

**MINUTES OF THE
HOLLADAY CITY COUNCIL MEETING**

**Thursday, August 13, 2015
Mt. Olympus Room
4580 South 2300 East
Holladay, UT 84117**

BRIEFING SESSION - 5:30 p.m.

ATTENDANCE:

Mayor Rob Dahle
Lynn Pace
Patricia Pignanelli
J. James Palmer, Jr.
Steven Gunn
Sabrina Petersen

City Staff:
Randy Fitts, City Manager
Todd Godfrey, City Attorney
Stephanie Carlson, City Recorder

Mayor Dahle called the Briefing Session to order at 5:38 p.m. The Council reviewed the agenda and went over the appeal hearing process.

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Council Meeting 6:00 p.m.

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- I. *Welcome*** – Mayor Dahle.
Mayor Dahle conducted and called the meeting to order at 6:03 p.m.
- II. *Pledge of Allegiance.***
The Pledge of Allegiance was led by Chief Don Hutson.
- III. *Public Comments.***
There were no public comments.

IV. Appeal for SOHO Food Truck.

Mayor Dahle read a prepared introduction by the City Attorney.

‘This matter is a third party appeal of a decision of the City’s Planning Commission, granting a conditional use permit for the operation of the SOHO Food Court. The appeal has been brought by several residents of the City. This appeal is a review of the Planning Commission’s decision and the Council will be considering the record of proceedings before the Planning Commission to determine if the Planning Commission’s decision was correct. The Council will hear arguments of the parties relating to the Planning Commission’s decision. No public input will be taken. No new evidence will be heard. The parties have been advised of the procedure that will be followed.

We will first hear from the Appellants who will be represented by Scott Lilja The Appellants will have 15 minutes to present their position. Following the appellants’ presentation, Mr. Olsen, the owner, will have 15 minutes for his argument. After Mr. Olsen’s presentation, a few minutes will be allocated to the City staff to clarify any issues they think it will be necessary. After the Staff’s presentation, the Appellants will be given three minutes for rebuttal, as they bear the burden of proof on this issue. It is the intent of the Council to hear the presentations and then discuss in closed session. Our intent is to have it on the agenda next week for the Council’s consideration and final vote.

Scott Lilja - 2432 Kentucky Avenue. I am here representing the neighbors who have joined in this appeal of the conditional use permit granted to the SOHO Food Park. I received a few days ago a staff memo that responded to our appeal and there are a number of things in there I am going to be responding to tonight. The first one though was that the staff, on page four, was not clear what impacts we were contending had occurred as a result of this conditional use. So, just to be clear, we believe there are safety impacts, traffic impacts, parking impacts, traffic congestion, and noise

What we want is just a proper review of this conditional use under the Holladay City Code. The first thing I want to talk about is the Design Review Board requirement and under the City Code it is a requirement. It is not optional. In several places the Code says that if there is a development proposed within the Holladay City Zone it will be reviewed by the Design Review Board. That is the language in the Code. There is an argument made by the staff that it doesn’t have to be reviewed because it is not a building. Well, the requirements don’t actually refer to a building. They refer to a development or development activity and in the case there is a development or development activity the Design Review Board shall review. A development or development activity consists of the construction or expansion of or establishment of a use that creates additional demand, a need for public facilities, or a change in a use of land or occupancy that creates additional demand and need for public facilities. This clearly falls within that definition. The reason this is important is this is a procedural requirement of the granting of this permit and the failure to follow that procedural requirement will require a court to reverse this. Similarly this conditional use permit does not consider or require pedestrian walkways in the parking area that has been required under the use permit. The final design shows that there is a walkway going in front of the cars, the 10 stalls that are created on the south parcel. But if you look at the depth of those stalls it’s really not possible for that walkway to exist to direct people to the crosswalk that goes across Kentucky Avenue. Now, in the absence of that crosswalk, people are required to walk in the street. In the street walking down to the crosswalk or just more often directly across the street on the S curve. In the staff memo, staff points out on page 2 that first of all, it’s hard to argue that the

food court really has a parking lot at all and that it should be regulation. They then argue that this section is intended for sites with a building and corresponding on-site parking lot and that it is to direct people to a building. The purpose of this whole section of the Code is pedestrian safety. I can't think of a situation where pedestrian safety is more important than here where the building is essentially this facility and people are being directed to go across the street to reach this destination. To not have proper compliance with Code in order to direct those people to the crosswalk for safe crossing of that street is a clear violation.

A few years back the street was realigned and it was realigned for the purpose of improving safety. That was the stated purpose. And now, what we've done is create a very unsafe condition. We have pedestrians walking in and around the street. We have vehicles backing into traffic on this S curve and we have traffic congestion at that S curve. People come around that corner and they don't know what they're going to get. There has been much made too of the fact, that this street has always been connected to Holladay Boulevard and it has always had commercial uses. We did have a liquor store, it's true. But at that time Kentucky went straight down to Holladay Boulevard and the creation of this S curve for the purposes of safety with the use now permitted, actually creates a dangerous condition. The way it is set up now, you've got blind curves coming up to Holladay Boulevard, coming down Kentucky and you have people in the street, cars in the street, and it's not safe.

A lot of what this comes down to is parking. The staff has pointed out that the Village is an area with restricted parking by design. In Section 13.71.020 C of the Holladay Village Zone Code it states that there are to be mid-block roadways providing and leading to well-placed successful parking located on and off the street. That's the Park City model. The problem in Holladay is we don't have that model. We don't have a public off-site parking facility. So instead what happens is people start parking in the neighboring parking lots. The staff in their memorandum on page 4b states that there are hundreds of empty parking stalls in the evening in the Village. True, but they are all on private property. The ones most clearly near this property are posted as no parking by the owners. So, this isn't a situation where we have public parking readily available. This is a situation where all of those empty stalls are owned by individuals who have said you can't use these stalls to park in but they park there anyway.

Last night there were 45 cars parked in Mr. Melby's parking lot, all posted no parking. There were 10 cars parked going up Kentucky. An area which, under the conditions imposed is to be posted residential parking only. It hasn't been. There were five cars parked on Holladay Boulevard and 16 on the south parcel, which is supposed to only have 10 stalls for parking. Now if you compare that to a brick and mortar restaurant that has the same seating as this place, about 120 seats, it would require 48 parking stalls. It still wouldn't be enough to cover the peak demand last night. And you've got to remember that this is a destination food court and has been designed that way.

The staff report on page 4 paragraph 8b says that though there are 10 spaces for use here and that meets the requirements under the food court ordinance. That would be true if there was one food truck here and one parking stall but this is a conditional use application. With a conditional use application there are no designated requirements under the Code. The requirements are what is necessary in order to deal with adverse impacts presented by this use. Have there been conditions imposed to do that with regard to parking.

The staff report also reported that 50% of consumers arrive without vehicles. Well, last night, even with regard to the 50% you still had 90 vehicles here at peak traffic time. One of the things that has

to be dealt with under Section 13.08.040 is any impairment of traffic during peak traffic demand caused by this use. So, of those 90 cars that were there last night, 75 of them were parked illegally, on private property, or on Kentucky which is to be posted resident parking only. The staff also talks about the noise control which is required on this property. On page 3, paragraph 4, they talk about a restriction on amplified music and the restriction is that it has to fit within the Noise Ordinance of the Code. That means 70 decibels. A rock band is playing at this venue at least once a week and usually more – operates at 100 decibels generally and I can hear them at my house pretty clearly. It was suggested by the staff that they should monitor that situation. I don't know if that has occurred or not. But it seems to me if I want to have an outdoor band playing, that's a special event and a permit is needed. The conditions for use which were referred to by the staff report include improvements that needed to be installed within 30 days of the opening of the food truck court. The south parcel has not been paved, has not been striped. The south parcel has not been landscaped and the 'residential parking only' signs have not been placed.

The applicant hasn't done anything to minimize the adverse impacts on his neighbors who are enjoying having his patrons park in their parking lots posted no parking. In the staff report on page one the staff notes that those in favor of this use, at the public hearing, outnumbered those opposed to it. That is what's called public clamor and the Utah Supreme Court has said that is not a consideration in granting this permit.

Council Member Gunn stated that the noise from the band is not an insurmountable problem. We could simply send someone over to enforce the ordinance with regard to the playing of music. Why should that be an insurmountable obstacle to the maintenance of the status quo, which I define as being the conditional use. I don't understand why you think that is something that should prevent us from denying the Appeal. We can cure the problem of noise, can't we?

Mr. Lilja stated that the conditions that have been posed do not negate the adverse impacts to the neighboring residential areas. Many of the conditions have been ignored by the applicant and those conditions only work if the applicant complies with them.

Council Member Pace commented on the requirement of a walkway in the parking lot. The diagram that we were given, the one that was in the packet, shows a site layout with a certain number of parking stalls. There were a certain number of stalls and then there was a space where the crosswalk came through and then more parking stalls. I concur with you, whatever was shown out on the street side is not a walkway, that is street. But my question is, I assumed that that walkway, that space extending from the crosswalk was in fact, a pedestrian walkway and if people were concerned about cars, they would go to the front end of their car to walk over the crosswalk. Is it your contention that that space is not a pedestrian walkway.

Mr. Lilja stated that it is my contention that there isn't a sufficient space there to create a pedestrian walkway. I think if it could be done it would be, but it can't be done. There's not room for it.

Council Member Pace commented that gets into another point you made and that is that it hasn't been striped. I think that I heard you say that it doesn't matter whether or not they meet the parking minimums. They may need a higher standard if that is necessary to mitigate impacts for parking. Do you agree that it meets the minimum parking requirements?

Mr. Lilja responded that under the Food Truck Court Ordinance, yes, but this is a special use. They couldn't walk into this space and open up a food court without a conditional use permit.

Council Member Pace asked about the noise and I'm not sure I heard you right. Were you saying that that standard was too high because you said there was a certain noise standard and then you compared that to a band.

Mr. Lilja stated that they are subject to the Noise Ordinance and at certain times are operating at 70 decibels maximum. If you go on line and look at decibel ratings, a rock band operates at about 100 decibels and that is well outside the Noise Ordinance. We don't think that even with the conditions imposed we have dealt with the adverse impacts of this use.

Council Member Pace stated that you're getting to the point I'm getting to and that is assuming they observe the requirement for noise standard, is it still your contention that that's too noisy because that's a standard City wide. That's the standard for your yard and my yard.

Mr. Lilja commented that if you enforce the Noise Ordinance with regard to that one item, yes, that's probably the case.

Council Member Pace stated that there are other things required that have not occurred – striping and other things like that. I don't know which of those have or have not been done. So you are making two arguments. One is the conditions imposed were not adequate to mitigate the impacts. And then even if they were, he hasn't complied with them. Can you summarize for us what you think are the adverse impacts caused by this facility that have not been adequately mitigated. I think that might focus our attention for the response.

Mr. Lilja stated that given the location and size of this venue, the S curve on Kentucky Avenue creates with this use and the use that has been proposed, traffic congestion, it creates huge parking problems, it creates traffic issues, it creates huge safety issues. None of those are resolved by these conditions. The condition of 10 parking spaces doesn't resolve the parking issue here. There is nothing that resolves the issue of the people milling about in the street, walking across from this ad hoc parking area. There is nothing that deals with the parking problems going up Kentucky. And there's nothing that resolves the issue of the parking on private property of the neighbors.

Council Member Pace asked to follow up on that. What we are hearing is traffic congestion - meaning number of cars and the amount of space in configuration with the road, parking problems, and safety issues. So road, safety, pedestrian issues correct?

Mr. Lilja replied yes. We've got pedestrians going across Kentucky, across Holladay Boulevard to use the restroom over at Kicks because there is no restroom facility here. There are a lot of pedestrians and a lot of roads here and there's really nothing that stops that from occurring.

Council Member Pace asked specifically about the parking problems. You're not complaining that people are parking in Mr. Melby's lot. You're complaining about them parking up Kentucky.

Mr. Lilja replied that is the primary concern, however, I think that it's important to understand that contrary to what your staff is saying; there aren't hundreds of available public parking spaces.

Council Member Petersen asked about the residential parking signs. I assume those are signs you would like to see going up Kentucky to a certain point saying 'residential parking only'.

Mr. Lilja replied that those are signs which under condition two are supposed to have been placed by the applicant within 30 days of the issuance of this permit.

Council Member Gunn asked what the significance of that condition not being filled as of now? Does that result in our granting of the Appeal or does it just mean that we must now be better at enforcing the agreement?

Mr. Lilja stated that it's just another way in which these conditions have not been met and, therefore, any adverse effects that are supposedly mitigated by them are not mitigated.

Council Member Petersen stated if it is just a question of installing the signs and fulfilling that condition. It's not necessarily tied to the fact that Planning and Zoning issued a Conditional Use Permit they should not have issued. The signs should be installed. What is the connection with the reason that Planning and Zoning should not have granted the use.

Mr. Lilja replied that the Planning Commission shouldn't have granted the use until all of these measures were in place and everyone knew what was going to happen because none of these things happened.

Council Member Petersen feels that any application should not install something before a use is issued. It's a lot to go out and install something on a street without the use being issued, that would be done after. I see the need to have those installed but it would be done after the use was issued, not before.

Mark Olsen. I just want to make a comment that this was certainly not a fast thing with the Planning Commission. I met with the Planning Commission on five separate visits to get this process taken care of and they were very thorough. The first one is his talk about the DRB not occurring. I believe Rick Whiting addressed that with the Planning Commission when Mr. Doxey brought it up very thoroughly and explained how it was not applicable. The crosswalk is a very safe thing. We've been functioning now for quite a period of time and we've never had any problems with it. I took offense to some of the comments that he made in terms of the quantity of cars and the parking. Of course all of that is post Planning Commission's decision so it's really irrelevant from this discussion. Item number four talks about people swinging around the corner. A stop sign has been placed by the City on that S curve so that people do not swing around the corner and it's quite safe. Item number five referring to the neighbors.

I've been in close contact with both the Melbys as well as the people directly to the east. In fact, I've become quite good friends with everybody and we're working together to solve the problems. They appreciate the life it's brought into the City and they are very amicable in working with me and we have a very good relationship in trying to calm that because everybody wants the City to be vibrant. We want the Village to have success and of course, cars are a consequence to vitality and growth. I'd like to talk about the rock band that occurs three times a week that he described. First of all, we've been open four weeks and we've had a band come twice. So, that's every two weeks. And on both situations it was not a rock band – it was a blues band and it's Gerome who owns the Blues Barbershop across the street and he asked if he could come over and play with his blues band. At no time was I aware that the noise was above the ordinance and in both situations I had him close down prior to 9:00.

Then the final thing is I'd like to talk about are the things that I've been accused of ignoring. I haven't ignored anything. SOHO has never been open when I'm not present short of me coming to this meeting and coming to the Planning Commission a week ago. Those are the only two times SOHO has been open where I haven't been there. And trust me when I say, I have put a lot of work into it. I am not ignoring anything that needs to be done. I just have to do things in order of the proper timing. As the City Council knows, we're working on some issues over on the south parcel and once those are resolved I will immediately jump on doing the completion of the parking lot and the striping and all those things. I just need to resolve those things that we talked about at our last meeting.

The parking sign that the Appellant said that I did not put up. That was brought up during the Planning Commission's meeting and maybe it was a typo in the agenda, but Matt Snow made the comment on the Planning Commission that it would be inappropriate for me to have to put the parking signs up on Kentucky. If indeed only residential parking signs were going to go up Kentucky. That would be something that the City would do. So I am not aware that I was ever responsible to put parking signs up Kentucky. And if it says that, I apologize because that certainly was never communicated to me and I would never neglect something that I was supposed to do.

In closing, the vision statement of the Holladay Village Zone says: 'It is intended that the Holladay Village be a special unique place for people to gather, shop, recreate, and enjoy the views of the surrounding mountains. The Holladay Village should cater first to the residents of Holladay providing goods and services that encourage them to shop at home rather than outside of the City. Because the Village Center is intersected by the crossroads, an inherent conflict between pedestrians and vehicular traffic arises. By creating a Village with a unique character, catering to pedestrians in one or all quadrants of the Village, it is hoped these objectives may be accomplished. This Village characteristic should include plazas, eating establishments, boutique shops, personal services. It is envisioned that the Village will be a very personal space with a human scale market area for the residents of the City as well as visitors seeking a special experience. Visual impact is the goal with a Village feel that would be a character of a flavor unique to the Holladay area. It will be designed to attract the discriminating and curious and be the jewel within the City as well as enhance the general shopping experience for those who come to the City of Holladay. The purpose of this chapter is to identify and enhance the Holladay Village, create a development pattern for new development that is appropriately oriented toward public rights-of-way, provide a center for human interaction, and protect and increase the economic vitality of the City. It is intended that the Holladay Village become a place of diverse land use with an aesthetically attractive, easily accessible, and economically healthy environment. A range of mix of commercial, service, public and residential land uses allow quality design and environmentally sensitive structures and site features to create a visual interest, encourage greater pedestrian use, and enhance the economic vitality of the entire City.'

Since SOHO has opened, it's only been just four weeks, I think the Planning Commission saw exactly what they intended with this vision statement and I think that is why the Planning Commission approved SOHO because it has done just exactly that. It has been very successful and the residents of Holladay are thrilled to have it and I feel fortunate that I'm able to participate in it.

Council Member Pace stated that there has been some discussion as to whether or not, again as we discussed with the previous speaker, one whether or not the Planning Commission adequately addressed the impacts – adequately mitigated the impacts. And second, whether or not we have actually done what they asked us to do. I heard you mention two things. One, striping the parking

lot and two, the no parking signs on Kentucky Avenue. Are there other things the Planning Commission contemplated that have not yet been accomplished?

Mr. Olsen replied that there is to be some landscaping on the southern parcel, which I fully intend on doing.

Council Member Gunn asked Mr. Olsen about the Design Review Board requirement.

Mr. Olsen responded that it was determined by the staff that that was not necessary.

Council Gunn commented that may be true. Staff may have said that, but the Ordinance says what it says. Are you contending this is not a development?

Mr. Olsen replied that would have to defer to your staff on that to answer that question.

Council Member Petersen stated that's probably a question for staff since they made the decision and it's not up to him.

Council Member Gunn stated it is up to him to give me a compelling argument. The Ordinance says that if there's a development, there has to be review by the Design Review Board, and I'm asking him how he gets around that requirement.

Mr. Olsen replied that the Council would have to talk to staff. He can't answer that question for you.

Council Member Palmer took a stab at answering that. It's not the applicant's decision whether he goes before the Design Review Board. That was a City process, and he was directed by staff whether or whether not to go through the Design Review Board, and our staff elected not to convene the Board.

Mayor Dahle thanked Mr. Olsen. He then asked Mr. Allred if there's anything that requires clarification to the Council.

Paul Allred, Community Development Director. I think I tried to cover most of the main points in my staff response on behalf of the Planning Commission. In terms of the technical side of it, I think we looked very carefully at things – interpreted the ordinances the way we felt they should be interpreted -- and we moved forward with the process.

Council Member Gunn asked the same question that he asked of Mr. Olsen. Why is this not a situation where the Design Review Board had to look at the project and approve it? Do you have any other arguments other than those stated in the memorandum?

Mr. Allred commented that if you look carefully at the language, it clearly says that the Planning Commission is the approval body. When these ordinances were set up, it wasn't the City Council that would give approval to the developments. It wasn't the DRB. The DRB was an advisory or a recommending body to the Planning Commission. There is specific language in the Code that says that the Planning Commission has that explicit authority and can act without a Design Review Board recommendation. So, if there is no recommendation from the DRB, they can move forward. We interpreted that as an implied ability for the Planning Commission to not have to have a DRB recommendation. Furthermore, over the years as projects have come before the Planning

Commission – actually, they go to the Design Review Board and we get a recommendation from them specifically for design issues. It does beg the question if the Design Review Board acts as a Planning Commission in terms of the site plan, they're just simply duplicating the same thing that the Planning Commission would be doing, and I have sat and reviewed Design Review Board Meetings and Planning Commission Meetings, and I don't believe either body was really interested in the DRB acting as a mini-planning commission in terms of looking at buffers and parking stalls. They never looked, in my opinion, at least recently, at those details. That's the Planning Commission reviewing the site plan. The Design Review Board is primarily been to look at above ground structures: the architecture. In fact, many of those Design Review Board Meetings cut right to the chase. They review the architecture, they say 'we like this', they have a detailed staff report where they look at materials and design, and they quickly make a recommendation or they'll have an applicant come back, and then they send it on. They are not looking at the site plan issues they are looking at design issues. Because this project did not involve an above-ground building, we didn't feel it was necessary to have a Design Review Board Meeting to look at flat-work and portable tables and chairs and that kind of thing. So, that's the staff interpretation of why this didn't go.

Council Member Gunn stated this is what 13-71.02(e) says: To ensure these goals are met, any development within the HV Zone shall be reviewed by the Design Review Board.

Mayor Dahle stated that this is not the place where we should debate all of that. I think that will be done in closed session. And, staff's response to this is pretty clear in – Paul did a pretty good job of going back through the appeal and addressing it from the Planning Department's standpoint and states why that decision was made. I think that is something we would debate in closed session in terms of our interpretation of that.

Council Member Pace asked Mr. Allred to follow-up on the comments that were made by Mr. Lilja regarding the adverse impacts and whether or not they have been adequately mitigated. One of those I think we've talked about already in terms of parking. Clearly there was some anticipation about signs going up that hasn't happened. Assuming the signs went up and assuming that was enforced, there wouldn't be any adverse parking impact on the neighborhood. So I think I've got my answer there. I noticed that the approval dealt with a cross-walk on the street, dealt with a stop sign. The issue that has been raised tonight is a walk-way in the parking lot. But with 10 parking stalls, is there enough space there to put an extended pedestrian walkway after you get across the street through the parking lot?

Mr. Allred stated they are going to have to stripe the 10 stalls, provide that space for people to cross there. It is a little tight – there's no question about it. I would let the City Council know that many months ago the staff drove their personal cars over to the site and what appears to be a very tight site is actually larger than you would think. We all took our cars and parked them in various ways on there to see how we could back out, pull in and pull out, and surprisingly enough there's quite a bit more room there than you would think in terms of the ability for the cars to pull and to back out safely.

Council Member Pace asked to what extent the Planning Commission addressed the configuration of the streets, the curb there and the volume of traffic coming.

Mr. Allred replied that the Planning Commission looked at the whole project kind of holistically, aerial view, and they were looking at whether or not this technically complied with "codes and

ordinances”. Certainly there was some discussion about pedestrian traffic and people crossing the street. The crosswalk on Kentucky has been installed, including speed bumps. I think there have been more than reasonable efforts from both the applicant and from the City side to make sure that the site has ample pedestrian crossings from any direction on sidewalks. I think the Planning Commission was very concerned about safety, but I think they feel that the S-curve and the fact that it’s very hard to drive fast on that curve doesn’t work for you to go quickly. I think the Planning Commission was extremely concerned about safety. Whether or not they could envision every possible scenario, I don’t know that anybody can do that, but I think that they were very, very careful to listen and consider the recommendations that were made.

Mayor Dahle thanked staff and offered a three minute rebuttal for Mr. Lilja.

Mr. Lilja responded that Council Member Gunn was citing to Section 13.71.020 in talking about the Design Review Board, and that language “to ensure these goals are met” immediately follows the purposes of the Holladay Village Center, so it’s to ensure that those goals are met – that we have a Design Review Board and included in the design guidelines, are parking requirements. So the Design Review Board is more than just looking at a building. With regard to congestion, no traffic study was done. We don’t know what the impacts are on that curve because no one studied it. There are cars backing into the road there and there’s a lot of congestion. With regards to the conditions that were imposed, they are very clearly set forth in the July 1, 2015 letter to Mr. Olsen. The 30-day requirement is number 15. It says all improvements must be installed within 30 days of the opening of the food truck court. The paving is set forth in 14 and the signage is in number 2, and it says: “The applicant will provide Residential Parking Only or similar signs in appropriate places along Kentucky Avenue east of the HV zone boundary.” It’s clear – it was imposed on the applicant.

Council Member Pace stated that it says the applicant will provide at least 10 public parking stalls on site. Then it says, “Food Court Parking Only” signs should be placed on site, as well as “No Commercial Parking”, “Residential Parking Only” or similar signs at appropriate places on Kentucky. I think there’s an open question as to whether or not that’s the City’s job or the applicant’s.

Mr. Lilja feels it isn’t the City’s responsibility to place “Food Court Only” signs. Condition number 1 says he’s going to deal with adverse impacts on his neighbors. This wasn’t looked at thoroughly and the impact was not considered. We’ve got people parking where they’re not supposed to be parking. We’ve got a use that requires 48 stalls that only has 10.

Council Member Pace commented that it seems to be that your comments about congestion undercut your arguments about safety. If there are lots of cars there, they’re not moving very fast. If you look at Holladay as a whole, most of our streets don’t have sidewalks. Wander Lane, all of our joggers and all of our walkers are out in the street. It has an enormously positive effect on reducing the speed of traffic. It makes it safer because they’re sharing the use. I’m curious as to whether or not you agree with that or if you see that differently.

Mr Lilja responded that it depends what the condition is at the time. If there are two cars parked in that parking lot and someone is walking across the road and a teenager comes around that corner at 30 miles an hour there’s going to be bad things happening. If there are cars backing out there, there are people turning left off of Holladay Boulevard onto Kentucky and all of a sudden hit a wall. Also the congestion, when you talk about sidewalks, we don’t have sidewalks on the lower part of

Kentucky and when you get cars parked on both sides of the street and people walking to those cars and otherwise, it creates a big safety issue.

Council Member Pace stated that he understands that. He feels that the Planning Commission attempted to address that. I would not have assumed that spill-over parking for another business next door is an adverse impact. Most of those businesses would love to have those people in front of their store because the spill-over commercial traffic is positive if his business shares his customers with me. So I'm not viewing that as an adverse impact if there is spill-over commercial parking.

Mr. Lilja replied that those parking lots are posted: "No Parking for Anyone except Patrons of These Buildings". I'm telling you that you need to consider these things, and they weren't considered. I understand your presumption, and it may be a reasonable presumption if my neighbor is a retail store, but they aren't. That's not the business they're in. What they now have is a parking lot full of cars from people who are not their tenants.

Mayor closed the process, and reminded everybody that the Council will be addressing this issue in closed session. The Council will vote on this issue at our next meeting on the 20th for those that would like to show up. He thanked both the appellant and Mr. Olsen for their time.

V. *Continued Public Hearing on Proposed Rezone from R-1-15 (Single-Family Residential 15,000 square foot) to RO (Residential Office) for Property Located at 1992 East Hedgewood Court (5760 South).*

Mayor Dahle opened the public hearing and noted that this was a continued hearing from the last Council Session and invited comments from residents who had not already addressed the Council.

Rebecca Heatherwald - 2045 E Hedgewood Court. She has been living at that address for 18 months while the property owners are out of the country. She spoke against the rezoning and clarified comments by Mr. Carson made at the last meeting. She brought to the Council's attention Paragraph 13.50.010 of the statute that governs the zoning of residential property. Ms. Heatherwald referenced the statute which states that the Residential Office Zone is to be allowed only where residential use is no longer feasible. She claimed that Mr. Carson presented false information regarding the feasibility of using the area as a residence. She explained that the property has continually declined in desirability as a residence since Mr. Carson acquired it because of Mr. Carson's neglect. She explained that said large trees, grass, and shrubs have been allowed to die because of lack of water. In addition, as many as nine cars have been parked in front of the property close to Highland Drive making look like a used car lot. Ms. Heatherwald stated that claims that the property cannot be rented because of school bus traffic and congestion are not accurate. She stated that there are only one or two buses at a time on the street as they exit the school property and wait at the stop sign. She concluded by reminding the Council that Mr. Carson has not presented a single document or evidence to support his claim that the area is no longer feasible as a residence. She urged the Council to deny the application.

Burt Carson - 1992 E Hedgewood Court. He informed the Council that this property is clearly the worst rental home he has. It should rent for \$2,200 to \$2,300 a month because it is a little over 3,000 square feet. However, because of its age and location, the home is rented to multiple families because clients want something upgraded and located in a cul-de-sac for \$2,300 a month. He can only rent the property to tenants who typically do not take care of the yard. He again expressed his

concern that the road is full of bus traffic that blocks the driveway. He remarked that the neighborhood will look wonderful if he can rezone the property. He hopes to find a law firm, architect, or accounting firm who will buy it and do the remodel. He has owned the home for seven years and it was purchased the home as a rental.

Mayor Dahle asked what has changed in the last seven years other than the fact that a few buses exit in the afternoon onto Hedgewood Court.

Mr. Carson responded that the buses line up on Hedgewood Court and his driveway is blocked. The buses are a significant issue because the driveway that the tenants want to pull out on is blocked.

Council Member Pace asked about the size of the property. Mr. Carson responded that it is one-half acre in size with a current zoning of R-1-15. It was suggested that Mr. Carson consider rezoning the property to something that would allow him to redevelop the property into smaller lots rather than pursuing a non-residential use. Mr. Carson indicated that he had spoke with developers who are interested as long as their costs are minimal. His position continued to be that the lot is perfect for a RO use because there would be plenty of parking in the rear and the new owner could make the front attractive.

Council Member Pace expressed concern because the Master Plan states that a RO zone is inappropriate if the property can be used for a residential use. It was noted that along Highland Drive there is plenty of interest in residential uses. Mr. Carson was not aware of another home in the City where a driveway is shared with a school.

Tom Nelson - 2155 Pheasant Way. He stated that the Carson's do not have a deeded right-of-way to use the private road. There are plenty of people who live on Highland Drive who have maintained beautiful yards. He also stated that the school bus issue is not significant because Hedgewood is an exit only with one bus at a time. There is no proof that it cannot be used as a residence.

Fernando Flotis - 2044 E Hedgewood Court. He expressed his hope that the City will enforce the zoning on the property. It is a single-family residence but it has been rented to 3 to 4 families, which results in multiple cars parking on the property.

There were no further public comments. **Mayor Dahle closed the public hearing at 7:23 pm.**

VI. *Consideration of Ordinance 2015-12 Amending the Zoning Map of the City of Holladay for Property Located at 1992 East Hedgewood Court from R-1-15 to RO.*

Council Member Palmer moved to deny Ordinance 2015-12 based on the burden of proof not being met. Council Member Petersen seconded the motion.

Council Member Gunn offered some observations about the petitioner, the property and the neighbors. As to the neighbors I express my gratitude for your interest and input. I want you to know that I have carefully considered your opinions on this issue. In particular I have considered your request that certain conditions be met before the Council approves the proposed rezoning. I think that the imposition of such conditions is beyond the authority of this Council. We have adopted the RO Zone and its attendant requirements after extensive discussion, the opportunity for public input and a public hearing. It would be improper (and bad public policy) now to allow

interested parties to impose requirements in addition to those required by the ordinance. For example, the agreement prohibits the use of signs, but our ordinance permits the installation of one monument sign. We can't change our zoning ordinances on a case-by-case basis to please neighbors. Mr. Carson may and should keep his word to the neighbors; but those promises are not legally enforceable and in my opinion are not binding on subsequent owners of the property.

Mr. Carson informed us in our last hearing that he believes that he and his successors may use Hedgewood Court for access to Highland Drive. From what I have learned I doubt that to be the case. (But this is an issue for the courts, not the City Council to decide.) What is relevant is whether RO Zone parking to be located behind the home can gain access to Highland Drive through the subject property without exiting or entering from Hedgewood. Clearly it can.

Concerning the applicants I observe that their property is not well-cared for. There is minimal landscaping and what is there is not being maintained. Neither is the home on the property. I do not agree with the characterization of the property as being slum-like; but it is certainly an eyesore. I am hesitant to reward the owners for their neglect by rezoning the property so that they can recoup their investment.

That being said, I intend to vote for the rezoning because of my belief that there is a better chance that the appearance and value of the property will be enhanced by rezoning than by leaving the property in its present designation. Mr. Carson has said that he intends to sell the property if it is rezoned. I see such a sale as a positive step in the rehabilitation process. Whether or not he sells, there are certain landscaping, design and maintenance requirements attendant to the RO Zone which the City can enforce. Additionally, the Planning Commission has recommended that the Council rezone the property. I have the highest regard for the Commission. My view is that we should follow its recommendation unless we conclude that it is clearly erroneous.

Mayor Dahle commented that he is troubled that the Council would ever consider someone's investment return on a property as justification for rezoning and is not the Council's responsibility. The only concern is the RO zone statement that states it is appropriate only where a residential use is no longer economically feasible. He is not convinced this is the case.

Council Member Pace spoke out in support of the motion. He stated that there are a number of ways to enhance the property and maintain and preserve the residential use, which is what the Master Plan requires.

The Council roll call vote was as follows: Council Members Pace, Petersen, Pignanelli, Palmer and Mayor Dahle in favor with Council Member Gunn opposed. The motion to deny passes with a 5-1 vote.

VII. *City Manager's Report*

Manager Fitts reported on the following items:

- Bike trails are finished and signed. We are in the process now of sweeping
- Met with UDOT to finalize the Highland Dr. corridor expansion. We are hoping to use \$670, 000 left over from the Village Center. There are still a number of hoops to jump through.
- Blue Moon Festival was a huge success, had over 5,000 people. We had good reviews and people spilled over to the adjoining businesses on the plaza.

VIII. Council Reports.

Council Member Gunn reported he has received the bids for the trees at Stratton Park and they should be planted by Oct. 12

IX. Other Business.

X. *Adjourn City Council Meeting and Convene in a Council Work Meeting*

Council Member Pace moved to adjourn the City Council Meeting and convene in a work meeting. Council Member Pignanelli seconded the motion. The Council voted in the affirmative and the meeting adjourned at 7:40 p.m.

WORK MEETING
August 13, 2015

ATTENDANCE

Mayor Rob Dahle
Lynn Pace
Patricia Pignanelli
J. James Palmer
Sabrina Petersen
Steven Gunn

City Staff
Randy Fitts, City Manager
Stephanie Carlson, City Recorder
Todd Godfrey, City Attorney
Paul Allred, Community Development Director
Clarence Kemp, City Engineer

Mayor Dahle convened the Council in a Work Meeting at 7:48 p.m.

a. Calendar.

The next meeting will be Aug. 20. On Aug. 22 is the Dog Days event on the plaza. We have sold 40 banners and raised \$1,200. Ms. Carlson reminded the Council of the Canvass meeting on Aug. 18. The Council will hold a social event on Aug. 27.

b. Update on City Hall Park/Playground.

Council Member Pace reviewed a list of priorities for Phase 2 of the park which include: landscaping, shade structure for playground, ice skating facility, perimeter areas and north end recreation space. The Council reviewed this list and will work with Holly Smith to see what funding may be available.

Manager Fitts went over signage for the playground and park which will have the rules. The Council added: No smoking and no overnight parking.

c. Other Business.

Council Member Pace commented on animal control and that there still has been no work on their billing method. He also discussed looking at taking the Council meetings out to the citizens and holding them at local schools. Lastly he asked about the status on exposed wall height language from the staff and planning commission.

Mayor Dahle asked the council about moving the process along with regards to deer management. The first step is a public hearing and adoption of a “no feed” ordinance. The Council was amenable to starting with the ordinance.

XI. *Closed Session Pursuant to Utah Code Section 52-4-204 & 205 to Discuss Personnel Issues, Potential Litigation and Property Acquisition and Disposition (if needed).*

Council Member Pace moved to go into Closed Session to discuss personnel issues, property acquisition, and disposition. Council Member Pignanelli seconded the motion. The Council roll call vote was as follows: Council Members Pace, Petersen, Pignanelli, Gunn, Palmer and Mayor Dahle voted in favor. The Council convened in a closed session at 8:39 p.m.

Those in attendance at the Closed Session were: Council Members Pace, Petersen, Palmer, Gunn, Pignanelli and Mayor Dahle. Others present included Randy Fitts, Todd Godfrey, Stephanie Carlson, Paul Allred and Clarence Kemp.

The minutes of the Closed Session were taken and are now on file as a Protected Record.

Council Member Palmer moved to adjourn the Closed Session and reconvene the Work Meeting. Council Member Gunn seconded the motion. The Council roll call vote was as follows: Council Members Pace, Petersen, Gunn, Pignanelli, Palmer and Mayor Dahle voted in favor. The motion to go out of closed session at 9:49 p.m. passed with a unanimous vote.

XII. Adjourn Work Meeting.

There being no further business, Council Member Pignanelli moved to adjourn. Council Member Gunn seconding the motion. The Council voted in the affirmative. The meeting adjourned at 9:50 p.m.

I hereby certify that the foregoing represents a true, accurate and complete record of the Holladay City Council meeting held Thursday, August 13, 2015.

Stephanie N. Carlson, MMC
Holladay City Recorder

Robert Dahle, Mayor

Minutes approved: 9-17-15