

CITY OF NORTH SALT LAKE
APPEAL AUTHORITY - SCHEDULING CONFERENCE
APRIL 30, 2019

FINAL

PRESENT: Craig Hall, Hearing Officer

STAFF PRESENT: Sherrie Llewelyn, Community Development Director; Ken Leetham, City Manager; David Church, City Attorney; Len Arave, Mayor

OTHERS PRESENT: Milt & Vicki Buhrman, Taylor Spendlove, Patrick Scott, Kelly & Chris Jones, Barry Bryson, and Wendy Mele

Craig Hall brought the meeting to order. He explained that he is the substitute hearing officer, as the city appointed hearing officer had a conflict and had recused himself. He explained the purpose of the meeting is to schedule where the appeal is going.

Mr. Hall asked the appellants to identify themselves. Wendy Mele and Kelly Jones introduced themselves and stated that Chris Jones and Barry Bryson were also in attendance as concerned neighbors. Kelly Jones stated that other neighbors have been asked to be part of the letter and process. Mr. Hall clarified that the notice of the hearing and scheduling should be sent to Kelly Jones and to Wendy Mele.

Taylor Spendlove was introduced for Brighton Homes the developer of the property. Mr. Spendlove stated that he would be the contact for the developer.

David Church was identified as the City Attorney and representing the city and he identified any notice be sent to Sherrie Llewelyn at the city for the purpose of keeping the record in the city.

Mr. Hall stated that purpose today is to outline the schedule and protocol for the hearing. He stated that according to city statute, this matter is an appeal of the General Development Plan approved by the City Council. This decision was an administrative decision, and administrative appeal is heard de novo basis, meaning over again. He stated that he can take factual testimony, to review the applications, and to look at the applicable state statutes and city ordinances. He asked if everyone understands the scope of the appeal.

Mrs. Jones stated that they understand that this is an administrative process and that they needed to stay within that scope.

Mr. Spendlove stated that he understands the process.

Mr. Church stated that he also understands the process.

Mr. Hall stated that this process would not be a free for all and go far afield. He stated that what he would like to establish today is that on behalf of the appellants that they submit a memo or statement of specifically of what your appeal is and where they intend to go with that, including identifying what witnesses they will call. He stated that there were a number of people, based on the minutes that testified in front of the City Council. He stated that he was not sure that it was necessary to have all of those come again, but that he would leave that up to the appellant to decide how they wanted to provide their factual presentation.

Mr. Hall clarified that he was requesting a witness and to identifying the issues that they intend to present at the hearing. He asked the appellants if they understood and they both confirmed yes. He asked them how many days it would take them to put that together. Mrs. Jones stated it would take approximately 4 days or by the end of the week. Mr. Hall offered the following Monday and the appellant agreed that was acceptable.

Mr. Hall asked the appellants to submit prior to the close of business on May 6, to submit the statement of facts and list of witness to the Community Development Director, Sherrie Llewelyn, so that she can disseminate them to the various parties.

Mr. Church's was asked for his response by May 13th, to which he agreed, clarifying that he would be given a copy of the appellants submittal to which he would respond.

Mr. Hall asked Mr. Spendlove to submit a response by the May 13th if the developer choses to do so or submit something different than that submitted by the City Attorney. Mr. Spendlove stated that he was under the understanding that the appeal related to the decision made by the City Council and that he did not know if he would have anything additional to add to the response. Mr. Hall explained the de novo issue, where the appellants are stating why the City Council made a bad decision, not only from a legal stand point, given the allegations that misinformation was given; but also from a policy standpoint. Mr. Hall explained that the de novo standard has taken the factual determination away from the Planning Commission and invested it in him as the hearing officer. Mr. Spendlove affirmed that he understood and that he could respond by the 13th of May as well.

Mr. Hall identified a hearing date of May 21, 2019 at 9:00 a.m. in the morning. He stated that was a Tuesday. He asked the appellants if they could be prepared to present the morning of May 21st.

Mrs. Jones stated that she could. She voiced her concern is this development is still being debated at the Planning Commission on May 14th. She reported movement on the property with flagging and blue staking. She asked that those kind of activities halt until they have a chance to have this redress.

Mr. Hall stated that he understood that no permits had been issued on the project, no land disturbance permit.

Mr. Spendlove stated that he hasn't done any marking, so if someone has it hasn't been the developer. He reported that currently a firm is doing some soils testing on the site but that they should be done with that within the next few days and shouldn't be doing anything else. Mr. Hall clarified that no construction would occur on the site. Mr. Spendlove stated that they were several months away from pulling a permit if it is approved. Mr. Hall clarified that there would be no demolition or construction.

Mr. Church stated that he believes the applicant can go forward on any application process they wish during the process of this appeal. He does not believe that there is anything in the code that stays the process once an appeal is filed. The city can review any applications or process them as submitted

Mrs. Jones stated that she believes there is an underlying zoning information is at question and thus she doesn't want any other issue to be heard.

Mr. Church clarified that the final process would not be completed prior to the hearing and that there was an underlying density that the property owners would be entitled to regardless of the outcome of the appeal. He believes the landowner can go on with the plans however they want to go forward with them. He stated that there is nothing in the ordinance that stays the process on the application when an appeal is filed. He stated that it says the opposite unless the hearing officer finds on application argument that the process should be stayed, the process may continue.

Mr. Hall clarified that there is an underlying zoning on the property and that was not what was being appealed. What is being appealed is a determination on a multi-family unit project of 14, 16, or 24 unit project. Mrs. Jones clarified that the question was regarding the density calculation. Mr. Hall further stated that as he understood the process that the approval being appealed also required a rezone before final approval of the project, which had to go back before the city council and planning commission. He stated that this appeal process will take place prior to that final approval has been made on the final zoning decision.

Mrs. Jones asked for clarification on when the project would be going back to the Planning Commission.

Sherrie Llewelyn stated that the developer had submitted a subdivision preliminary plan application. She explained that under the P-District rezoning process, the applicant applies for General Development Plan. The Planning Commission makes a recommendation on the general development plan to the City Council. The City Council approves the General Development Plan. At that time the applicant can apply for preliminary plan approval, under the subdivision

ordinance, which is recommended by the Planning Commission to the City Council. The City Council then makes the final decision on the zone change and the preliminary plan.

Mrs. Jones asked if the dates had been set.

Ms. Llewelyn stated that the developer has filed their application, and if they submit their redline corrections back on time, they can expect to be on the Planning Commission agenda on May 14th for recommendation to the City Council.

Mr. Church asked Ms. Llewelyn to clarify that nothing would be approved and construction begin for approximately 6 weeks. Ms. Llewelyn stated that the zone change could be completed on May 21st. The applicant could then apply for final plat and it would be approximately another 4 weeks to completion. That would be the fastest scenario.

Mr. Hall asked if the 21st is acceptable to the parties to hear this appeal. Mr. Church and Mrs. Jones stated they were fine with the date. Mr. Spendlove stated that they were hoping for sooner as the appeal was filed on April 10th. He was concerned that the hearing was now already a month from the date of the appeal filing. He is concerned that there is nothing in the ordinance that states the appeal must be heard by a certain date. He requested that the hearing be scheduled fairly quickly.

Mr. Hall stated that in order to allow the appellant to submit their statement and give the city and the developer time to respond the soonest date is May 21st in order to get the information complete and to the hearing officer.

Mrs. Jones was concerned that their first issue of the density calculation information had an effect on the council voted on the zone change. Mr. Hall stated that he has no authority over the rezone. Mr. Church stated that their property has not been rezoned.

Mrs. Jones stated that the council had voted to rezone.

Mr. Church clarified that the council has not changed the zoning of the property or voted on the zone change. He explained the process that all the Council had done was vote on the General Development Plan which is a step in the process towards an eventual rezone decision on the P-District rezone.

Ms. Llewelyn stated that this was essentially a concept plan.

Mr. Church explained it was just an initial first step, that the P-district process in North Salt Lake is really a negotiated development plan. Rather than applying for a development under the existing zoning, to which they have the rights to, the application is for a negotiated plan where the city and the developer negotiate about changes that would be mutually beneficial to the

zoning, rather than by going with the straight approval allowed by the zone. The first step in this was the proposed general development plan that the city council has voted to approve. The next step would be the actual subdivision development plans and proposed development agreement. If the city council approve the development plan, the City Council adopts a new zone for that area that incorporates those changes as the contract for the development of that property.

Mr. Hall explained that that is the only matter in front of the hearing officer and that is the appeal of the approval by the City Council of the General Development Plan.

Mr. Hall also asked that the parties explain one other issue. The appellants have brought up a concern that a particular member of the City Council was predisposed to multi-family. He instructed the parties as they prepare their statements that must address why legally that is either proper or impermissible to be predisposed as the allegation states toward multi-family.

Mrs. Jones stated that her administrative concern was that those sentiments were put out into the public and that city staff did not correct it.

Mr. Church asked if the hearing would be limited to the two issues raised in the appeal application that were filed timely in the appeal or that in this de novo hearing that they could bring up issues that they did not include in their appeal.

Mr. Hall stated that is the problem with the statute and term de novo, and he doesn't want the hearing to be a freewheeling everything goes, however de novo means over again.

Mr. Church clarified that the statute also says that the appellant has to identify the issues with the decision that was made within 10 days of the decision, which they did and the 2 issues they raised are included in that appeal, which they ought to be limited to just as any other complaint or legal document. They have identified the issues and it should be de novo on those issues only. The first issue is the density and the second issue is the councilman. Mr. Church stated that he felt Mr. Hall was asking them to go beyond those issues that they raised in the appeal application.

Mrs. Jones stated that they were not intending to go beyond the issues, yet she stated that as she attempted to get the materials for the appeal, some materials had not been published such as minutes. She explained that they would like to be able to include.

Mr. Hall explained that he had the minutes of the meetings and that he is not concerned with what happened in the meeting. He explained that he is predisposed to limit the hearing to the two issues stated in the appeal unless he is convinced by tremendous argument to the contrary.

Mrs. Jones stated that she would limit her argument to those two issues.

Mr. Hall asked if there were any other concerns to discuss and thanked everyone for taking time out of their day to attend the conference. He asked for strict compliance to the time limits set. Seeing no additional concerns, Mr. Hall concluded the scheduling conference.

Minutes reviewed and approved as written.



City Recorder