

**MINUTES OF THE
HOLLADAY CITY COUNCIL MEETING**

**Thursday, September 20, 2012
Mt. Olympus Room
4580 S 2300 E
Holladay, Utah 84117**

BRIEFING SESSION - 5:30pm

ATTENDANCE

Mayor Dennis Webb - *excused*
Lynn Pace
Patricia Pignanelli
J. James Palmer, Jr.
Steve Gunn
Sabrina Petersen

City Staff
Randy Fitts, City Manager
Stephanie Carlson, City Recorder
Craig Hall, City Attorney

Council Member Palmer conducted and called the briefing session to order at 5:35 pm. The Council reviewed the agenda.

The Council discussed the surplus property on Berghalde. As long as the city has an easement the Council felt good. They asked that the City Manager negotiate the cost and terms. After six long years and a lot of hard work the Council will finally adopt a new Title 13 which is cause for celebration.

Manager Fitts reminded the Council of the fire station groundbreaking ceremony on Friday, September 28 at 10:00 am.

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Council Chambers
4580 S 2300 E
Holladay, Utah 84117**

Council Meeting - 6:00pm

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I. *Welcome*

Council Member Palmer conducted the meeting. The meeting was called to order at 6:04 pm.

II. *Pledge of Allegiance*

The Pledge of Allegiance was recited by the audience.

III. *Public Comments*

Bruce Parker. He thanked the City for the numerous events and celebrations that include surrounding areas. He feels the City Hall Park is becoming a destination park and he looks forward to many more events.

IV. *Presentation on Helmet Program*

Kevin Condra – Salt Lake Valley Health Dept. This project began last fall over the concern of the numerous head injuries that were being reported. Along with the Health Dept. and members of different Youth City Councils they came up with the slogan “Safety is a Snap, Wear your Helmet.” Over the past year they have been collecting data from over 30 different elementary schools on helmet use. In the Holladay area in 2011 67% of students wore helmets, in 2012 only 36%. This campaign is trying to make people aware of the issue and make wearing helmets second nature, like seat belt use.

V. *Public Hearing on Proposed Amendments to Sections 13.14.054 and 13.14.071 Residential Building Corridor and Front Setback*

Council Member Palmer opened the public hearing at 6:12:53

Jon Teerlink – City Planner provided a brief staff report. This issue was in response to the moratorium enacted by the City Council. Staff has been able to complete several surveys regarding how new construction for residential uses are incorporated into existing neighborhoods (i.e. how front yards are calculated). The concern raised by the Council was the unintended consequence of the building corridor was being exacerbated by an increase over every single home on the street. The proposal comes down to sizes of lots and age of homes in area.

There were no comments. **Council Member Palmer closed the public hearing at 6:15:45pm.**

VI. Consideration of Ordinance 2012-23 Amending Sections 13.14.054 and 13.14.071 Pertaining to Residential Building Corridor and Front Setback Requirements

Council Member Pace moved to defer Ordinance 2012-23 to the next meeting on October 11 to give the Council more time to consider and review the language. Council Member Petersen seconded the motion. The Council voted in the affirmative and the motion carried.

VII. Decision of Appeal of Highland Hawk Investments Regarding Denial of a Conceptual Subdivision Plan of Orchard Hollow

Council Member Palmer noted that this is a continued item regarding a denial of conceptual subdivision plan of Orchard Hollow. This is an appeal from the Planning Commission.

Council Member Pace commented that what we are dealing with is really a question over two areas. There is the portion of the property that has already been previously dedicated to the City by virtue of public use. State statute says that's dedicated by ten years prior use. City ordinance says we recognized that statute and, therefore, we are not going to give you credit for it in your lot area. That's, I think, what we'll call the "already-dedicated area." The second area is the additional property that has not heretofore been used by the public, but which the City is requiring as part of an expanded and improved right-of-way, which will be dedicated as part of the development. And, under City ordinances, the property owner gets credit for that space that they will be dedicating as part of the lot area. My concern is that in the discussion before the Planning Commission there appears to be a question as to where the edge of the already dedicated property is. There is clearly the travel way – meaning the pavement where the cars travel – and then there is an additional strip of ground that has asphalt on it. When I looked at it was clear it was older asphalt, but it was still intact, still functional, that appeared to have been formed for the purpose of drainage. So the water would run off the road and then run north/northwest on Holladay Blvd and a little farther northwest there is a storm drain. So, as I looked at that property, it was fairly clear to me, that at some point somebody came in there and put down all that asphalt and included a certain portion to deal with drainage running off the road. Now, the cars don't drive on that, but that's where you drain the water that runs off the road. Now, the reason I say that, or point that out, is because in the Planning Commission discussion, there was an assumption that only the portion that cars have driven on, or that cars drive on, is what has already been dedicated by use. This is what I am troubled by. I've had more than a little experience dealing with the dedication and vacation of public streets, so I looked in – the attorneys here will appreciate this – I looked in *McQuillan's Law of Municipal Corporations 2009 - Revised Volume*, Volume 10A on street dedications. Here's what I found. Section 30.3: "The word street is a generic term and includes all urban ways which can be and are generally used for the ordinary purposes of travel, even where such travel is confined to pedestrians alone. Street, in a general sense, usually includes all parts of the way: the roadway, the gutters, and the sidewalks." Next section, 30.21, is about streets obtained by prescriptive use. "The width of the prescriptive easement is not necessarily limited to that portion of the road actually travelled, and it may include the shoulders and the ditches that are needed and have been actually used to support and maintain the travel portion." Section 30.29: "That is to say, the extent of a street or alley acquired by prescription is generally limited to the portion actually used, thus the width of a prescriptive road easement must be determined by the extent of actual use over the prescriptive period. In determining the dimensions of such use, toe-to-toe measurement of the travel portion without more is not deemed sufficiently descriptive." And then they cite to a New York case saying you've got a 20-foot travel way, but the actual use was 50 feet when you take into

account the shoulders and the drainage and such. Anyway, having said all that, I don't think there is evidence in the record to indicate whether that was a public or a private improvement. I don't think there is evidence in the record to show how long it has been there. I don't think there is evidence in the record to show how wide it is, and whether, if you take that drainage swale into account, whether the property owner has enough property or not. So based upon all of that, my sense is we have some of the right information in front of us, but I don't think we have all of it, and I think we ought to send it back to the Planning Commission to gather those additional facts – they're the fact finders, we're not – and let them deal with it and get us a revised decision. The issue I'm getting at is this: it could have been installed privately, but if the City or the County has been using it for storm drainage, then there has been actual public use. But all of those are relevant facts that I think ought to be considered. And I don't know that I could sit here today and say, well, without that you lose. Or with it you win. But to me, as I looked at it, it was pretty clear that there was travel way use of the surface, and drainage use of the swale, the strip, or whatever you want to call it.

Council Member Palmer asked if there is enough information in the record and if Council Member Pace thinks we should remand it back to the Planning Commission.

Council Member Pace feels we should remand it for them to consider this based upon this revised legal information that it doesn't have to be motorized vehicle use to have been used by the public.

Council Member Gunn commented that he has also have done some research on the subject, but came to exactly the opposite to the conclusion of Council Member Pace. The question is not what is a road? The question is what is a highway within the meaning of our ordinance, which is Section 14.04.120. What is a highway within the meaning of the Utah statute, which deals with dedication for public use based upon prescription, which is Utah Code Annotated Section 72-5-104. Whereas it may or may not be true that the word "road" is often used to encompass sidewalks and shoulders and gutters, that is not the case with regard to the use of the word "highway," which I believe is a term of art as used in those statutes. Section 72-5-104 says: "*A highway is dedicated and abandoned to the use of the public when it has been continually used as a public thoroughfare for a period of ten years.*" It seems to me that that word, that expression, "public thoroughfare" implies actual use by motorized vehicles. It's open for interpretation as to whether public use is anything that would benefit the public or anything that is traveled upon. Council Member Gunn continued subsection eight of that same statute, so we're talking about 72-5-104(8), says: "*The scope of the right-of-way,*" admittedly not the word "highway" but it seems to be used as a synonym, "*The scope of the right-of-way is that which is reasonable and necessary to ensure safe travel according to the facts and circumstances.*" It doesn't seem to me that a parking area, or curb and gutter, is necessary to ensure safe travel.

Council Member Petersen stated that "*for safe use*" is to be determined also, because getting water off of a road would allow the road to be safe. If you don't have anywhere for that water to drain, it could flood on the side, it could cause a wash across the road. It would also help safe use.

Council Member Palmer stated it would give rise to the question - is safe travel vehicular travel? Pedestrian travel? Or both?

Council Member Gunn stated that a thoroughfare suggests to me that we're talking about vehicular traffic. But section 14.04.120 of our ordinance defines public highway, or highway, as meaning any road, street, lane, court, place, viaduct, tunnel, culvert, bridge, alley, or other public way, situate public or dedicated, abandoned... It talks about essentially what is a road, or a street. Not about parking areas or curb and gutter. These statutes, or this ordinance and that statute, lead me to the exact opposite conclusion of Council Member Pace. That is, that a highway refers to vehicular traffic and not to what I might call subsidiary kinds of improvements that relate to the vehicular traffic. Furthermore, it seems to be that . . . and, well, it doesn't seem to be, it is true that the statute 72-5-104 places the burden of proving dedication on the party asserting dedication. That would be the neighbors. Other case law shows that the burden of proof is clear and convincing proof. Now, I'm of the view that since the neighbors did not adduce evidence at the hearing which was clear and convincing in showing that the roadway was something other than the asphalted surface, that they cannot now come back in and have a second bite of the apple. Indeed, I doubt that they can meet the burden of proving by clear and convincing evidence that the swale area, or whatever you want to call it, is part of the highway. So, I am opposed to the idea of remand. I assert and urge you to adopt the view that under our ordinance, a highway is only that area which is regularly travelled by vehicles - not by foot traffic, not a parking area, not curb and gutter, not a swale. My first point is the swale is not part of the dedicated-by-use highway. I might also point out that we should err on the side of caution in taking property away from private property owners. To the extent we are now willing to describe property well off of the beaten track, so to speak, as being dedicated by prescription, I think that's exactly the wrong approach to take when dealing with the private property of individuals. Now, this analysis doesn't solve the problem of determining whether the swale, or I would call it the shoulder parcel, should be or should not be counted towards the 45,000 square feet which is necessary to establish a three-lot subdivision. Mr. Hall has assumed in his analysis, which he shared with the Commission that section 15.28.02 is dispositive of this issue and, indeed, I believe that Mr. Budge made the same argument in his brief. I don't share that view because it seems to me that the exception described in that ordinance relates to something different. It addresses the question of whether a dedicated street should be included or should be excluded from the computation of the area of the lots. However, the statute does not deal with this situation if we assume that the swale area is not part of the dedicated street. As to that issue, it seems to me that our ordinances are silent. We are going to have to interpret our ordinances and should that interpretation decide whether the swale is not part of the dedicated street, it is nonetheless to be included in the 45,000 square feet computation which is necessary in order to create three lots. My view is that because the ordinance says that a dedicated street will not be included, that the implication is that an area that is not dedicated by public use should be included. It is true that our statute is ambiguous in that regard. However, if we adhere to the notion that we ought to err on the side of the landowner, and that we ought to encourage dedication, then we ought to say, I think, and interpret our ordinance as saying, that this area, the swale area, should be included in the area of the three lots, of the subdivision. So for those reasons, I believe that we should reverse the decision of the Planning Commission and should approve the application of the developer concerning these three lots.

Council Member Petersen feels you can very well argue that that shoulder has been used for public use. I have highlighted several of the things from Council Member Gunn's letter that was sent earlier. One of which was our own code section 14.04.120, which defines a public highway and highway as any road, street, lane, court, place, viaduct, tunnel, culvert, bridge, alley, or any other public way. That does not necessarily mean - I have seen plenty of alleys that are not just for vehicular traffic. They're for pedestrian traffic also. The same with viaducts and things. So,

again, I think that's open for interpretation as to whether or not that means that a highway has to be solely vehicular travel. I think that swale has created some safety for that area. That area is kind of sloped a little bit and I think it has a drainage – it doesn't have a drainage problem along there, but one of the reasons why I think it doesn't is because of that swale. I think it has been used. I think has been necessary. I don't know who put it there. I don't know what its original intent was. Those are all questions that we have that are unanswered. But I do think that that section has very much been used and has helped the traffic along that road. I've had several concerns along that portion of Holladay Boulevard, which is one of the streets that have encouraged me to go out and seek grants for making that safer for travel. It's a tricky street that we have in our City and I have some safety concerns along this area with putting a lot more cars encouraged to park on the street and things. I think you could very easily argue that that swale has been used for public safety and public use.

Council Member Palmer is inclined to agree with Council Member Pace. We don't have enough factual information. The problem we have is that this came to us from the Planning Commission, not as an affirmative denial, but because of deadlock. They made a motion, the motion couldn't be approved. A countervailing motion couldn't be made and they were stuck. So it came to us. And it's not really fully fleshed-out and I think we need some more information. Council Member Gunn raises some good points, but I'm looking, for instance, at the section that he raises that a highway, under Section 15.28.020, is a road on which vehicles travel, on which travel occurs, together with structures like culverts, tunnels, and bridges associated with the primary function of permitting safe travel. I look at that, and it kind of says the same thing as the things that Lynn has brought forward, that say this little swale on the side, regardless of who put it there, certainly functions to drain water. If you walk the area, as I have, it also looks like it functions as kind of an impromptu sidewalk, because there is sidewalk in some sections that are in, not others. So those are my thoughts on the matter.

Council Member Petersen agrees. I don't feel like I have enough information to make a decision on this and be fair to either party.

Council Member Pignanelli also agrees. She is really am concerned about the safety issues.

Council Member Pace stated that the safety issue is not relevant. It has nothing at all to do with whether this is a highway or not.

Council Member Petersen feels it may not be relevant, but it is a problem on that road. But I'm just saying, I know it's not relevant as far as the legal issues of this appeal. It still just creates doubt in my mind. My main thing is I can just as easily justify that that swale has been used for public use as I could. . . I mean, they are both great arguments. But when I walk that area, and when I travel that area, my feel is that it has been used for public use. Or that is has benefitted the public in some use.

Council Member Pace asked is it a highway? Not, has it been used by the public? Is it a highway?

Council Member Palmer feels that we don't have enough facts to say that. The other issue that I see is, were we to find one way or another tonight, this likely would be appealed. I think a court would face some of the same issues we've got, which is saying it's an insufficient record because this all started with a tie vote at the Planning Commission.

Council Member Pace appreciates the discussion. What lead me to explore this was I thought to myself, you know, if we weren't dealing with the development of the law and we weren't dealing with an additional dedication, and suppose we were just in a quarrel with the property owner over how much the City owns by virtue of use, and how much we don't, we would have a quarrel over where that line is today. Does it end at the travel way? Or does it include the drainage swale? And that depends in part on a lot of factors that we don't have. Who put it in? How long has it been there? How does it function? But there's no question you've got a hillside that rises off the street. So if you don't drain the water, you're going to have water and ice and snow on the road. And so, to me, I'm not the fact finder, but looking at it, it was pretty clear that at some point, somebody put it all of the asphalt, including the drainage swale. And then later, when they came back to resurface the road, they put on a narrower strip because it was easier and cheaper, but it looked to me like that drainage swale functioned as part of the road to get the water off of the road. Now, that's for somebody else to do more homework on, but I think the challenge remains to say how much is already in public use. Where is that line? And how much is left for acreage or square footage for purposes of development? I have no opinion on two lots or three lots. That's not the issue. But I think we have an obligation to our citizens to make sure we are following the ordinance and to do our best to try to get it right. And I think under these circumstances, with the little bit of legal research that I've done, I think there's an open question that exists that the Planning Commission assumed did not exist. And so it's unfair to change the rules, and then reverse or affirm them without giving them a chance to reconsider this based upon that revised assumption.

Council Member Gunn feels that we're not providing any guidance to the Commission. We're not saying, these are the legal principles which we must follow, now come back with a decision for us. We're saying just find out more about the swale.

Council Member Pace replied that if you read in the minutes, the City Attorney told them that the public use was limited to the motorized vehicle use. So they put on their blinders and that's all they considered. If the evidence suggests that there has been public use beyond the travel way, you're free to consider it.

Council Member Gunn stated then we're saying, in effect, that Mr. Hall's direction was incorrect. And are we going to substitute a new rule when we send this back to the Planning Commission? It seems to me that we should give them some direction as a court of appeals would do if it remands a case to the trial court. And we're not. We're simply saying we need more facts.

Mr. Hall replied that he would be more than happy to defend his position. You know what my position on the definition of a highway is. And I am not convinced by the discussion tonight that that opinion is any different than it was before. So, if you want a different opinion, you're not going to get one from me. Highway is defined by the travel portion of the road and that's what that ordinance talks about. I stand by the opinion. If you want to solve the issue, I suggest you do three or four things. I throw these things out as suggestions before you make your motion tonight. Number one, if you're going to remand it back, I would ask you to remand it back with specific instructions to the Planning and Zoning to ask and answer specific questions. Not to have a hearing *de novo*. What I ask you to do is to remand it back with specific instructions as to what information you need. If you want them to have further fact finding on X, Y, or Z, tell them that so there's no need to go into this peripheral area that is not the subject of the appeal. The

subject of the appeal is how much square footage is available for development. Period. That's the sole question.

Council Member Pace asked how you can determine that without knowing how much has been dedicated by virtue of public use.

Mr. Hall said then make that the specific request to the Planning and Zoning. Make it as narrow as possible, following the pattern that the Supreme Court and Court of Appeals do when they remand things back to the fact finder, i.e., the district court judge or the jury or whatever the situation may be. Second of all, you're in a situation here that, if we're going to go back, maybe at this point, some consideration needs to be made as the legislative body and the policy makers to clarify the ordinance. I'm not sure of the process by which we do it since we have an application pending. I think that property owners and the citizens ought to know what we mean by that one particular section. You're readopting that section tonight and if we need to do it, let's clean it up. Let's not perpetuate a problem. My suggestion and counsel is to give the Planning Commission specific direction on where you want to go to help them in determining what the facts are as to the issue.

Council Member Pace feels the real issue here is - what is the scope of the property that has been dedicated by virtue of public use. There are various opinions among the Council. All my research led me to believe that it was probably inappropriate to tell them, as an instruction to the jury, so to speak, that they couldn't consider anything beyond the traveled way. The research I did suggests that, depending on the facts, it may be more than the traveled way. And if, in fact, Salt Lake County put in that roadway and put in that drainage swale, and it has functioned to drain City and County storm water lo, these many years, I think there's a very compelling argument that could be made that the street includes not just the traveled way, but the drainage paths on both sides. That's a fact question.

Council Member Pace restated Mr. Hall's conclusion is the property could be dedicated for purposes not previously utilized. What was previously utilized? Mr. Hall's memo doesn't address that. What was previously utilized by the public for more than ten years? Does it include the drainage swale or not?

Mr. Hall said that for purposes of the State statute, it says highway. I gave them the opinion the night of the first hearing on August 5th that that was the travel portion of the road. That's been the practice of UDOT and the rest of us that have been practicing eminent domain work for municipalities.

Council Member Pace understands that but he's saying *McQuillan's* seems to suggest otherwise.

Mr. Hall duly disagrees.

Council Member Pace made the following motion: Based upon the evidence in the record and the arguments of counsel and the other evidence presented, I would move that, with regard to the appeal of Highland Hawk Investments regarding the denial of conceptual subdivision plan of Orchard Hollow, that we remand this matter back to the Planning Commission to consider the extent of the property which has already been dedicated to the public by virtue of public use, under the State statute, and which would therefore impact the amount of additional property that needs to be dedicated for the development and the amount of the credit to be given to the

developer and the amount of square footage that they have to be used in that calculation. I'm not going to tell them how to gather additional facts. If they want to do it by briefing, they can do it. If they want to open a public hearing, they can do it. It's up to the discretion of the chair. But I would encourage them to ask the questions of what property has been used for public use, what improvements have been there, how they were installed, how they've been used, how long they've been there. Facts that bear on the relevancy, scope of the use, and the duration of that use. The statute requires ten years continuous use by the public. Also, that the fully empanelled Planning Commission hear this so that we can get detailed findings and not another tie vote

Council Member Petersen asked if he mentioned who installed?

Council Member Pace said if it's relevant, who installed it. It may or may not be relevant, depending upon how it has been used. I would leave it open to them as to the factors they need to consider, but the question we need an answer to and the parties need an answer to is how much of that property has already been dedicated to the public by virtue of public use. And I don't have enough information.

Council Member Petersen seconded the motion.

Council Member Gunn commented that the problem with the formulation suggested by Mr. Pace is it contains within it a legal conclusion that I don't concur with. And that is, that, say, bicycle traffic, or parking, or diversion of water, is a public use. If we're going to send this back, we should simply say to the Commission, tell us about the following uses. Or tell us how the property has been used. But we shouldn't say public use, because the moment we say public use, we are implying that it is dedicated, because of the State statute. So let's give them a laundry list of findings we want them to make, but don't use the words public use. Because I think once you make that statement, you have already answered the question. Sure, if children walking along that street regularly walk there, that's public use. And therefore it is dedicated. Well, I don't agree with that proposition. So, let's ask them to tell us how often and for how long cars have been parked there, how long the asphalted swale has existed. What was it like before then? Was the asphalt that we now see there, the older asphalt, at one time part of the asphalt of the road or has it always been a separate kind of improvement? We should ask them, in short, to tell us through their findings, and through now apparently extended hearings, how this property has been used. I would prefer that we give them guidance as to what they do with that information, but if you want them to be simply an information gathering body, who then reports to us and we make the hard decision, so be it. I don't think that's the right way to do it.

Council Member Pace concurred with much of what Councilman Gunn said. My concern with the record we have before us is that it seemed to preclude consideration of anything beyond the motorized travel way. I'm not suggesting that that's wrong. They may do their fact gathering and determine that's all that has been used for public use. It simply leaves open the door for them to gather facts and determine how much has or has not been used by public use. And I don't want them to report to us. I want them to make the decision. And I hope all the parties will be so convinced by the legitimacy of that decision that we won't hear this appeal again. They are the decision maker. But I am leaving open the possibility that that drainage swale may have been used for public use and may have been dedicated, or it may not. I don't know what the facts will show. But I'm leaving that door open for them to gather facts and for them to decide.

Council Member Gunn stated that their decision will be based on their perception that such use, other than for vehicular traffic, does or does not constitute a part of the highway. And we should tell them whether that's true or not. We should say to them, we find that public use for purposes of dedication consists not only of vehicular traffic, but of sidewalks, gutters, parking, whatever else there is. We ought to bite that bullet and make that decision so they know what the rules are. Right now, they don't know.

Council Member Pace stated that the information he read at the beginning said it's a fact question, and the information I read said it *can be* those other things. Not is or is not. Can be, based upon the facts. I don't know what those facts are.

Council Member Gunn does not think it was based on the facts. I think there is a legal principle that has to be determined, and then you plug the facts into that legal principle. Right now, we're saying, well, if the facts convince us that this property has been used for other purposes, then we will consider that as being a public use and that entire area is a dedicated highway. You know, if kids are playing on the slope, does that make the whole slope a dedicated highway because it's a public use? Or if the children walking to and from school divert from the swale area, the area that was marked with the die? Does that mean that even beyond that area it is public use and, therefore, a dedicated street? Well, that seems to be the implication of what you are saying. We should tell the Commission what the rules are. Then they can plug the facts that they now are being asked to find into those principles. But don't just say to them, "Tell us what all of the facts are and then tell us whether this is a dedicated street." They're not capable of doing that until we tell them what the definition of a highway is. There is one other thing that I would like them to tell us about and that is this. We have not been informed what the area of the asphalted area is. Due, I think in part, to the fact that the eastern edge of the asphalt is irregular. So it will be, at best, a somewhat imperfect measurement. But if we measure the distance from the street, from the travel portion of the street, to the edge – the eastern edge – of the swale, at say six foot intervals, we'll be able to come up with some fairly careful measurement of the amount of the area of the swale. That may not be relevant if you are saying, if the rest of the Council is saying it's not the swale, the asphalted area that we're looking at. We're looking at all the uses of that area. So if kids were going up above the swale, along the embankment, and that's public use as well, then the figure that I'm asking for is not going to be that.

Council Member Pace doesn't mean to belabor the point. But what we are talking about here, the statute calls for continuous use by the public. Kids occasionally playing on the property is not continuous use by the public. What we are talking about is a 24/7 laying of asphalt on a permanent basis, apparently a long time. More than ten years? I don't know? That is what is at issue here. Both sides are represented by capable attorneys. They'll marshal the evidence. They'll go to the Planning Commission. They'll wrestle this to the ground. And if people are still unhappy, we'll hear about it again. I suspect we're not going to hear another appeal.

Council Member Palmer stated that in the motion, and correct me if this is wrong, is that we're asking the Planning Commission to consider the extent of the property previously dedicated by continuous use by the public as a roadway. And that encompasses all of those items that you just mentioned plus other methods of solving it. And I think that the Commission would be fully capable of exploring all the variants of that theme and arriving at a decision.

Council Gunn asked if Council Member Pace would accept the amendment as to the computation of the swale area?

Council Member Pace replied when we said determine how much has been dedicated by use of the public, if that's a meandering line, they'll have to map the meandering line and measure it. They can do that.

Council Member Gunn and Petersen are only talking about the asphalted area.

Council Member Pace commented that's all he knows. I don't know what evidence the parties are going to bring to the Commission, and if they said the asphalted area – one of the parties said that the asphalted area is three feet. When I went out there today, it didn't look like three feet to me. But maybe the extent of the drainage is only 18 inches. It is the drainage that would be use by the public. So my point to the Planning Commission is not to tie their hands and to say, "You tell us what public use that there has been of this ground." Some of it is travel way, some of it may have been drainage. Maybe there is something else we don't know about. Take that evidence, measure it, and say, "This much has already been dedicated, beyond that is the acreage you've got to work with for your development." Measure the dimensions of whatever portion of the property has been continuously used by the public for more than ten years for public use.

Council Member Gunn asked if he would accept the amendment that they will specifically find out what the area of the asphalted area is? I want to know that measurement

Council Member Pace feels that's part of it, but suppose somebody brings in evidence of something more than that? I'm not going to tie their hands.

Council Member Palmer believes that you will get that because by answering the question how much is a dedicated roadway, less from the dedication property line is the computation for that question. You arrive at that answer.

Council Member Gunn is not sure that's true. Is there some problem with asking them to tell us what the area is of the asphalted area? Is there some problem with that?

Council Member Pace does not think there is a problem with it, but that may or may not be co-terminus with the portion that has been used by the public. All I really want to know is - what is the portion that has been used by the public?

Council Member Petersen clarified that by the asphalted, you mean to the edge of the swale.

Council Member Gunn replied yes, to the eastern edge of the swale.

Council Members Pace and Petersen accepted the amendment to find out what the area of the asphalted area is. The Council roll call vote was as follows: Council Members Petersen, Palmer, Pace, and Pignanelli in favor and Council Member Gunn opposed. The motion passed by a majority vote.

VIII. Consideration of Resolution 2012-38 Declaring of Property Located at approx. 3501 Berghalde Lane in Holladay as Surplus Property

Council Member Pace moved to approve Resolution 2012-38 with the following modifications: add approximately 5,428 sq. ft. or 0.1246 acres of land as surplus and be offered for sale to the

adjacent property owner and that the City Manager be authorized to sell the property at fair market value. Council Member Petersen seconded the motion. The Council roll call vote was as follows: Council Members Pace, Petersen, Pignanelli, Gunn and Palmer in favor. Resolution 2012-38 was approved by a unanimous vote.

IX. *Consideration of Ordinance 2012-15 Repealing Title 12 and 13 of the City Code Pertaining to Zoning and Re-enacting a New Title 13 with Revisions*

Council Member Petersen moved to adopt Ordinance 2012-15. Council Member Pignanelli seconded the motion. The Council roll call vote was as follows: Council Members Pace, Petersen, Pignanelli, Gunn and Palmer in favor. Ordinance 2012-15 was approved by a unanimous vote.

Council Member Pace thanked staff for their many, many hours on this project.

X. *Consideration of Resolution 2012-34 Repealing and Approving Suspension and Revocation Standards for Alcohol Standards*

Mr. Hall stated the previous standards adopted by the Council are trumped by State Law, which is sufficient.

Council Member Pace moved to approve Resolution 2012-34. Council Member Petersen seconded the motion. The Council roll call vote was as follows: Council Members Pace, Petersen, Pignanelli, Gunn and Palmer in favor. Resolution 2012-34 was approved by a unanimous vote.

XI. *Consideration of Resolution 2012-35 Authorizing the Mayor to Execute a Tenth Amendment and Renewal to an Agreement for Public Work Services Between Salt Lake County and City of Holladay*

Council Member Petersen moved to approve Resolution 2012-35. Council Member Pace seconded the motion. The Council roll call vote was as follows: Council Members Pace, Petersen, Pignanelli, Gunn and Palmer in favor. Resolution 2012-35 was approved by a unanimous vote.

XII. *Consideration of Resolution 2012-36 Authorizing the Mayor to Execute a Third Amendment and Renewal to an Agreement for the Overlay, Chipseal, Slurry Program Between Salt Lake County and City of Holladay*

Council Member Pace moved to approve Resolution 2012-36 with one modification to change amount from \$400,000 to \$350,000. Council Member Pignanelli seconded the motion. The Council roll call vote was as follows: Council Members Pace, Petersen, Pignanelli, Gunn and Palmer in favor. Resolution 2012-36 was approved by a unanimous vote.

XIII. *Consideration of Resolution 2012-37 Authorizing the City Attorney to Enter Into and Sign a Stipulation for Settlement of a Quiet Title Action Filed in Third District Court in and for Salt Lake County, UT Civil No.110917356*

Mr. Hall explained that his lawsuit involves quiet title action regarding a piece of property that is literally in "no man's land." It is recognized by the County, but has no owner. Mr. McAllister is the adjacent land owner and he has attempted to clear title to this piece of ground. The lawsuit is intended to do that. He has a stipulation from Salt Lake City, Salt Lake County, Upper Canal and

others and has included us because of a storm drain irrigation line. As part of the stipulation, we will relinquish all claims to that property, if any, but at the same time the McAllister's have signed an easement for the city.

Council Member Petersen moved to approve Resolution 2012-37. Council Member Pignanelli seconded the motion. The Council roll call vote was as follows: Council Members Pace, Petersen, Pignanelli, Gunn and Palmer in favor. Resolution 2012-37 was approved by a unanimous vote.

XIV. *Consent Agenda*

a. Approval of Minutes – July 19, August 23, 2012

Council Member Pace moved to approve the minutes of July 19 and August 23 with minor edits. Council Member Pignanelli seconded the motion. The Council voted in the affirmative and the minutes were approved.

XV. *City Manager Report – Randy Fitts*

Manager Fitts reported he is still working with Cottonwood Heights and Taylorsville on options for public works and shared services.

XVI. *Council Reports*

Council Member Pace reported on the Future of Salt Lake County meeting that he and Manager Fitts attended. It has involved a discussion about the creation of a public works special service district (animal control would not be included). It would be a district with no tax authority. The unincorporated areas and any city that wanted to join by Interlocal agreement. A study was done and in the end if this goes forward it would save \$55,000. He feels the city should look into options. Council Member Pace also reported on the Millcreek annexation meeting he attended last week, it was long and he only made a brief appearance. It was a pro-incorporation meeting and they invited Holladay because they had heard rumors about Holladay and our taxes.

Council Member Palmer reported that Maggie McGee's still continues to be an issue with noise complaints. Mr. Hall is going through the process of notifying them to remove the fence.

XVII. *Adjourn City Council Meeting and Convene to a Council Work Meeting*

Council Member Pace moved to adjourn City Council meeting and convene in a work meeting in the Mt. Olympus Room. Council Member Pignanelli seconded the motion. The Council voted in the affirmative and the meeting adjourned at 7:23 pm.

WORK MEETING – September 20, 2012

ATTENDANCE

Mayor Dennis Webb - *excused*
Lynn Pace
Patricia Pignanelli
J. James Palmer
Sabrina Petersen
Steven Gunn

City Staff
Randy Fitts, City Manager
Stephanie Carlson, City Recorder
Craig Hall, City Attorney
Clarence Kemp, City Engineer

Council Member Palmer convened the Council in a work meeting at 7:4:30 pm. The Council celebrated the adoption of LUDMA after six long years. They thanked Pat Hanson for all her many hours and hard work on this project.

a. Update and Discussion on City Hall Park Common Area

The Council discussed a meeting date to discuss the City Hall Park. It was decided to meet on October 11 after a brief council meeting. This will be the only item on the work meeting agenda. The staff will get as much information out to the Council beforehand. The Council was asked to come prepared to go over details and make decisions.

b. Discussion on Fire Station & Casto Home

The groundbreaking will be September 27 at 10am. The Council would like to the living quarters be high function and low maintenance. Chief Slack brought old photos and newspaper clippings on the first fire station.

c. Discussion on Building Corridor

1. The Council reviewed the proposed language. The Planning Commission has recommended that the size of the subject property be the determining threshold. Also that all properties be categorized as being either a “Large” or “Small” lot, as defined;

Large Lot: Lots larger than 1.50 acres in size

Small Lot: Lots less than or equal to 1.50 acres in size

Properties that are categorized as a large lot be exempt from the averaging requirements when determining a front yard setback. Rather, the setback requirement for a large lot shall be a standardized measurement of 40 feet. The building corridor for a new home on a small lot be calculated *without regard* to the existing homes on large lots. Conversely, the building corridor for a new home on a large lot shall be calculated *without regard* to the existing homes on small lots.

The Council asked this be put on the next agenda for adoption. The moratorium will expire on October 11 the day of the next meeting.

d. Discussion on Traffic Study - Council Member Palmer

It was suggested the city purchase a pole-mounted radar device so we could get speed data in addition to traffic counts. They are a small box that will attach to a pole and can be used year round. The staff has also discussed establishing specific points on all streets to collect data. Can the current radar speed signs be upgraded? Staff is working with the vendors to update. The signs on Casto and Cottonwood Lane are recording speed data. The Council will need to discuss standards and classifications for roadways and how they function.

e. Long Term Storm Drain Update

Council Member Pignanelli stated that the storms drains in her area are constantly a problem. She would like to start the discussion on a fee for storm drains. It is a fee across the board, no one is exempt. Staff has begun work on a capital projects plan so the Council can begin discussions.

f. Legal Issues – Craig Hall

Mr. Hall discussed a parcel in question up at Millrock. He also delivered copies of police reports to Maggie McGee's.

g. Community Development Update - Paul Allred

Mr. Allred reported on the following:

- The ORD sign regulations will be coming to the Council for a hearing
- Cottonwood Club remodel – total tear down and rebuild
- The Commission is working on the residential office zone
- Holladay Village – need to sit down with contractor to go over some issues
- Fire station – like to issue footing and foundation permit, while we work on details
 - Council Member Pace would still like to see some estimates.
- Highland Dr master plan – Tom Nelson has made a presentation to the Commission
- Business license fee study is complete

h. Calendar

The meeting schedule for October will be October 11 and October 25. The meeting on the 25th will be an emergency table top exercise.


I. Other Business

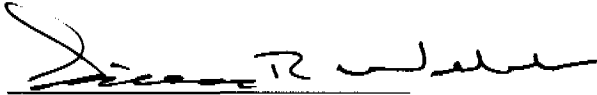
XVIII. Closed Session Pursuant to Utah Code Section 52-4-204 & 205 to Discuss Personnel Issues, Potential Litigation and Property Acquisition and Disposition – (If needed)

XIX. Adjourn

There being no further business, Council Member Petersen moved to adjourn with Council Member Pignanelli seconding the motion. The Council voted in the affirmative and the meeting adjourned at 8:50 pm.

I hereby certify that the foregoing represents a true, accurate and complete record of the Holladay City Council meeting held Thursday, September 20, 2012.


Stephanie N. Carlson, MMC
Holladay City Recorder


Dennis R. Webb, Mayor

Minutes approved: November 1, 2012

