CITY OF NORTH SALT LAKE
APPEAL AUTHORITY HEARING
RELATING TO ORCHARD GROVE
MAY 21, 2019

FINAL

PRESENT: Craig Hall, Hearing Officer

APPELLANTS: Kelly Jones and Wendy Mele.

NORTH SALT LAKE REPRESENTATIVES: Sherrie Llewelyn, Community Development Director; David Church, City Attorney;

OTHERS PRESENT: Ken Leetham, NSL City Manager; Len Arave, Mayor; Brian Horrocks, City Council, Lisa Watts Baskin, City Council; Linda Horrocks, City Recorder; Connie Larson, Minutes Secretary; Milt & Vickie Buhrman, Taylor Spendlove, Patrick Scott, Brighton Homes; Chris Jones, Barry Bryson, Mark Lee, Larry Martin, Lonnie & Colleen Stuart, and Melissa Adams, residents.

1. CONSIDERATION OF AN APPEAL ALLEGING AN ERROR IN THE APPLICATION OF CITY CODE SECTION 10-10-3, USE REGULATIONS IN THE APPROVAL BY THE CITY COUNCIL ON APRIL 2, 2019 OF THE GENERAL DEVELOPMENT PLAN FOR ORCHARD GROVE, A PROPOSED 16-UNIT TOWNHOME DEVELOPMENT TO BE LOCATED AT 378 EAST ODELL LANE

Craig Hall, Hearing Officer, brought the meeting to order at 8:00 a.m. Mr. Hall asked the appellants to identify themselves. Wendy Mele, 395 East Odell Lane, North Salt Lake. Kelly Jones, 107 Osborne Circle, North Salt Lake. David Church, City of North Salt Lake.

Mr. Hall stated he appreciates the documents, exhibits, briefs, and statements that were sent to him. The purpose of the hearing is to come to an agreement on what the exhibits are for the record. Anything that is submitted for purposes of the hearing in terms of memorandum or a document is support of your position, is not part of the record that will be considered for purposes of making the decision. Those were submitted to help Mr. Hall understand the position, together with Exhibits A-D.

Mr. Hall stated there are two issues that have been raised by the citizens. It is the burden of the citizens to show that the decision by the City Council regarding the General Development Plan was in error.

Wendy Mele indicated there are two errors.

1. Miscalculation error, even in the most recent Planning Commission meeting. A potential map was submitted, and she attempted to put together the calculations that were heard during the meetings. She was unable to come to the same conclusions the City came to.

2. Map is not precisely to scale. The City provided a map, and it is not precisely to scale. She would like to compare the maps. One of the citizens has done more analysis, and talked with Sherrie Llewelyn, Community Development Director.

Chris Jones, 107 Osborne Circle, stated this project, as proposed, is a multi-family project of four duplexes. He does not understand how the zoning applies, and how to calculate how many units. He asked the Community Development Director how to calculate, and based on the calculations, it is eight units. The City Planner memo acknowledged for a multi-family standard development of eight units. Mr. Hall asked what eight units are. Mr. Jones described there is a certain square footage applied to the first unit of 7,500, and 6,000 for every additional unit. Take 54,000 square feet and subtract 7,000. The result is eight units. In 1C of the brief, the density figure used for RM-7 Zone is 12 units that is derived from the duplexes. In the brief it shows that multi-family density is not an appropriate point of comparison. He believes six duplexes cannot fit on the parcel because of setback requirements from the road that are 25 feet, and backyards that are 20 feet, and ten feet side yards on either side. Mr. Jones displayed Exhibit G that was provided from Ms. Llewelyn's map for six duplexes. He said there must be 20 feet between the two units.

Mr. Hall stated the applicant is asking for a P-Zoning, which gives more flexibility.

Mr. Jones stated the key argument is the density was doubled from eight to 16 units. He believes the City cannot meet setback requirements, and only five duplexes would fit on this property with the setback requirements. He asked why the City is using duplexes for the basis of comparison when it is a multi-family project.

Mr. Hall asked Mr. Jones if he attended all of the Planning Commission and City Council meetings. Mr. Jones replied he did not attend all of the meetings.

David Church, City Attorney, asked Mr. Jones what he does for a living. Mr. Jones said he is an attorney, but he has no training in planning, engineering, or marketing real estate. Mr. Church stated the appellant's primary position is that the staff reports and comments of Ms. Llewelyn, and others of the Planning Commission should have indicated the comparison was eight instead of 12 units she mentioned. They also believe the Planning Commission or the City Council would have made a different decision had she said eight instead of 12. There is no evidence they would have voted differently if she said eight instead of 12, because the number was never provided. Mr. Church asked Mr. Jones if he did an analysis of the proposed General Plan that was adopted, and its effect on the community as a whole, compared if the development would be under the zone without a zone change.

Mr. Church asked Mr. Jones if he did any studies on traffic patterns for a development under the P-Zone. Mr. Jones replied he has not. Mr. Church stated the entire allegation of error is not that the Planning Commission made a bad decision, or that the City Council made a bad decision, but

that Ms. Llewelyn was wrong when she said eight units is a comparison instead of 12 units. Mr. Church asked if the design, as it sits, would be an allowable design under the current zone with no zone change, and that Ms. Llewelyn would be correct in that 12 dwelling units could fit on the property. Mr. Jones replied "yes."

Mark Lee, 450 East 100 North, attended all but one Planning Commission meeting, and he attended all of the City Council meetings. During that time he heard different numbers that would be allowed to be built, and that 12 units would be built. As he tried to get information on the City website, there is a General Plan that talks about the RM-7 Zone that allows up to eight units per acre. He couldn't understand how they could not get 16 units per acre. He talked to Sherrie Llewelyn, and she thought she made an error in her calculations, and that she would notify the City Council. After that conversation Sherrie did call Mr. Lee, and said the way she arrived at her calculation was different than when she talked on the phone. The calculation was arrived at with duplexes instead of single-family dwellings, and she would notify the City Council. This was after the second City Council meeting. This concerned the citizens, because it narrowly passed the City Council at the March 19, 2019 meeting. The minutes said the recommended plan was presented to the Council, and there was much discussion. It was asked what density was allowed, and Ms. Llewelyn told the City Council what was allowed, and he said he didn't understand that. The motion failed to pass, and the City Council asked for a reduction of units as a possible alternative to coming back and being passed. On April 2, 2019 it is noted the developer returned with 16 units with minor changes, and it was misspoken that 12.8 units could be in six duplexes or three duplexes, or two units of six. The correct information was given to the City Council on April 8, 2019. Mr. Lee said it was a narrow pass, and some City Council members might have made a different decision if they knew exactly what was allowed on the RM-7 Zone. If the City Council had all of the correct information, it would have been different.

Ms. Jones said the calculations are a concern. From minutes of multiple instances that the density under the RM designation was asked for to make the comparison. It was admitted there was a miscalculation, yet Ms. Llewelyn said the City Council is used to getting miscalculations. The residents believe there was a miscalculation to make a reasonable comparison. Density is being doubled on a parcel of one acre, and they are concerned about the figures that are being given.

Mr. Hall stated he needs to be shown the decision of 16 units was affected by fuzzy numbers. Ms. Jones said the record shows when density was asked for by the Planning Commission and City Council, so they could make that comparison. Every time they received that density number, they received the wrong number, which is evidence they knew an error had taken place.

Ms. Jones said early in the process, prior to this item going to the City Council, she believes there was an ethical problem with Council Member Stan Porter, and some of his interactions. His relationship with Brighton Homes came to light in a wayward light, not officially. Residents feel there is outside cheerleading from Council Member Porter, and the residents should have impartiality. There are questions that should have been answered early in the process, and to be more transparent.

Mr. Hall asked Mr. Church about conversations outside of the record, and is it proper to be considered today. Mr. Church stated he would object if it is about asking neighbors to talk about gossip in the neighborhood, which is unfair and malicious, and what the neighbors said about what Mr. Porter may or may have not done with Brighton Homes. If the residents have actual evidence, of misconduct, there is a procedure in State law, where they can file a complaint with the State Ethics Commission, and Council Member Porter can respond and have due process.
Mr. Hall asked if the City has a practice for elected officials to submit an annual disclosure practice. Mr. Church replied the City does have that practice, and when Council Member Porter stated in an open meeting he was involved in the selling of a Brighton Home he recused himself from the discussion. He did disclose in an open meeting that Brighton was attempting to buy his home. He closed on the sale of the home in November or December of 2018. The new application was filed January 9, 2019. The neighbors insinuate that somehow the relationship with Brighton Homes has tainted Council Member Porter in this matter, and the neighbors want to know how much he sold the home for, and his motives in the vote. The neighbors have unfairly defamed Council Member Porter.

Mr. Hall asked Ms. Jones if the interactions between the witnesses and Council Member Porter occurred in the months of January, February, March or April 2019. She replied "yes." Council Member Porter may have disclosed the details of the sale of the home but the details of that sale were not made available to us. His inaction was he sold his home to Brighton, and moved into a newer Brighton home. Could it have risen to the level of a gift? Ms. Jones asked Mr. Hall to offer his professional opinion on this matter.

Mr. Hall allowed questions for the 90-day period from January 9, to April 2, 2019. The appeal is drafted as follows: "Because of Council Member Porter's preconceived bias or inappropriate relationship that it has been alleged, his vote is tainted, thus we don't have an appropriate decision at the City Council level on April 2, 2019."

Ms. Mele said she cannot give the specific date of the Planning Commission meeting, but after the meeting, she was approached by Council Member Porter, and he said the P-Zone is a good idea.

Carly Martin received an email forwarded from another resident on February 7, 2019, that a document Council Member Porter emailed to a few people discussing a planned unit development versus the allowed RM-7 Zone. He discussed advantages and disadvantages of using the planned district versus keeping the RM-7 Zoning. She was discouraged that Council Member Porter was for the development. Mr. Church asked if she could point to anything in the document that is inaccurate or unfactual in Exhibit K. Ms. Martin replied "no" she could not find anything unfactual. He referred to Item 9 of the last page: Ms. Martin read, "Regarding this upcoming application on Odell Lane, I respectively request that you hold-off on the specific discussions with me about this particular project until after the Planning Commission has a chance to review the application, hear from the public, and make a recommendation to the City Council. I will then study it in detail and review the pros and cons. I will be glad to discuss past PUD's outcomes, and why in most cases they have been positive for the community." Mr. Church asked from this document how Council Member Porter was in favor of the development, and how he was pro development in the City. Ms. Martin replied that he discusses the previous PUD's in the area. Mr. Church replied that he

discusses that they were good. There is nothing that refers to Brighton Homes in the document, and that Council Member Porter had an inappropriate relationship with Brighton Homes. He replied there is nothing in the document that refers to Brighton Homes, and that it is not inappropriate to confer with constituents. Ms. Jones asked Ms. Martin where the letter was posted. Ms. Martin said she got it through an email, but she does not know where it originated.

Barry Bryson, 349 Odell Lane, represents the residents of the HOA across the street, and his home is closest to the development. Around the first week of February, posting went up across the street. Mr. Bryson gave his concerns to Council Member Porter. Mr. Bryson went to the first City Council meeting, and was shocked when Council Member Porter made the motion to get density down from 24 to 16. The goal of the RM-7 Zone is eight units per acre. His point is that sometime around the first of February, something changed in Council Member Porter's opinion of what was going on, and that he doubled the density. Mr. Bryson felt this is a zoning change, and he feels P-Zones are appropriate, but that it is a manipulation that wouldn't be allowed in the law. Ms. Jones asked if there was a discussion about apartments. He replied there was a discussion to not allow apartments.

Mr. Hall asked Mr. Bryson if there is anything in your interaction with Council Member Porter, other than changing his opinion that was illegal or unethical. Mr. Bryson replied there was nothing illegal or unethical in the email he wrote, but he feels he was patronized.

Ms. Mele asked about her interactions with Council Member Porter, and if there was anything wrong in the letter she received. Ms. Jones replied the City has an online thread, and she was on the thread asking questions with Brianna Cox and Sherrie Llewellyn, and this is when Council Member's Porter's letter came to light. She feels the letter was meant to dissuade the residents to take part in the process, and the letter insinuates the City Council has to do what is in front of them. During intermission of a City Council meeting, Council Member Porter asked why the citizens are pushing for a zone change, when there could be apartments.

Mr. Hall asked Ms. Jones asked if there is any direct evidence that Council Member Porter acted illegally or unethically. She believes it was unethical to advocate for the project so early on. Mr. Hall said a zone change is a legislative act. He asked if she is appealing the legislative act or the administrative act. Ms. Jones was told they had to hold things to an administrative level. She talked about the letter appearing on the North Salt Lake City Utah page. The administrative piece is that the City allowed it to go unaddressed. Ms. Jones stated the timing of the interactions are important, and the City has stipulated to the error. The City set-up the hearing, and the City suggested this is a matter of jurisdiction. Throughout this process, the City has made the citizens feel, at times, they are an irritant. The residents see themselves as shareholders, and to have a voice on an issue that impacts their neighborhood.

Mr. Hall asked Ms. Jones who suggested this was the forum to address your questions. Ms. Jones went to the City and asked what recourse they had. She was told to address their administrative concerns this way. She said the City and Sherrie Llewelyn directed her how to complete the application to set-up this meeting. Mr. Church stated Mr. Hall does not have jurisdiction, as it is the middle of a legislative act. He does not have jurisdiction to hear an appeal from a legislative

decision. This is part of the legislative process that has not yet concluded, and Mr. Hall cannot overturn a legislative act under State Law and City Code to affect that outcome. He cannot overturn the legislative act had it been taken, and the fact that is has not been taken, would make it more problematic.

Mr. Hall asked how you characterize the approval that took place on April 2, 2019, where the General Development Plan was approved. Mr. Church explained this is a step in the legislative process for a P-District. It is a multiple step process; one of which agreeing on the plan proceeds the zone. The actual vote on the zoning ordinance adopting the development plan becomes zoning regulations for that particular district. The residents are arguing this is an administrative act, but it is not. Actual vote on a zoning ordinance becomes zoning regulations for that district, and it is part of multi-step plan. They are appealing because the clerks cannot decide jurisdiction. The issue is on whether this is legislative or administrative. The City Council is an independent body, and they can go forward in making their decisions. The P-District cannot go forward without the General Plan, and this is why it is part of the legislative process.

Mr. Hall asked Sherrie Llewelyn if she was the principal planner from the start on the project, and if she did the analysis of the various applications and compared it to the existing zone. She replied "yes." The existing zone is RM-7. Mr. Church asked if she did an analysis for the City Council on what densities were available under various applications for that zone, and she reported the max is 12.8 units based on calculation for duplexes where it is required to have 8,500 square feet for the duplex. It would be a conditional use in that zone. If it was developed as a single property, whether it was apartments where one owner would own the six units and rented all six units, it would fit within the fit of the setback. This is six buildings with two units per building. She said it would meet the current zone for a PUD under the RM-7 Zone, and it would not require a zone change. She reported the maximum density to the Planning Commission and City Council, and it was reported orally and written in the staff report. She said she did make a mistake at the April 2, 2019 City Council meeting. She explained the maximum density was 12.8 units, and she misspoke and said that means you could do six duplexes, or four three duplexes, or three four duplexes. She should have said you could do six duplexes, or if multiple family units would be based upon a different calculation. The same mistake was in the written staff report. Mr. Church asked if there was any indication that either the Planning Commission, or City Council made their decision to approve the General Development Plan that is being appealed based on a mistake Ms. Llewelyn made. She replied "no", based on the four years she has worked with the City, and the Planning Commission and City Council who understand the zoning, and what the maximum density would be. Mr. Church asked under the General Development Plan that was approved by the City Council, did the developer make concessions with the design of the building that would not be required under the General Development Plan. Ms. Llewelyn explained the developer made concessions on the design of all the buildings, and they are voluntarily moving the sidewalk back from Orchard Drive and adding a park strip. They are dedicating an additional right-of-way on Odell Lane. The developer conceded that no more than a single entity or person can own more than two of the units in the development, so the development cannot be bought solely by one person to rent all 16 units. This could not be required under the RM-7 Zone.

Ms. Jones said it is her understanding that it is the judge's job to see if there was an error. Mr. Hall stated it is his job to make sure the particular provision of the P-Zone was followed. Ms. Jones is concerned of the numbers Sherri Llewelyn used, and that the Planning Commission and City Council have the correct numbers.

Mr. Hall asked when the P-Zone was approved by the City Council. Ms. Llewelyn replied it was before her employment, which would have been at least ten years ago. Mr. Hall asked if Council Member Porter was involved in the original drafting of the P-Zone. Mr. Church replied Council Member Porter has been on the City Council for eleven years, and on the Planning Commission before that. It is a fair assumption that Council Member Porter had involvement in the process of the P-Zone. Ms. Jones said they never cited the City statute in the brief. She recognizes the land is owned by someone else. She feels in key parts of the process, that the City was given the wrong math. Council Member Porter made an error in not recusing himself from the discussion of Brighton Homes.

Mr. Church stated assuming it was an administrative act, the appellants bear the burden of proof. The best plan for this property and for the City is the General Development Plan that has been adopted by the Planning Commission and City Council under the options of the RM-7 Zone. The question is should the plan stand or not stand. The plan should stand because it is the best plan for the property for the benefit of the City and neighborhood. Council Member Porter sent an email to the activists for them to participate, and he gave them basic information. Nothing in the letter is inaccurate, and does not advocate for P-Districts as an option.

Mr. Hall stated he read all of the minutes, exhibits, and plans. Jurisdiction is an issue. Rezoning of a parcel of property is within the legislative prerogative of the elected City Council members. The form of government here is a City Manager and City Administrator. Ken Leetham, City Manager, runs the day-to-day activities of the City. The City Council establishes the broad policies under which Mr. Leetham and the officials must operate, which includes the whole code pertaining to zoning, and the code for zoning, which includes the RM-7 Zone. This zone does not require any special consideration. They are not asking for reduced setbacks, eliminate the park strip, etc. It is approved, and there is no subjectivity to it.

Mr. Hall ruled that he does not have jurisdiction in this matter to overturn the City Council because it is a legislative matter.

1. It is not unethical or illegal for a City Council person to advocate in a legislative matter. It is not bad for a person to sponsor a particular legislation for what an individual thinks is best for the State, or to have an opinion on what is best for the City. Mr. Hall stated he has not heard anything that rises to unethical or illegal conduct.

2. Because of the mistake by the City Planner that influenced the City Council in their recommendation on the second vote, Mr. Hall stated he has no evidence that a mistake influenced the City Council to vote for 16 units for the project. In the event he had jurisdiction, he rules against point one on the administrative error, and finds the influence

of the City Council did not rise to the level of illegal and unethical conduct. The decision is that the appeal of the appellants is denied.

The hearing concluded at 10:15 a.m.

The minutes have been reviewed and approved as written.

Linda Horrocks
City Recorder