

**CITY OF SOUTH JORDAN
ELECTRONIC
PLANNING COMMISSION MEETING
COUNCIL CHAMBERS
May 23, 2023**

Present: Commissioner Michele Hollist, Commissioner Nathan Gedge, Commissioner Steven Catmull, Commissioner Trevor Darby, Commissioner Laurel Bevans, Supervising Senior Engineer Shane Greenwood, Assistant City Attorney Greg Simonsen, City Planner Greg Schindler, Deputy City Recorder Cindy Valdez, Senior IS Tech Phill Brown, GIS Coordinator Matt Jarman, Meeting Transcriptionist Diana Baun, Planner Damir Drozdek, Planner I Miguel Aguilera

Others: Jearl Withers, Jeff Seaman, Darrell Donalson, Bob Elder, Corey Brady

Absent: Commissioner Aaron Starks

**6:31 P.M.
REGULAR MEETING**

A. WELCOME AND ROLL CALL – *Chair Michele Hollist*

Commissioner Michele Hollist welcomed everyone to the Electronic Planning Commission Meeting and excused Commissioner Aaron Starks who was unable to attend.

B. MOTION TO APPROVE AGENDA

Commissioner Gedge motioned to approve tonight's agenda as published. Chair Hollist seconded the motion; vote was unanimous in favor. Commissioner Starks was absent from the vote.

C. APPROVAL OF THE MINUTES

C.1. May 9, 2023 Planning Commission Meeting Minutes

Commissioner Catmull motioned to approve the May 9, 2023 Planning Commission Meeting Minutes as published. Chair Hollist seconded the motion; vote was unanimous in favor. Commissioner Starks was absent from the vote.

D. STAFF BUSINESS - *None*

E. COMMENTS FROM PLANNING COMMISSION MEMBERS

Chair Michele Hollist asked for updates on the commission's education requirements for the year, as well as the current attendance towards training.

City Planner Greg Schindler briefly discussed the training requirements and asked the commission to be thinking about subjects they would like to learn more about.

Chair Hollist gave an additional brief review of the City Council meeting from May 2, 2023 that she began at the last Planning Commission meeting.

Commissioner Steve Catmull wasn't able to join the council meeting on May 16, 2023, he will review the audio once it's available online and get that report to the other commissioners.

Commissioner Laurel Bevans noted she will be absent from the June 27 meeting.

Commissioner Nathan Gedge will be absent from the June 13 meeting. After the last meeting he drove down Beckstead Lane and shared that it is in fact marked "No Parking" along both sides of the street.

F. SUMMARY ACTION - *None*

G. ACTION - *None*

H. ADMINISTRATIVE PUBLIC HEARINGS

**H.1. DAYBREAK VILLAGE 12A PLAT 1 AMENDED SUBDIVISION
AMENDMENT**

Address: Lots 170 through 179 and Lot P-103

File No.: PLPLA202300060

Applicant: LHM Real Estate

City Planner Greg Schindler reviewed background information from the Staff Report.

Chair Michele Hollist asked about the P Lot on the map.

Planner Schindler responded that it's basically a sidewalk.

Chair Hollist asked if it is being completely vacated, or just moved.

Planner Schindler responded that the existing one is being vacated, and they are recording a new one.

Chair Hollist asked if the applicant was present, they were not. She then opened the public hearing for comments, but there were no comments and the hearing was closed.

Commissioner Nathan Gedge was pleased to see larger lots being developed in the city.

Commissioner Gedge motioned to approve File No. PLPLA202300060, Amended Subdivision Amendment, based on the Staff Report and staff presentation. Chair Hollist seconded the motion. Roll Call Vote was 5-0, unanimous in favor. Commissioner Starks was absent from the vote.

H.2. HARVEST CROSSING VILLAS 2 PRELIMINARY SUBDIVISION AMENDMENT

Address: 3244 W Harvest Chase Dr

File No.: PLPLA202300010

Applicant: Jeff Seaman

Planner Miguel Aguilera reviewed background information from the Staff Report.

Chair Michele Hollist opened the public hearing for comments, but there were none and the hearing was closed.

Commissioner Laurel Bevans asked how long ago these were built, and how this was missed during the construction process.

Jeff Seaman (Applicant) – Said they were built about four years ago, and this was before his time so he is not sure how it was missed. When they went to build, the buyer wanted the bigger lots on the south side, so internally they double checked everything to ensure correction. This came up because the HOA was doing some work on other items and it was brought to Peterson's attention.

Chair Hollist asked if the city has any obligation to the owners to make sure they are notified, or that things are corrected on their deed.

Assistant City Attorney Greg Simonsen responded that all of that will be taken care of as part of the process. He doesn't have any additional information that would cause him to disagree with what is happening tonight.

Commissioner Darby motioned to approved File No. PLPLA202300010, Preliminary Subdivision Amendment, as published in tonight's packet and discussed here in this meeting. Chair Hollist seconded the motion. Roll Call Vote was 5-0, unanimous in favor. Commissioner Starks was absent from the vote.

H.3. PARK PLACE PHASE 2 AMENDED SUBDIVISION AMENDMENT

Address: 1079 W Jordan River Dr.

File No.: PLPLA202100136

Applicant Josh Gera, Ensign Engineering

Planner Damir Drozdek reviewed background information from the Staff Report.

Chair Michele Hollist asked for the minimum lot size for this zone.

Planner Drozdek responded that in the R-2.5 Zone it is 12,000 square feet.

Chair Hollist asked if any of these changes would impact neighbors' abilities to subdivide in the future.

Planner Drozdek responded no, it will not impact any future potential subdivisions.

Chair Hollist asked for more details on the access to these lots, and asked about whether certain areas will be paved.

Planner Drozdek said the drive coming from the north will be paved, but the maintenance access from the east he believes will not be paved.

Commissioner Laurel Bevans asked to clarify that 123 and 124 are now 209 and 210.

Planner Drozdek responded yes.

Bob Elder (Applicant Representative) – He is with Ensign Engineering and they prepared the plat for the project. The access road coming up from the bottom to 212 is also a county maintenance road to service Midas Creek, and that will be paved as a secondary access to Lot 211.

Chair Hollist opened the public hearing for comments.

Corey Brady (Resident) – In the development of this subdivision, that road is now paved for the full length of my property. The road elevation was raised and that road sits six feet above the original level. My concern is with the continuing development here, if they are going to continue to push that on, as they have started to bring in fill on the backside, that means my entire backyard is six feet deep and becoming a hole. The other concern I have is how much smaller the lot sizes got, as the subdivision I reside in that abuts this one has a 1/3 acre requirement, and these are two 1/4 acre lots. By making them even smaller I am worried about the overall impact.

Chair Hollist closed the public hearing and asked staff to address some of the questions.

Planner Drozdek discussed the grading requirements and noted that they may need to make some changes to the property to make things work. The minimum lot size in the R2.5 Zone is 12,000 square feet, along with the required density for the zone. He also added that this is a creek, not a canal.

Engineer Greenwood added that it is Midas Creek, and it is a flood control channel for the area.

Chair Hollist has concerns as they have seen utility accesses previously that turn into secondary driveways, and she thought there were restrictions on residential properties fronting multiple roads.

Planner Drozdek said Lot 211 does not have access or frontage on Boylston, from the plat it is just an easement and the actual property doesn't front the area. He referred back to the city code for the rules on double frontages and when they are allowed.

Chair Hollist asked if the city is requiring the owner to provide access to Jordan River Drive across Lot 209.

Planner Drozdek responded yes.

Commissioner Steve Catmull asked if there are any ordinances related to retaining water on one's property.

Engineer Greenwood responded that the city's low impact development requirements require they retain 80% of the storm. If there is a way to discharge the remainder, they can, but in this case they will probably have to retain 100%.

Commissioner Catmull asked to clarify that there is sufficient protection in the code for abutting landowners when there is a significant elevation change.

Engineer Greenwood responded yes, the property owner has to keep the drainage on the lot.

Chair Hollist asked about dirt, who is responsible if the retaining wall falls.

Engineer Greenwood responded that the owner of the wall would be responsible.

An audience member asked if the county is responsible for maintaining the wall, or if it is the property owner of Lot 212.

Engineer Greenwood responded that he believes it is the property owner's responsibility.

Planner Drozdek noted that they haven't seen any language to indicate that the county is the responsible party, it's just for them to access the creek.

Assistant City Attorney Greg Simonsen said every property owner has the duty of retaining storm water on their property, unless an ordinance or specific situation arises that is legally recorded. He can't see the county being involved in this in any way, it would be something the neighbors need to take care of between themselves.

The commissioners and staff discussed the supposed location of the retaining walls being discussed, but they only found retaining walls around the property on Lot 211.

Planner Schindler said the resident commenting seemed to be more concerned that he is directly west of two of the lots, which are higher than he is. There is nothing being constructed around Midas Creek that can be seen on the map, it's only the access for the county's maintenance in the creek.

Commissioner Bevans asked about the subject property, noting that it looks like the road is already paved. She asked if it has been paved for a long time, or recently built up.

Planner Drozdek said the image appears to have been taken in 2021.

Chair Hollist asked about the property behind the homes.

Engineer Greenwood said that is Lot 201 and it will be accessed from the private driveway as well.

Commissioner Bevans asked if that area will be hard piped.

Engineer Greenwood responded that it will be left open, as it is through many other subdivisions.

Chair Hollist asked if any structures have been built on Lot 201 yet.

Engineer Greenwood believes it is being constructed right now.

Chair Hollist noted that in the Staff Report there are two long grid pieces in-between the pool and detached garage, she asked for more details.

Mr. Elder noted that the two long grids are LID structures, going below grade to pick up storm water from the development. The drive access was built previously with the adjoining subdivision, and has been sitting there for a little while. The homeowner on Lot 211 is currently doing construction. The lot line between 209 and 210 was moved approximately 10 feet to the north. The access road, as part of Midas Creek, will connect with the county to maintain. There is a large pipe section of Midas Creek that runs along Lot 211 and 212. One of the agreements was to provide an access to their structures and Midas Creek that sits further west. There is an intercepting channel that comes diagonally to the west, and that intercepts Midas Creek. He believes the neighbor's property will eventually drain to the south, with the water eventually going to the creek. There is a channel going through the property to the west of existing Lot 201, and the property brought up previously he believes drains to the south into the drainage. The continued path when Lot 201 is built will need to ensure it continues to provide drainage from his lot. The private drive along the west property line has a large 36 inch sanitary sewer main that drains across the property, so that access road running along the two lots and along the west was controlled a bit by the grade of that sewer and that is the reason for the ridge, a fill over the sewer pipe to get the cover.

Chair Hollist asked about parking spots.

Mr. Elder responded there are plans to put parking spots on the west side for visitors. The property owner owns Lots 201, 211, 212, 209 and 210.

Chair Hollist asked if the detached garage will have a kitchen.

Mr. Elder was unsure.

Planner Drozdek didn't remember either.

Chair Hollist asked if an accessory unit like this was allowed, as its square footage is equal to that of the main structure.

Planner Drozdek said these conversations have already been had with the property owner and their representative, but he doesn't believe he has seen any plans for a detached garage come through. They cannot have any detached accessory dwelling units on this lot.

Chair Hollist noted that the staff report shows a basic floor plan with square footage and definitely some sort of a sink, which is why she asked about a kitchen.

Planner Schindler noted that floor plan is in the landscape plan, and you can see there is a floorplan in the garage. It is small, but it does show some sort of sink.

Mr. Elder said there is sewer going out from that building.

Planner Schindler said that when they get a building permit for that building they will review it. If it shows a bedroom, bathroom and kitchen then it will be determined an ADU and will not be allowed with all three features.

Chair Hollist asked if they are allowed a detached building of this size in this zone that matches the square footage of the main structure.

Planner Drozdek responded that a size of 60% of the main structure is approved by staff, and anything larger would come to the planning commission.

Chair Hollist noted that tonight they are only approving the lot lines, not anything being built there.

Planner Schindler said it might be best in the motion to not state "as presented" since they are not approving the provided landscape plan or any other plans submitted, other than the lot lines.

Attorney Simonsen is still not understanding some of the drainage, and in particular because Mr. Elder used the term "I believe." When someone says that, it's telling him that they don't really know the answer. He asked Mr. Elder if he was prepared to tell staff and the commission that everything he represented about the drainage tonight is something he knows is going to happen, or if it's just a vague belief.

Mr. Elder responded that without spending more time in the drawings, and having worked on the engineering of the plans, in his mind he remembers that the ground and the way it falls, along with knowing where the drainage goes and based on the site plan and grading, that is his understanding.

Attorney Simonsen asked if Mr. Elder is offering testimony before the planning commission tonight that the drainage on this revised subdivision is going to meet the city requirements as we have heard from the city's engineer.

Mr. Elder said that as each of the projects is developed, the drainage will be managed on site, per the requirements of the city and the drainage engineer. In reference to how the property adjacent is draining, that was the information he was sharing on how he believes it is currently draining, based on his previous work around the property. However, without looking specifically at the contours of the specific lot he can't say 100% for sure.

Attorney Simonsen noted that a neighbor commented, saying he has concerns about ongoing grading putting him in a hole. As drainage is discussed, he thinks that's probably what's concerning everyone is that he is in a hole. Attorney Simonsen has not been out to the property to see this, so he has a hard time envisioning how deep this hole is. He asked Mr. Elder if he agrees that the grading taking place on the property is putting the neighbor in a hole.

Mr. Elder said this is the first he has heard that comment. He knows where the road was built in relationship to his property on his east. This property on the west, as you get to the back corner, he thinks the road was built up a few feet higher and there was a retaining wall built near the property line on that very south corner where the road was being raised. As far as that being raised and putting him in a hole, the sewer that comes across creates a dam. If he understands it correctly the dam creates the water pushing back on his property. He doesn't know if there have been any drainage issues, but he believes his property drains to the south and the building up at the private drive along his east property line doesn't create a dam for his water to flow, even with the road being built up.

The neighbor asked from the audience to approach and speak.

Chair Hollist asked if there is a motion from the commission to allow the referenced neighbor to approach and answer the questions proposed.

Commissioner Gedge responded that he is not in favor of that motion, because the discussion is not pertinent to the application in front of the commission this evening. Also, he noted that substantial evidence really has not been presented to the commission based on the question being raised. There have not been any pictures or other proof submitted to show the road or how high it has been raised.

Commissioner Bevans agreed with Commissioner Gedge, they are voting on property lines tonight. She encouraged that conversation to happen outside of this meeting between the applicant group and the neighbors.

Chair Hollist asked staff if, when this is seen again for the site plan, they could include the grading and slopes of the properties in the area so they will be aware of how the water flows. She also noted that the applicant stated everything will be developed in accordance with city ordinances, in regards to water retention and handling.

Planner Drozdek said this application will not be including any public improvements, so all of the public improvements for the subdivision have been done with previous phases. Essentially, they are just moving property lines with this application, so no improvements will be taking place. There will be some private improvements on the property itself, but that is taken care of with the building permit when issued. The drainage and grading issues are things staff has already looked at with the building permit for the home.

Chair Hollist asked if the city goes onsite after completion to verify that everything has been done correctly.

Planner Drozdek said yes, there is an inspection.

Engineer Greenwood added that they require the contractor to submit an engineered grading letter, testifying the builder has completed the grading per the approved plan.

Commissioner Bevans said this is already under construction, so that means the grading plan was already approved. She asked if the building permit currently in is based on the amended lot lines, or based on what the property was prior to amending this. Does that change anything based on their approved and engineered grading plans.

Planner Drozdek said it doesn't change for Title 17, Planning and Zoning, because the property is getting bigger; this would only increase setbacks from adjoining property lines. In this case, it doesn't change anything, but he doesn't believe it would change anything in terms of grading or drainage either.

Engineer Greenwood confirmed it would not change the grading and drainage on the lot.

Commissioner Bevans noted that the lot shape is now different, and asked if they have to have amended plans approved with that change since the previous approval was based on the previous lot. Or, are they just approving this and their current building plans go as is, with the planning commission getting new building plans for anything else added to the lot.

Planner Drozdek said that once this is approved they can submit an updated site plan, which will reflect what is being approved here.

Commissioner Catmull believes that this really counts during the final inspection. A building permit is issued, not approved, which allows the city to help people avoid issues when the final inspection happens.

Planner Schindler responded that is correct. When someone submits for a building permit they also have to submit a grading plan, which is reviewed by the city's engineering department. Then as stated, when things are all finished the city gets a signed letter from an engineer saying that what's onsite during the inspection matches what was approved by the city when the building permit was issued. If it turns out that is incorrect, that is on the engineer and their license. Or, if the property owner themselves changes the grade, they will be liable for that. There have been issues with grading throughout the history of the city, where people changed the grade resulting in the city being blamed, and based on the current code the city is no longer liable for that after approval if something is changed or built differently.

Commissioner Catmull asked if the property lines change after issuing a building permit, is there another review to look at anything.

Chair Hollist said she believes they will have to do new permits for things like the pool and detached building, as those haven't been issued, but will potentially be applied for once the property lines are changed.

Planner Schindler said if the property is under construction, they will not re-review it as the permit has already been issued.

Attorney Simonsen said this hasn't helped to clarify anything for him. They are under construction, so what building permits have been issued so far; has it been issued just for the house, or for the pool and detached garage as well.

Planner Drozdek said it was just for the house.

Attorney Simonsen then asked if the grading permit required by the engineer's office, or the plan submitted, will be updated, or will it just assume those things are going to be the same as before.

Planner Drozdek said the grading is not changing with this subdivision plat, it will remain the same as presented with the building permit application.

Engineer Greenwood added that when the pool and detached garage comes back for a permit, they will have modified the grading to facilitate those things. The pool and structure will then merge with the building of the home and one plan will be submitted that will reflect both.

Attorney Simonsen asked to confirm that the grading will then change.

Engineer Greenwood responded that the grading will change at that time to accommodate the building going in.

Attorney Simonsen asked if the applicant will need to submit another grading plan when those changes are made.

Engineer Greenwood said that will come in with the permit package, it will include the grading, drainage, site plan, etc., for review before the new permit is issued.

Commissioner Bevans asked if it would be appropriate to require the applicant to submit new site and grading plans for the entire amended plat in their motion tonight.

Attorney Simonsen deferred that to the engineers, whether that would be required or not.

Engineer Greenwood said they will only require a grading plan for the additional permits for the detached garage and pool.

Chair Hollist asked if that will consider what's already in place on the rest of the property.

Engineer Greenwood responded that yes, it will consider that in conjunction with the building grading.

Commissioner Gedge asked to discuss what they should include in the motion, based on what has been shared tonight. This is ultimately just a lot line adjustment, but he'd like to clarify what needs to be included in the motion so they are not over-approving anything and ensuring they are only addressing the lot lines.

The commission discussed options for the motion.

Commissioner Catmull noted that the recommended motion does include the term "amended subdivision" which does have meaning in the city code; that is one level of protection since it says they are only approving the amended subdivision, nothing else.

Commissioner Catmull motioned to recommend approval of File No. PLPLA202100136, Amended Subdivision, as presented in the packet on page 35; subject to all utility easements consistent with both State and City Codes and regulations. Commissioner Gedge seconded the motion. Roll Call vote was 5-0, unanimous in favor. Commissioner Starks was absent from the vote.

I. LEGISLATIVE PUBLIC HEARINGS - *None*

J. OTHER BUSINESS

City Planner Greg Schindler and staff discussed the potential agenda for the next meeting.

Commissioner Gedge will not be present at the next Planning Commission meeting.

Planner Schindler asked the commissioners to email himself, Attorney Simonsen or Director Schaefermeyer if they have any specific topics they would like training on.

Commissioner Gedge asked for additional info on acceptable forms of evidence testimony to accept for the commission's consideration regarding detriments, allowable mitigations or reasons to object to a staff recommendation.

Attorney Simonsen noted that at the last meeting, there was a resident here for a conditional use permit for her yard, but she also had a variance application going on. It has never been the planning commission's job to get into variances, but he thought they might want to know more about them and what the criteria are for obtaining one.

Chair Hollist said it might be helpful to learn more about the city's landscaping requirements as well and potentially moving towards applying drought tolerant, water friendly landscaping.

Planner Schindler said there was a recent water efficient landscaping ordinance adopted for residential front and side yards, and they are enforcing those rules now as well as reviewing them. The city has also adopted plant types and guidelines for the collector street park strips, and residents can use those same plants for their park strips as well. The requirement is still that 50% of the park strip must be covered with live plant material at maturity, and the tree canopy doesn't count.

Attorney Simonsen addressed identifying credible evidence, saying that they need to think a bit like a lawyer. He has had the chance to question and cross-examine hundreds of engineers, contractors and other experts. What they heard tonight was terrible testimony to come up and say "I believe this," but that's just hedging because he didn't know the answer, and under cross examination he said he would have to go look at the papers. He really didn't know the answers to the questions, and you will become pretty adept at listening to what people say; if they answer your questions they'll be able to point to something to prove their point. He understands the argument from the applicant, and he agrees that they were only there for a lot line adjustment, but when he finds out that a permit has already been issued and they already have a neighbor concerned about being in a hole, he wants to find out whether this is going to be a change in the grading as part of this lot line adjustment. The engineer needed to be able to answer that, to give the commission a definitive answer. He doesn't usually talk about people like this, but tonight that engineer did not do his job; he wasn't prepared to do his job. Attorney Simonsen isn't saying the commission's vote was incorrect, and he thinks based on the evidence given they made the decision they needed to, but since evidence was brought up he wanted to point out bad evidence being presented by someone who should have been prepared. From a citizen down the street, that's about the best evidence you can expect; however, when somebody comes represented by an engineer, lawyer, or other professional they need to be able to answer all the commission's questions. He felt their questions were outstanding tonight.

Chair Hollist added that she and Commissioner Bevans have had that discussion with regards to the landscaping issue, as a lot of claims were made that night. Afterwards they discussed where the pictures were, the documentation regarding the bus stops, etc. She asked if that is something the commission can require, as when citizens show up they usually don't bring any level of

evidence beyond feelings and concerns about what could happen, and the commission knows it's not allowable to act on those.

Attorney Simonsen noted that questions, even when something is granted, sometimes create lessons to be learned and to be taught. Most of the people come in with a positive recommendation from staff, figuring their application will be granted. The applicant's representative and neighbor from tonight's item are still outside talking, and there's a reason for that; this neighbor is going to be in a hole. Many times the commission can't do anything about that, and he doesn't think there was much they could have done tonight, but his questions were to tell the applicant's representative to take care of the neighbor. He is sitting here saying the applicant changed the grade last time they did this, and he is afraid it will be changed again. The applicant probably deserved to get a positive recommendation, but it's not the commission's job to answer the neighbor's questions, that's the applicant's job and he wasn't doing that. He got upset tonight because the applicant's representative wasn't doing his job in Attorney Simonsen's opinion. The city has outstanding engineers, and the city's engineers would have been here with the knowledge to answer all of those questions. The applicant's representative said a few other things near the end that Attorney Simonsen couldn't believe he was saying, regarding needing to check other places for information. At the end he will get an engineer's report as explained by Planner Schindler, and this engineer is just being too lax. He needs to understand this, especially when a neighbor speaks the way they did tonight.

Chair Hollist asked if they should start tabling things when they can't get the information they want, as Attorney Simonsen usually cautions against that.

Attorney Simonsen believes they voted the way they needed to tonight, but he got concerned when he heard that it was under construction already and that the grading plan has been approved. In addition, he heard both that the grade will and will not change with the adjustments. The city at that point is thinking the grade is going to stay the same, but he kept wondering if there is a way to move that the Deputy City Recorder provides a link when this comes up again to take you back to the discussion that was already had on the matter. He doesn't know if the matter will be before them again, but if it is, he thinks they will see the same neighbor here with the same concerns expressed. He would like to hear from the engineer and applicant at that time that they have sat down with the neighbor, shown him the drawings, and that there will not be further raising of the grade; that it will not affect the drainage, in fact it will improve the drainage so it doesn't run onto his property. He doesn't see a scenario where this will be back before the planning commission, unless they want that larger detached garage. Many times when people come before the commission it's just fluff, they are sharing what they've heard about in the past rather than actual evidence. However, when you have an engineer representing an applicant and the commission is asking the kinds of questions an engineer ought to know, what was heard tonight was poor testimony and he wants the commission to be able to recognize that when they see it in the future.

ADJOURNMENT

Chair Hollist motioned to adjourn the May 23, 2023 Planning Commission Meeting. Commissioner Darby seconded the motion; vote was unanimous in favor. Commissioner Starks was absent from the vote.

The May 23, 2023 Planning Commission Meeting adjourned at 7:54 p.m.

UNAPPROVED