

Provo City Planning Commission

Report of Action

November 10, 2021

*ITEM #5 Matthew Griffiths requests an Ordinance Text Amendment to Title 15, to add a new chapter establishing policies and procedures for the dedication of private streets and utilities. City-wide application. Aaron Ardmore (801) 852-6404 aardmore@provo.org PLOTA20210360

The following action was taken by the Planning Commission on the above described item at its regular meeting of November 10, 2021:

CONTINUED

On a vote of 6:0, the Planning Commission continued the above noted application.

Motion By: Brian Henrie

Second By: Ally Jones

Votes in Favor of Motion: Brian Henrie, Ally Jones, Lisa Jensen, Laurie Urquiaga, Robert Knudsen, Dave Anderson
Laurie Urquiaga was present as Chair.

- Includes facts of the case, analysis, conclusions and recommendations outlined in the Staff Report, with any changes noted; Planning Commission determination is generally consistent with the Staff analysis and determination.

TEXT AMENDMENT

The text of the proposed amendment is attached as Exhibit A.

STAFF PRESENTATION

The Staff Report to the Planning Commission provides details of the facts of the case and the Staff's analysis, conclusions, and recommendations. David Day (City Engineer) gave additional background on the reasons for the new code proposal, that the City has had no regulations for taking private roads and utilities to public ownership. Mr. Day stated that the text amendment is still open for comments and edits, and that he would recommend that the Planning Commission continue the item after discussion in order to create a better ordinance.

CITY DEPARTMENTAL ISSUES

- The Coordinator Review Committee (CRC) has reviewed the application and given their approval.

NEIGHBORHOOD MEETING DATE

- City-wide application; all Neighborhood Chairs received notification.

NEIGHBORHOOD AND PUBLIC COMMENT

- Neighbors or other interested parties were present or addressed the Planning Commission.

CONCERNS RAISED BY PUBLIC

Any comments received prior to completion of the Staff Report are addressed in the Staff Report to the Planning Commission. Key issues raised in written comments received subsequent to the Staff Report or public comment during the public hearing included the following:

- Amber Gudmundson gave additional background on the proposal. She stated her concerns with private utilities including water meters and fire hydrants.
- Mr. Hatfield said he is not in favor of the current version of the ordinance because it requires the HOA to bring up utilities to the current code standard. He believes that this would be unrealistic for private ownership groups. Mr. Hatfield suggested that a standard from time built with continued maintenance be in the language.
- Mrs. Hatfield stated her belief that it is in the public interest to take over the private utilities, so the experts can properly maintain fire hydrants and utilities.

APPLICANT RESPONSE

Key points addressed in the applicant's presentation to the Planning Commission included the following:

- David Day responded to questions from the Planning Commission regarding costs of the regulations, remedies of dated systems, and ability to confirm compliance with current standards. Mr. Day confirmed that the City would not have to bear up-front costs at the time of transfer for deficiencies in systems.

PLANNING COMMISSION DISCUSSION

Key points discussed by the Planning Commission included the following:

- The Commission stated support for the amendment, so long as it does not cost the City additional funds to bring aged private systems up to code.

Planning Commission Chair

Director of Development Services

See Key Land Use Policies of the Provo City General Plan, applicable Titles of the Provo City Code, and the Staff Report to the Planning Commission for further detailed information. The Staff Report is a part of the record of the decision of this item. Where findings of the Planning Commission differ from findings of Staff, those will be noted in this Report of Action.

Legislative items are noted with an asterisk (*) and require legislative action by the Municipal Council following a public hearing; the Planning Commission provides an advisory recommendation to the Municipal Council following a public hearing.

Administrative decisions of the Planning Commission (items not marked with an asterisk) **may be appealed** by submitting an application/notice of appeal, with the required application and noticing fees to the Community and Neighborhood Services Department, 330 West 100 South, Provo, Utah, **within fourteen (14) calendar days of the Planning Commission's decision** (Provo City office hours are Monday through Thursday, 7:00 a.m. to 6:00 p.m.).

BUILDING PERMITS MUST BE OBTAINED BEFORE CONSTRUCTION BEGINS

EXHIBIT A

CHAPTER 15.23

DEDICATION OF PRIVATE STREETS TO PUBLIC OWNERSHIP

SECTION:

15.23.010: Purpose

15.23.020: Policy

15.23.030: Administrative Procedures

15.23.010: PURPOSE:

This Chapter establishes policies and procedures for the dedication of private streets and utilities to public ownership. Private alleys are not eligible for dedication under this Chapter.

15.23.020: POLICY:

(1) Property owners may request the existing private street and/or utilities be considered for dedication to public ownership, using the following process:

(a) The request must come in the form of a private dedication petition, which must be signed by property owners representing one hundred percent (100%) of the total linear frontage of the street and 100% of the ownership of the utility. In the case of a Homeowners Association (HOA), the petition must be signed by the board of trustees representing the owners or those with express authority to legally bind the HOA.

(b) By signing the petition, each petitioner agrees it is that petitioner's intent to dedicate the street or utility to public ownership.

(c) The petition shall set forth the reasons for the proposed dedication and explain how dedicating the street or utility is in the public interest.

(d) The City's Public Works and Development Services departments will review the request and identify any deficiencies, including, but not limited to, ways in which the street or utilities do not satisfy the factors set forth in this Chapter and potential costs, liabilities, or logistical, maintenance, and infrastructure problems the dedication may impose on the City if approved. If no deficiencies are identified, or all identified deficiencies have been corrected, the petition will be forwarded for review as provided in subsection (1)(g).

(e) The identified deficiencies will be communicated to the petitioners. Petitioners may choose to correct any or all of the identified deficiencies at their own expense prior to the Municipal Council review described in subsection (1)(f).

(i) No later than 30 days after receiving the list of deficiencies from the City, petitioners must notify the City in writing whether petitioners elect to correct deficiencies or request the petition be forwarded to the Municipal Council for consideration of an appropriation.

(ii) If Petitioners elect to correct deficiencies, the petitioners must notify the City in writing when the corrective work is complete. The Public Works and Development Services departments will then review the request again as set forth in subsection (1)(d).

(iii) The process set forth in subsections (1)(d)-(e) will repeat until no further deficiencies are identified or until petitioners elect to submit the deficiencies to the Municipal Council for review.

(f) Upon election by the petitioners, any deficiencies identified through the City's review and uncorrected by the petitioners will be reviewed by the Municipal Council to consider appropriation of the estimated costs necessary to remedy the deficiencies. However, the Council may not appropriate money to correct deficiencies

that this Chapter specifically states will not be paid for by the City. If all remaining deficiencies associated with a petition are of this type, the petition will not be sent to the Municipal Council for review and will be deemed rejected.

(i) If the Municipal Council does not authorize the appropriation, the petition shall be deemed rejected and the street or utilities will not be dedicated to public ownership.

(ii) If the Municipal Council authorizes the appropriation, the petition will be forwarded for review as provided in subsection (1)(g).

(g) Upon referral under this section, the petition will be considered by the Coordinators Review Committee (CRC) executive team, consisting of [members to be determined], for final approval.

(h) Dedication to public ownership will not be approved unless all the conditions in subsection (3) have been met and a finding has been made that dedication is in the public interest. The mere fact that the conditions in subsection (3) are met does not guarantee that the street will be approved for public ownership.

(2) The following factors, among others, may be considered by the City in determining whether dedication is in the public interest:

- (a) The street provides or can provide access to open space, public facilities/uses, or other public amenities.
- (b) The street provides or can provide an improvement to the surrounding pedestrian or vehicular circulation pattern.
- (c) The street provides or can provide an identified planning goal as noted in the adopted master plan for the neighborhood.
- (d) Dedicating the street or utility to public ownership will encourage reinvestment in the community.
- (e) Dedicating the street or utility to public ownership will improve water conservation in the community.
- (f) Dedicating the street or utility to public ownership will increase maintenance efficiency for City workers.
- (g) Dedicating the street or utility to public ownership will mitigate a hazardous condition and/or will lead to an improvement in health or safety conditions in the community.
- (h) Dedicating the street or utility to public ownership will enhance public safety for the community and surrounding area (e.g. access, certified maintenance, and use of fire hydrants for a high-risk fire danger area).

(3) Private streets will not be approved for public ownership if:

(a) The utilities do not meet current City standards, unless it is demonstrated that the key objectives of the standards are already being met by existing conditions.

(b) The street surface features do not meet current City standards, unless brought into an acceptable degree of compliance in the determination of the CRC executive team.

(i) There are certain City standards that the City will not consider waiving or reducing (grade, surface, width) in determining the question of whether there is an acceptable degree of compliance, as they relate to health and safety and ability to provide services. Streets will not be considered for public ownership unless they meet current City standards for street width and comply with all applicable Fire Code standards.

(ii) The grade of the street must meet current City street grade standards.

(iii) City standards require that street surface features be in compliance with all current state and federal standards, including those contained in the Americans with Disabilities Act of 1990 (ADA).

(c) Deteriorated retaining walls and other private property features abutting the proposed public ownership have not been removed, repaired, or replaced by the property owners to ensure public safety.

(d) The City is not able to safely and efficiently provide services (fire protection, garbage collection, snow removal, etc.) along the street.

(4) Provo City will not pay the cost of underground (utilities, etc.) or surface (curb, gutter, sidewalks, concrete, etc.) improvements to bring the street up to City standards. The burden is on the private street property owners to fund necessary improvements.

(a) Private street property owners may pursue funding options to upgrade the street to City standards through the City's community development block grant (CDBG), capital improvement program (CIP), or special assessment area (SAA) programs if the private street was not expressly created in a platted subdivision.

(5) If matching funding is requested from the City through the CDBG or CIP programs, or through creation of an SAA, the request will be considered through the routine processes for allocation of those funds and will not be given priority.

(6) The City will not agree to split the ownership of utilities and streets unless the public interest in dedication is compelling.

(7) If a private street was created as part of a planned development:

(a) The City will not pay or share the cost of repairing or improving the street. However, property owners may pursue funding options as described in subsection (4).

(b) An amendment to the planned development is required. There must be a compelling public interest shown for public ownership to be considered.

(c) The amendment process will be reviewed by the planning commission with a recommendation forwarded to the Municipal Council.

(d) The petition for dedication for such a street will only be forwarded to the CRC executive committee for review if the Municipal Council approves the amendment.

(8) The City may determine that a street proposed to be dedicated requires an evaluation or audit to ensure compliance with ADA standards as described in subsection (3)(b)(iii). Petitioners will be responsible for funding any evaluation or audit deemed necessary.

(9) The City will not take ownership of a street that does not allow public access.

(10) The City will not take ownership of a street that is targeted for redevelopment as identified in a City master plan.

(11) No specific rights or guarantees for use of the street, such as on street parking, are conveyed to private street owners when a private street becomes publicly owned.

15.23.030: ADMINISTRATIVE PROCEDURES:

The Mayor is authorized to adopt additional, consistent administrative procedures necessary to implement this policy.