

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

**Tuesday, August 5, 2008  
7:00 p.m.  
Holladay Municipal Center  
4580 South 2300 East**

***ATTENDANCE***

**Planning Commission Members:**

Paul Shupe, Chair  
Gene Carr  
Cyrus McKell  
Brad Scott, Vice Chair  
Lynda Shields

**City Staff:**

Paul Allred, Community Development Director  
Rick Whiting, City Planner  
Pat Hanson, City Planner  
Clarence Kemp, City Engineer

**1. Field Trip and/or Discussion.**

**1.1 All Agenda Items May be Visited and/or Discussed.**

The work meeting commenced at 6:30 p.m.

Community Development Director, Paul Allred, suggested the City have a unified way of informing applicants of what they need to submit based on the specific request. He recommended the zoning ordinance and subdivision regulations be combined to include the subdivision regulations in the zoning ordinance. He wanted to make sure that regardless of the action taken tonight by the Commission on the Sleepy Hollow project, that they ensure compliance with all of the technical requirements.

(18:37:27) Mr. Allred considered the boundary issue to be the most significant. He explained that the Gileses' property goes across Sleepy Hollow and up Chad Christensen's driveway to the west and then back down to Sleepy Hollow. Mr. Oldroyd commented during the field trip that he would make sure Mr. Christensen is present to discuss the situation. He stated that a land swap took place a few years ago, which brings the validity of the survey into question.

Modern planning issues and clustered development concepts were discussed. The advantages of PUDs were reviewed. Mr. Allred explained that PUDs by nature are inherently more efficient than traditional development patterns; yet, conventional subdivision development is almost always a permitted use, whereas PUD's are almost always conditional.

(18:49:02) The Commission reviewed the Dreyfous Farms application. City Planner, Rick Whiting, recalled that at the previous meeting there was some public opposition to the project. He recalled that there was concern about the 20-foot easement and the buffering. Commissioner Shupe's recollection was that there was the possibility of developing seven lots although six were requested. Mr. Whiting suggested that any motion specify that it is a five-lot PUD rather than a six-lot. Mr. Allred suggested the Commission make it clear that there was an error reflected in the February 20 minutes and correct it.

## **2. AGENDA ITEMS – Including Public Hearing, Discussion, and Decision.**

Chair Paul Shupe called the meeting to order at 7:10 p.m. and read the Commission statement. He noted that all sites on the agenda were visited earlier in the evening.

### **2.1 Dreyfous Farms PUD – 5950 South 2300 East – Final Plat Review – Planner: Rick Whiting.**

(19:13:38) Mr. Whiting presented the staff report and stated that the property consists of a five-lot PUD. At its February 20 meeting, the Planning Commission approved the conditional use permit and the preliminary plat for the PUD. There were a few minor technical issues but the Planning Commission chose to request a reappearance for final plat approval, which is the purpose of tonight's meeting. The Planning Commission specifically required the installation of a 20-foot wide easement with a five-foot natural landscape buffer along the fence lining Lot 5. That requirement was determined to have been met by its depiction on the final plat. The second item was that the maximum number of dwelling lots permitted by the zone is seven, however, the Commission approved five lots, which needed to be corrected in the motion. Mr. Whiting explained that there was a discrepancy in the report that shows six lots rather than five.

Mr. Whiting reported that any additional subdivision would require Planning Commission approval. Additionally, there is a stipulation in the approval of the preliminary plat that the conditional use permit does not allow vehicular traffic to flow through the project between Pheasant Way and Far Down or 2300 East. He clarified that private access is allowed but not public access through the project.

(19:16:20) Mr. Whiting stated that staff recommends approval of the final plat. The applicant was diligent in meeting the technical requirements and went beyond by upgrading the water system through Salt Lake City Water and providing an additional fire hydrant. Those items were not required by the Planning Commission but were done in good faith by the applicant. Staff found that the project meets the requirements of a planned unit development in the R-1-87 zone and complies with the City's General Plan and vision for the future for this part of the City. Approval would be beneficial to the community and not detrimental in any way. The project will allow for the ongoing maintenance of the health, safety, and welfare of residents of the project and the community. The project meets all Planning Commission stipulations and requirements in its preliminary plat approval at the February 20 meeting and meets all requirements of the Unified Fire Authority.

Staff recommended approval subject to the requirements previously approved by the Planning Commission in addition to the following:

1. The applicant shall place a plat note restriction on Lot 4 on the final plat, which does not allow future subdivision of any new lots from Lot 4.
2. The applicant shall place a plat note restriction on the final plat prohibiting any future public access through the project from Pheasant Way to Far Down and 2300 East.
3. The PUD shall contain five lots rather than six lots.

(19:18:40) Mr. Whiting reported that the applicant was unable to be present but authorized him to answer any questions the Commission might have. Mr. Whiting confirmed that a public hearing is not required with final plat approvals. He explained that generally final plats are approved by the Technical Review Committee; however, the Commission thought it would be beneficial to review the final plat one more time. Lot #5 was identified. Mr. Whiting explained

that it is a vacation from another subdivision to be included in the PUD. It was approved previously at the February 20 meeting.

Commissioner Shupe referred to the 20-foot easement that is or will be recorded. A 50-foot right-of-way access is also shown with an entry number. Mr. Whiting did not believe the two were in conflict even though they may overlap. He recommended that a requirement of approval be to ensure that the second easement is not in conflict.

By approving the PUD, the Commissioners wondered whether the lots are large enough for some to have animals and others not. Mr. Whiting explained that Lot 4 is the larger lot but even Lot 5 is larger than one-half acre, which would allow for one horse. The applicant asked Mr. Whiting earlier in the day if the property would be fenced so that the whole project is within one fenced compound to allow horses to roam freely. Mr. Whiting stated that that might work except that gating is required with the PUD. He clarified that animals would be allowed on Lot 4 and one horse or smaller animals would be allowed on Lot 5. The other lots are sufficient for animals with the exception of Lot 1, which is less than one-half acre in size.

(19:22:52) Commissioner McKell recalled that there was previous concern on the part of the applicant that Lots 3 and 4 would qualify for green space tax concerns and even if there were animals on it, it would be considered open space.

(19:24:12) *Commissioner Shields moved to recommend approval of the Dreyfous Farms PUD with the following recommendations:*

1. *The project meets the requirements for a PUD in the R-1-87 zone.*
2. *The project complies with the provisions of the City's General Plan.*
3. *Approval of this PUD and conditional use permit will not be detrimental in any reasonable way to neighboring properties.*
4. *This proposed project will allow for ongoing maintenance and health, safety, and welfare of residents in the project and in the general vicinity.*
5. *The project meets all stipulations and requirements of the Planning Commission in the preliminary plat approval of the February 20, 2008 Meeting.*
6. *The proposed project meets all requirements of the UFA.*
7. *The applicant shall place a plat note restriction on Lot 4 on the final plat that disallows future subdivision of any new lots.*
8. *The applicant shall place a plat note restriction on the final plat that prohibits any future public access through the project from Pheasant Way to Far Down or 2300 East Street.*
9. *There will only be five lots allowed in the subdivision rather than the previously indicated six lots in the February 20, 2008 minutes.*
10. *Staff and the Technical Review Committee shall review the currently recorded 50-foot right-of-way with the 20-foot right-of-way that is proposed and come to an agreement with the applicant with regard to the right-of-way and ensure there is no conflict between the two easements before the plat is recorded.*

*Commissioner McKell seconded the motion. Vote on motion: Gene Carr-Aye, Cyrus McKell-Aye, Lynda Shields-Aye, Brad Scott-Aye, and Paul Shupe-Aye. The motion passed unanimously.*

## **2.2 Sleepy Hollow Subdivision – 2584 East Sleepy Hollow Drive- Conceptual Plan and Preliminary Plat Review – Planner: Rick Whiting.**

(19:28:30) Mr. Whiting presented the staff report and stated that the proposal is for a three-lot subdivision in the R-1-10 zone. The maximum density allowed in the zone is four lots per acre with three proposed at this location. The proposal meets the area requirements. The applicant held a neighborhood meeting on April 7, 2008. Mr. Whiting explained that the lot is on a hillside with an 11% grade. The proposed subdivision will replace two previously existing structures; a single-family residence and a duplex. The net gain in density will be zero since three single-family dwellings will replace three single-family units. The property is in a secluded area on Sleepy Hollow Drive, which is a private road.

Mr. Whiting reported that the applicant removed trees along the canal on the east end of the project, which created a problem since the trees were within the canal easement. The matter went through a process with the City and the damage to the canal that ensued from the removal of trees was repaired. That situation is no longer a consideration of the application as it had been corrected. There remained, however, some erosion control and governmental requirements that the applicant needed to follow through on. Those items were reflected in the findings contained in the staff report.

(19:32:27) Mr. Whiting stated that a provision in the Utah Pollution Discharge Elimination System (UPDES) requires that a mediation plan be prepared. That was done and accepted by the City Engineer, Clarence Kemp. Other factors were discussed between staff and the public that are not directly applicable to the application. One had to do with an easement dispute with a neighbor to the north. That issue was resolved and was no longer a factor. Second is the condition of Sleepy Hollow Drive, which is not germane to consideration of the application. Mr. Allred reported that it is a private road. The neighbors, however, raised the issue in terms of this subdivision application, because the Planning Commission is not the governing body of the City they cannot convert a private road to a public road and require improvements to it. Arguments raised tonight about the public or private nature of the road would be irrelevant.

Commissioner Carr brought up the concern on behalf of the Unified Fire Authority (UFA) with regard to the condition of the road and supporting their equipment. Mr. Allred reported that the UFA has been on the site. Mr. Whiting explained that the UFA has specific requirements for turning their equipment around. The turnaround area must meet their specifications for load bearing and the strength of the road material. One of the requirements staff recommended is that the designated fire turnaround area be clarified precisely so that the turnaround and road meet City Code and UFA requirements. If that can't be accomplished, the plat would not be given final approval or recorded. He stressed that that is an important stipulation that needs to be included in the approval process. Mr. Whiting verified that the proposal meets all City codes.

(19:37:15) The applicant, Sharie Giles, gave her address as 3325 South 1100 East. She reported that her father grew up in the older home on the property.

Commissioner Shupe opened the public hearing.

Doug Brewer, a Naniloa Drive resident, commented on the private lane aspect of Sleepy Hollow. He thought the condition of the street ought to be of concern. With the additional traffic he thought the Commission should look at the additional burden that will be created on the street. He provided the Commission with a petition signed by nearly 100 neighbors surrounding the property who are opposed to the subdivision. The concern is that three small lots will replace what has traditionally been in the neighborhood. It is contrary to what the neighbors were used

to. Nearly all of the lots bordering the west side of the canal off of Wander Lane are larger, estate-sized lots. This proposal sets a precedent that they did not want to see. Mr. Brewer is also concerned about the vegetation that was cleared from the lots. He characterized Holladay as a very wooded and natural-looking area that the neighbors hoped will stay that way. The first step in the development process was to remove all of the vegetation from the acre of land. At a minimum, he wanted to see some mature trees replaced on the perimeter and the erosion aspect of the site addressed. There is concern with the grade on the site and the lack of vegetation to hold it there. Mr. Brewer had personally noticed that there is more dust on his property than there used to be. He asked for clarification as to where the canal stops and starts and where the setbacks should be measured. He and the neighbors were shocked and upset by the destruction of the trees without warning. With regard to the cement retaining wall, Mr. Brewer preferred to look at a soil berm rather than an inner city-looking canal. It appeared to function as it should but the canal is now 12-feet wide in most places and runs about six-inches deep rather than three or four feet deep. He remarked that debris tends to get stuck in the canal when it runs so shallow.

(19:46:05) Chad Christensen the property owner to the north, agreed with Mr. Brewer that the proposed plan is not the best thing for the neighborhood. His primary concern is that the application mentions that the right-of-way issue has been resolved amicably. He commented that his last contact with Mrs. Giles was through her attorney where she accused and threatened to sue him for trespassing on her lot. Ironically, the basis for his trespass was to plant a tree on her property. Mr. Christensen objected to the claim that the matter was amicably resolved. He commented that the right-of-way needs to comply with the International Fire Code of 20 feet. He remarked that if the plan works now because the trees in the back were removed and a retaining wall built, it would not have worked before. He did not think the City should promote the idea of altering the existing landscape and changing the canal bank in order to make the plan fit. The initial introduction to the plan is also somewhat misleading and he did not think the plan would fit four properties. He could see no concession on the part of the landowner by reducing the units from four to three. He thought the fact that Mrs. Giles no longer plans to reside in Holladay should be considered. His understanding is that the property is up for sale as a whole and will subsequently be up for sale in parts. Mr. Christensen thought the ideal situation would be to subdivide the property into two lots and create a circle for the neighborhood to enjoy.

(19:49:30) David Dellenbach, a Floribunda Drive resident, identified his property on the map displayed. He is concerned with the whole area. Since moving to Holladay, the law was changed and now allowed the kind of development being considered. It had been very distressing to everyone in the neighborhood. He could not attribute it to anything other than lack of leadership to take the beautiful estate-like lots and allow them to be broken up the way they are. He believed that factors like breaking up the community should be considered. He thought the Commission had the power to make decisions other than ones that are mathematically based. He believed that the notice given with regard to the property was faulty since this was the first time he had seen what was proposed for the property. The notice he received looked different and indicated that the one-acre property would be broken up into three lots. He did not consider that to be a fair representation. Mr. Dellenbach commented that the lots surrounding the property are beautiful estate-type lots. To break the subject property into small parcels will destroy the character of the surrounding properties. The end project would also result in crowding on the street.

(19:55:20) Dennis Bowthorp, a Heber City resident and father of the applicant Sharie Giles, reported that he grew up in Holladay. He recognized that there is no representative present from the canal company. He reported that trees steal water from those who are downstream and own shares of water. Trees were an enemy to a canal company. In his opinion, his daughter was helping the canal company by removing the trees. He thought she should be thanked for removing the trees. He stated that the applicants were trying to eliminate two old problems in order to build a nice home for him. He remarked that his home in Heber is not on one level and is inconvenient for him since he is confined to a wheelchair.

Chad Christensen commented that when he purchased his property to the north about four years earlier, he also requested to subdivide his property. He owns more property than Mrs. Giles and was told that he could only divide it into two lots since, at the time, the requirement for a private road was that divisions be no less than one-half acre. He stated that he has two lots consisting of one-half acre in the back and .7 acre in the front. He then built a house and improved the property. The law was then changed. If that happened in the business world, it would be grounds for a lawsuit because he acted under one understanding and then it was changed. He relied on a law that was put in place by the City and he invested in the property relying on the fact that all of the surrounding neighbors would also be held to the same standard. He realized that the intent of the law is to prevent large homes from being built on small lots.

(20:01:35) Heidi Brewer gave her address as 4856 Naniloa Drive, and stated that her home backs the subject property on the backside of the canal. The issue had been incredibly emotional for her and she stressed the value of trees. She was present the day the trees were removed and it was very distressing for her to watch an entire acre of land be stripped of trees. Mrs. Brewer did not consider three lots on the property to be in keeping with the neighborhood. In the area there are no small lots. Recently an emergency meeting was held with the City Engineer and they discussed the issue of the private road and how it should be addressed before an approval is granted. She realized there would be some development but her concern is with the potential to build a house in close proximity to the canal, which is less than 20 feet from her property. She asked what the setback would be on the proposed flag lot.

(20:04:50) Ann Butler reported that she lives on the corner of Sleepy Hollow Drive and Wander Lane. She is concerned about the potential for her home to be flooded in the event of a heavy rain. She stated that her home sits much lower and there is no curb or gutter to protect it. During the meeting with staff, her husband presented a two-page list of items they wanted to be addressed before moving forward in considering the development. The list was since misplaced. Her husband suggested the project be taken back to the start because the neighbors should have been notified of the proposal. She stressed that they received no notice. Mrs. Butler stated that she owns one-half acre of property as do her neighbors and they were concerned that the zoning will change. Her husband also wanted to see the status of the street addressed before proceeding. Mrs. Butler stated that because she is downstream from the subject property, she wished there were some trees to absorb some of the runoff water. She provided the Commission with pictures of the lots prior to the demolition.

(20:09:39) Ken Lisonbee gave his address as 4868 Naniloa, which is one of the bordering lots to the east of the proposed subdivision. He agreed with the other concerns raised. He was never notified of the neighborhood meeting and tonight is the first time he had seen a proposal. He stated that the applicant had not acted properly. His impression is that she is trying to sneak something in.

(20:10:40) Cherri Oldroyd reported that she owns over one-half acre of property and is adamant about trying to maintain the character of the neighborhood by keeping the lots a comparable size. Mrs. Oldroyd commented that they left the Sugarhouse area for Holladay 18 years ago and developed their corner. She wanted to maintain the open space, trees, and greenery that Holladay is known for. She realized that development is inevitable but wanted to see it be done responsibly.

(20:12:12) Randy Meek commented on the market and stated that in the last two years the City has allowed various lots to be subdivided. He was aware of no buyers for any of the four properties. From a market point of view, he did not see buyers coming to Holladay for small lots.

(20:14:07) Clay Stucki identified himself as legal counsel for George and Sharie Giles. He heard the comments from neighbors about wanting to keep the property open and the lots large. The problem he saw with that is that the Gileses have property rights. The decision had already been made on the property and the zoning allows for four lots. The Gileses submitted the legal application for three lots and were found to meet all of the requirements. As a result, the Gileses have a vested right in the current zoning of the property and are legally entitled to subdivide their property. The zoning decision was made some time ago. He found it interesting that the Brewers have a one-third acre lot yet they find it repugnant for someone else to develop their property into one-third acre lots. Mr. Stucki also found it interesting that Mr. Brewer opposed the request on the basis that Sleepy Hollow Drive needs to be maintained when he doesn't use Sleepy Hollow Drive to access his property. Mr. Stucki doubted that any of the neighbors would like to be told what they can and can't do on their property. The applicants were sympathetic to erosion concerns, however, a UPDES permit was applied for and all of the requirements were met. Because the Gileses own the property, they decided that it would be best to remove the trees on the site. He contended that the tree issue was not properly before the Planning Commission. The City does not have a tree ordinance and the Planning Commission does not have the authority to weigh in on what trees are planted and where.

Mr. Stucki realized that a petition was submitted with numerous names on it. He stated that Utah case law is clear that the time to make decisions about the character of neighborhoods is during the zoning process. Subdivisions require verification that the law has been adhered to. Mr. Stucki stated that staff went to great lengths to address all of the concerns and ensure that the law has been followed. He stated that to make a decision against the application would be unfair to the Gileses. Case law is clear that when the requirements have been met, a decision should be based on the recommendations of the staff and not on public clamor.

(20:23:55) In response to the easement issue, Mr. Stucki stated that they did extensive research to confirm that the drive is private. The property owners along Sleepy Hollow Drive own the ground. It is not known exactly where the property lines go up Sleepy Hollow Drive. Mr. Stucki explained that the road has been used long enough that there is clearly a prescriptive easement. Mr. Whiting explained to the Commission Members that any disagreement over the easement is a private matter between the two parties. It is important to know that in order for the Planning Commission to approve a subdivision, it must be clear that there is no disagreement.

City Engineer, Clarence Kemp, explained that part of the confusion comes from the County plats, which indicate a clear right-of-way width and a clear cul-de-sac. Legal research, however,

showed that they do not exist. The County Recorder does not show a deed or record. Different properties have differing views of what that right-of-way ought to be. The applicants wanted assurance that the subdivision is not encroaching on the pre-existing right of access. He believed that a determination of whether or not the requirements for road dedication have been met would need to be determined by the City Council. He pointed out that the existing hammerhead is using the private drive and without the use of the private drive, the turnaround will not qualify for public access. Mr. Kemp explained that the earlier proposal showed the hammerhead in the middle of the properties. He suggested the design be shifted since it will affect the overall coverage of the three lots.

Commissioner Shupe explained that in the worst case scenario, there is a prescriptive easement there. Mr. Kemp believed there could be some benefit to the neighbors getting together to decide how to better maintain Sleepy Hollow Drive. Some neighbors were supportive of what is proposed but did not want to see the road ruined like Mr. Christensen did when he built his house. He explained that the road issue is a separate issue for the neighbors to work out.

(20:32:55) Commissioner Carr's understanding is that the lot could be landlocked if someone were able to take over the right-of-way access. Mr. Kemp stated that there is no way for any of the lots to become landlocked since there are clear property rights along the roadway. The private drive was originally built in the 1930s. Today, a developer would be required to establish an HOA for maintenance of the road.

Richard Oldroyd stated that Todd Gordon owns the road to where the Bowthorp property starts. He did not dispute the easement issues but stated that it is unfortunate that the entire road is under one person's ownership. Previously, the City wanted to pave the road and would have except that permission was not given from the Bowthorps. Mr. Oldroyd is concerned about the ownership of the road but hoped to resolve the ownership issue. It was clarified that the Gordons own the entire road up to the Bowthorp property line.

(20:37:11) Cathy Gordon identified her property on the map and verified that they own most of the street. She stated that her husband tried to give it back to the City at one point but there were issues with the cul-de-sac and turnaround.

Chad Christensen claimed that Mr. Stucki's claims were inaccurate. He stated that the property could not be combined to make four lots. In fact, it barely qualifies for three lots. Mr. Christensen commented that Mr. Stucki made it sound like what Mrs. Giles did was completely legal, which it is not. She entered the easement owned by the City and violated the property rights by removing the trees on the easement without proper permission. She received permission from a maintenance employee who did not have the authority to give it. Mr. Christensen commented that this is the first time he had been able to see the proposal. He suggested he be given the time necessary to ensure that the proposal is in compliance. Mr. Christensen also asked to examine the rear easement to make sure that it does not create a new property line. He thought there is reason to delay a vote.

Mr. Stucki claimed that proper and legal notice was given. With regard to determining that all of the requirements are met, staff took adequate time to review the proposal and came to the conclusion that all codes have been complied with. He saw no reason to delay a decision further.

Commissioner Shupe closed the public hearing.

(20:42:09) Commissioner Shupe thought it would be beneficial for the public to understand how Commission decisions are made. He listed several items he wanted to get feedback from staff on. It was confirmed that the City Council Member from the project area is Barry Topham. Commissioner Shupe suggested the audience take note of that. He indicated that the City has ordinances for subdivisions on private roads. The Commission follows and is bound by a set of rules or ordinances. The concerns of the public were heard and he acknowledged them. He explained that one of the ways the public can have input is by approaching the City Council since they are the governing body that sets the rules. He remarked that the Commission does not have the ability to override the ordinances that are in place.

Commissioner Shupe stated that the Sleepy Hollow Estates project meets the ordinances in place for private roads in subdivisions.

Mr. Allred agreed and made the following points:

1. It has been clearly established that the applicants have legal access to their property.
2. The Unified Fire Authority reviewed the request. Staff recommended that the turnaround that was originally proposed be flip-flopped and the existing asphalt used for the top of the hammerhead portion of the "T". The UFA reviewed the turnaround and originally determined that it would work. They later determined that it will not work as shown on the preliminary plans. Mr. Allred clarified that the hammerhead is not proposed to go onto Mr. Christensen's property and in fact, it cannot. The turnaround has to be completely within the Sleepy Hollow right-of-way outside of the Gileses' property or on their property.
3. With regard to lot size, the proposed lot sizes exceed the minimum allowed in the R-1-10 zone. The smallest lot would be almost one-third acre and the other two were greater than one-third acre. That zoning had been in place since the City incorporated and had not been changed. While the lots may be slightly smaller than some of the immediately abutting lots, they also mirror other lots that are adjacent.
4. The existing road is clearly private and not public. It could be argued that if the turnaround had to be put in, it would be 80 to 100 feet in diameter, which would take valuable property from at least three property owners, including the Giles. Mr. Allred doubted that anyone would want to see a cul-de-sac instead of a hammerhead since it would be more expensive, generate more heat, generate more storm water runoff, and require more maintenance. A hammerhead is a more eco-friendly development pattern and was proposed for that reason. Staff is of the opinion that a hammerhead turnaround is a good solution in this instance.
5. Tonight is the public hearing designed by code to bring people to meetings. He had heard repeatedly that citizens were not aware of the proposal. He found that to be regrettable. From staff's perspective, they had spoken to most people in the neighborhood in an attempt to generate as much publicity as possible prior to tonight.
6. The City has made every attempt to make sure that notices are correct. An error was found initially on one of the mailing lists and a correction made. Staff made every attempt to get the most up-to-date list. Any errors were inadvertent and Mr. Allred apologized to those who might have been left out of the process.
7. Concerns were expressed earlier in the meeting by the Brewers. With regard to potential development on the back lot, where the wall has been poured, there is a 20-foot no build buffer. The lot is also encumbered by deep lot setbacks, which must mirror the setbacks of abutting properties. The rules were designed to minimize the impact of deep lot subdivisions. Mr. Allred explained that there were reasons why the City moved away

from the one-half acre minimum. People were building very large homes behind smaller homes that do not fit into the neighborhood. New rules were designed to state that if someone has enough land for three lots, it could be developed. Any home that goes into a particular subdivision or neighborhood has to be compatible with what is around it. Other rules were put in place to prevent a home that is incompatible with the neighborhood from being built.

8. With regard to the area along the canal, Mr. Allred explained that there is a rule in the subdivision ordinance requiring a six-foot fence to prevent access into the canal.
9. The rules for deep lot subdivisions changed in 2007. The Planning Commission and City Council spent numerous hours debating how to make it work. Numerous ordinance changes were proposed to the rules to make development even more sensitive to the neighbors.
10. The setbacks on the canal will be determined based on the 20 feet plus whatever the required rear setback is.

(20:59:07) Mr. Allred stated that a lot of time has been spent tonight talking about emotional issues that have very little to do with the application.

Commissioner Shupe stated that the Commission sent tree ordinances to the City Council for their comments on a number of occasions. Commissioner McKell, an arborist, stated that tree removal on private property is of concern. The main place the City presently has legal rights are in the setbacks and the frontage on public property. In those areas, trees cannot be cut down. Historic trees are also protected. Commissioner McKell explained that the tree issue will have to be addressed from the standpoint of adequate landscaping.

In response to a question raised, it was clarified that there is a signed surveyed plat of the property. Commissioner Scott is concerned that a line was crossed with the demolition of structures on the property that was detrimental to the neighboring properties that should have been addressed. It was noted that when the demolition permit was issued, it was only for the houses. He is hesitant to grant approval without having an understanding of the landscaping requirements. Mr. Kemp explained that staff shared the same concern. When the tree removal took place, the City held a public meeting to discuss the issue with the neighbors. Several things came to their attention. First, it was determined that the City's ordinances are lacking in certain areas, particularly with regard to the issue of trees. There were also questions as to whether the Gileses have a legal right to clear the site to the extent they did. There is no question, however, that they had no right to work within the 20-foot zone adjacent to the canal. At that point, the only thing that could be done would be to rectify at least the flood control issues that were paramount at the time. That was done by constructing the concrete wall. There was concern that the visual ambience of the property that existed previously was destroyed. Mr. Kemp agreed that that was a significant part of the Holladay environment. If there is a legal violation that is clear-cut, it had to do with the UPDES permit process, which is a state requirement that is an unfounded mandate in terms of the City's enforcement. Mr. Kemp explained that the UPDES is an erosion control permit and based on the size and extent of the clearing on the site required that type of permit from the State. One of the conditions he recommended be imposed on the applicants is that no plat be recorded until the erosion control plan is implemented. The Gileses' engineer submitted the permit and revisions were made to it. It requires reseeded rather than the planting of new trees in part because it is not known what the houses will look like. He stressed, however, that reseeded and topographic stabilization of the site is mandatory.

(21:07:48) Commissioner Scott commented that the demolition changed the drainage of the property and made it hazardous to the surrounding neighbors. Mr. Kemp agreed. Commissioner Scott asked who would be liable if the property remains in its current condition for one or two years. Mr. Kemp stated that he had never heard Mr. or Mrs. Giles indicate that they were not willing or able to proceed with the work, however, for that reason he suggested adding a requirement to the condition of recordation.

Commissioner Scott stated that with the hammerhead being on Sleepy Hollow, there should be a survey with the hammerhead showing that it is on Sleepy Hollow and that it fits so that all three lots are in compliance before it is approved. Mr. Kemp stated that the lines showing the hammerhead on the plat map were drawn by staff. He explained that a legal survey was done and the hammerhead was carefully considered. The only question is whether any portion encroaches onto the Christensen property. Mr. Kemp did not believe that is the case.

(21:10:55) Commissioner Carr was saddened by the tree situation. He stated that Mr. Stucki correctly described the Commission's position and authority. He reiterated that they are an administrative body whose purpose is to represent citizens. The Commission, however, does not have any authority to change the law. Commissioner Carr suggested the Commission inquire more about the concerns that some expressed about not having heard about the proposal before tonight. He asked staff if they were satisfied that proper notice was given. Mr. Whiting is of the opinion that the matter was properly noticed, but agreed to double-check to see if any properties were overlooked. Staff had spent a fair amount of time working on that and extended the notice radius to make sure that it included all of the properties. Mr. Whiting commented that the hammerhead will be designed to fit only on the applicant's property and Sleepy Hollow Drive unless Mr. Christensen agrees to an easement. Mr. Allred's understanding is that the Fire Authority just reviewed the hammerhead and approved it. According to the UFA, the turnaround is legal.

Mr. Allred referred to the back lot and stated that it is possible that any home built there will have to be fire sprinkled. Depending on where the home is built on the property, the UFA rules are that if they have to extend a hose off the truck more than 150 feet to the rear of the home, the home will have to be fire sprinkled inside. Mr. Kemp did a measurement and stated that the map was drawn incorrectly. He clarified that the driveway is required to be paved 60 feet. Anything beyond that would be a convenience depending on what is needed for fire access to the back lot. The various options available to the Gileses were described.

(21:22:13) Mr. Kemp stated that it has been the City's practice in the past to require that improvements go in as a condition of subdivision approval. His feeling is that because it is part of the entitlement process, there really are not three lots that are usable until the infrastructure is in. There is a theory that that can be postponed until such time as the first building permit is issued. With regard to a question raised by a member of the public, Mr. Kemp stated that he would want some kind of HOA agreement in place to specify how the costs are divided between the property owners and what the trigger is. He did not want to get into a litigation situation because someone doesn't want to pay for the road.

Mr. Allred explained that the Gileses will have to pay for repairs and pavement on portions of their property. What is driving the issue is the third lot. The applicants wanted to tear down the old buildings on the site and build these two new homes. The requirements would be the same if two homes were being proposed on the property now. The only reason there would be an

improvement on Sleepy Hollow would be because of the third lot. Without the third lot on the site, there is no regulation requiring a hammerhead. Mr. Kemp thought there is an implication that somehow Sleepy Hollow has been rejected as appropriate for fire engines by the UFA. He stressed that that is not the case. The UFA had never commented one way or the other and vehicles use the road on a regular basis.

Mr. Allred's opinion is that if the subdivision is platted, the applicants will have to pave and improve a portion of Sleepy Hollow and at least the minimal portion of the driveway used to service all three lots. The UFA has not said they will require pavement all the way back in, however, they strongly recommend it. He suspected that once a home is built a paved driveway will be desired. The front two lots can be accessed from a paved surface presently without making any improvements to the asphalt. He believed that the setback constraints, the narrowness of the lot, and the setback requirements may require the property line to be gerrymandered. Property may need to be shifted around. He realized the applicants did not want to hear that as they have gone through various iterations. To get the lots to work and fit a home on the third lot will not be easy. He conjectured that they may need to move a line to make the circle bigger in order to fit a home on the property. If the applicants find that the third lot is too difficult to build on, they may reduce to two lots.

*(21:32:05) Commissioner Scott moved that agenda item 2.2, Sleepy Hollow Subdivision be continued for two weeks to allow time to study the property issue of the hammerhead, the drainage, and the vegetation on the canal.*

Mr. Allred suggested the possibility of addressing the issue in a similar fashion as the Poulos Valley Subdivision and requires any permit that is applied for and approved on Lot 3 to trigger all of the paving improvements on Sleepy Hollow. He commented that it could be a contingency of the preliminary or final plat.

*Commissioner Shields seconded the motion.*

Mr. Allred believes that the three issues raised in the motion have already been addressed. Mr. Kemp agreed. He stated that under State law, the applicants are required to mitigate and reseed the site as required by the UPDES. Drainage could be resolved through the reseeded and regrading, which has to happen regardless of whatever else takes place on the site. Commissioner McKell stated that requiring reseeded in August and September is not reasonable.

*Commissioner Shields withdrew her second.* Although she is sympathetic to the neighbors she did not think the City had any legal recourse. The matter was given further consideration.

*Commissioner Shields re-seconded the motion. Vote on motion: Cyrus McKell-Aye, Lynda Shields-Aye, Brad Scott-Aye, Gene Carr-Aye, Paul Shupe-Aye. The motion passed unanimously.*

## **2. ORDINANCE DISCUSSION**

### **2.3 Definitions for Proposed Land Use Table.**

(22:05:54) Commissioner Shupe questioned the Commission's ability to address the above matter in one evening. Commissioner Carr agreed that a significant amount of time may be

needed, but stated that a discussion would be a good place to start. City Planner, Pat Hanson, explained that the first step would be to make sure the terms are clearly defined.

### **3. PLANNING COMMISSION BUSINESS**

#### **3.1 Items as May be Brought Forth by the Chairman or Staff.**

(22:08:48) Commissioner Shupe thanked staff for their efforts in helping to educate citizens.

(22:11:24) Mr. Allred reported that it had come to his attention that a discussion took place at the last work meeting regarding an application that is currently under consideration. He discussed the situation with the City Recorder who stated that it would be better to change the format of the agenda. Working with the Recorder, the Staff wanted to make a permanent change to the agenda to make it more specific to what might or might not be discussed and also that the Commission would not make any decision at a meeting that was not noticed properly. The change would set out individual items under the Planning Commission Business heading as follows:

- Updates or follow-up on items in the development review process.
- Discussion on possible amendments to the code.
- Report from staff on upcoming applications.

Mr. Allred suggested the Commission avoid discussions where it could be construed that they tried to build a consensus for what is to be discussed or voted on at a future meeting. He wanted to make sure that the Commission's integrity is not questioned and that all discussions and actions are aboveboard and transparent.

### **4. Consent Items.**

#### **4.1 Approval of Minutes – Planning Commission Meeting – July 1, 2008.**

(22:11:52) The Commission Members agreed to submit revisions to the minutes to staff. Possible modifications were discussed.

### **5. Adjourn.**

(22:18:59) *Commissioner Shupe moved to adjourn. Commissioner Scott seconded the motion. Vote on motion: Cyrus McKell-Aye, Lynda Shields-Aye, Brad Scott-Aye, Gene Carr-Aye, Paul Shupe-Aye. The motion passed unanimously.*

The Planning Commission Meeting adjourned at 10:20 p.m.

*I hereby certify that the foregoing represents a true, accurate and complete record of the City of Holladay Planning Commission meeting held Tuesday, August 5, 2008.*



Teri Forbes  
T Forbes Group  
Minutes Secretary

Minutes approved: 10/7/08