



CITY of HOLLADAY

PLANNING COMMISSION MEETING AGENDA

Tuesday, January 5th 2021

In accordance with Executive Order issued by Governor Herbert Suspending the Enforcement of Provisions of Utah Code 52-4-202 and 52-4-207 due to the infectious nature of the COVID-19 the Planning Commission of the City of Holladay will hold their regularly scheduled meeting by electronic means, with no physical location.

Interested parties are encouraged to watch the video stream of the meeting on the City of Holladay's Facebook page. Participation in *public hearings* portions of the meeting can be done in any of the following ways:

- Email your comments related to *public hearing items* to the Community Development Department during regular business hours; jteerlink@cityofholladay.com OR rhobbs@cityofholladay.com
 - During the meeting, go to www.zoom.us in your web browser and join a meeting:
Meeting ID is: TBA (check city website: www.cityofholladay.com prior to the meeting)
 - During the meeting, call Zoom on your telephone: 699-900-6833 or 346-248-7799 or 301-715-8592
Meeting ID is: TBA (check city website: www.cityofholladay.com prior to the meeting)
-

AGENDA

5:30 PM WORK SESSION – The Commission may discuss any or all agenda items. No decisions or voting to occur.

6:00 PM CONVENE ELECTRONIC MEETING – Public Welcome & Chair Opening Statement

PUBLIC HEARING

1. **Conditional Use Permit – McQuinn Accessory Building – 2163 East Pheasant Way – R-1-43**
Review and consideration of a request of conditional approval from property owner, Anthony McQuinn for construction approval of a detached garage/guesthouse on his property sized larger than the permitted footprint in accordance with Holladay Ordinance §13.14.030, .030 & 132.08.040 File #21-2-01

ACTION

2. **Approval of Minutes** – 11/10 & 11/17

WORK SESSION

3. **Community Development Department** – Review of 2021 Ordinance amendment schedule

ADJOURN

CERTIFICATE OF POSTING

I, Stephanie N. Carlson, the City Recorder of the City of Holladay, certify that the above agenda notice was posted at City Hall, the City website www.cityofholladay.com, the Utah Public Notice website www.utah.gov/pmn, and was emailed to the Salt Lake Tribune and Deseret News and others who have indicated interest.

DATE POSTED: *

Stephanie N. Carlson MMC, City Recorder
City of Holladay



CITY OF HOLLADAY

**ORDER ON PUBLIC MEETINGS OF THE CITY OF HOLLADAY PLANNING
COMMISSION**

I, Jan Bradshaw, as the Chair of the City of Holladay Planning Commission, do hereby find and declare as follows:

1. Due to the Emergency conditions which currently exist in the State of Utah, and specifically in Salt Lake County and the City of Holladay as a result of the COVID-19 Pandemic, the holding of public meetings with an anchor location as defined in the *Utah Open and Public Meetings Act*, presents a substantial risk to the health and safety of those who may be present at the anchor location; and
2. The risk to those who may be present at an anchor location can be substantially mitigated by holding public meetings of the Planning Commission pursuant to electronic means that allow for public participation via virtual means; and
3. The City has the means and ability to allow virtual participation in the public meetings in accordance with the *Utah Open and Public Meetings Act*;

NOW THEREFORE, BASED UPON THE FOREGOING,

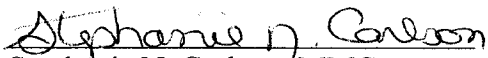
For thirty days from the date of this Order, meetings of the City of Holladay Planning Commission, shall be conducted by virtual means, without an anchor location.

DATED this 15th day of November, 2020.

By: _____

Jan Bradshaw, Chair

ATTEST:



Stephanie N. Carlson, MMC

City Recorder

Rules of the City of Holladay Planning Commission for Public Hearings

The Planning Commission Chair or Vice Chair is the Presiding Officer and will conduct the hearing.

1. **Introduction.** The Presiding Officer informs those attending of the procedure and order of business for the hearing.
2. **Staff Presentation.** City Staff briefly introduces the request that prompted the public hearing. The presentation shall not last more than five minutes.
3. **Sponsor Presentation.** If desired, the applicant or his/her representative may also make a presentation. The presentation shall not last more than fifteen minutes.
4. **Public Comment.** The Presiding Officer asks for public comment on the matter before the Commission. Comments are limited to three minutes and speakers are allowed to speak only once. Speakers are requested to:
 - (a) Complete the Citizen Comment Form
 - (b) Wait until recognized before speaking
 - (c) Come to the microphone and state their name and address for the record
 - (d) Be brief and to the point
 - (e) Not restate points made by other speakers
 - (f) Address questions through the Presiding Officer
 - (g) Confine remarks to the topic
 - (h) Avoid personalities

After each citizen has spoken, Commission members may ask questions of the participant before the Presiding Officer resumes or closes the hearing.

5. **Applicant Summation/Response.** Following citizen comment and questions by the Commission, the applicant shall be given an opportunity to give up to fifteen minutes summation and/or response prior to closing of the public hearing.
6. **Closing the Hearing.** If there is no further public comment, questions by Commission members, or final response by the applicant, the Presiding Officer shall conclude the hearing at least ten minutes in advance of a subsequently scheduled public hearing. The Commission may vote to extend the public hearing past the starting time of a subsequent public hearing.
7. **Consideration of Item.** At the close of the public hearing, the Commission shall consider the item, discuss its merits and vote on the matter or vote to continue it at a future meeting.

FILE# 21-2-01

McQuinn Conditional Use Permit

ADDRESS:

n/a

LEGAL DESCRIPTION:

22-15-154-011
LOT 10 Cottonwood Glade Subdivision
97 acre / 42,253sqft

APPLICANT/REPRESENTATIVE:

Anthony McQuinn

PROPERTY OWNER:

Anthony and Mary McQuinn

ZONING:

R-1-43

GENERAL PLAN DISTRICT:

Country Estates-Protected (CE-P)

CITY COUNCIL DISTRICT:

District #5

PUBLIC NOTICE DETAILS:

Mailed 12/22/2020 (500' radius)

REQUEST:

Conditional Use Permit

APPLICABLE REGULATIONS:

13.14.110
13.14.030
13.08.040
13.14.090

EXHIBITS:

Site zone map
Site aerials
Staff report
Applicant Narrative
N'hood mtg notes
accessory building construction drawings

STAFF:

Jonathan Teerlink, City Planner

DECISION TYPE:

Administrative:

Public hearing required. PC shall make a motion of either, denial, approval or to continue. All motions require findings which support the decision. As directed by ordinance, applications shall be approved if the Land Use Authority finds Substantial Evidence of compliance with applicable requirements. Holladay Ord. 13.06.050.B2 and 13.08

SITE VICINITY MAP



Notes:

Lot is currently vacant

NOTICE OF A PUBLIC HEARING Conditional Use Permit – Accessory Building Size

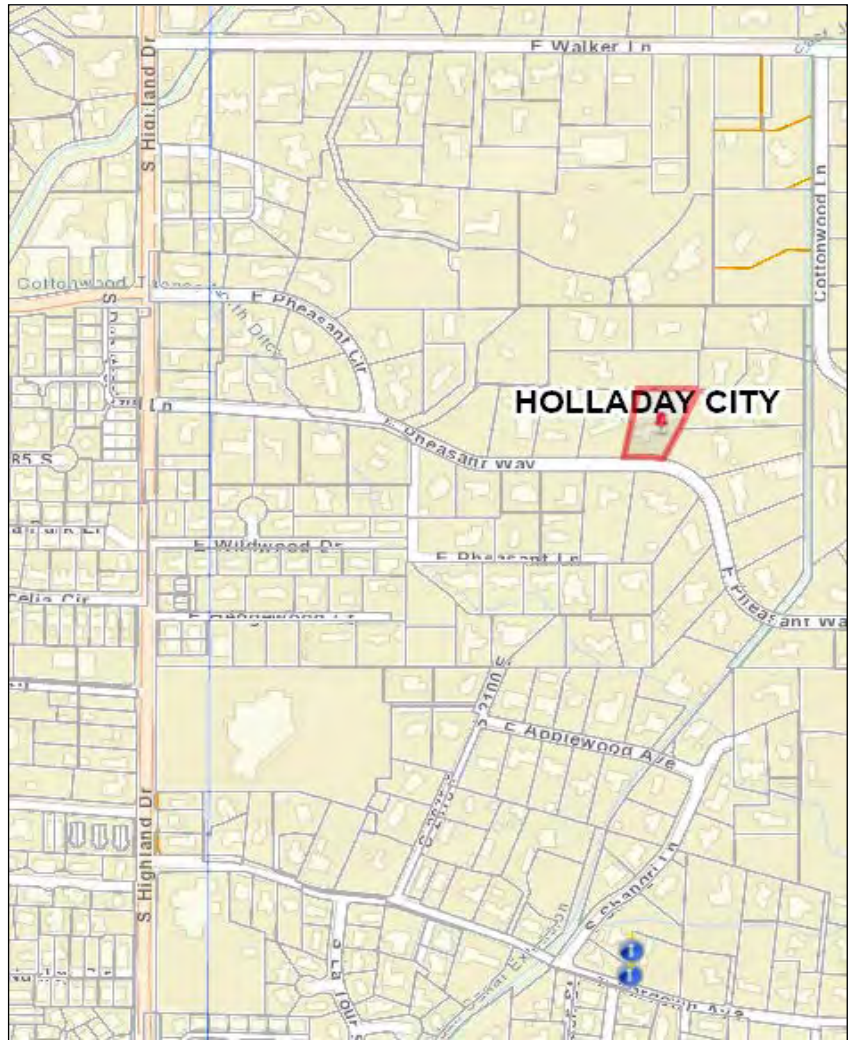
Date: Tuesday, January 5th 2020
Time: As close to 6:00 pm as possible
Location: **Remote Electronic Meeting – See below*
Hearing Body: Planning Commission

Notice is hereby given that the City of Holladay Planning Commission will hold a public hearing to receive comments regarding a Conditional Use Permit application submitted by Anthony McQuinn. Mr. McQuinn is asking the Commission to sanction emplacement of an accessory building [intended to function as a storage building, workshop and guesthouse] on his property in accordance with provisions in Holladay City Code Section 13.14.030. The property is located at 2163 Pheasant Way in Holladay.

*****No zone or ordinance change is proposed in conjunction with the/this application.*****

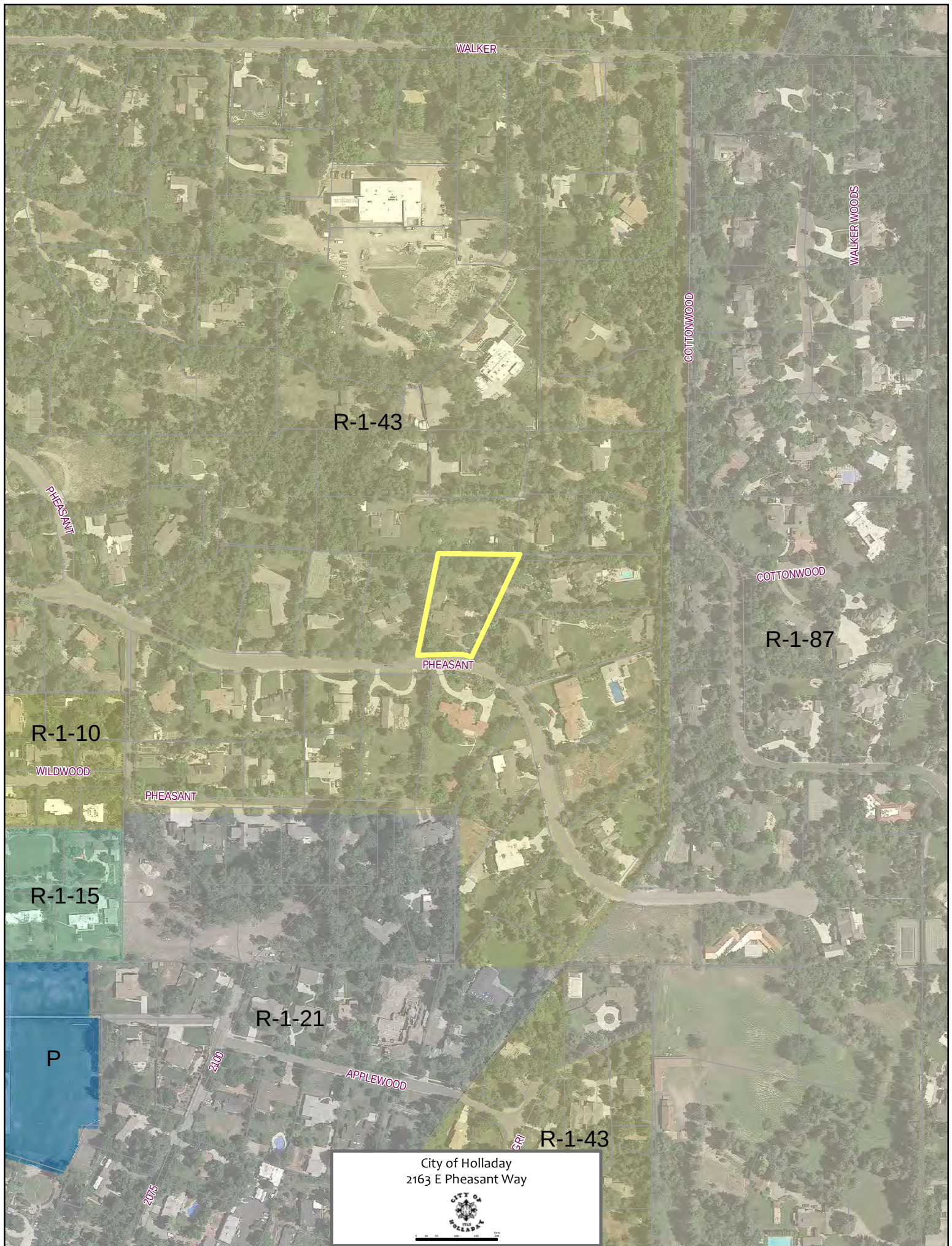
**Due to the current declared State of Emergency, the Planning Commission will hold virtual meetings until further notice as public gatherings are currently prohibited. This hearing will be held electronically. Information on how to join the meeting can be found on the City's website, www.cityofholladay.com, and on the posted agenda prior to the meeting. Interested parties are encouraged to watch the video stream of the meeting on the City of Holladay Facebook page.*

**Please submit any written comment via email to Jonathan Teerlink, jteerlink@cityofholladay.com by 5:00 pm 01/04/2020. Public comments received by the designated times will be read and evaluated by the Commission.*



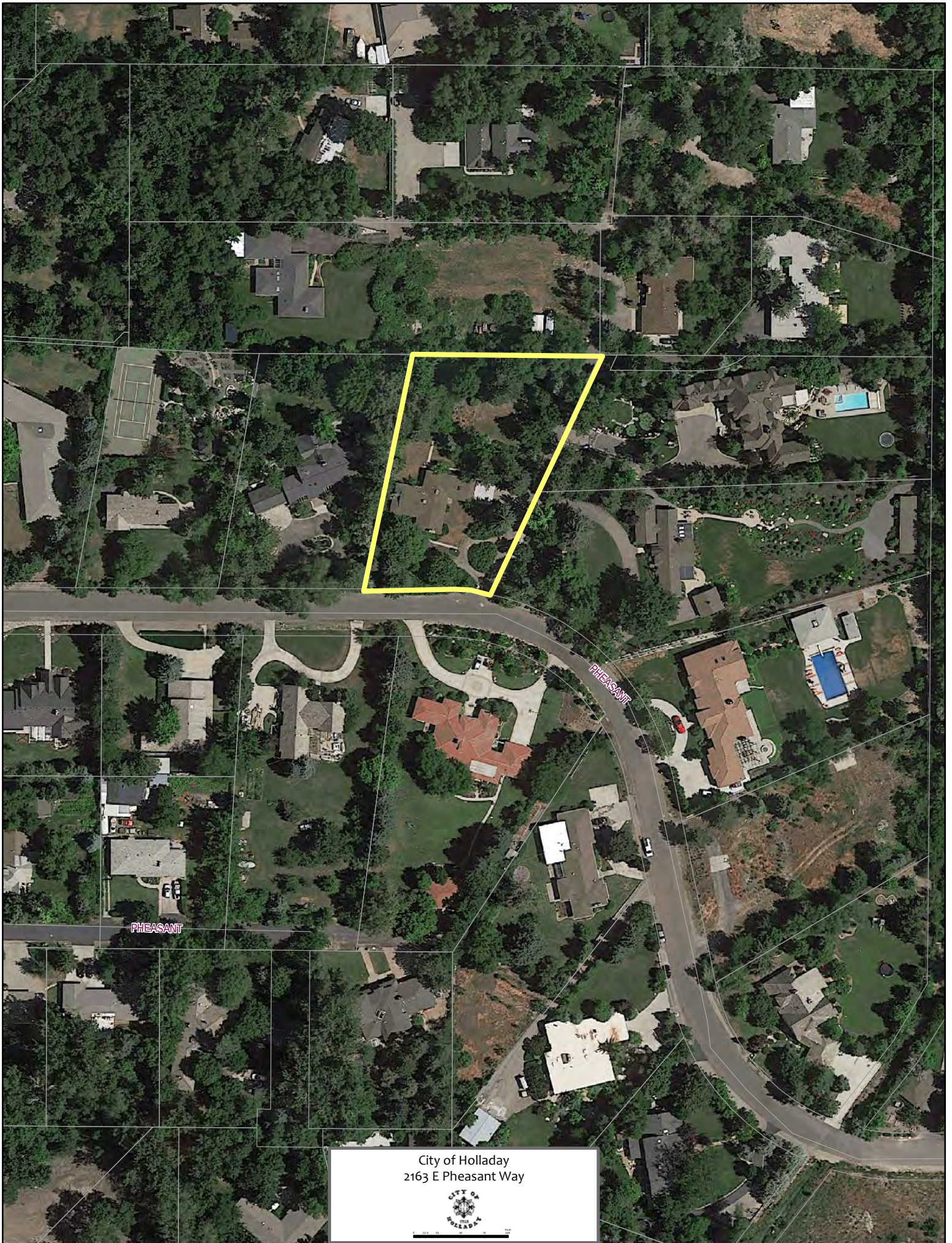
If you have questions please contact Jonathan Teerlink at 801-527-3890 during regular business hours.

ATTENTION: This notice was mailed December 23rd 2020, by order of the Community Development Director, Paul Allred, to all residents within an area extending 500 feet from the subject property. If you know of anyone who may not have received a notice but may have an interest in the meeting, please pass along the information. If you are not the owner of your residence, please notify the owner regarding this matter. Thank you.



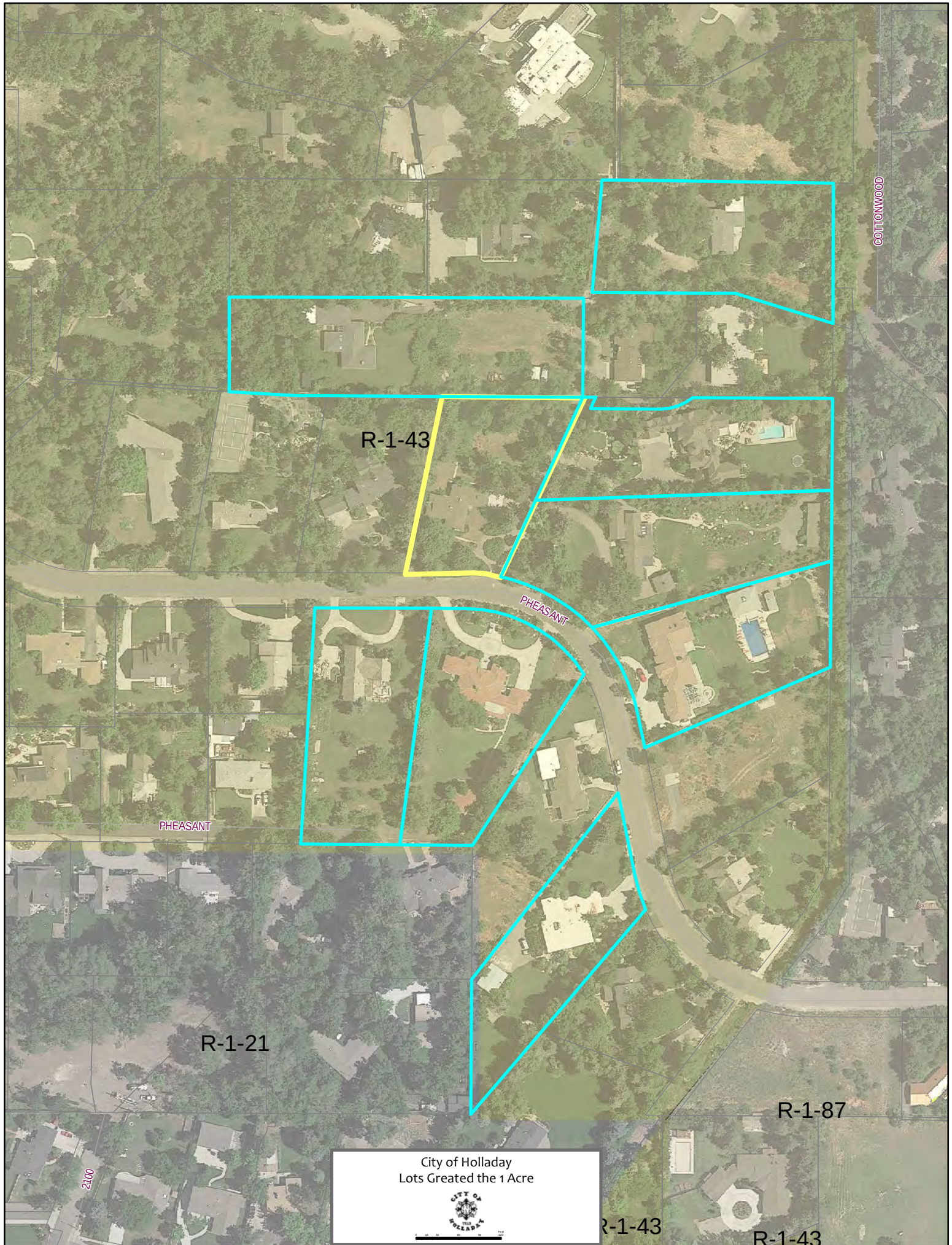
City of Holladay
2163 E Pheasant Way





City of Holladay
2163 E Pheasant Way





City of Holladay
Lots Created the 1 Acre



154-014

154-011

22-15

155-000

© 2015 Maxar, GeoEye, Earthstar Geograph

© 2015 Airbus

Request: **CONDITIONAL USE – ACCESSORY BUILDING (FOOTPRINT SIZE)**
 Project: McQuinn Garage
 Address: 2163 E Pheasant Way, Holladay, UT 84117
 Applicant: Anthony McQuinn
 File No: 21-2-01
 Notice: Mailed December 22, 2020
 Staff: Jonathan Teerlink, City Planner

ACREAGE:	.97 acres (42,253.2 sq ft)	
ZONE:	R-1-10	
CURRENT USE:	Single Family Residential Home	
GOVERNING ORDINANCES:	13.14.110	ACCESSORY BUILDINGS – MAX PERMITTED 1,100 sq ft
	13.14.030	ACCESSORY USES
	13.08.040	CONDITIONAL USE PERMITS STANDARDS
	13.14.090	REAR YARD COVERAGE MAX

PLANNING COMMISSION ACTION

Conditional use requests are administrative actions approvable by the Land Use authority (Planning Commission). This use is allowed, however elements of a project at a given location may warrant specialized review for mitigation of potential negative aspects or potential negative impacts. Conditions may be applied by the Planning Commission to mitigate or lessen potential issue.

PROPOSAL / BACKGROUND

- The applicant, Anthony McQuinn is requesting *conditional* approval to construct a detached garage/workshop/guesthouse building, with a footprint of 1,500 square feet, exceeding the permitted footprint size as per Section 13.14.110 (1,100 square feet) and Section 13.14.030G (1,200 square feet).
- The use of the building is primarily a guesthouse, two-story “carriage house”.
- The conditional use, if approved, allows the guesthouse to exceed the total allowable footprint by 800 sqft
- Mr. McQuinn’s .97 acre property is similar to other lots in the area in that it does not meet the R-1-43 zone’s minimum one acre lot size. The request is to apply size allowances granted to lots one acre and larger.
- The lot is large enough, to accommodate the proposal. meeting setbacks normally applied a home. (see site plan)
- The applicant has held a neighborhood meeting and as provided background summary of neighbor’s concerns.
- As the Guesthouse is proposed to meet the same setback (also known as the building corridor) as the primary home, maximum height allowed is 35 feet instead of 20 feet outside the “corridor” area.

PERTINENT DEFINITIONS, ORDINANCES, ETC.

- The Planning Commission is authorized to approve conditional use permit above the footprint area provided in chart 13.14.110 and 13.14.030 provided the proposal does not exceed a maximum of 25% of the rear yard area. 13.14.090 – the building is proposed with the buildable area of a primary home, a location which in not considered a rear yard.
- Denial of a conditional use permit application should only occur, “*if the anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or by the imposition of reasonable conditions to achieve compliance with applicable standards, the conditional use permit shall be denied.*” (13.08.040.G.)
- 13.14.030 ACCESSORY USES:
 - “E. Any accessory building or buildings incidental to a permitted use where the total footprint square footage exceeds the square footage as allowed in chart 13.14.101 of this chapter shall be approved by the planning commission as a conditional use”
 - G. The Planning Commission may approve a conditional use permit for a guesthouse...[having] A footprint greater than one thousand two hundred (1,200) square feet on lots larger than twenty one thousand seven hundred eighty (21,780) square feet but smaller than forty three thousand five hundred sixty (43,560) square feet.

- **ACCESSORY BUILDING:** A detached, subordinate building clearly incidental to and located upon the same lot occupied by the main building.
- **ACCESSORY USE:** A use conducted on the same lot as the primary use or structure with which it is associated; and is a use which is clearly incidental to and customarily found in connection with such primary use; and is either in the same ownership as such primary use or is maintained and operated on the same lot substantially for the benefit or convenience of the owners, occupants, employees, customers or visitors of the primary use.
- **GUESTHOUSE, CARETAKER QUARTERS:** *A separate dwelling structure located on a lot with one or more main dwelling structures and used for housing of guests or servants, and not rented, leased or sold separate from the rental, lease or sale of the main dwelling.*

STAFF RECOMMENDATION

Primary focus of this conditional use application is to ascertain and mitigate the anticipated or manifested (via public hearing) detrimental effects of a guest house proposal at this location having a footprint of 800 square feet larger than normally permitted. Staff recommends evaluating public comment and assessing whether or not there are negative ramifications attached to the proposal and, if so, determine what modifications to the site/building shall be required to directly mitigate the concerns. Specifically, it is recommended that the Commission review the approval standards in the Conditional Use section below for guidance and to find compliance.

Staff recommends that the Planning Commission can approve the request, as proposed or otherwise modified, by moderating a discussion centered around reasonable mitigative condition(s). Assuming neighboring property owners have no measurable, definable impacts on their properties, the PC may feel comfortable with an approval. Staff has provided the Planning Commission possible findings and potential conditions immediately below.

Suggested Findings:

1. City ordinances allow for the request - with applicable conditions (if any)
2. The use is consistent with applicable standards set forth Holladay Ord.13.08.040F
3. Guesthouses are an allowed accessory use for this lot size
4. Upon finding of potential negative impacts, if any, the PC may impose directly related and reasonable conditions to offset the impacts.
5. The combination of both the home and proposed accessory building meet maximum lot coverage regulations
6. The proposed use is for private, residential purposes – (Second Kitchen Agreement has been executed)
7. The Guesthouse is proposed to be situated having frontage on the private lane, meeting setback standards regulating primary home construction.
8. Assuming neighboring property owners have no measurable, definable impacts on their properties, the PC may feel comfortable with an approval as proposed.

Suggested Conditions of Approval, if applicable

1. The use of the structure is residential and shall follow Holladay's land use regulations, specifically it may not support a commercial business, long-term or short-term rental, commercial storage or leasing activities
2. The accessory building may not exceed a footprint of 2,000 square feet or an overall height of 35'
3. Architectural treatments are required as the permit submitted drawings.
4. The conditional use shall run with the land and not the applicant.
5. The conditional use is subject to inspection upon complaint of non-compliance with the permit.
6. Applicant shall apply for and obtain an approved building permit.

SUPPORTING DOCUMENTS:

- Excerpts from the Conditional Use section below. 13.08.040, Conditional Use Permit
- Aerial Photo

13.08.040: CONDITIONAL USE PERMIT:

F. Approval Standards: A conditional use shall be approved if reasonable conditions are proposed by the applicant, or can be imposed by the land use authority, to mitigate the potential detrimental effects of the proposed use in accordance with applicable standards set forth in this section.

1. A conditional use shall:

- a. Be consistent with policies set forth in the city's general plan applicable to the site where the conditional use will be located.
- b. Be allowed by the zone regulations where the conditional use will be located.
- c. Be compatible with the character of the site, adjacent properties and uses, and existing development within the vicinity of the site where the use will be located.
- d. Provide vehicular access to the site without materially degrading the existing level of service of the abutting streets.
- e. Locate all driveways oriented to direct traffic to streets, major or local, without impacting the safety, purpose, and character of these streets.
- f. Locate on-site parking areas and structures, particularly those locations likely to encourage street side parking for the proposed use, in areas of the site that will not adversely impact the reasonable use of adjacent properties.
- g. Accommodate peak traffic to the site without impairing the use and enjoyment of adjacent properties.
- h. Provide an internal circulation system designed to mitigate adverse impacts on adjacent property from motorized, non-motorized, and pedestrian traffic.
- i. Restrict hours of operation of the proposed conditional use in relation to the hours of activity or operation of other nearby uses to mitigate noise, light, odor, or other nuisances that unreasonably impair the use and enjoyment of adjacent properties.
- j. Demonstrate existing or proposed utility and public services will be adequate to support the proposed use at normal service levels and is designed in a manner to avoid adverse impacts on adjacent land uses, public services, and utility resources.
- k. Install appropriate buffering, such as landscaping, setbacks, and building location, to protect adjacent land uses from light, noise, and visual impacts resulting from the proposed use.

2. A conditional use shall not:

- a. Contribute to a detrimental concentration of existing nonconforming or conditional uses substantially similar to the use proposed within one-fourth (1/4) mile of the exterior boundary of the subject property;
- b. Result in loss of privacy, objectionable views of large parking or storage areas; or views or sounds of loading and unloading areas; and
- c. Encroach on or cause erosion of the bank of a river or stream, or direct runoff into a river or stream without approval by the appropriate storm water authority.

3. The proposed conditional use and associated development shall comply with all other applicable provisions of this title and this code.

G. Conditions of Approval: Such conditions shall:

1. Be expressly set forth in the conditional use permit;
2. Not be used as a means to authorize a use intended to be temporary only;
3. Substantially further a legitimate public purpose;
4. Not require the applicant to carry a disproportionate burden in furthering the public purpose of the conditions,&
5. In the case of land dedications and other contributions of property, be reasonably related and roughly proportionate to the use of the property for which the conditional use is authorized.

H. Denial: If the anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or by the imposition of reasonable conditions to achieve compliance with applicable standards, the conditional use permit shall be denied.

I. Appeal: A person adversely affected by a final decision of the planning commission regarding approval or denial of a conditional use permit may appeal the decision to the city council.

J. Effect of Approval:

1. A conditional use permit shall not relieve an applicant from obtaining any other authorization, permit, or license required under this title or other title of this code.
2. A conditional use permit shall run with the land, unless otherwise specified in the approved conditional use permit, and is subject to the provisions relating to amendment, revocation, or expiration of a conditional use permit.

K. Inspection: Following approval of a conditional use permit, the community development director shall ensure that development is undertaken and completed in compliance with the permit.

L. Amendment: The procedure for amending an approved conditional use permit shall be the same as the original procedure set forth in this section.

M. Revocation: A conditional use permit may be revoked as provided in chapter 13.09 of this title.

N. Expiration: A conditional use permit shall expire and have no further force or effect if the building, activity, construction, or occupancy authorized by the permit is not commenced within two (2) years after approval. A twelve (12) month extension may be approved by the land use authority subject to payment of an extension fee equal to the original filing fee.

Conditional Use Permit Request:
McQuinn Accessory Building/Guest House
2163 Pheasant Way, Holladay UT 84124

Issue:

We have a number of requirements for the property that will potentially require additional accessory buildings. These include additional covered parking, additional space for a workshop, storage and lawn care equipment, and additional space for guest and family accommodations. The guest accommodations will initially be used for our son and daughter in-law while they attend graduate school at the University of Utah, and long term for our special needs daughters to provide them with a supervised independent living experience with friends. We could fill these needs with multiple accessory structures, but a significant portion of our lot is already taken up with a private lane (accessed by several adjoining properties), and building multiple structures would maximize our lot coverage, reduce our backyard, and significantly limit our land use and landscaping options.

The code allows for a guest house with a 2,000 square foot lot coverage for properties over an acre and 1,200 square foot lot coverage for properties under 1 acre. Our property is .97 of an acre, which would technically restrict us to the smaller foot print, and significantly impacts our ability to consolidate these three activities into one building.

We have designed an accessory building/guest house (drawings attached) and are requesting a conditional use permit to construct this building on our property. It has an approximately 2,000 square foot footprint and is consistent with other buildings built on 1 acre properties in the city.

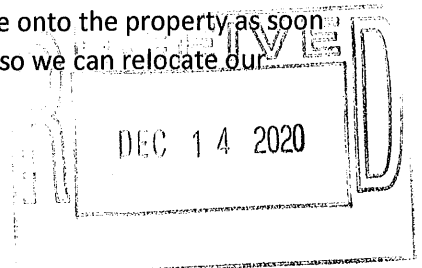
We have held a neighbor meeting and shown the plans to our neighbors. They understood the reason for our request and were receptive to design. Meeting notes are attached to this submission.

Request 1: We are requesting a conditional use permit to build the Accessory/Guest House, as outlined in the attached floorplan, plot diagram and elevations. This building would include a woodworking shop, 3 car garage/storage space on the ground floor and a guest apartment on the second floor. The uses of the building are all consistent with building and zoning regulations, so we are only requesting the authorization to build a building that is consistent with the lot coverage of a 1 acre lot.

Background:

We currently plan to start construction on both buildings at the same time, but the guest house will be on slab and will be very simple construction compared to the main house. The guest house will likely be constructed in about half of the time of the main house. We expect that the guest house will be completed after rough construction on the primary residence, but before the interior finishing construction has been completed.

We have recently relocated our family from California, so our children can attend school and so we can manage the building project locally. We are currently renting a house on Splendor Circle in Holladay, and 4 of our children are attending Churchill Jr. High. We would like to move onto the property as soon as possible so we can minimize our rental expense during construction, and so we can relocate our belongings from storage.



Request 2: We would like to obtain an occupancy permit for the accessory/guest house as soon as the accessory/guest house is completed and while the primary residence is still under construction. We will relocate to the primary residence once the primary residence is completed.

Additional Background:

We currently have 7 kids, one married biological son who is an engineering student at BYU and who is planning on pursuing a master's degree at the University of Utah once he graduates, one biological son who is a BYU student who is currently on a mission in Farmington, New Mexico, and 5 adopted children who are still at home. 2 of the kids are adopted from Korea and 3 from the same orphanage in China. We are currently in the process of adopting another daughter who is a childhood friend of our Chinese daughters. We expect to bring her home mid to late 2021 year depending on travel restrictions.

2 of my daughters have special needs and will likely live with us long term, but as they get older we would like to use the guest house to provide them a supervised independent living experience. The guest house will provide flexibility for housing our children as they marry and attend school, and for our special need's children in the future. Having the larger multipurpose building will make these goals possible.

We appreciate your consideration of these request. We believe that they are consistent with the land uses and requirements of the code and consistent with the nature and environment of the neighborhood. We look forward to the hearing and your response.

Please let me know if you have any questions.

Best Regards,

Tony McQuinn
650- 823-9647
apmcquinn@gmail.com

Notice of Neighborhood Meeting

December 5, 2020

From:

Tony and Mary McQuinn
2163 E. Pheasant Way
Holladay, UT 84121
650 823-9648

Dear Neighbor,

A neighborhood meeting will be held on Saturday, December 12, 2020 at 2163 E. Pheasant Way, Holladay, at 10 a.m., to discuss a proposed main house project and conditional use permit for a guest house located at 2163 E. Pheasant Way.

Please wear a mask and come meet your new neighbors to discuss this conditional use permit application. We will have doughnuts and hot chocolate to keep you warm while you socially distance outdoors, and promise to keep the meeting brief.

This is **NOT** a City of Holladay Planning Commission or City council meeting. This is a pre-meeting prior to presenting a pending application to the City of Holladay.

Thank you,

Tony and Mary McQuinn

Neighborhood Meeting

December 12, 2020

2163 E. Pheasant Way, Holladay UT 84124

Notes on Neighborhood meeting for Guest Cottage Conditional Use permit

Anthony and Mary McQuinn

Notice

A notice was sent to all surrounding neighbors within 500 feet for a meeting on a proposed house project for the vacant lot. We held the meeting on the lot at 10:00 am on Saturday, December 12, 2020. Approximately 20 neighbors attended the meeting including many families and children. 8 families signed our sign our sign-in sheet, all of which were immediate neighbors to the property.

Summary of the Meeting

We showed the neighbors our plans and talked with them about our proposed building project. Most of the discussion revolved around their displeasure about the lot being deforested by a previous owner, and that the lot had been left vacant and undeveloped for several years. They were excited to finally see some activity on the property, and were interested in knowing when we would be able to break ground.

The neighbors were initially cautious about a request for a variance, based on previous negative experiences in the neighborhood and with the actions of the previous owner of our property, but were happy to see that the property was close to being developed and would be occupied by a family.

We discussed the cottage and our proposed plans. We explained that we would like to have additional enclosed parking space on the property, an area for a woodworking workshop and a guest cottage for my Son and Daughter in Law, and for our special needs daughter's future use, and that we would like to consolidate these 3 uses into one building rather than having multiple accessory buildings on our property.

We explained that the code allowed a 2,000 square foot guest house on the property for a property larger than one acre and a 1,200 square foot guest house

on the property for properties less than one acre. This difference would materially impact the use of our land and would restrict our ability to consolidate these three ancillaries uses into one building.

We notified them that our property was .97 of an acre and would therefore fall within the 1,200 square foot restriction. A significant portion of our property is also taken up by the private lane, and we would like a large open back yard which further added to our desire to consolidate the 3 uses into one building.

We explained that we were going through the conditional use permit process to allow us to build the building shown to them in the plans, and that it was not a general variance on the property.

Neighbor feedback

The neighbors started by expressing skepticism and cautiousness over variances in general, recounting stories about the previous owner of our property demolishing the house and cutting out large trees and landscaping before obtaining the building permits for the property, other neighbors building basements without finishing the house, purchases by developers and one spec house owner threatening to turn their rental house into a drug rehab center. It sounded like many of the zoning and building restrictions were developed based on abuses by developers in our neighborhood, so it was helpful and interesting to hear the back stories on these regulations.

When we discussed our project, they seemed to be relieved that the property had been purchased by a family that was planning to live on the property long term. Once we discussed the allowances and the size and coverage issues with our property, they seemed to understand and accept our request for the conditional use permit.

when we showed the plans to the neighbors, they were mostly interested in the street elevations for the view that faces their properties. The only discussion over the structure and its uses was a statement that they did not want it to be rented as an Air BnB, which we reassured them was not our intention.

Most of the discussion revolved around the neighbor's displeasure with the previous owner demolishing the house and landscaping and their regret that the beautiful natural landscaping had been removed. So, the neighbors expressed their desire to quickly have the land developed and to have the property landscaped. We expressed our interest in adding landscaping that was in keeping with the nature of the neighborhood.

There was some discussion over the narrowness of the private lane, and concern over whether or not we would put up a fence that might further restrict access, to which we assured them we were not intending on putting a fence up along the private lane. One neighbor also asked questions about the placement of the main driveway and access to the private lane, but we think that their questions were resolved by further explanation of the plans.

Overall, it was a great experience and opportunity to meet the neighbors. Our children immediately made friends and started playing with the neighborhood children at the meeting. We were able to learn the background on the property and the neighborhood, and to meet several wonderful families. We were concerned about having an outdoor meeting on the property in December, but having an in person, face to face meeting allowed us an opportunity to meet the neighbors and to have discussions and establish a rapport that would have been impossible over Zoom. The neighbors were very knowledgeable about the neighborhood and informed us about internet, radon and water issues in the area.

We discovered many similarities with the neighbors including children, schools, hobbies and interests, and look forward to getting to know them better once our project is completed.

Neighbor mailing list
From County Assessor

X MICHAEL W & TIFFANY K NELSON
2071 E PHEASANT WAY
HOLLADAY, UT
84121-1308

X AHL-UTAH
560 N 500 W
SALT LAKE CITY, UT
84116-3429

X CHARLES & VILAH PETERSON
2190 E WALKER LN
HOLLADAY, UT
84117-7616

X LLC & M LLC
1912 NORTH DIVISION #201
SPOKANE, WA
99207

X SAFFORD PROPERTY INVESTMENTS, LLC
2159 E PHEASANT WY
HOLLADAY, UT
84121-1310

X BONNIE LUND
2165 E PHEASANT WY
HOLLADAY, UT
84121-1310

X LILA BLANCHARD
2161 E PHEASANT WY
HOLLADAY, UT
84121-1310

X DON SKAGGS
PO BOX 171437
HOLLADAY, UT
84117-1437

X STEPHEN & KAREN MCPHIE
5578 S WALKER WOODS LN
HOLLADAY UT
84117-7661

X CRAIG & MARG MCCLANAHAN
2093 E PHEASANT WY
HOLLADAY, UT
84121-1308

X KATHRYN J PRICE
4760 S HIGHLAND DR
MILLCREEK, UT
84117-5149

X HEXAD INVESTMENTS CO., LLC
2149 E PHEASANT WY
HOLLADAY, UT
84121-1310

X UNITY TR ET AL
2149 E PHEASANT WY
HOLLADAY, UT
84121-1310

X TOM & NADINE NELSON
2155 E PHEASANT WY
HOLLADAY, UT
84121-1310

X KARIN LINDSEY
2157 E PHEASANT WY
HOLLADAY, UT
84121-1310

X CHAD IVERSON
2075 E PHEASANT WY
SALT LAKE CITY, UT
84121-1308

X MADELYN MCGILL
2102 E PHEASANT LN
HOLLADAY, UT
84121

X NINA JOHNSTON
2120 E PHEASANT WY
HOLLADAY, UT
84121-1311

X ROBERT & CLARE LANG
2134 E PHEASANT WY
HOLLADAY, UT
84121-1311

X SONKENS FAM TR ET AL
2076 E PHEASANT WY
HOLLADAY, UT 84121-1358

X SINGING GYPSIES LLC
4825 S WANDER LN
HOLLADAY, UT 84117-6410

X SINGING GYPSIES LLC
2119 E PHEASANT LN
SALT LAKE CITY, UT
84121-1357

MELANIE MUMFORD

X 6332 S HAVEN CHASE LN
SALT LAKE CITY, UT 84121-6515

X KEVIN & KEITH GREAVES

2152 E PHEASANT WY
HOLLADAY, UT 84121-1311

LAUREL SMITH

X 2174 E PHEASANT WY
HOLLADAY, UT 84121-1311

X TITAN MANAGEMENT LLC

1745 E FORT UNION BLVD
COTTONWOOD HTS, UT 84121-2851

MICHAEL & CARRIE WAGSTAFF

X 2141 E PARLEYS TER
SALT LAKE CITY, UT 84109-1509

JONATHAN & LINDA SPIRA

X 2194 E PHEASANT WY
HOLLADAY, UT 84121-1311

X CARRIE JOHNSON

1937 N UTAH ST
ARLINGTON, VA 22207

X MYRLE & KEVIN WATTS

2144 E PHEASANT LN
HOLLADAY, UT 84121-1356

X BLAKE & BRYNN HADLEY

2169 E PHEASANT WY
HOLLADAY, UT 84121-1310

X CATHERINE L HARLIN

2181 E PHEASANT WY
HOLLADAY, UT
84121-1310

X MARK REICHMAN

2191 E PHEASANT WY
HOLLADAY, UT
84121-1310

TAYLOR & WENDY DEBRY

X 2199 E PHEASANT WY
HOLLADAY, UT 84121-1310

BRYCE WADE

X 2141 E PARLEYS TER
SALT LAKE CITY, UT
84109-1509

SHEETAL & RAJIV SHAH

X 2173 E PHEASANT WY
HOLLADAY, UT 84121-1310

TODD R WILCOX

X 2263 E COTTONWOOD CIR
HOLLADAY, UT 84117-7601

PM HOLDINGS, LLC

X PO BOX 171018
SALT LAKE CITY, UT
84117-1018

MARILLYN B JOHNSON

X 975 S MILITARY DR
SALT LAKE CITY, UT
84108-1325

MEETING SIGN-IN SHEET			
Project:	Conditional Use Permit for Guest Cottage 2163 E. Pheasant Way Holladay, UT 84124	Meeting Date:	12/12/2020 10:00 a.m.
Facilitator:	Anthony and Mary McQuinn 650 823-9648	Place/Room:	Vacant lot - project site 2163 E. Pheasant Way Holladay, UT 84124

[illegible]

From: [Nina Johnston](#)
To: [Jonathan Teerlink](#)
Subject: Mr. Anthony McQuinn at 2163 Pheasant Way
Date: Wednesday, December 30, 2020 10:39:25 PM

I am totally opposed to Mr. McQuinn wanting to build an accessory building to serve as a storage building, workshop and guest house. Why can't his house accommodate those needs?

I live at 2120 East Pheasant Way and no one builds like that. It would fill up the whole lot.

Most sincerely,

Nina Johnston



TONY & MARY
McQUINN

DESIGN PHASE		
DRAWN:	DATE:	CHECKED:
-	-	
DESIGN REV. PHASE		
-	-	
FINAL PHASE		
-	-	
SHOP DRAWINGS		
-	-	

PROJECT: 20-063

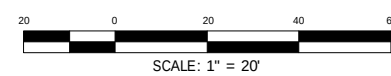
COPYRIGHT PFB CUSTOM HOMES GROUP, LLC.
THESE DRAWINGS ARE NOT TO BE USED FOR
MAKING ANY REPRODUCTION THEREOF, FOR USE
WITH ANY OTHER PROVIDER'S MATERIALS OR FOR
CONTRACTING ANY BUILDING WITHOUT FIRST
OBTAINING THE WRITTEN PERMISSION FROM PFB
CUSTOM HOMES GROUP, LLC. DO NOT SCALE
DRAWINGS. PFB CUSTOM HOMES GROUP, LLC IS
NOT RESPONSIBLE FOR ERRORS DUE TO SCALED
DRAWINGS. REFER ANY QUESTIONS OR
DISCREPANCIES TO PFB CUSTOM HOMES GROUP,
LLC BEFORE START OF CONSTRUCTION.

PRELIMINARY
NOT FOR
CONSTRUCTION

SCALE: AS NOTED

SITE

SHEET



CERTIFICATE

I, VON R. HILL, A PROFESSIONAL LAND SURVEYOR ACCORDING TO THE LAWS OF THE STATE OF UTAH, DO CERTIFY THAT I HAVE SURVEYED THE PARCEL OF GROUND SHOWN HEREON ACCORDING TO UTAH STATE CODE 17-23-17.

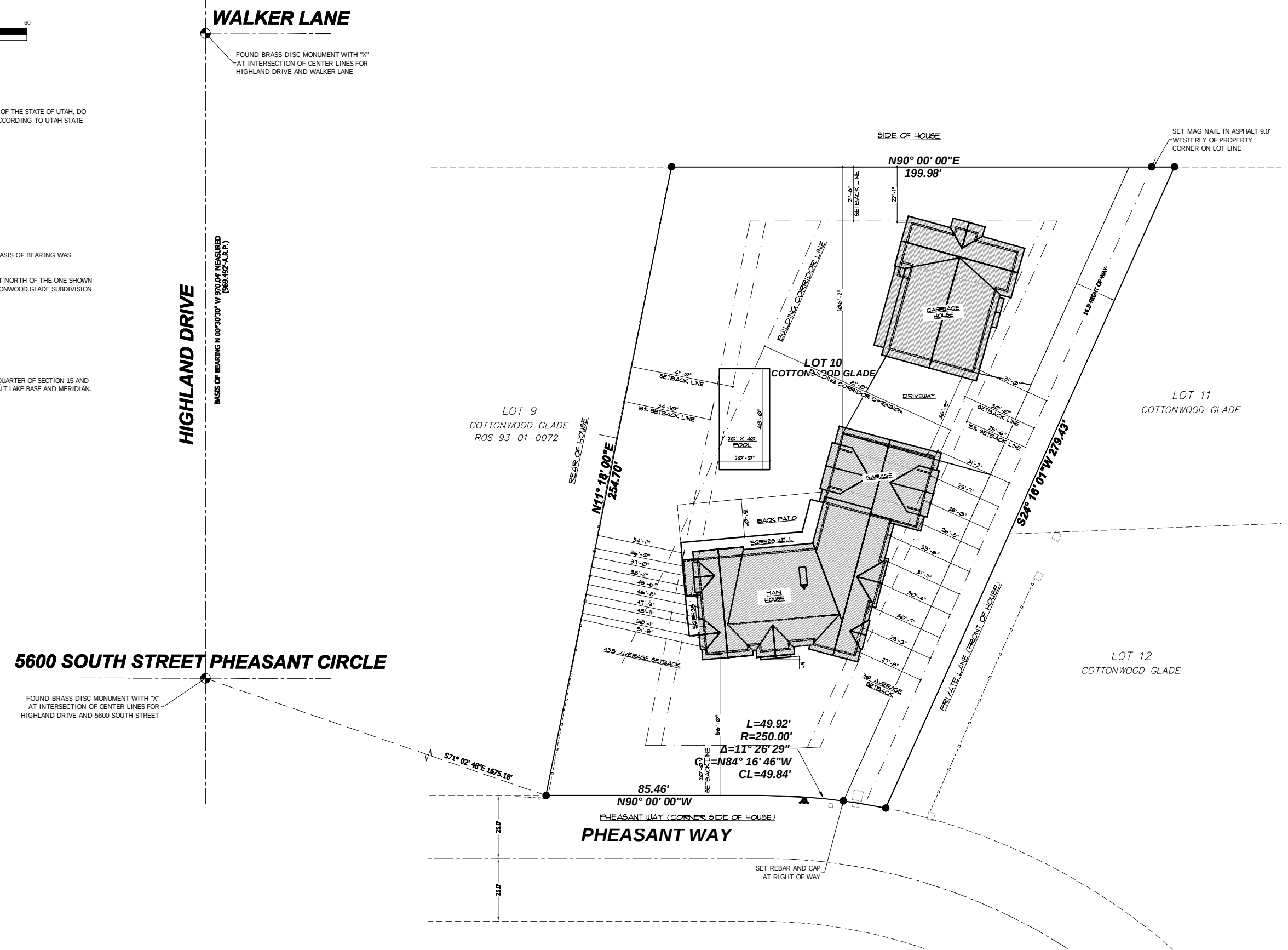
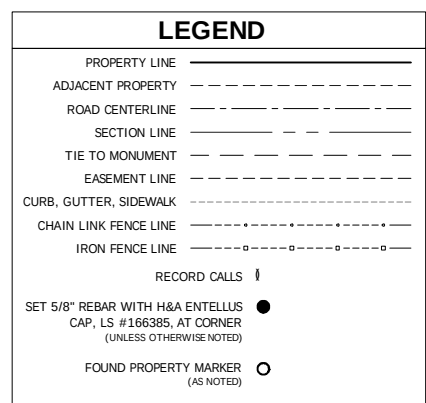
NARRATIVE

THE PURPOSE OF THE SURVEY WAS TO MARK THE PROPERTY CORNERS. THE BASIS OF BEARING WAS ESTABLISHED BETWEEN THE MONUMENTS SHOWN.

DESCRIPTION

LOT 10, COTTONWOOD GLADE, A SUBDIVISION, A PART OF THE NORTHWEST QUARTER OF SECTION 15 AND
NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 2 SOUTH RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN

CONTAINS 0.969 ACRES



SITE PLAN



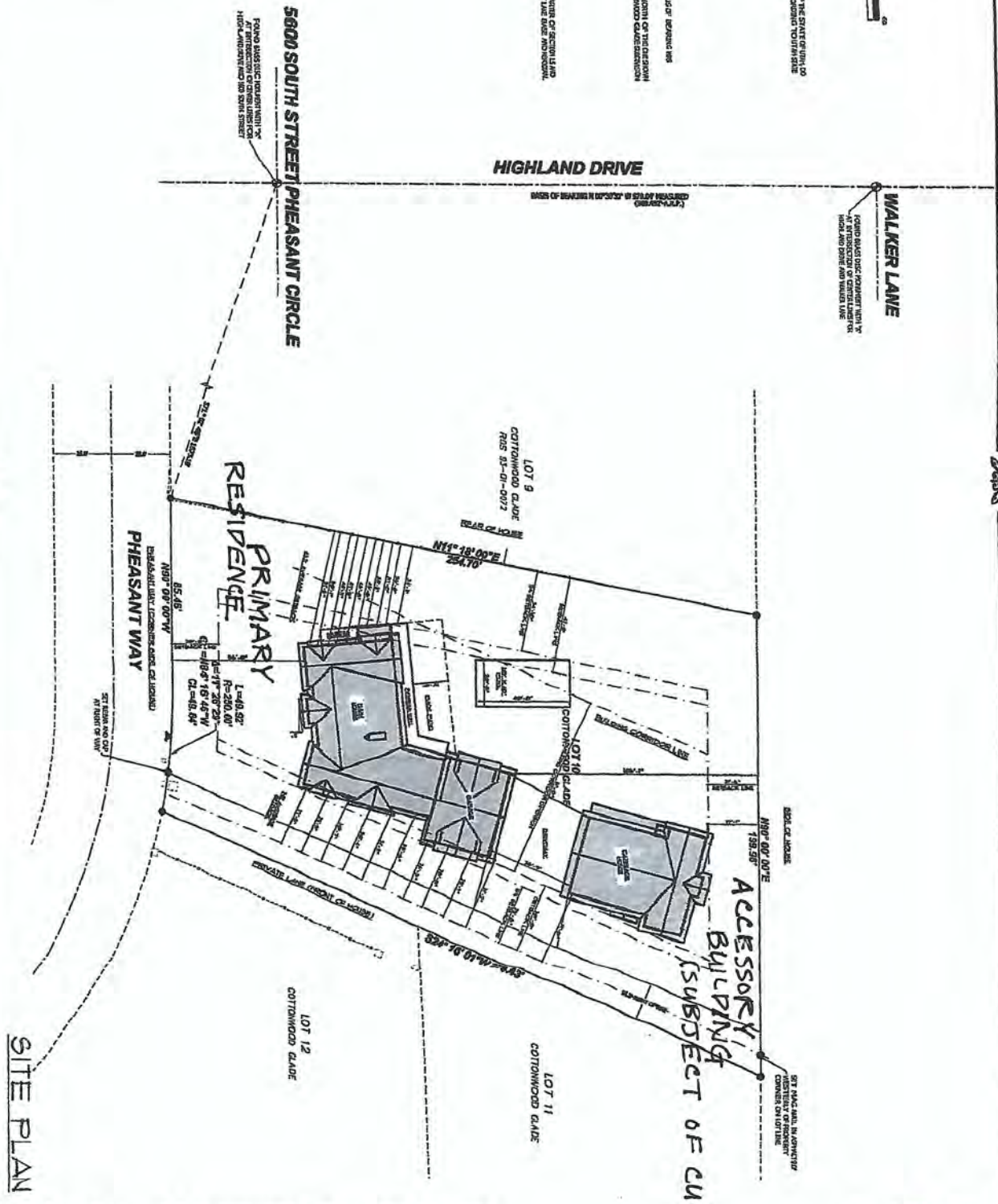
CERTIFICATE
I, TONY A. MCFINN, A PROFESSIONAL LAND SURVEYOR, ACCORDING TO THE LAWS OF THE STATE OF MISSISSIPPI, HAVE EXAMINED THE RECORDS OF THE MISSISSIPPI DEPARTMENT OF REVENUE AND THE RECORDS OF THE MISSISSIPPI DEPARTMENT OF LAND AND FORESTRY, AND HAVE FOUND THAT THE ABOVE DESCRIBED PARCELS OF LAND ARE THE SAME AS THOSE DESCRIBED IN THE RECORDS OF SAID DEPARTMENTS.

NARRATIVE
THE PURPOSE OF THIS SURVEY WAS TO SUBDIVIDE THE PARCELS OF LAND DESCRIBED IN THE RECORDS OF THE MISSISSIPPI DEPARTMENT OF REVENUE AND THE RECORDS OF THE MISSISSIPPI DEPARTMENT OF LAND AND FORESTRY, AND TO SHOW THE LOCATION OF THE BOUNDARIES OF SAID PARCELS OF LAND, AND TO SHOW THE LOCATION OF THE BOUNDARIES OF THE PARCELS OF LAND DESCRIBED IN THE RECORDS OF SAID DEPARTMENTS.

DESCRIPTION
LOT 10, COTTONWOOD GLADE, A SUBDIVISION OF A PART OF THE SOUTHWEST QUARTER OF SECTION 14 AND THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 1 SOUTH, RANGE 1 EAST, 5TH TIER, 6TH MERIDIAN, CONTAINING 3.66 ACRES.

LEGEND

PROPERTY LINE	—
ADJACENT PROPERTY	---
ROAD CENTERLINE	—+—
SECTION LINE	—+—+—
TIE TO MONUMENT	—X—
ADJACENT LINE	---
CHAIN, CUTTER, SPOKE	—X—X—X—
CHAIN LINE (SEE NOTE)	—X—X—X—
IRON PILE LINE	—X—X—X—
RECORD DATA	1
SET DATA WITH A BENCHMARK	●
DATA FROM BENCHMARK	○
FOUND MONUMENT MARKS	○
(AS NOTED)	



SITE PLAN

TONY & MARY McQUINN

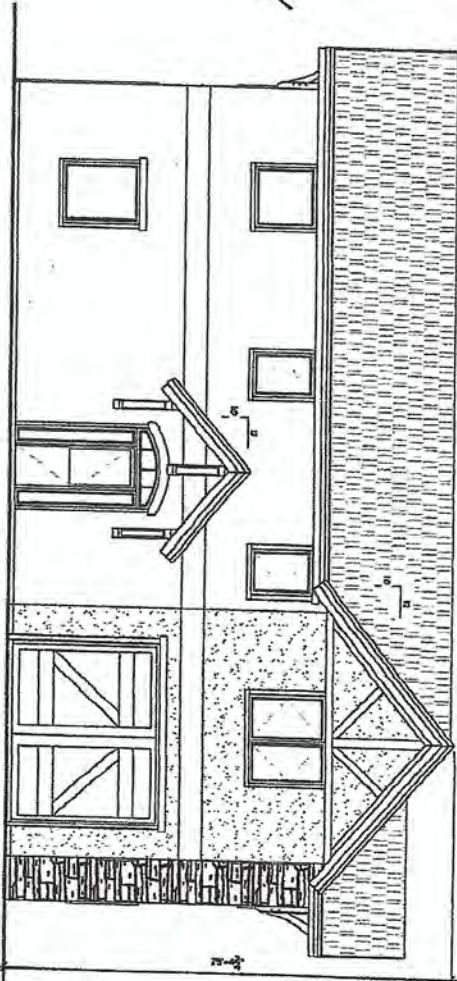
MTFN DESIGN
POINT ZERO
LAND SURVEYING
INC.

DESIGN PHASE	DATE	CHD
CONCEPT		
DESIGN		
CONSTRUCTION		
PROJECT NO.	20-063	
DATE	10/1/2020	
PROJECT NAME	5600 SOUTH STREET/PHEASANT CIRCLE	
CLIENT	TONY & MARY McQUINN	
LOCATION	LOT 10, COTTONWOOD GLADE	
SCALE	AS NOTED	
SHEET		

ACCESSORY BUILDING (SUBJECT OF CUR REQUEST)

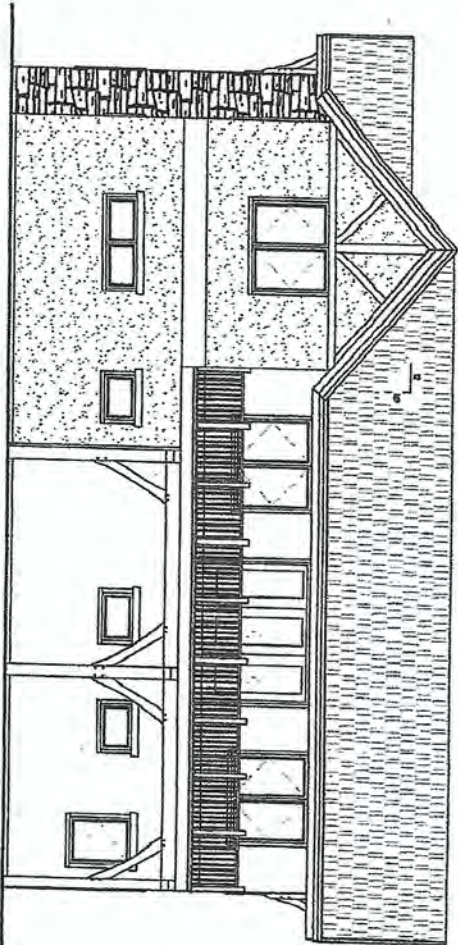
MAIN PURPOSES -

1. ADDITIONAL COVERED GARAGE SPACE
2. WORKSHOP / STORAGE SPACE
3. GUEST / ADDITIONAL FAMILY ACCOMMODATIONS



ENTRY ELEVATION

EAST FACING
ONTO PRIVATE LANE



BACK ELEVATION

WEST FACING
OVERLOOKING
BACKYARD

A MECHANICAL VENTILATION SYSTEM IS REQUIRED TO MAINTAIN PROPER AIR FLOW IN THE WORKSHOP AREA. IN A BOLD UP OF WATER VAPOR IN THE WORKSHOP AREA, THE STRUCTURE SHOULD BE PROVIDED WITH MECHANICAL VENTILATION.

2.1

SHEET

TONY & MARY
McQUINN

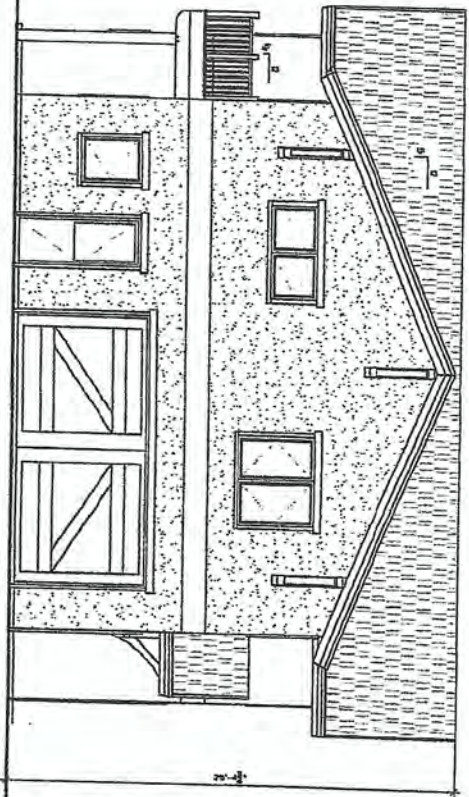
MTN DESIGN
POINT ZERO
REAL ESTATE CONSULTANTS
INC.

PROJECT	20-063
DATE	1/20/20
DESIGNER	TONY & MARY McQUINN
CLIENT	TONY & MARY McQUINN
LOCATION	10000 100th Ave S, Suite 100, Richmond, BC V6V 1K1
PROJECT DESCRIPTION	ARCHITECTURAL DRAWINGS FOR A MECHANICAL VENTILATION SYSTEM TO MAINTAIN PROPER AIR FLOW IN THE WORKSHOP AREA. IN A BOLD UP OF WATER VAPOR IN THE WORKSHOP AREA, THE STRUCTURE SHOULD BE PROVIDED WITH MECHANICAL VENTILATION.

PRELIMINARY
NOT FOR
CONSTRUCTION

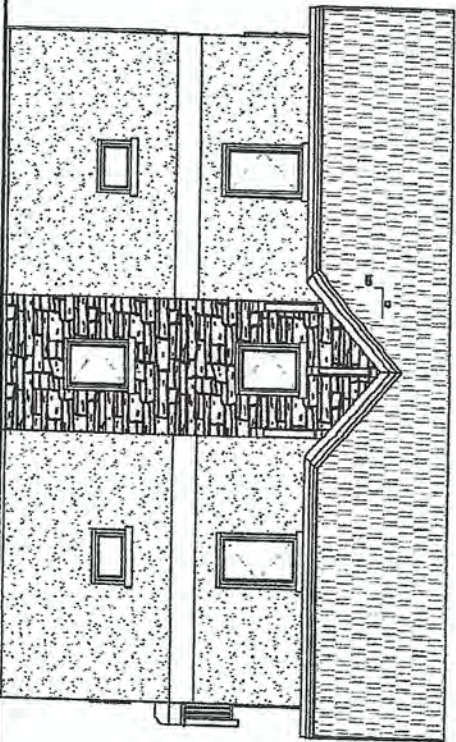
SCALE
1" = 4'

ACCESSORY BUILDING



KITCHEN SIDE ELEVATION

SOUTH FACING
TOWARDS MAIN
HOUSE GARAGE



NORTH FACING

BEDROOM SIDE ELEVATION

A REQUIREMENT OF THE BUILDING DEPARTMENT IS THAT ALL BUILDINGS BE INSULATED TO MEET THE REQUIREMENTS OF THE BUILDING DEPARTMENT. THE BUILDING DEPARTMENT WILL NOT ISSUE A PERMIT FOR A BUILDING THAT DOES NOT MEET THESE REQUIREMENTS. THE BUILDING DEPARTMENT WILL NOT ISSUE A PERMIT FOR A BUILDING THAT DOES NOT MEET THESE REQUIREMENTS.

2.2

SCALE: 1/4" = 1'-0"

PRELIMINARY
NOT FOR
CONSTRUCTION

PROJECT: 10-063
DATE: 10/10/10
DRAWN BY: J. McQuinn
CHECKED BY: J. McQuinn
APPROVED BY: J. McQuinn

TONY & MARY
McQUINN

MTN DESIGN
POINT ZERO
HIGH PERFORMANCE
HOMES



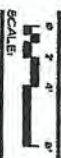
MTN DESIGN

TONY & MARY
McQUINN



1.2
SHEET

PRELIMINARY
NOT FOR
CONSTRUCTION



PROJECT: 20-063
 COVENANT FOR THE DOWNEY CREEK LGA
 THESE CHARGES ARE NOT TO BE USED FOR
 MARRIAGE, ANTI-REPRODUCTION, RESEARCH, OR
 ANY OTHER PURPOSES. BUSINESS OR OTHER
 CONTRACTING AND LENDING WHICH NOT
 DERIVING FROM MARRIAGE PROHIBITION
 CANNOT HAVE FORCE. IT DOES NOT
 DERIVE FROM ORIGINAL RIGHTS. IT CAN
 NOT BE USED FOR THE PURPOSES OF A COURT
 ORDER. HEREIN, A PERSON'S
 AGREEMENT TO THE CHARGES IS NOT
 A CONTRACT FOR THE PURPOSES OF

DEBON PHASE		
GRAIN	DATE	CHECKED
DEBON RECY PHASE		
FIELD PHASE		
SHOP DRAWING		

CHOP DRUGS

PROJECT: 20-063

CONTROL THE CASH FLOWS NOW. THE
BEST DIVIDENDS ARE NOT TO BE HAD FOR

MAKING AIR REPRODUCTION Easier. FOR USE WITH AIR QUALITY PRODUCTS AVAILABLE ONLY AT CHEMURMAN AIR QUALITY WORLD FIRST.

Optimizing Performance Through
Distributing The Widely Proven
Custom Moves Group, Ltd. Do Not Stop!

DRIVING: PRO CUSTOM MOVIES GROUP, LLC IS NOT RESPONSIBLE FOR DAMAGES DUE TO SCALDS

CRANFORD, N.J. (AP) — A 25-MPH (40-KM/H) DISTANCE STOP
WENT INTO EFFECT IN THE CRANFORD AREA.

—L'Espresso— 16.000 lire al numero

PRELIMINARY

NOT FOR
CONSTRUCTION

1000

θ	2	4	6
1			

SCALE:

1.2

SHEET

TABLE 1

2

Fig. 5

AFTER RECORDING RETURN TO:

City of Holladay
4580 South 2300 East
Holladay, UT 84117



CITY of HOLLADAY

SECOND KITCHEN COVENANT AND AGREEMENT

THE UNDERSIGNED, as the owner(s) and/or occupant(s) of the real property (the "Property") that is described below, hereby jointly and severally states as follows for the benefit of the City of Holladay and its successors and assigns (the "City"):

1. The undersigned acknowledges that the City's zoning ordinance permits only one (1) single family dwelling on the Property.
2. The undersigned acknowledges that a building containing more than one kitchen or set of cooking facilities (e.g. a full kitchen or a "kitchenette", wet bar, etc.) could be considered, under applicable City ordinances, to contain more than one (1) dwelling unit.
3. The undersigned hereby requests the city's consent to the construction and/or maintenance of more than one (1) kitchen within the structure (the "Residence") on the Property located at:

Address: 2163 Pheasant Way, Holladay, UT

Parcel Number: 22-15-154-011-0000

Legal Description: Lot 10 Cottonwood Glade 8772-7033, 872-7035, 9125-1456

Building Permit Reference: 9125-14579844, 3966, 3969 10517-1225 10575-1462
10740-4670

4. To induce, and in consideration for, the City's permission to maintain more than one (1) kitchen in the Residence, the undersigned hereby represents, warrants and certifies to the City that, notwithstanding the existence of more than one (1) kitchen in the Residence or the City's consent to such second kitchen, **the Residence and the Property may not at any time be used for any purpose other than as a single-family dwelling unless another use listed hereafter is specifically authorized by the City in writing.**
5. The undersigned further acknowledges and agrees that any use of the Residence or the Property which increases the number of dwelling units therein beyond one (1) may cause the undersigned to incur civil and/or criminal liability for violation of the City's adopted zoning ordinance.
6. This Agreement shall constitute a covenant running with the land and shall be binding on the undersigned and the undersigned's heirs, assigns and successors-in-interests to the Property.

Anthony P. McQuinn
Mary M. McQuinn

State of UTAH

County of SALT LAKE

On December 7th, 2020

Anthony P. McQuinn

Mary M. McQuinn

personally appeared before me,

Who is personally known to me _____

Whose identity I proved on the basis of CA Drivers License

Whose identity I proved on the oath/affirmation of _____

a credible witness to the signer of the above document, and he/she acknowledged that he/she signed it.



NOTARY PUBLIC
CARRIE CRYER
COMM. # 702918
COMMISSION EXPIRES
OCTOBER 18, 2022
STATE OF UTAH

Carrie Cryer
Notary Public

DRAFT

**MINUTES OF THE CITY OF HOLLADAY
PLANNING COMMISSION MEETING**

Tuesday, November 10, 2020

6:30 p.m.

Meeting Conducted via Electronic Means

ATTENDANCE:

Planning Commission Members:

Jan Bradshaw, Chair
Martin Banks
Chris Layton
Howard Layton
Alyssa Lloyd
Ann Mackin
Marianne Ricks

City Staff:

Paul Allred, Community Development Director
Stephanie Carlson, City Recorder
Todd Godfrey, City Attorney
Jonathan Teerlink, City Planner

WORK SESSION

Chair Jan Bradshaw called the meeting to order at 6:04 p.m.

City Planner, Jonathan Teerlink reviewed The Apollo project located in the Holladay Village at 2265 East Murray Holladay Road. The project was presented previously but an easement issue arose over the summer that needed to be addressed by the applicant. The issue was resolved but some of the retail square footage was lost. In order to compensate, Smiles Family Dentistry, a separate building on the same property will be razed, however, the use will be included in the new building project. Mr. Teerlink reported that the ground floor on Murray Holladay Road is required to be retail/commercial. The Holladay Village Ordinance addresses the equitable treatment of existing non-conforming uses, which include dentistry on the ground floor at this specific location. As a result, Smiles Family Dentistry can relocate within the new building.

Mr. Teerlink reported that the Design Review Board (“DRB”) has spent the past few months working with the applicant to readdress the expansion. Minor modifications were made to the patio areas and a recommendation was made. Staff reviewed the request and recommended approval of the preliminary construction elements. With regard to the plat, the Technical Review Commission (“TRC”) reviewed the design and made recommendations including addressing demarcation of the common spaces. Staff also recommended that there be a Maintenance Agreement for the garage area. In response to a question raised, Mr. Teerlink indicated that for the time being it will be maintained as leasable space. He noted that the CC&Rs are essentially the Maintenance Agreement. Tree preservation issues were discussed.

1 City Attorney, Todd Godfrey had reviewed the submittal from Holladay Villas and had spoken
2 with the developer's legal counsel. He recommended that the Planning Commission review the
3 project to ensure that it complies with all City ordinances, which requires a landscape buffer along
4 the south side. There was an assertion that the building that presents an unlawful encumbrance on
5 the easement. Mr. Godfrey did not, however, recommend that the City insert itself into that
6 issue. Their duty is to ensure that the project complies with the ordinance. If it does, it is entitled
7 to approval.

8
9 ***Commissioner Howard Layton moved to adjourn the Work Session. Commissioner Chris***
10 ***Layton seconded the motion. The motion passed with the unanimous consent of the***
11 ***Commission.***

12
13 The Work Session adjourned at approximately 6:26 p.m.

14
15 **CONVENE ELECTRONIC MEETING – Public Welcome and Chair Opening Statement.**

16 Chair Jan Bradshaw called the Regular Meeting to order at approximately 6:32 p.m.

17
18 Chair Bradshaw read the Commission Statement in addition to a statement regarding the
19 emergency conditions that exist due to the COVID-19 pandemic and the reason for holding remote
20 meetings without an anchor location for the next 30 days.

21
22 **PRESENTATION**

23 **1. Planning Commissioner Special Service Award.**

24 Special honor and recognition of service were presented to former Planning Commission Members
25 Jim Carter and Troy Holbrook who each served six-year terms. Commissioner Carter was honored
26 for his expertise and experience. Commissioner Holbrook was appreciated for being wonderful to
27 work with and for so prepared and informed. Both men were thanked for their service.

28
29 **PUBLIC HEARING**

30 **2. “The Apollo” – Amended Conceptual/Preliminary Site Plan and Plat – 2265 East**
31 **Murray Holladay Road (HV Zone).**

32 Mr. Teerlink presented the staff report and stated that the matter before the Commission involves
33 administrative approval of a permitted use redevelopment. A Conceptual Site Plan was approved
34 earlier in the year and since then the applicant had been addressing resolving easement concerns
35 with the abutting condominium project. The issue involves a private easement access issue. It
36 was recommended that the Planning Commission review the matter incrementally.

37
38 Mr. Teerlink explained that in addressing the easement concern, the applicant expanded the
39 building to include Smiles Family Dentistry. In doing so, the footprint and architecture were
40 expanded. The matter was sent back to DRB for a recommendation. The next step was to review
41 the amended site plan and architecture and move forward with onto the Preliminary Site Plan. Mr.
42 Teerlink explained that access can be addressed as part of the Preliminary Site Plan. Procedural
43 issues were discussed.

1 In response to a question raised, Mr. Teerlink stated that they were not able to ~~view directly see or~~
2 ~~the handle the~~ sample building materials. Because meetings were held virtually, only images were
3 shared.

4
5 The developer, Chris Ensign, gave a history of the property and described the process of bringing
6 forward the proposal. He described the easements and presented the adjusted site plan to avoid
7 encroachment on the easement. He explained that the access easements are not part of the car
8 wash portion of the overall site plan and the car wash is not a party to the easements. He explained
9 that for years people have been parking on a sliver of the developers' property to the east. The
10 easement does not allow for that to occur but it has been taking place, nonetheless. Mr. Ensign
11 explained that (1) it is an access easement, (2) there are no prescriptive rights on commercial
12 properties, and (3) the land use allows for the property owner to use the property as they choose
13 as long as it is not inconsistent with the access. ~~Nevertheless, T~~ the new, proposed building was
14 redesigned to return both of the access easements to their original proper locations. ~~By In~~ doing
15 so, however, the expanded building & ended up came too close to the Smiles Family Dentistry
16 building.

17
18 Mr. Ensign reported that they had problems with the easements and their buildings now no longer
19 encroach. They now believe they comply with the Code and the easement requirements. The
20 proposed adjustments will increase the dwelling unit count to ~~threethirty-three~~, which is consistent
21 with the allowance for the acreage. Mr. Ensign described the tandem parking and stated that it
22 will be dedicated to employees of the commercial or retail tenants. The intent was to maintain the
23 service level for the public. Building H height issues were discussed. Mr. Ensign stated that it is
24 reduced incrementally so that there is not just one midpoint for the entire building and is instead
25 remeasured every 20-feet to maintain compliance with the zone allowances. ~~section.~~

26
27 Mr. Teerlink explained that to accommodate the slope of this site for the Village, the city measures
28 commencing & go by at the top back of street curb. Every section is measured to the top of the
29 maximum height. In this case, the height was dropped on the far east side. Peter Paulos, project
30 architect, from PH Architects reported that he grew up in Holladay and now lives on the east coast.
31 He said W when there is a long parcel like this one the elevation is divided into 10 equal
32 components. The overall building height allowance is 38 feet and using the 10 separate
33 measurement points allowed by code, no building components ~~cannot~~ be more than four feet over
34 the overall height allowance at any given point. ~~mark~~. As the grade slopes, everything slopes with
35 it. In response to a question raised, Mr. Teerlink stated that there is a maximum eight-foot height
36 allowance for any -on parapet on roof edges. Community Development Director, Paul Allred,
37 stated that the issue goes back to the early days of the HV zone. Mr. Ensign identified an area on
38 the site where wall art was envisioned.

39
40 Chair Bradshaw opened the public hearing.

41
42 *Bruce Shapiro* identified himself as the attorney representing Holladay Villa A and B. He
43 explained that a 30-foot-wide easement comes off of Murray Holladay Road on the south side of
44 the new building along the property line with Holladay Villa A and B. If the Planning Commission
45 requires landscaping, curb, gutter, or sidewalk it would be tantamount to approving something that

1 conflicts with an express easement on the property that is already designated. Furthermore, they
2 feel that under the Village Master Plan, the City is obligated to protect the surrounding
3 neighborhoods. They are also required to improve the vehicular traffic situation. That would be
4 resolved by not? restricting or encumbering the easement. Adequate buffering was also needed
5 from the adjacent residential neighborhood. Due to the existence of an easement and the way the
6 building is planned, there would not be an adequate buffer, which would be in violation of the
7 Master Plan. With regard to the roofline, Mr. Shapiro and his clients believe it is too high and
8 does not meet the requirements of the Code. There was also concern with the sewer, which
9 currently clogs and has problems. Connecting to it further could result in additional issues.

10
11 City Attorney, Todd Godfrey stated that there are conflicting claims regarding the character of the
12 easement but he considered that to be outside of the Planning Commission's purview. It is the
13 City's obligation to look at the project and determine whether it complies with City ordinances. If
14 it does, the applicants are entitled to approval. Private easement issues that would prevent the
15 project from being built would need to be addressed by the developers. With regard to height,
16 staff determined that it meets the City's requirements. The landscape buffer is also required in the
17 Holladay Village Zone. It was his opinion that the project complies in terms of access, traffic, and
18 height and the use is appropriate. The obligation to preserve an existing access for a neighboring
19 property owner had been met. He had not heard anything suggesting that the project does not
20 comply with the City ordinances.

21
22 Chris Layton asked who decides what can be placed in an express easement? Mr. Godfrey
23 explained that that is an issue governed by the easement document that is between the parties who
24 are a party to the easement. If the terms are not expressed, that will have to be worked out. Because
25 the City is not a party to the agreement, it makes no sense for the City to get involved. The
26 protection granted by the City is a level at which the project complies with the HV ordinance. The
27 City's role was not to resolve land use disputes between third parties.

28
29 Martin Banks asked if it would be inappropriate for the City to provide comfort that the competing
30 view of the neighbors is not in good faith and credible. If Mr. Shapiro contends that the easement
31 is 30 feet without a specified use, he asked if it would behoove the City to study the easement.
32 Mr. Godfrey stated that often these types of situations are not as clear as they appear. If at some
33 point there is an allegation regarding the easement, it may be a different situation. He reiterated
34 that he did not consider it appropriate for the City to weigh in on private issues.

35
36 Procedural issues and motion language was discussed.

37
38 *Teresa Jacobs*, a resident of Holladay Villa A, stated that the residents realize that the easement
39 issues are not the fault of the City but it would be a goodwill gesture to educate them on where
40 they can park overnight and what they can expect in the future. With the added retail space, they
41 will be competing with shoppers parking on curbs. Currently, the parking situation is very
42 convenient but Ms. Jacobs recognized it will not last. She was concerned that in the future they
43 will displace people who use the residences and do not have a parking space. She indicated that
44 Holladay Villa A is on the east side closest to the bridal store. Holladay Villa B lost many more

1 parking spaces and has far more residents. In Holladay Villa A they have one parking space per
2 unit.

3
4 Parking issues were discussed. Alyssa Lloyd commented that it seems that the extra parking will
5 have to come from the elimination of green space or force parking on public rights-of-way.
6 Mr. Ensign stated that there are approximately 1,000 parking stalls available in Holladay Village.

7
8 *Jessica Rancie* identified herself as legal counsel for Chris Ensign and addressed the prescriptive
9 easement. She stated that they are confident there is no prescriptive easement on the property.
10 The easement itself does not allow for parking and is a right-of-way. She explained that the
11 language is limited to the right-of-way. To get parking prescription rights, a few things need to be
12 accomplished. Because it is a conventional parking area that is open to the public, there is no way
13 to claim a prescriptive easement. It is well-established law that a prescriptive easement cannot be
14 obtained because it is public.

15
16 There were no further public comments. The public hearing was closed.

17
18 Mr. Ensign reported that his team met with the neighboring residents to address the issue but there
19 did not seem to be much interest from the neighbors to work with him. He remarked that once he
20 begins the redesign process he will not be willing to address the issue further.

21
22 Chair Bradshaw reminded those present that this is an administrative action and the Commission's
23 decision will be based on whether the applicant has complied with all 13 approval standards set
24 forth in Section 13.08.08 of the City Code. Staff indicated that compliance has been confirmed.

25
26 Mr. Teerlink stated that the closest parking area would be down the lane behind Meier's Pharmacy.
27 In addition, there is a grade change with a fence that separates Holladay Villa A and the rear
28 parking lot.

29
30 Mr. Allred agreed with Mr. Godfrey and understood how difficult it can be to deal with a private
31 easement through a development site. In terms of parking, he was unable to determine the width
32 of the driveways but stated that parking is not allowed on a 20-foot private road. Per the Fire
33 Code, parking is only allowed on any road that is 26 feet or wider. Mr. Allred commented on
34 parking in the Village and stated that as buildings have been built, the City has added more than
35 100 publicly funded stalls on City rights-of-way. He stated that there is a great deal of public
36 parking property within a short walk of this project and Holladay Villa.

37
38 (14:56:28) *Commissioner Ricks moved to approve the ~~Conceptual Site Plan Development and~~*
39 *Amended Building Design?? for The Apollo at 2240 to 2254 East and 2258 Murray Holladay*
40 *Road in the Holladay Village Zone based on the following:*

41
42 ***Findings:***

- 43
44 1. ***It has received a favorable recommendation from the DRB.***
45

1 2. *It complies with the vision and design guidelines of the Holladay Village.*

2
3 ***Commissioner Banks seconded the motion. Vote on motion: Chris Layton-Aye, Marianne***
4 ***Ricks-Aye, Ann Mackin-Aye, Alyssa Lloyd-Aye, Howard Layton-Aye, Martin Banks-Aye, Chair***
5 ***Jan Bradshaw-Aye. The motion passed unanimously.***
6

7 (14:58:45) ***Commissioner Ricks moved to approve the Amended Conceptual Site Plan for The***
8 ***Apollo at 2240 to 2254 East and 2258 East Murray Holladay Road in the Holladay Village Zone***
9 ***based on the following:***
10

11 ***Findings:***
12

13 1. ***The building location and architecture have been approved.***
14

15 2. ***Site development details are compatible with the vision and standards of the***
16 ***Holladay Village.***
17

18 3. ***It is subject to the project being serviced by all life safety utilities and further***
19 ***examination and discussion on the proposed parking plan.***
20

21 4. ***It has safe, predictable, traffic patterns.***
22

23 ***Commissioner Lloyd seconded the motion. Vote on motion: Chris Layton-Aye, Marianne***
24 ***Ricks-Aye, Ann Mackin-Aye, Alyssa Lloyd-Aye, Howard Layton-Aye, Martin Banks-Aye, Chair***
25 ***Jan Bradshaw-Aye. The motion passed unanimously.***
26

27 The preliminary site plan was next addressed. Commissioner Lloyd commented on the five-foot
28 landscape buffer along the property lines. She observed that the Landscape Plan diagram did not
29 show anything along the west lot line. Mr. Paulos explained that they are clustering the
30 landscaping toward the front. Commissioner Lloyd did not want to see the trees along the
31 perimeter removed but was supportive of having better fire access. Mr. Paulos reported that the
32 fire drive is 24 feet wide. The trees to be removed were labeled many of which appeared to be on
33 the property line or on the neighboring property. They came out two feet for the curb to leave as
34 much existing vegetation as possible. Chris Layton questioned why a landscape buffer is not
35 required along the west property line.
36

37 Marianne Ricks was concerned that they are losing much of the tree canopy in the Village. The
38 desire was to preserve trees where possible. Options and possible solutions were discussed.
39 Mr. Teerlink read from the ordinance regarding buffers against differing land uses. They may
40 include required perimeter parking lot landscaping, which includes walls and fold-outs. Mr. Allred
41 read from the standards and stated that the width of the buffer is determined by the chapter unless
42 modified by the land use authority as part of a site plan approval. They allow up to 50% of
43 buffering and/or landscaping to be in non-plant materials. Mr. Allred further explained that the
44 Holladay Village is both a residential and commercial zone. It is a mixed-use zone. Because this

1 is the only building in the Village that is both residential and commercial, he wondered if there
2 was flexibility to interpret it as being residential.

3
4 Buffer issues were discussed as well as specifics to be included in the motion on the preliminary
5 condominium plat. Public comments provided by John Barickman via email were read and made
6 part of the record. His comments pertained to the easement and uncertainty regarding the history
7 of it and whether it was intended for the use of the condo residents. The right-of-way first appeared
8 in 1962 in a deed that transferred the land now known as Holladay Villa A and B with the right-
9 of-way that connects to the two tracts of land to Murray Holladay Road. The connection of the
10 two tracts to Murray Holladay Road was not an accident as the deed precedes the Holladay Villa
11 plat. Issues with the survey and right-of-way were identified.

12
13 A question was raised regarding the drawing. Mr. Ensign's understanding based on their survey
14 was that it (the access easement) was moved back to the original metes and bounds description
15 and the easements are now in the proper place. He noted that they designed their development
16 around it. Mr. Godfrey stated that rights-of-way and easements have similar legal characteristics,
17 however, a right-of-way is technically more restrictive than an easement. He did not suggest the
18 Commission try to determine the rights of parties to agreements that the City is not a party to. He
19 recognized that the developer has tried to draw the site plan respecting the existing easements.
20 From the City's perspective, it is appropriate to look at the project and determine whether it
21 complies with the ordinances. One deficiency on the west side of the project was identified and
22 should be addressed in the motion. Commissioner Banks suggested that a restriction be added that
23 specifies that landscaping placed on the far south side of the project needs to be legally located.
24 With those two qualifications, it was his opinion that the project complies with the ordinances. If
25 the accesses have not been located where there is existing legal access and if those who benefit
26 from the easements are concerned, they have a lawful remedy.

27
28 Potential motion language was discussed. There was concern regarding potential tree loss along
29 the south side of the project. The possibility of moving the sewer line five or six feet to the north
30 was discussed. Mr. Ensign explained that they were willing to move it as far as they are able. He
31 stated that he would do his best to provide more landscaping on the west.

32
33 ***Commissioner Ricks moved to approve the Preliminary Site Plan details for The Apollo a mixed-
34 use redevelopment project at 2240 to 2254 East and 2258 East Murray Holladay Road in the
35 HV zone. Approval was subject to the following:***

36
37 ***Findings:***

- 38
39 ***1. Building location and architecture have been approved.***
40
41 ***2. Construction drawings comply with the approved Conceptual plan.***
42
43 ***3. On-Site development details are compatible with the vision and design standards
44 of the Holladay Village providing a pedestrian friendly asset.***
45

4. *Provides required dedication of Murray Holladay Road (~~6680~~’ wide right of way).*
5. *Off-site improvements comply with and enhance the visual streetscape of the Holladay Village.*
6. *The project can be serviced by all life safety utilities*
7. *Safe, predictable traffic patterns are proposed.*

Requirements:

- a. *Preservation of existing tree canopy along perimeter of the project site.*
- b. *Compliance of landscape buffering zone.*
- c. *Landscape buffering on the south side of the project will be placed in legally permissible locations.*
- d. *Move sewer line north as the developer is able to preserve and protect tree canopy.*

It was further moved that the Final Site Plan approval be delegated to the TRC or the Community Development Director for administrative approval. Commissioner Lloyd seconded the motion. Vote on motion: Chris Layton-Aye, Marianne Ricks-Aye, Ann Mackin-Aye, Alyssa Lloyd-Aye, Howard Layton-Aye, Martin Banks-Aye, Chair Jan Bradshaw-Aye. The motion passed unanimously.

The Preliminary Condo Plat was next discussed. Mr. Teerlink identified the location of the drainage field and suggested that it not be specifically described on the plat in order to be movable. He stated that it will be located in a common or limited common area. Mr. Allred explained that the plat will include a series of notes. Often the Planning Commission does not see them because many of the site plans and subdivisions are delegated to the TRC. When the final plat is prepared there will be notes from the City regarding no maintenance on City streets and a public utility easement note.

(15:39:27) *Commissioner Ricks moved to approve the Preliminary Condominium Plat for The Apollo, a mixed-use retail and residential redevelopment project at 2240 to 2254 East and 2258 East Murray Holladay Road in the HV zone. Approval was subject to the following findings:*

1. *Conforms to the density and use of the approved conceptual plan.*
2. *Land Uses comply with the “allowed uses” table for the Holladay Village Zone.*
3. *Meets the goals of Holladay Village Area Master Plan.*

1 4. *Meets the long-range redevelopment needs and goals of the Holladay Village.*

2
3 5. *Will not adversely impact adjacent properties but will promote the health, safety*
4 *and welfare of Holladay residents.*

5
6 6. *Provides additional housing opportunities in the Village area which will support*
7 *not only adjacent Village businesses but the wider Holladay business community.*

8
9 **Requirements:**

10
11 a. *Covenants Codes and Restrictions Declaration – maintenance of emergency*
12 *access and planting strips along sidewalk and parking garage.*

13
14 b. *Current Title Report.*

15
16 *It was further moved that the Final Condominium Plat approval be delegated to the Community*
17 *Development Director upon recommendation from the TRC. Commissioner Howard Layton*
18 *seconded the motion. Vote on motion: Chris Layton-Aye, Marianne Ricks-Aye, Ann Mackin-*
19 *Aye, Alyssa Lloyd-Aye, Howard Layton-Aye, Martin Banks-Aye, Chair Jan Bradshaw-Aye. The*
20 *motion passed unanimously.*

21
22 **ACTION ITEMS**

23 **3. Approval of Minutes – September 1 and 15, 2020.**

24 The minutes of September 1, 2020, were reviewed and modified.

25
26 (15:49:05) *Commissioner Mackin moved to approve the minutes of September 1, 2020, as*
27 *amended. Commissioner Banks seconded the motion. Vote on motion: Chris Layton-Aye,*
28 *Marianne Ricks-Aye, Ann Mackin-Aye, Alyssa Lloyd-Abstained, Howard Layton-Aye, Martin*
29 *Banks-Abstained, Chair Jan Bradshaw-Aye. The motion passed unanimously with two*
30 *abstentions.*

31
32 The minutes of September 15, 2020, were reviewed and modified.

33
34 (15:53:50) *Commissioner Mackin moved to approve the minutes of September 15, 2020, as*
35 *modified. Commissioner Chris Layton seconded the motion. Vote on motion: Chris Layton-*
36 *Aye, Marianne Ricks-Aye, Ann Mackin-Aye, Alyssa Lloyd-Aye, Howard Layton-Aye, Martin*
37 *Banks-Abstained, Chair Jan Bradshaw-Aye. The motion passed unanimously with one*
38 *abstention.*

39
40 **DISCUSSION ITEMS**

41 **4. Community Development Department Update on Various Draft Ordinance**
42 **Amendments.**

43 Mr. Teerlink reported that before the end of the year the City will likely need to make a
44 recommendation to the City Council on major Code amendments pertaining to the Accessory
45 Dwelling Unit (“ADU”) ordinance, the waterway protection section, and updates from State

1 Legislative Sessions from 2018-2020. He expected to have a hearing on the drafts at the last
2 meeting in December.

3
4 Mr. Allred commented that there are House and Senate bills that the City is behind on. For the
5 purpose of the moderate-income housing, the City will not meet the December 1 deadline. ~~W~~With
6 respect to Accessory Dwelling Units (ADU's)s, he stated that cities are being challenged over the
7 amount of various fees being charged. The Homebuilders Association is looking to keep costs
8 down while the Legislature is trying to get cities to provide alternative ways to provide housing.
9 For the time being, staff felt it would be acceptable to delay forwarding an ADU ordinance to the
10 State until after the first of the year. Mr. Allred indicated that he would be reporting to the State
11 in the near future. He addressed the Chapter 2 changes to the moderate-income housing update
12 that the Commission recently acted on. The changes were sent to the Council who was to take
13 action on November 19.

14
15 With regard to the Holladay Crossroads zone, a Facebook Live event was scheduled for the
16 following Thursday. Council Member Dan Gibbons would be conducting the event to ensure that
17 constituents have a basic understanding of the Crossroads zone. Notice was sent out the previous
18 week to approximately 300 households and commercial businesses/property owners.

19
20 Mr. Teerlink reported on issues from the 2018 and 2019 Legislature that have not yet been
21 addressed. One includes a mandate for every municipality to provide telecommunications towers
22 at a micro level. The large wireless telecom cell towers with large arrays on them have made it
23 necessary for micro towers to be placed. They are usually no taller than a flagpole and are stealth
24 in nature. They are placed in park strips and on utility poles. Every municipality is required to
25 have a section in its ordinance that allows them in some manner.

26
27 Mr. Teerlink reported that there is also a need to review the Conditional Use Section and ensure
28 that the guidelines and approval standards are compliant with State regulations on how conditional
29 uses are handled. Clarification of some elements is needed to ensure that it is clear in the ordinance
30 that a conditional use is essentially an approved use with any necessary conditions. He noted that
31 it is very difficult for a conditional use to be denied. Mr. Allred added that there are also
32 subdivision regulations that need to be complied with. He noted that the City is also spending a
33 great deal of time keeping up with the impacts of COVID-19_-guidelines. While there has been a
34 general slow-downslowdown due to the pandemic, the number of building permits has not
35 decreased.

36
37 Mr. Allred reported that the public hearing on Chapter 2 was scheduled for November 19 before
38 the City Council with a vote anticipated on December 3. The public hearing on the Crossroads
39 zone was scheduled for November 19 with a vote anticipated in January or February.

40
41 Staff was thanked for their great work.

42
43 **ADJOURN**

44 ***Commissioner Lloyd moved to adjourn. Commissioner Mackin seconded the motion. The***
45 ***motion passed with the unanimous consent of the Commission.***

- 1
- 2 The Planning Commission Meeting adjourned at approximately 9:43 p.m.

DRAFT

1 *I hereby certify that the foregoing represents a true, accurate, and complete record of the City*
2 *of Holladay Planning Commission Meeting held Tuesday, November 10, 2020.*
3

4 Teri Forbes

5 Teri Forbes

6 T Forbes Group

7 Minutes Secretary

8
9 Minutes Approved: _____

DRAFT

DRAFT

**MINUTES OF THE CITY OF HOLLADAY
PLANNING COMMISSION MEETING**

Tuesday, November 17, 2020

6:30 p.m.

Meeting Conducted via Electronic Means

ATTENDANCE:

Planning Commission Members:

Jan Bradshaw, Chair
Martin Banks
Chris Layton
Howard Layton
Alyssa Lloyd
Ann Mackin
Marianne Ricks

City Staff:

Jonathan Teerlink, City Planner
Robert Hobbs, Senior City Planner
Stephanie Carlson, City Recorder
Jared Bunch, City Engineer
Todd Godfrey, City Attorney

WORK SESSION

Chair Jan Bradshaw called the Work Session to order at 6:01 p.m.

The possibility of changing meeting times was discussed.

The agenda items were reviewed. Senior City Planner, Robert Hobbs introduced the Mitchell Residential Site Plan Special Exception and stated that there are special exception requirements for waterway separation that require a variance application when someone wants to move a structure closer to a waterway. In this case, construction is underway. Possible options were discussed to bring the property into compliance.

City Attorney, Todd Godfrey, reported that for many years the Upper Canal Company likely did not become aware of these types of projects until after construction was complete. About 10 years ago, the City purchased the physical canal structure from the Upper Canal Company. The Upper Canal now has the right to run water through the canal to their users but the owner of the physical structure is the City. As a result, the City is being more thorough in its review of these types of circumstances. There are ordinances that require a certain setback from the canal. Because there is not a strong standard in the ordinance, it was Mr. Godfrey's opinion that the matter be looked at to see if there is good cause to allow the exception.

Martin Banks asked if it was incumbent upon the City to protect the physical features of the canal or if it is under the purview of the Upper Canal Company. Mr. Godfrey stated that from the City's standpoint they believe it is their obligation. Upper Canal weighs in and helps as needed. They are an important partner and their feedback is valuable. He explained that with this proposal they

1 will get a written Canal Protection Agreement that will be handled administratively through staff.
2 It will deal with their responsibility to maintain the structure and what happens if they do not.

3
4 Chair Bradshaw clarified that the role of the Planning Commission is to decide on a special
5 exception to the location of the pool guesthouse.

6
7 Chris Layton commented that it appears to be a precedent issue in terms of determining what is
8 fair. For example, the home to the northeast is not 20 feet from the canal and could establish a
9 precedent. Specific issues with neighboring homes were discussed. Mr. Godfrey did not consider
10 it a precedent but thought it weighed on a just cause analysis.

11
12 ***Commissioner Lloyd moved to close the Work Session. Commissioner Ricks seconded the***
13 ***motion. The motion passed with the unanimous consent of the Commission.***

14
15 The Work Session adjourned at 6:28 p.m.

16
17 **CONVENE ELECTRONIC MEETING – Public Welcome and Chair Opening Statement.**

18 Chair Jan Bradshaw called the Regular Meeting to order at 6:30 p.m.

19
20 Chair Bradshaw read the Commission Statement in addition to a statement regarding the
21 emergency conditions that exist due to the COVID-19 pandemic and the reason for holding remote
22 meetings without an anchor location.

23
24 **PUBLIC HEARING**

25 **1. Mitchell Residential Site Plan – Special Exception – 2351 East Hintze (R-1-21 Zone).**

26 Senior City Planner, Robert Hobbs presented the staff report and stated that the applicants are
27 requesting to place a pool guesthouse closer to the Upper Canal than the required 20-foot setback.
28 He explained that special exceptions are the instrument the City uses to address and consider
29 applications for different types of zoning efforts. In this case, the applicant would like to have
30 sanctioned the guesthouse/pool house that is closer than 20 feet from a waterway. The staff report
31 provided the background and history of the matter as well as exhibits and a site plan.

32
33 Staff and the City Engineer reviewed the proposal and found it agreeable to allow for the structure
34 to be in the location proposed. The Upper Canal Company was also supportive of the proposed
35 position. Access past the structure along the canal for maintenance purposes was still available
36 via a 12-foot passageway. The applicant and their engineer agreed to certain plan modifications
37 that helped cure the encroachment issue. An agreement would also be entered into to protect the
38 City in the event there are canal issues. Mr. Hobbs stated that there is already a pattern of canal
39 leakage onto the property. It was anticipated that the project will help cure those issues primarily
40 because of the shoring up effect of the structure through excavation and the construction of
41 foundation walls.

42
43 Marianne Ricks asked about the reasoning behind the 20-foot requirement. City Engineer, Jared
44 Bunch, explained that it is for maintenance of the bank and access. This specific site has a concrete
45 wall constructed in place of an earthen bank. The concrete wall was an improvement that was

1 constructed by the property owners. The City ordinance clearly states that improvements made on
2 a bank for the purpose of development of property are to be maintained by the property owner. A
3 concrete wall requires less maintenance than an earthen bank and if maintenance is needed, the
4 property owner will be responsible for it.

5
6 Martin Banks was concerned about infiltration through groundwater migration between the canal
7 and the nearby house. Mr. Bunch stated that in this particular location there is a clay liner on the
8 bottom of the canal. It appears to be leaking in some areas and repairs were being looked into.
9 The specific repair would involve a rubberized membrane. This particular site is unusual because
10 the canal is at a higher elevation than the lot. For that reason, they do not want water infiltrating
11 into the ground. The rubberized membrane will protect the lot from seepage and allow the
12 Mitchells to proceed with construction. He clarified that the main purpose of the 20-foot setback
13 is maintenance and access.

14
15 Ann Mackin asked about the liner that goes inside the canal and who would be responsible for it.
16 Mr. Bunch stated that the City is working with the property owners and they are in negotiation.
17 Chair Bradshaw reminded the Commission that the canal repairs have no bearing on tonight's
18 discussion.

19
20 Mr. Godfrey clarified that the responsibility for the cost of the repairs was an ongoing discussion.
21 In terms of the exception for the pool house, they see the needed repair of the canal as a separate
22 issue from the location of the pool house and structure.

23
24 Howard Layton asked about the nearest access point to the canal easement if a piece of equipment
25 needs to be brought in. Mr. Bunch stated that there is access from the cul-de-sac on Hintze. In
26 many cases, it is accessed for walking inspections at bridge crossings rather than through land
27 across private property. They look for access along the bank for maintenance. In this particular
28 instance, the retaining wall would be the maintenance responsibility of the property owner. He
29 pointed out the wall could easily be replaced given the 12-foot setback that is proposed in the
30 corner.

31
32 In response to a question raised by Chris Layton, Mr. Bunch stated that the canal is at a higher
33 grade than the backyard of the Mitchell property. The Mitchells are proposing to backfill against
34 the wall at a higher elevation than what currently exists so that the grade difference is not as great.
35 The guest house will also have a basement that is 12 feet deeper than the canal and 12 feet away
36 from it. Mr. Bunch did not foresee problems since it will have a concrete foundation and be
37 waterproofed. If the canal were to leak, the property owner was comfortable with the design they
38 are implementing.

39
40 Martin Banks asked if granting an exception would set the City up for a liability negligence claim
41 that the certificate would not cover. Mr. Godfrey was nervous about that and stated that a new
42 certificate will need to be signed with the City as the owner of the facility to protect against that
43 circumstance. What is proposed is essentially encroachment into an area that is a protected zone.
44 As a result, he felt that the City was fully justified in seeking an indemnity to hold harmless.

1 The applicant, Kevin Mitchell, gave his address as 2351 East Hintze Drive was present. He
2 thanked the Commission for their time and attention. He felt they had covered the issues very well
3 and stated that there is no one more interested in keeping the pool house dry and well maintained
4 than him. They have a robust Water Mitigation Plan in place if anything were to happen. They
5 have been working with the City throughout the process and better understand how to protect the
6 canal and ensure they do not do anything to compromise it. The intent was to implement a plan
7 that is good for everyone.

8
9 Chair Bradshaw opened the public hearing. There were no public comments. The public hearing
10 was closed.

11
12 Martin Banks asked that Mr. Bunch comment on the one public comment received from a
13 neighbor. Mr. Bunch stated that several issues were raised, most of which have been addressed.
14 With regard to leaks that have occurred in the past, staff was working on a solution.

15
16 Chair Bradshaw indicated that there was a concern identified by a neighbor regarding the
17 guesthouse becoming an Airbnb rental. Mr. Mitchell stated that he has no plans to rent it out.
18 There is a guest room in the guest house for the use of relatives that visit.

19
20 Chair Bradshaw reported that the applicant's compliance has been confirmed.

21
22 ***Commissioner Howard Layton moved that the Planning Commission approve the Special***
23 ***Exception for the Mitchell Residential Site Plan located at 2351 East Hintze Circle in the R-1-***
24 ***21 zone subject to the following:***

25
26 ***Finding:***

- 27
28 ***1. The Special Exception meets the seven approval standards and criteria within the***
29 ***City of Holladay Code Section 13.08.150.***

30
31 ***Planning Commission approval was contingent upon the applicant's compliance with the City***
32 ***and Upper Canal requirements for a revised permit, which will include:***

- 33
34 ***1. A Grading/Drainage Plan Revision.***
35
36 ***2. Canal protection during construction.***
37
38 ***3. Canal and access to be field inspected and monitored.***
39
40 ***4. A Certificate of Protection and indemnification of the City shall be executed as a***
41 ***hold harmless agreement.***

42
43 ***Commissioner Lloyd seconded the motion. Vote on motion: Chris Layton-Nay, Marianne***
44 ***Ricks-Aye, Ann Mackin-Aye, Alyssa Lloyd-Aye, Howard Layton-Aye, Martin Banks-Aye, Chair***
45 ***Jan Bradshaw-Aye. The motion passed 6-to-1.***

1
2 **DISCUSSION**

3 **2. Planning Commissioner Annual Training Session.**

4 Mr. Godfrey reported that his firm has done legal work for the City of Holladay since mid-2014.
5 His firm was established in the early 1970s and his partner, Mike Mazuran, began representing
6 public entities in the late 1960s. That has been the primary type of work done by the firm ever
7 since. There are five attorneys in the firm.
8

9 Mr. Godfrey reported on the powers granted to cities. The Dillon Rule was established in the late
10 1800s and specifies that cities are strictly creatures of what the state tells them they can be. Unless
11 they have a very specific grant of authority in State law, they cannot act on their own accord. In
12 the late 1920s or 1930s, they started to move away from that rule. In 1980, the court made the
13 statement that when general welfare power is granted to the government, it has the independent
14 authority to act in reasonable and appropriate ways. He noted that a city can do what is reasonable
15 and appropriate and is not bounded by a rule that says that there must be a specific grant of
16 authority. That was significant for zoning law. Because land use law has several facets and ways
17 to regulate, it was important that cities not be bounded by having a specific grant of authority.
18

19 Mr. Godfrey reported that over the years the court has developed more concrete rules related to
20 land use decisions. In 2003, the Utah Supreme Court recognized that city decisions on land use
21 should be upheld unless they are arbitrary, capricious, or illegal. The court went on to say that
22 they understand that when cities act, they can so in different roles. Sometimes they are acting
23 in a legislative capacity, sometimes in an administrative capacity, and sometimes like an appeal
24 authority. The determination of whether their action is arbitrary and capricious differs based on
25 the role they take on. When a city is acting within its legislative powers, that decision is not
26 arbitrary as long as the grounds for the decision are reasonably debatable. Mr. Godfrey considered
27 that to be an incredibly deferential standard. He explained that no city in the State has ever had a
28 decision on a zone change overturned by a court.
29

30 Mr. Godfrey explained that at some point a court will overturn a city decision on a zoning matter.
31 He hoped the City of Holladay would not be the first. Ways to avoid that were discussed. He
32 explained that when exercising administrative power or in a quasi-judicial role, a decision is not
33 arbitrary or capricious if it is supported by substantial evidence. When cities make mistakes in
34 terms of land use and make it difficult for private property owners or developers, there has been a
35 pattern in the State of taking that up with the Legislature as opposed to the court. As a result, there
36 is a fairly extensive set of Code changes related to land use law. A land use regulation refers to a
37 legislative act. The statutory definition of a land use regulation is a legislative act. The land use
38 decision is the administrative act. From that comes decision or appeal standards. Mr. Godfrey
39 reported that State Code specifies that a court is required to presume that a land use regulation
40 properly enacted is valid. When challenged in court on a city action, the court presumes that what
41 the city did was valid.
42

43 Mr. Godfrey explained that the arbitrary and capricious standard for an administrative decision is
44 codified in the same way and must be supported by substantial evidence in the record. He stressed
45 that the city is bound by its own ordinances. When a decision is challenged, the law requires that

1 they prepare the record of decision, which is an electronic version of the packet received before
2 the meeting, any written comments, the minutes from the meeting, a transcript of the actual portion
3 of the meeting where the land use allocation was considered, a transcript of the public hearing, and
4 the motion made. From that record, they argue to a court about the decision. If substantial
5 evidence can be gleaned from the paper record to support the decision, the city wins. If it is a
6 legislative question, if a reasonably debatable reason cannot be found in the Council record, they
7 could lose. Findings set forth in the staff report, reasons for decisions, and the way they are stated
8 in the record are critically important.

9
10 Instances where a body makes a decision that is contrary to the staff recommendation were
11 discussed. Mr. Godfrey stated that in those cases the motion should state the reasons for the vote
12 to enhance the record. He stressed the importance of making decisions in the open and stated that
13 the nature of discussions matters. Each member of the Commission has their own expertise and
14 approach to issues and their input is valuable. Procedural issues were discussed.

15
16 Mr. Godfrey reported that about four years ago, the Legislature codified an old common rule that
17 if there is an ambiguity in a regulation governing real property, it has to be construed in favor of
18 the private property right. That means that unless an ordinance specifically prohibits something,
19 the applicant is entitled to approval. Mr. Godfrey next addressed the Commission's roles and
20 responsibilities under the Land Use, Development, and Management Act ("LUDMA"). On
21 legislative questions, the Planning Commission will always be the recommending authority
22 because the City Council has to make a final decision on a legislative question. The Planning
23 Commission will act as the land use authority on most, if not all, administrative decisions that
24 involve dedicating a public road.

25
26 Protections available to the Planning Commission were discussed. Mr. Godfrey stated that public
27 officials often get nervous when someone threatens legal action against city officials for denying
28 an application. He explained that Planning Commission Members are protected in their duties by
29 the Governmental Immunity Act of the State of Utah. They are officials of the City and have
30 volunteer protection as well under the Act. If someone were to name a Planning Commission
31 Member by name in a lawsuit in their official capacity they are entitled to defence from the City
32 in that action. The cost would be paid by the City. The only way to lose that protection would be
33 by intentionally acting outside the bounds of their duties. Federal law provides qualified immunity
34 as well as long as a Planning Commission Member is acting within the scope of clearly established
35 law.

36
37 Mr. Godfrey explained that site visits are of significant legal concern for him and stated that site
38 visits in general create difficulties. He, however, acknowledged how valuable site visits can be
39 for someone who does not spatially understand what a piece of property looks like until they visit
40 it in person. If three Planning Commissioners take a site visit and the entire body does not go, all
41 are not operating on the same information. In addition, he was concerned about contact with
42 applicants or neighbors during a site visit. The interaction occurs outside of the record and is not
43 addressed to the full Commission. He characterized a drive-by as different from a site visit.

1 Mr. Godfrey urged the Commission Members not to engage a developer who may contact them or
2 try to arrange a meeting. If that happens, they should work through staff. Issues that arise from
3 those types of meetings cannot be remedied in a lawsuit. He also urged the Commission Members
4 to avoid texting each other during meetings. He stressed the importance of how meetings are
5 conducted. He commented that the decorum and civility the Commission Members show is of
6 benefit to the City of Holladay and makes a remarkable difference.

7
8 Mr. Godfrey reported that he meets with staff, Chair Bradshaw, and Vice-Chair Layton the
9 Monday before every meeting. They review the agenda and make sure that the staff information
10 is provided. They then address the standard of review on a particular application. Procedural
11 issues were discussed.

12
13 Ann Mackin missed the opportunity to gather outside of meetings at the Annual Christmas Party
14 and hoped it could be reinstated next year.

15
16 **ADJOURN**

17 ***Commissioner Mackin moved to adjourn. Commissioner Howard Layton seconded the motion.***
18 ***The motion passed with the unanimous consent of the Commission.***

19
20 The Planning Commission Meeting adjourned at 8:11 p.m.

1 *I hereby certify that the foregoing represents a true, accurate, and complete record of the City*
2 *of Holladay Planning Commission Meeting held Tuesday, November 17, 2020.*
3

4 Teri Forbes

5 Teri Forbes

6 T Forbes Group

7 Minutes Secretary

8
9 Minutes Approved: _____

DRAFT