

**Rockville Planning Commission
Public Hearing and Regular Meeting
Rockville Community Center, Town Hall
August 10, 2021 – 6:00 pm**

1. **CALL TO ORDER – ROLL CALL** - Chair Jane Brennan called the meeting to order at 6:02 p.m. Present were Ken Rybkiewicz, Cheryl McGovern, Tim Arnold and Linda Brinkley. Brooke Wright and Garth Tyler were excused. Dayton Hall, the Town's attorney, was also present. Town Clerk, Vicki S. Bell recorded the meeting.
2. **DECLARATION OF CONFLICT OF INTEREST WITH AN AGENDA ITEM** - Tim Arnold declared a conflict with agenda item number six (6). Chair Brennan excused him from a vote but not from the discussion.
3. **PUBLIC COMMENT** - There were no public comments.
4. **CONSIDERATION AND POSSIBLE ACTION ON AN APPLICATION FOR A TEMPORARY USE / SPECIAL EVENT PERMIT FOR THE BUTCH CASSIDY RACE BEING HELD ON SATURDAY, NOVEMBER 13, 2021 - RYAN GUBLER** - Ryan Gubler spoke on behalf of the Town of Springdale requesting the temporary use/special event permit. Tim Arnold asked if there would be any specific measures taken due to Covid-19. Ryan said that there would be sanitation stations available, spacing out the seating in Grafton and suggesting that runners wear masks for transportation. There were no further questions.

Chair Brennan read her motion. Whereas the application for a temporary use/special event permit for the Butch Cassidy Race on November 13, 2021, is complete and the event complies with the Rockville Land Use Code Chapter 9.1.25 and the event complies with the Rockville General Plan. And the Grafton Heritage Partnership approves of this use and the Butch Cassidy Race has a long history of leaving little impact on the environment and has been both a community fund raiser and a welcome community activity. Chair Brennan **MOVED** to approve the application. Ken Rybkiewicz **SECONDED** the motion. -

Cheryl commented that some people do not drive slowly enough on the dirt road to keep the dust down. Ryan Gubler said that he would pass that along to the shuttle drivers.

Vote on Motion:

**Ken Rybkiewicz: Aye
Cheryl McGovern: Aye
Tim Arnold: Aye
Linda Brinkley: Aye
Jane Brennan: Aye**

The motion passed unanimously.

5. **CONSIDERATION AND POSSIBLE ACTION ON AN APPLICATION FOR A WALL PERMIT FOR DOYLE TIMMONS AT 449 W. MAIN STREET, ROCKVILLE – DOYLE TIMMONS**– Doyle Timmons appeared via Zoom along with his attorney, Kevin Richards. He is requesting a permit to build a retaining wall. Chair Brennan asked the Commissioners if they had all seen the construction and were aware of what was being addressed here. Construction had begun but has since stopped pending the approval of a wall permit. Linda had a question regarding the mailing address on the application. It was a PO Box with no city. Doyle gave the city, state and zip. Linda asked if the building inspector had reviewed the plans to determine whether or not the wall would require engineering. Clerk Bell stated that she had been unable to contact the building inspector about that today. Chair Brennan said that there is a concern because the requirements state that any retaining wall that is equal to or exceeds four feet above the ground shall be engineered and approved pursuant according to the International Building Code standards. She asked if there had been any engineering done on the wall. Doyle responded no. Chair Brennan asked if he was aware if there was anything special that needed to be done engineering wise when using the large blocks. He responded that they had gone down six feet and compacted the ground and added road base before starting the blocks, which are 3300 pounds each. Doyle added that going east to west the wall would also use rebar. Chair Brennan asked about the cement that she has seen the workers putting up at the base of the wall as it is not in the plans. Doyle responded that it was put there as an extra precaution to ensure the bottom of the wall would never move. Chair Brennan said the amount of cement was too small to be considered structural. Cheryl asked for some clarification regarding the compacted road base. Doyle said that

there was 6 feet at the beginning, closer to the road and it decreased as the wall moved into the property. Ken asked about the part of the plans that allow for delivery trucks to safely enter the property off of SR-9. He asked what kinds of large trucks are required for a parcel that hasn't had a building permit approved yet. Doyle answered that he was planning for the future when he did have an approved permit and wanted to provide a safe access for them. Chair Brennan then brought up a construction sign that he has on the property. They had emailed him last month to let him know that the sign could be no larger than 8 square feet. Doyle said that no one can see it at that size and requested an exception. Following some discussion, Chair Brennan restated that a temporary construction sign can only be 8 sq. ft., that it needed to be removed within 15 days of completion of the project and to please respect Rockville's Land Use Code. Attorney Hall asked for clarification on the height of the wall. Doyle said it starts at 8 feet, reducing in increments of 2 feet as it progressed into the property. Attorney Hall referred him to Rockville Land Use Code Section 9.1.18, which says that any retaining wall over 4 feet would have to be engineered and approved pursuant to International Building Code. Attorney Hall recommended this requirement be met in order to comply with the Land Use Code. He then suggested continuing the action until the plan is submitted. Tim said that he has used these blocks before and agreed that they are engineered to be very stable and are well-built as long as they are installed correctly. Tim agreed that engineering would be a good idea. Ken said that it is due more because of the soils here as opposed to the blocks. Chair Brennan made a motion, WHEREAS though the application for a retaining wall submitted by Doyle Timmons on the property of 449 W. Main Street is complete and his plans for a retaining wall show the structure and the structure itself will comply with Chapter 9.1.18, Mr. Timmons does not yet have an engineering report as required by the Land Use Code Chapter 9.1.18, because this wall is more than four feet above the ground and our Code requires an engineering report. With that in mind Chair Brennan **MOVED** that we do not approve this application. Cheryl **SECONDED** the motion.

Attorney Hall asked to comment before the vote and suggested continuing the application as opposed to denying it. Doyle agreed with this suggestion. The first motion was rescinded, and Chair Brennan made a second motion. WHEREAS though the application for a retaining wall submitted by Doyle Timmons on the property of 449 W. Main Street is complete except for the engineering report. Chair Brennan **MOVED** to have the matter continued until the next meeting. Cheryl **SECONDED** the motion.

Vote on Motion:

Ken Rybkiewicz: Aye
Cheryl McGovern: Aye
Tim Arnold: Aye
Linda Brinkley: Aye
Jane Brennan: Aye

The motion passed unanimously.

6. CONSIDERATION AND POSSIBLE ACTION ON AN APPLICATION FOR AN EXCAVATION PERMIT FOR TIM ARNOLD AT 39 S 140 W, ROCKVILLE- TIM ARNOLD

– Tim Arnold has plans to build an addition to his home. The first step will be excavating the area. When filling out the application at the Town Office, Tim was asked to provide some additional information which was passed out to the Commission. He explained the drainage plan and says that he could not find a 100-year flood line designation on the FEMA website. Tim is only asking for an excavation permit at this time because he needs to excavate next to the current basement to look for the plumbing and utilities so he can figure out where they are before completing his building plans. Chair Brennan made a motion. Whereas the application for an excavation permit submitted by Tim Arnold for excavation prior to construction of a home addition at 39 S. 140 N. is complete, and the excavation does not conflict with Rockville Land Use Code Chapter 5 with the added condition that Mr. Arnold submit a plan showing the 100-year flood plain. The permit will be held until that information is received. Chair Brennan **MOVED** to approve the permit contingent on receipt of the flood plain information. Linda Brinkley **SECONDED** the motion.

Vote on Motion:

Ken Rybkiewicz: Aye
Cheryl McGovern: Aye
Tim Arnold: Abstain
Linda Brinkley: Aye
Jane Brennan: Aye

The motion passed with four Ayes and one abstention.

7. CONSIDERATION AND POSSIBLE RECOMMENDATION FOR A REQUEST FOR REASONABLE ACCOMMODATION BY DOYLE TIMMONS AT 449 W. MAIN STREET, ROCKVILLE – Doyle

Timmons introduced his application, stating that he has answered all of the questions that were requested he answer in advance, to the best of his ability. Doyle then requested that Chair Brennan be recused, stating that she has made comments to him that have shown that she has no compassion for people with disabilities. Dayton Hall, the Town's attorney, responded by explaining that according to Utah law a member of a political body, such as a planning commission is only required to recuse themselves if they have an interest in the property that is the subject of the application or if they have a direct financial relationship to the outcome of what the body is considering. As these do not apply, Chair Brennan would not be required to recuse herself. Chair Brennan then explained that she had spoken to Mr. Timmons once on his property and once or twice at the Town Office, where Clerk Bell was also in attendance. She admitted to having asked if he was planning to do a congregate living facility with Doyle responding that he did not care to. Chair Brennan then apologized if Doyle felt that she was being accusatory, noting that perhaps he was just upset about his sign. Chair Brennan then stated that they have questions and answers and that is what she is going with and that she does not have a personal opinion other than what is in the Land Use Code. The floor was then turned back to Attorney Hall. He began by explaining that the applicant is requesting, under the Fair Housing Act, for Reasonable Accommodations for Disability. And that accommodation in this case, is a change to an applicable ordinance to accommodate somebody to allow them to occupy a dwelling. He went on to define the three requirements to consider. First, that there is a disability; the applicant has submitted documentation showing there is a disability. Second, whether there is a related need for the accommodation; the applicant is requesting an increase in square footage for the house, beyond what is permitted by the ordinance. Also requesting that the garage be attached to the house, which will make it a substantial increase to what the zone allows. He told the Commission that what they should consider is whether this request is related to the disability. The third requirement is that the request has to be reasonable; would it fundamentally alter the nature of the providers operation? To apply this wording to the Town, would it alter the Town's purpose or zoning? His final comment was that if the Commission is considering denying the request that they need to offer alternatives as opposed to just flat out denying the request.

Linda asked about whether they are counting the attached garage in the total square footage of the home. Chair Brennan responded that it is in the Code and has been the Town's procedure that the footprint of the structure includes an attached garage in the square footage. Doyle added that he wanted to clarify that he is not trying to pull anything over on the Commissioners. That the reason he has stated in his request is the only reason he has for wanting to build a home that big. He isn't planning on it being an Airbnb or a group home, or anything like that. Chair Brennan asked if the plans submitted are similar enough to what he plans on building for them to even make the judgement. As she knows that there have been changes made to the plans since they were submitted. He said that they are. Chair Brennan said that the plans only show 30-inch doorways which are not ADA compliant. She then pointed out several other items which would not be compliant. Doyle said that in the final plans, they will be. Chair Brennan states that the proposed home is 4,352 square feet and asked if he has considered any ideas to decrease that footage by 352 square feet. Mr. Timmons' attorney said that the additional square footage over 4000 is what the draftsman added on to make the home ADA compliant. Chair Brennan stated that she has no issues with the fact the son-in-law is handicapped and needs wheelchair access. What she does have an issue with is that he would not be able to enjoy and use and have the same opportunities as the rest of us to enjoy a house that is 4,352 square feet versus a house that is 4,000 square feet. Cheryl states that she agrees with her on that issue. Chair Brennan asked Doyle if he has any options or compromises that he would like to present.

Cheryl then asks Doyle if he can explain why 4,000 square feet is not large enough for his son-in-law. He refers that question to his council, Kevin Richards. Mr. Richards explains that it is not just the son-in-law, it is the entire family, which is actually two families, that will be living on that one floor. Mr. Richards also points out that the garage is actually an accessory building and should not be included in the footprint of the main building. He goes on to ask if the Commission is going to allow them to have a breezeway to accommodate the son-in-law being able to access the home from the garage. Cheryl clarifies that an attached garage is not an accessory building. An accessory building is not attached to the house. Mr. Richards said that the slab the garage is on is separate from the house, attached by a ten-foot breezeway. The Commissioners say that it is not a separate foundation on the

plans that they have. Doyle says that those are preliminary plans but that he has submitted another plan where it is clearly a separate slab as it has a basement and an elevator. There is more discussion to make sure that everyone understands the plans. –

Cheryl asks if the portico on the front of the house could be used for the son-in-law to access the home. Doyle and Mr. Richards explain that there would be no access to elevator from there, nor is it protected from the elements. Chair Brennan clarifies that the size of the portico is not being counted toward the footprint's square footage. Chair Brennan asks if anyone on the Commission has any suggestions or options to offer. Cheryl says that the Commissioners have discussed some options and have decided that they would allow a one-car attached garage specifically for the son-in-law, so he can access the elevator if the square footage of the home can be decreased to 4,000 square feet. The additional three-car garage would be allowed but it would have to be detached from the home. Cheryl asks if that's something that they would accept. Doyle said that he isn't sure and would have to think about it. He doesn't like the idea of having to build two separate structures, though. Doyle asks Attorney Hall if he thinks that would be considered a reasonable accommodation. Attorney Hall said that he isn't the one who has to decide what is reasonable here, but the Commission has come up with a viable option that is outside of the applicable zoning ordinances.

Chair Brennan offers another option which would be to allow the 4,352 square foot house but then require the entire garage be detached. Doyle doesn't see that there would be an undue burden financially or administratively to the Town, so he doesn't understand what it matters whether his garage is attached or not. He states that he is not willing to make a compromise, not in the least. Chair Brennan states that she is not convinced that they cannot make the home completely handicap accessible within the allowed 4,000 square feet.

Kevin Richards states that he wants to add one more thing, for the record. He then proceeds to read from the Joint Statement for the Department of Justice and the Department of Housing and Urban Development, Questions and Answers on the Fair Housing Act and Zoning. It says the Fair Housing Act is not a land use or zoning statute. It does not preempt local land use and zoning laws. This is an area where state law typically gives local governments primary power. However, if that power is exercised in a specific instance in a way that is inconsistent with a federal law, such as the Fair Housing Act, the federal law will control. Attorney Hall said that he read that same article and that is where he got the information that he gave earlier regarding the three criteria he discussed at the beginning. Where there must be a reasonable nexus between the disability and the requested accommodation. And that the requested accommodation must be reasonable.

After further discussion, Chair Brennan restated all of the options that they had discussed. Doyle said that he really can't make a decision right now. Attorney Hall suggested that they give him time to think about it. Doyle agreed that he would like some time to think about it. Chair Brennan **MOVED** to have the discussion continued until next month's meeting on September 14th. Linda Brinkley **SECONDED** the motion.

Vote on Motion:

Ken Rybkiewicz: Aye
Cheryl McGovern: Aye
Tim Arnold: Aye
Linda Brinkley: Aye
Jane Brennan: Aye

The motion passed unanimously.

8. **OPEN PUBLIC HEARING FOR PUBLIC COMMENTS ON APPLICATIONS FOR TWO (2) SUBDIVISIONS SUBMITTED BY BUSH AND GUDGELL, INC.**
 - A. **A MINOR SUBDIVISION, GARLAND & VONDA HIRSCHI MEADOWS, OF APPROXIMATELY 14.573 ACRES AT APPROXIMATELY 55 WEST GRAFTON ROAD INTO TWO (2) PARCELS.**
 - B. **A MAJOR SUBDIVISION, RACHEL D. HIRSCHI ESTATES, OF APPROXIMATELY 97.49 ACRES AT APPROXIMATELY 100 WEST GRAFTON ROAD INTO FOUR (4) PARCELS.**

Chair Brennan **MOVED** to open the Public Hearing. Cheryl **SECONDED** the motion.

Vote on Motion:

Ken Rybkiewicz: Aye
Cheryl McGovern: Aye
Tim Arnold: Aye
Linda Brinkley: Aye
Jane Brennan: Aye

The motion passed unanimously.

Clerk Bell: Read into the record a letter Tydon Older submitted earlier in the day. A copy of the letter is attached.

Bob Hermanson, Bush & Gudgeon: I appreciate your time tonight. Not sure if this is my opportunity to talk about the projects in the public hearing. If you'd like me to wait.

Chair Brennan: Actually sir, no. You will have an opportunity when we present, and the floor will be yours at that time.

Bob Hermanson: Great, thank you. I just wanted to clarify. I appreciate it.

Jacob Andersen: Hello Commission, some of you know me, I'm Jacob Andersen. My position on the Hirschi subdivision, let me explain my thoughts first which will support my reason for it. I know there's the feeling by many in the Town that certain things are applied to some people whether they are long-time residents, whether they are liked or disliked, and they are applied very, very differently. I have no opposition to what the Hirschi's are trying to do. In fact, I believe we should try to encourage and help people with what they are trying to do with their land. But when someone comes that hasn't been a part of the community very long, it seems that there is a chance to squash what they are trying to do and make it very, very difficult. I don't know that it's a secret that there are some that perhaps don't like Tydon. And when he was trying to do his subdivision, it was the first major subdivision that had been done in some time and he tried to do exactly this and go straight to final plat, and he was told that you have to meet all the requirements of preliminary plat and final plat. And when he was doing that, he was in addition told you cannot subdivide. We will not let you subdivide unless you have water. When he secured water, he was told that securing it is not enough it must be transferred to the land. When it was transferred to the land and a temporary approval granted, he was told that's not enough. It has to be permanent approval granted. When he got permanent approval, he was also required to get approval from Springdale sewer to provide connections to all those sewer lines, provide a fire hydrant, improve a road, and even on top of that, told that he must bond all of this while doing it. And not allowed to sell any lots prior to the subdivision being approved. All I ask is nothing, hopefully too foreign or something that many of you will not hopefully appreciate. And that is I simply ask that everybody, whether they're liked, whether they're disliked, whether they've been a part of the Town for a long time or whether they're newcomers. That the ordinances are applied to everyone equally. So, with all of that said, I do like the trend, or I do like the idea of the planning and zoning helping those who are trying to apply for a subdivision or apply for excavation or doing what they can to assist the process. I simply ask that what you have required of people in the past be required of people in the future. Or at the very least, what you require from people now be extended to everybody in the future. Thank you.

Chair Brennan: Commissioners, I'm going to remind you that public comment is not our time to comment. But I do have a quick question. Jacob, Tydon, what year was your subdivision processed?

[Inaudible]-

Chair Brennan: 2019 or 2020ish? Last year? Ok. Thank you. Sorry guys, I kind of broke my own rules right there. Please step up.

Joe Harper: I support the Hirschi development, but I want all of the rules to be applied equitably and like Jacob said, I feel like the rules of this Town are applied unequally to people. When I first bought the Rockville Serenity Garden, Jane told me, she came up and told me I could not walk on my land. When I came into see what I could do with my land, Jane told me that I could not even build a 4x4 foot structure on my land. Because she had talked to the fire marshal. I felt like when I came into that meeting that the Planning Commission knew I was coming in and went and researched ways to say no to me. I feel like the Code is used as a way to give some people an easy pass and other people a

no. You lied when you said there are no homes in Rockville over 4,000 feet. There's two, right here on the corner. One built in 2014 that is 6,200 feet with two 2-car attached garages. So I feel like you lied to that guy.

Chair Brennan: Which house is that?

Joe Harper: The one that's up for sale for 2.8 million, built in 2014. There's another one for sale that's 4,200 and something square feet. Those are just the one's I looked up on Zillow while I was in this meeting. So I feel like, I built an 8x12 shed up on my property. So Jane was wrong. I could build bigger than 4x4 I could do what is legal and I went and researched with a lawyer on what was legal, and I pushed through with that. I didn't ask your permission because I didn't need to ask your permission. But I do believe that in the last four or five years that this Town treats different landowners differently. And I'm sorry, I'm going to calm down. Thank you.

Chair Brennan: All right, anybody else who would like to comment? Tydon?

Tydon Oler: I'd just like to clarify that I don't have any objections to the actual subdivision of the ground. I have the objections that I have are to how the Code is being applied...

Chair Brennan: Can you speak louder and cover your nose, please?

Tydon Oler: You can read the first paragraph of the subdivision ordinance and it specifically states that water and other things are required. We went through those hoops to make that happen. We went through what was required and asked. It's a very onerous subdivision ordinance. It's a very onerous preliminary plat ordinance even. I think the rule should actually be vacated. I think that would truly be the way to help property owners and landowners here at the Town. Instead what I feel has been done is a subdivision ordinance has been created and I've sat in meetings where it's been discussed by prior Planning Commissions that would make it onerous and make it difficult for people to subdivide. So, I could quote the individual by name, but I won't, he's no longer on this board but he was Chair at the time, so that less subdivisions would happen [inaudible] and that he fully supported in making it as difficult as possible of an ordinance. We stepped through all of that and were required to pay a bond for all the improvements, which are privately owned improvements still to this day were not Town improvements. And despite that fact, when the Town has somebody come forward or an individual come forward where they just want to skirt the rules, they make it happen one way or another.

Chair Brennan: Okay, thank you. Would anyone else like to speak? Seeing no one I will entertain a motion to close the public hearing.

9. **ADJOURN PUBLIC HEARING-** Ken Rybkiewicz **MOVED** to close the public hearing. Tim Arnold **SECONDED** the motion.

Vote on Motion:

Ken Rybkiewicz: Aye
Cheryl McGovern: Aye
Tim Arnold: Aye
Linda Brinkley: Aye
Jane Brennan: Aye

The motion passed unanimously.

10. **CONSIDERATION AND POSSIBLE RECOMMENDATION OF THE APPLICATIONS FOR TWO (2) SUBDIVISIONS SUBMITTED BY BUSH AND GUDGELL, INC.**

- A. A MAJOR SUBDIVISION, RACHEL D. HIRSCHI ESTATES, OF APPROXIMATELY 97.49 ACRES AT APPROXIMATELY 100 WEST GRAFTON ROAD INTO FOUR (4) PARCELS.**

Chair Brennan: To give us a preliminary I want to tell folks that I get phone calls and am stopped on the streets on the way to the post office with, what do you mean they're going to do a subdivision up there? It's happened the two or three times I've been on the Commission when we've had a subdivision. We are subdividing the lots -- one lot is going to be two lots and one lot is going to be four lots. We are not putting in a housing development. We are not allowing a neighborhood. This is not what you think of as a subdivision in St. George. You think of that, and you think of all the houses are all alike and right next to each other and they need curbs, and they need sewers and they need

plumbing and they need roads. So all of that stuff that's what a development is. So when someone brings us a plan to do a developed housing subdivision that's what we need. Everything, all of the hoops Mr. Oler and Andersen had to jump through. Because they had to allow access to their properties by road. So they had to be put in because we are not allowed to subdivide a lot that does not have access. So they were obligated to put in access. The subdivision, this major subdivision with four points, four lots. See, each one of those lots has access. So we're not asking them for access. The first major subdivision and the minor one also for being divided for sale, this is really a glitch in our Code. It does not have a simplified subdivision for, I'm not going to make improvements I'm just going to divide this so it fits into the zoning, and it fits into our Code so each lot is not smaller than the Code allows in order for it to be divided for sale. So it's different then what's being done down the hill.

[Inaudible from audience]

Chair Brennan: This is not the time to discuss this, however, one of the things I remember discussing with Mr. Oler when he brought this in is road access and that is something I was pushing for a bond for. Because that is something important that if we allow the division of these lots, they needed to have access otherwise we would be doing something against our Code. Things like that were important to me.

Cheryl McGovern: Jane, before we get too far into this, can I just read the classification, even though the major subdivision is pretty extensive. The major subdivision, this is 7.1.8, this is the classification of a major subdivision. All subdivisions with proposed divisions of 4 or more parcels for any size subdivisions requiring new streets or extensions of local or governmental facilities, infrastructure, or the creation of improvements. and this new, this four, this estate, as Jane said, all four of them are on frontage, are on Grafton Road. They all have road access. Correct?

Chair Brennan: Yes.

Cheryl McGovern: And so it doesn't fall into and if it didn't meet that criteria then all of the other stuff follows. It's not just, okay we'll put in a road. It becomes extensive.

[Inaudible from audience]

Cheryl McGovern: For any subdivision?

[Inaudible from audience]

Chair Brennan: Time out. Okay we have two different types of subdivisions. We have a minor and a major subdivision. A major subdivision is dividing into four more. Or a major subdivision can also be a minor size subdivision with special circumstances. Sensitive lands. Now if you recall in 2018, Cheryl, I believe you were on the Commission, Linda, I know you were, when we did the Perry subdivision. The Perry subdivision that's pretty much what we're doing here. It was, in 2018 it was approved because it was under contract with them, basically the development agreement contract. That they were doing this not to make improvements but just sell the property as it is. We do need an alternate Code. We do need something. And I would agree with some of you out there, our Code is complex needlessly. It does not need to be this extensive. People do not need to be subjected to things if they are not planning on building on and selling and having plots.

[Inaudible from audience]

Clerk Bell: None of this is going to be on the recorder, guys.

Chair Brennan: Time out, time out. Yes. The Perry subdivision was a two-lot subdivision, was a major subdivision because it had sensitive lands on it.

[Inaudible from audience]

Chair Brennan: Ok. Ok. We get to talk now. We're done.

[Inaudible from audience]

Chair Brennan: Ok. We are done. Listen, you had the opportunity for a public hearing.

[Inaudible from audience]

Attorney Hall: Jane, can I clarify the Code?

Chair Brennan: Please.

Attorney Hall: The reason that the Perry development oh, well not a development, the Perry subdivision was permitted because it was pursuant to our development. It was executed by the owner and by the Town. Under State Code 10-9a-32, a Town can enter into a development agreement, and that development agreement can, if certain criteria are met which they were in this case, it can amend, it can be different than what the Town zoning ordinance says. And so, because the Town agreed to that, under those conditions, then it was permissible to allow the Perry subdivision to occur pursuant to a development agreement. And so, some of the criteria in the Towns Code were not followed pursuant to that development agreement. That's why it was permitted in, when was this, 2018.

[Inaudible from audience]

Attorney Hall: So, you will be following your Code because State Code overrides what the Town Code says. And the State Code says you can enter into development agreements in certain circumstances if you want to. So I'm not saying it's a good idea or not a good idea. I'm just telling you it's permitted to do this pursuant to the State Code.

[Inaudible from audience]

Chair Brennan: And to the Commission, we are basically repeating the exceptions to the Code we were allowed to make for the Perry Subdivision, we basically are going to be able to repeat those because no development is planned. This is not something that needs, that has, buyers already. This is not something that has plots.

[Inaudible from audience]

Attorney Hall: So it's not,

[Inaudible from audience]

Attorney Hall: Hey, Hey! So at some point you violated Utah Code by disrupting this meeting and we can excuse you from the meeting. The public hearing part of the hearing is closed. The Chairperson has asked you to be quiet and now the Commission is debating this application. But your time to talk is done or you'll be excused.

Chair Brennan: So, with this, you all got an email regarding the development agreement. One of the things in the agreement, let's see, where was it, about not selling, or not developing. The intent of the above requirements are to ensure the safe development of environmental resources and sensitive lands. And any future development of these parcels will require compliance with the studies and the plan making an application for grading, excavation, and developing permits. What this means is that the buyer is responsible for fulfilling the exceptions that we've made. Like the Perry property in 2018, we waved the feasibility studies, the preliminary engineering plans, the grading plan, the drainage studies, the vegetation plan and the traffic study. That's because these things are important if you have a subdivision like a Housing Development. These things are not important to us, and we are allowed by Code and by law to come into this agreement to waive these things.

Tim Arnold: Well let me ask a question just to make sure I understand. The Perry's we entered into in 2018. And we are going to divide their property. And we said, great, you are going to take care of

the responsibility of the development of that property and put that on the buyers. Is that correct? Of that land.

Chair Brennan: Exactly. In fact it went on their deed.

Tim Arnold: It went on their deed that they were required to do that if they wanted to move forward on any development?

Chair Brennan: Yes.

Tim Arnold: In the case of Mr. Oler's subdivision, since I am unaware, I just want to make sure I understand. What was the difference between what he wanted to achieve and that?

Chair Brennan: For one thing, after the Perry subdivision was done and the way it was done, Mr. Oler presented us with plans that were basically a Housing Development. A Housing Development of four or five houses I believe.

Tim Arnold-: Okay and how big were those plots, those areas?

Chair Brennan: They were within the zone.

Tim Arnold: Okay. Within the zone. So not asking for smaller.

Chair Brennan: No.

Tim Arnold: Okay. And so, because he was taking the responsibility of the development of that, that's why we required all of the parts.

Chair Brennan: Exactly.

Tim Arnold: Had he just said, I just wanted to divide this land. Besides the road access, which is required, I can understand that, he could have done that and put all of the water, sewer and everything else on to the buyers. Correct?

Chair Brennan: Yes. But what we were presented with. A development plan with things like a possible gated community, possibly a community pond.

Tim Arnold: I'm just trying to make sure I understand the difference between the two.

Chair Brennan: CC&Rs. It was more like what you're used to hearing and understanding under the terms of subdivision.

[Inaudible from audience]

Chair Brennan: Okay. And what we're going to do now is talk about this subdivision with, would Mr...

Cheryl McGovern: I was part of this last subdivision, and we did site visits and what have you. And it was presented as a development. That wasn't like specific housing plans or what have you and the response to that was that would be on the buyer. That is true, that building the house, attaching the water, and this, that and the other thing, would be on the buyer. But he showed us where the sewer was going to go, where the water was going to go, where all that stuff was on our site visit. Long before we had a meeting.

[Inaudible from audience]

Attorney Hall: It takes a two-third vote of the Commission to remove a person from a public meeting, so I suggest you give whoever's speaking another warning and if he continues to disrupt the meeting do a vote to excuse him and if it doesn't leave then call the police. Cause this is just unacceptable.

Chair Brennan: Please hush so we can get our work done. Please step up.

Bob Hermandson, Bush & Gudgell: I appreciate your time, Bob Hermandson with Bush and Gudgell, representing the two items on your agenda this evening. Sorry, it's already starting off a bit challenging. Not our intention whatsoever. The intent with the Hirschi family is to purely, no development to take place, just with the access that is already there, the utilities that are already there, the road that is there, is purely just to subdivide it so that they can sell those as directed by the city. I own Bush and Gudgell so all I do is development work, but I don't do a lot out here in Rockville, obviously. It's because it's a different community, right? So just by the guidance we received this is what we pursued and that's honestly just what we submitted. So the development agreement scenario is what we were under the impression was the correct way to go about it. So that's what we were totally fine with and agreeing to. And that was the only intent of our subdivision. And that's it. It's just dividing it. We have no intention of doing any improvements that would be through the development agreement related to the, on the four lots, related to the future owners whatever they may do that would be a deed, well it's actually not a deed restriction. The development agreement itself, it's my understanding the agreement would be recorded and then it would show up on a title report. Those items would have to be addressed and at that point, when they come forward with that plan, they would specifically address those items as directly necessary to get whatever plan approved, they needed to. Is my understanding and just to be clear, that's our stance on it, what we're trying to do. What I feel like what the Planning Commission is represented tonight is my understanding of what was submitted as well so we are on the same page. The rest of it I'm not aware of entirely. Not to discredit that at all I'm just not involved, and I don't know what's going on there so I'm happy to answer any questions, but I feel like what's been communicated tonight in my understanding feels like what our intent was to submit to you all for consideration.

Chair Brennan: I have a question regarding the plans here.

[Inaudible]

Chair Brennan: My question was on the parcel drawing, the road does not completely front both of those parcels and that little highlight right up there so each one seems to have road access. The one I would be concerned with is lot three, and it seems to have enough road access before the property line ends.

Bob Hermandson: Maybe just to clarify, maybe I didn't understand what you were pointing to so lot three actually owns across the road, so they actually have that entire area there. The heavy black line is the boundary of lot three. I'm sorry I didn't understand when I looked there with you. I see what you thought.

Chair Brennan: Sorry guys, misinformation. Okay, so each one of these lots is within the 20-acre open space zone. And each one of these lots is 20 acres or more. Those are considerations that we need to take into account because we are not allowed to make a lot smaller than the zone. And we are not allowed to make a lot that is not accessible. So, who's got questions for Bob? Tim, have you got any questions?

Tim Arnold: I guess, those lots have been on the market prior to their approval. I guess I'm just curious as to why they were marketed that way.

Bob Hermandson: That part of it, as far as the real estate side I have not been a part of. I don't know if they were trying to understand if there was a market for the 20 acre lots. For me,

[Inaudible from audience]

Chair Brennan: Please step up. And who are you?

Nate Schaffer, Keller-Williams, St. George: To answer that question, so the four-lot subdivision, that's being proposed is not marketed as four separate parcels. It is still marketed as one solo parcel.

Chair Brennan: And what is the total acreage on that?

Nate Schaeffer: Ninety-eight point something odd acres.

Cheryl McGovern: And so if this goes through, it will then be marketed as individual lots?

Nate Schaeffer: That's correct. We're holding off doing that. If you go on the MLS you'll see how it's being marketed.

Cheryl McGovern: I didn't think it was initially.

Nate Schaffer: -Yeah. But we did create a sign that is correctly labeled that it is proposed. That it's potential future, so people can see what that would be like. But we do not, we have one listing for that lot. I would say though, that field lot, on the other hand, we recently, just in the past short while, we did change the marketing of that to two. If it would be something you'd like us to do, to put it back to one we would be happy to do that. I suppose we did that because that subdivision, from what we had been told, is just a simple, or a minor, as you would call it, and it would be something that didn't really require much discussion.

Chair Brennan: Well that was not okay. You should not have done that. Shame on you.

Nate Schaffer: We can certainly put it back if you would like.

Chair Brennan: I think that will be determined by what we do this evening.

Nate Schaffer: Okay. Any other questions for me? Thank you.

Chair Brennan: Okay, Bob, thank you for referring to him. We need to change the recorder.

Chair Brennan: Have you been made aware of the proposed development agreement?

Bob Hermandson: We have. And that was, as discussed in our initial meeting, that was the intended direction from square one. So we are fully in agreeance and that was our intent. And that was the direction we agreed. So, yes.

Attorney Hall: Can I say one more thing? I just want the Commissioners and everyone to be clear. What the applicant is asking for here is a deviation from the generally applicable Zoning Ordinances. Generally there would be a different process that an applicant would have to go through before any subdivision. Which, under the definition is, taking one piece of property and making it into two or more so it is a subdivision and the subdivision ordinance would generally apply. What's been contemplated here is to do a development agreement instead in this specific situation, because these are large lots and they all front on public access already. They are 20 plus acre lots. These are big, so you should consider whether this is an appropriate circumstance. Where it's okay to not require the more stringent requirements under the subdivision ordinance and instead allow a large lot subdivision to move forward under a development agreement, which is permitted under State Code. I hope that kind of clarifies the issue here tonight. What you've got in front of you is a proposed recommendation to the Town Council. Also, if you do make a recommendation for approval, then it should be subject to a development agreement because we want it to be clear. This only gets approved after the Town Council approves the development agreement and I look at the specific language and make sure that everything is okay legally. So I hope that helps clarify where we're at on this.

Chair Brennan: In the past a development agreement acted as a contract between the applicant to subdivide and the Town and it's very specific.

Cheryl McGovern: I don't have any questions for you but I'm going to ask some questions because I can see the look on your face is like, what's going on here? So the Perry development agreement, what is it? Why did we do that for them?

Attorney Hall: I wasn't here. I wasn't involved in that. All I know is what I've heard so maybe someone else can speak on that.

Ken Rybkiewicz: Can I ask what parcels those are or where they're at located in Town?

Chair Brennan: They are two parcels between the road and the Díaz property.

Clerk Bell: One of the parcels, it's owned now by Justin Maybe and the other is owned by Perry Homes and they are both still vacant at this point.

Linda Brinkley: How big were they? I forgot.

Chair Brennan: 20 acres.

Cheryl McGovern: They are at the 20 acres zone.

Linda Brinkley: I remember they were really big it seems like that is another thing this has in common with what we did with Perry. It's like our Attorney said, it's the size of the lot, undeveloped big piece of land.

Chair Brennan: And everything else is still the same as it would be have those lots been 20 acre parcels when designing was developed it's a 20 acres zone but it's a hundred acre property so they can divide it up we haven't ever stopped to my knowledge anyone from dividing their property up especially dividing their property up for sale I believe that it's our obligation to allow people to do as much as they want with their property according to the Code and our Code has no objections to this.

Cheryl McGovern: Okay, so my next question is because I want to make sure we're being fair and I'm sure everybody here wants to make sure we're being fair. So when the development, the people who are questioning what we're doing here as opposed to what we did for them, did we, at any point, did they come forward and ask us what we needed from them before we even considered the preliminary plat? Did we say, you have to have this, this, this, and this in place before you can even apply? Or did they just show up with it?

Clerk Bell: They just showed up with it. He had a packet probably about this thick and it had his application for the preliminary plat and all of the stuff that was required.

Cheryl McGovern: Hold on, hold on. So they were doing due diligence and that's why they came forward with all of those because that's what the Code requests. And I know for one thing, that the road part, if nothing else, that was the most legitimate thing that I can remember that was going to be required. Everything else, okay, let's just put that on the side table for a minute. But the road part was a big deal because it didn't have access and if they hadn't come forward, and I know we can't hypothetical this, but would we have had the opportunity to give them the same development as the Perry's and what we're considering doing for the Hirschi's?

Chair Brennan: I see no reason why not. This was after the Perry's, where it was known to anyone who was at the meeting or read the minutes, or got a GRAMA request, that we did do a development agreement for the Perry subdivision and that exceptions are allowed to be made in this.

Cheryl McGovern: So because they came forward with the information that is requested in our codes that's why we pursued and made them complete the process.

Chair Brennan: They brought it to us as a development. Different than subdividing a property, and so we dealt with it as the development it was brought to us as.

Cheryl McGovern: So I guess my next question is, if we don't have to offer these people this development agreement, we could require this.

Chair Brennan: That is correct.

Cheryl McGovern-: Because technically, it falls into this category. So why are we?

Chair Brennan: The reason why I would agree to this, and the reason I've gone forward in the paperwork with it before the meeting, since it's been submitted, is because I believe that there is a place in our Code for a simplified version for dividing property into smaller properties. And if we called it, dividing into smaller parcels, and not a subdivision then we would have a different aspect in our Code. And in that aspect, he is correct. Our Code is way too big for this type of situation. However, the law allows us, and our Code allows us to make some exceptions and simplify it.

Cheryl McGovern: Since we don't have the simplification, we can basically, as a Town, say you don't have to do this, we will allow you to do this instead.

Chair Brennan: Correct.

Cheryl McGovern: And the reasoning for this is because of the fact that they're not planning on developing. Because they didn't come forward with all of the information first and they just came and said what can you do for me, or what? What's going on?

Chair Brennan: No. The difference is, one is submitted as, I want to divide this property for sale, the other is, I have this development, this housing development...

Clerk Bell: Can I add something? One of the differences in my mind was, Bush and Gudgeon came to our office for a conceptual and said this is what we want to do. And they kind of explained what they wanted, and we looked back at what we did with the Perry Subdivision and said, you know, we can go the route of the development agreement as long as everybody is willing and that the sellers will put the burden of all the studies and stuff onto the buyer when they buy the land. They came to us and asked us that. We did not make the offer.

Cheryl McGovern: I just want the transparency for you guys. Because you weren't here for the last two and this is a big deal. And I could see why somebody would think that we were playing favoritism. The situation on paper does appear different and so I just wanted to make sure that we had the air cleared with all of the back and forth.

Chair Brennan: Thank you. Linda?

Linda Brinkley: I was just going to say the more we talk about this is something that I thought about, it's something I had wanted to bring up. And that is, I see a little bit of a difference here except for the fact that there's road frontage on both these separate parcels. When I look at it and I drove by there again today, the bigger pieces, the way they are divided, and the two smaller ones across the road, don't seem to be in the same category to me. Part of its acreage. Because across the road it has been distinctively divided into what's turning into one straight lot lined up. And the two signs that are out there, that I read, were telling the possible buyers these are the kinds of things that come with this. Or that you can get it with this. It seemed more like it was a different type of division across the road.

Cheryl McGovern: Oh there is a difference. The two lots, the minor division is in a developed area, the major division is another sensitive area. I think that if we consider breaking this up as one lot, that's a lot less density than four lots. A very pristine, sensitive overlay area, so when it was one lot I thought that was okay. But now that they want to build more houses over there, and it's their land, but there's no water over there and something might happen to our irrigation water rights if enough money comes into Town and if new people that buy this land want to get water and there's no well rights for it. There's a lot of things with this division that we should be asking before we decide to break it up. Because then we will have four separate people coming at us, trying to develop pieces of property that really are not developable unless they put all four houses along that plateau over there. Where there's no water, no sewer, no electricity. There're going to require the Town to bring electricity in. There's a lot that's going to happen with that division. And we really need to think about that.

Chair Brennan: You're talking about this subdivision, the major one.

Cheryl McGovern: There's no utilities there. None.