

PLANNING COMMISSION MEETING

Tuesday, November 28, 2017 7:00 p.m.

Community Recreation Center

10640 N Clubhouse Drive, Cedar Hills, Utah

Present: David Driggs, Chair, Presiding
Commissioners: Jared Anderson, Craig Clement, John Dredge,
Jeff Dodge, Brian Miller, LoriAnne Spear, Steven Thomas
Chandler Goodwin, City Manager
Denise Andersen, City Council Representative
Colleen Mulvey, City Recorder

1. Call to Order

This meeting of the Planning Commission of the City of Cedar Hills, having been properly noticed, was called to order at 7:01 p.m. by David Driggs.

2. Public Comment

There were no comments.

PUBLIC HEARING

- Review/Recommendation on Final Approval for the Cedars Townhomes Plat E Phase 5

Glenn Dodge, 10331 Morgan Boulevard, expressed his concerns about the builder of these townhomes. The existing townhomes, built by the same developer under a different name, had many structural issues and the HOA and residents have spent a couple million dollars fixing these mistakes. Mr. Dodge asked if the developer had a current geological survey of the property. He then suggested that the previous development had issues with inspectors, because the existing townhomes were not build to code. He said that a City inspector should visit the site weekly. Mr. Dodge also commented on the debris that was left by previous construction.

Scott Walker, 10346 Avondale Drive, agreed with all the comments made by Mr. Dodge, emphasizing his concern about having Edge Homes as the developer. Many of the concerns from the previous development had not been resolved, and the homes were still not up to code. Mr. Walker said that it would be irresponsible for the City to allow the same developer to build again without some serious stipulations put in place. He suggested better inspectors and requiring the installation of retaining walls.

Shirlene Jensen, 10364 Avondale Drive, commented that the existing townhomes were build directly above her home, and the construction caused so much shaking that the foundation in her home cracked. The City needed to implement conditions that would help protect the lower residents. Ms. Jensen also emphasized the need for a current geological study for the area.

Tina Adams, 10357 Morgan Boulevard, agreed with the comments that had been made and added her concern about the existing homes losing their view with these new townhomes. Privacy would be invaded, and there was the risk of earthquakes and landslides to consider.

Mike Carter, 10403 Morgan Boulevard, asked if the Planning Commission represents the developer or the citizens. It was explained to Mr. Carter that the Planning Commission was appointed by the Mayor and City Council to serve Cedar Hills. Mr. Carter pointed out that the developer was not present at the meeting. He felt that they should be present so that they could answer questions and make their case for this development.

David VandenBrink, 10281 Morgan Boulevard, echoed the comments regarding the construction issues of the existing development. He was primarily concerned that the property would be developed by the same developer. Ms. VandenBrink said that the City needed to know how this development would impact the existing neighborhood, and whether they would be part of the existing HOA.

Michael Hilkey, 10292 Morgan Boulevard, said that he was the HOA President and echoed Mr. VandenBrink's question about whether Phase 5 would be part of the HOA or not. He was concerned about the impact this would have on the HOA and the existing homeowners. The HOA was still working to fix the problems with the existing homes.

Jeff Bosgraaf, 10530 Doral Drive, said that he previously lived on Morgan Boulevard for six years, and was the President of the HOA for three years. He reiterated the issues that they faced and said that hundreds of thousands of dollars, as well as hundreds of hours had been spent trying to fix the developer's mistakes and legal action. The problems still have not been resolved. Mr. Bosgraaf agreed that the hefty restrictions should be placed on the developer if they are allowed to develop this Phase.

Andy Jensen, 10364 Avondale Drive, asked if this Phase would need to follow newly adopted City Code requirements, since the original approval granted so long ago. He felt that the development should be subject to the newer ordinance.

Nate Shields, 10423 Morgan Boulevard, said that his home was one that was severely affected by poor construction. He spoke of the issues with his home and with this neighbors' homes. Mr. Shields opined that the developer should not be allowed to build in this community again until they had repaired all the damages they caused.

Russell Fawcett, 10429 Sage Vista Drive, said that his primary concern was that the homes were pretty much built on sand, so there was a high risk of settling and sliding. He asked how the City intended to protect the existing residents.

Michael Williams, 10356 Avondale Drive, said that four of the proposed townhomes would be directly behind his home. At the time of purchase, Mr. Williams had asked the real estate agent if the property behind his home would be developed. He was told that the developer had declared bankruptcy and it was not likely that the property would be developed. If he had known that the same developer would come in and develop, he would not have purchased his home. Mr. Williams said there was potential for those new homes to slide right down into his back yard in the event of a natural disaster or poor construction.

David Fitzpatrick, 10461 Sage Vista, noted that a lot of the comments had been centered around the developer of the townhomes, and those concerns were valid. Mr. Fitzpatrick spoke of the building mistakes that had been made. He said that Phase 5 could open a new can of worms if it wasn't developed correctly.

C. Driggs closed the public hearing.

SCHEDULED ITEMS

3. Approval of Minutes from the October 24, 2017 Planning Commission Meeting

MOTION: C. Clement—To approve the minutes from the October 24, 2017 Planning Commission Meeting. Seconded by C. Spear.

Aye - C. Clement
C. Dredge
C. Dodge
C. Driggs
C. Spear

Motion passes

4. Review/Recommendation on Final Approval for The Cedars Townhomes Plat E Phase 5

C. Driggs first explained the role of the Planning Commission, which was to interpret City Code and determine whether an application meets that code. The Planning Commission was not supposed to act on personal opinions or desires. This particular project was granted final approval in 2002, but Phase 5 was never developed. Now the developer was seeking approval to complete the project.

Chandler Goodwin, City Manager, explained that when a developer owns a piece of land that is zoned residential and has the ability to have homes on it, that developer will come to the City and present a plan. That plan is brought to the Planning Commission for conceptual approval, which is simply a paper drawing. Any engineering takes place after the Planning Commission gives conceptual approval. Once the plan has been designed with an engineer, it will come back to the Planning Commission for a recommendation to the City Council for preliminary approval. There is a public hearing associated with that part of the process. If the City Council gives preliminary approval, the developer of the property is now vested in his right to develop their property. The developer then makes any final changes and brings the plans back for final approval of the Planning Commission and City Council. Once final approval has been granted, the developer can record the plat with the County and begin working with the building departments to obtain building permits. Mr. Goodwin said that the Cedars Townhomes Phase 5 was part of the final approval given in 2002. Phases 1-4 had already been constructed, and Phase 5 had sat dormant for 15 years. This development was part of a Planned Residential Development (PRD) and encompassed the greater Cedars area, which means the developer has a right to continue in this development. Although Phase 5 had previously received approval, the developer had made some minor changes to the original design that should be reviewed.

Mr. Goodwin then presented the original plat for the 12-unit townhome development. He also presented the new plat, which contained 11 units. Mr. Goodwin noted that the units had been

reoriented to face away from the existing townhomes to the west. The engineering, roadway, and accesses had not changed.

C. Driggs commented that there was language in the Background and Findings portion of the packet that says that the plan should come back for approval again if there are extensive or substantial changes to the plan. He wanted to know what defines “extensive” or “substantial”. He felt that the decrease in unit count and reorientation of the units was substantial.

Mr. Goodwin said that staff and the legal department felt that the changes weren’t substantial because the roadway and engineering had not changed. The drainage plan did not change with the loss of one unit. Mr. Goodwin understood that this was a sensitive issue, and staff was not oblivious to the problems at hand. However, the developer had vested development rights with the original plan, and those rights did not expire. He noted that property rights can transfer to new developers. The City was trying to strike a balance between the developer’s rights and addressing the residents’ valid concerns about past construction issues.

Mr. Goodwin then stated that the previous application included geotechnical studies that had been performed in 2000 and 2002. Since that time, Cedar Hills experienced a major landslide, which required the removal of four homes. He suggested that the City require the applicant to provide a new geotechnical study because of the geological changes to the site. He clarified that a supplemental study would not be adequate. Regarding the concept plan, Mr. Goodwin reported that staff had sent the plan to Bowen Collins & Associates (BCA), the City’s engineer, and they had reviewed it and provided some feedback. Mr. Goodwin suggested that staff sit down with the developer to work through that feedback. He also wanted to discuss water rights with the developer.

C. Thomas asked if the PRD would trump any zoning on the property. Mr. Goodwin explained that the PRD gives certain exceptions to City Standards, including zoning requirements. He gave examples of clustered densities and setback requirements. The PRD did not grant any density bonuses.

C. Miller said that he was a resident of this community and he shared the concerns raised by his neighbors. The developer had done a terrible job and escaped essentially unscathed. As the rights run with the land, there was nothing the City could do to stop the development. What they could do was to make sure that Phase 5 was done correctly. The City needed to include conditions that would protect the surrounding homes from the effects of construction, require new geological studies, and hold the developer to the strictest standards to which they are able. C. Miller recommending continuing the item.

C. Miller left meeting at 8:03 p.m.

C. Driggs agreed that the item should be continued, but he felt that they should continue their discussion that night because of residents that were present. They deserved to hear the discussion.

C. Clement asked for clarification on the lawsuit with the developer. Mr. Goodwin stated that the lawsuits were with G&J Construction. The developer now was Edge Homes.

Michael Hilkey explained that G&J Construction was now bankrupt. The HOA President at that time signed over their rights to sue G&J for G&J's right to use the insurance companies. The issue is ongoing.

C. Driggs said that there were a lot of conditions placed on the developer when the project was approved in 2002. He asked if this could be considered a conditional use. Mr. Goodwin explained that the PRD had its own, unique form of development.

In response to another question from C. Driggs, Mr. Goodwin stated that no building permits were issued for Phase 5, so the City was not sure whether the developer had obtained any water rights at that time.

C. Driggs agreed that a new geotechnical study should be done for Phase 5 and said that he was particularly concerned with the western slope and retention efforts. He asked if there was any merit to having more than one study done. Mr. Goodwin didn't think additional studies were necessary. The City would send the report to BCA for them to review.

C. Driggs stated that he would like to see renderings and elevations for the proposed townhomes. Mr. Goodwin said that was more pertinent to the HOA Architectural Review Committee, as there were design standards in the CC&Rs that needed to be followed. Because the project was part of a PRD, they had different design standards than the underlying zoning.

C. Driggs commented that the landscaping ordinances have changed since 2002, and he was unsure that the vegetation list in the original approval was not the same as what is allowed today. He suggested that this be examined.

C. Driggs asked if the orientation of the townhomes would affect the drainage plan. Mr. Goodwin explained that the road has not changed from the original plan, and a drainage plan is primarily for the collection of water on the street surface. He was more concerned about the infrastructure plan. C. Driggs still felt that they needed an updated drainage plan. He also wanted to see the developer subject to a nuisance code regarding the leftover construction debris. He asked if the City Code allowed them to require a warrantee on homes. Mr. Goodwin said that warrantees were a civil matter between the buyer and the developer. C. Thomas commented that the HOA might be able to enforce something like that.

C. Dodge said that most of his concerns had already been stated. He was truly troubled by the thought of allowing this developer to come back into the community. The City wouldn't be able to stop Phase 5 of this development, but they had a responsibility to make sure that it was done correctly. As far as the plans go, he liked that the building footprints were smaller, and he liked the reorientation of the homes. He suggested that moorings be done within each of the building footprints as part of the geological study. C. Dodge also expressed concern about potential drainage into the lower homes and said that the developer needed to address how they would be

mitigating that issue. He agreed with C. Driggs that the landscaping plan should be revisited as well.

C. Dredge said that he was extremely sympathetic to the issues that the residents had brought forward. The City would do their best to ensure the safety of the existing residents while still allowing the developer to complete the project.

C. Spear said that the developer should clean up the leftover debris before being allowed to continue the project, and he should compensate these residents for their troubles.

C. Thomas said that the law does allow someone to go bankrupt and start another company. The City couldn't do anything about who was developing the property, but they could make sure that the plans are in accordance with City Code and potential problems are mitigated.

Mr. Goodwin added that the City could also make a thorough review and make sure that an inspector is sent to the site once a month. Many things had changed since the proposal was originally approved, including staff and a new City inspector. He felt that the City was better apt to handle the development now.

C. Thomas commented that it seemed people were putting a lot of hope into the new geotechnical study. It could be that no issues are found, and the plan can go forward as proposed. Mr. Goodwin said that his hope was that the new study would help them make recommendations on the actual construction of the homes.

C. Thomas said that they couldn't go back and change what was done before. The issues with the existing development were related and important, but the City wouldn't be able to hold up development while they fix those issues.

C. Driggs said that the developer might be willing to remove the debris, but they needed to discuss that with him.

C. Anderson said that he was sensitive to everything that had been stated by the public and this was a unique situation. The City was in a bit of a predicament. If the City requires things of the developer that are found to be unreasonable, they would actually end up in a worse situation. They need to be sure that any conditions they place upon the developer need to be enforceable, and they could not "bootstrap" past issues with this phase of development.

C. Clement understood the frustrations of the residents, but there seemed to be a lack of understanding of what the Planning Commission could do. Their purpose was to interpret City Code. The City Council had a different role that would be more helpful to the residents.

MOTION: C. Dredge—To table the final plan approval for The Cedars Townhomes Plat E Phase 5 subject to further discussion. Seconded by C. Spear.

C. Driggs suggested that they create a list of elements that they wished to discuss with the developer.

After some continued discussion, the Planning Commission produced the following:

- Resolve outstanding issues with the plat and design documents with the City Engineers
- Conduct a new geotechnical report on Phase 5, to include testing and borings in each of the building envelopes, and the west slope retention
- An engineer’s bonded estimate of public improvement performed on the actual location of building sites
- The issue with water rights to be resolved
- Building renderings and landscaping plans are provided
- Drainage in the common area on the west side of Phase 5 to be addressed
- Site sections of uphill and downhill views to be provided

MOTION: C. Dredge—To amend motion to table the final plan approval for The Cedars Townhomes Plat E Phase 5 subject to further discussion and to include the above stated list of items. Seconded by C. Spear.

Aye	-	C. Clement	
		C. Dredge	
		C. Dodge	
		C. Spear	
Nay	-	C. Driggs	Motion passes

MOTION: C. Dredge – To take a short break (8:47 p.m.). Seconded by C. Clement.

Aye	-	C. Clement	
		C. Dredge	
		C. Dodge	
		C. Driggs	
		C. Spear	Motion passes

Meeting reconvened at 8:56 p.m.

MOTION: C. Clement – To move agenda Item #9 to be heard after agenda Item #5.
Seconded by C. Dodge.

Aye	-	C. Clement	
		C. Dredge	
		C. Dodge	
		C. Driggs	
		C. Spear	Motion passes

5. Review/Action on Conceptual Plan for the Wardell Subdivision, located at approximately 9730 North Canyon Road

Mr. Goodwin explained that the applicant was proposing to subdivide one lot into two. The property was located in the R-1-15,000 zone, and there were existing structures on each of the proposed lots. He noted that the applicant would have to work with UDOT regarding driveway access and curb cuts on Canyon Road. They would also be required to install a sidewalk.

C. Driggs said that the second building on the property was a shop rather than a home. It would need to be connected to proper utilities and changed into a residence.

There was some discussion regarding the sewer line, which would come from Canyon Road, which is a county-owned roadway. The City did not have a timeframe for when that would be available.

Mark Wardell, the property owner, said that Canyon Road would be the catalyst behind this development. The County was wrapping up plans for the roadway and would soon go out for bid. He expected the road would be under construction next year. Mr. Wardell's intention was to modify the second building so that it was livable, and it would connect into the sewer line on Canyon Road.

MOTION: C. Clement – To approve the conceptual plan for the Wardell Subdivision.

Seconded by C. Dredge.

Aye - C. Clement
C. Dredge
C. Dodge
C. Driggs
C. Spear Motion passes

9. Discussion on Amendments to City Code Title 10, Chapter 4, Sections 1B and 1F, Relating to Accessory Building Height

Mr. Goodwin explained that he had been approached by Peter Henderson about altering the City Code regarding the height of accessory buildings. The current code limits accessory buildings in any zone to 20 feet in height. Mr. Goodwin had researched what other cities allowed and found that Herriman allowed larger lots to have accessory structures taller than 20 feet, but it also included a stipulation that the accessory structure was required to have a greater setback as the height increased. Mr. Goodwin was favorable to this idea but wanted feedback from the Planning Commission.

C. Spear asked what the current setbacks were for accessory structures. Mr. Goodwin said that it varied by zone, but Mr. Henderson would be required a setback of 8 feet in his zone.

C. Driggs asked if the City had recently rejected or denied other applications for accessory buildings with increased height. Mr. Goodwin said that the ones he knew of were not in this zone. They were in zones with smaller lot sizes and higher densities. Mr. Henderson had quite a large lot that could accommodate an accessory structure with increased setbacks.

C. Dredge said that this situation didn't seem to be common and asked if the Board of Adjustments could grant a variance. Mr. Goodwin said that a variance could only be granted if the hardship was not self-imposed, and that wasn't the case for Mr. Henderson.

C. Driggs said that he had no concerns about this change.

C. Spear commented that the City just made a stipulation on ground mounted solar panels that limited them to 15 feet in height because the panels had generated complaints. Mr. Goodwin explained that the City treated the first application for ground mounted solar panels as accessory structures because they didn't have code language specific to those panels at the time.

C. Dodge said that he was in favor of the change as long as they set up proper guidelines for taller structures.

6. Review/Recommendation on Amendments to the City Code Title 10, Chapter 5, Section 38, Relating to Ground Mounted Renewable Energy Systems

C. Driggs stated that C. Clement had been assigned to research some language for this amendment, and that had been included in the packet.

C. Clement explained that he had incorporated the comments that were made during the last discussion of this code and made comparisons with other cities. He did add language stating that the total surface square footage would be limited to 5% of the total lot area. He also added language stating that a structural engineer would need to certify the solar panels.

C. Driggs commented that during the previous discussion they had talked about changing this to a conditional use. Mr. Goodwin added that they had also discussed only allowing ground mounted solar panels in larger residential zones, specifically the R-1-15,000 and R-1-20,000 zones.

There was a discussion regarding the 5% limitation, and what constitutes the "lot area". It was determined that the "lot area" was the property located behind the main dwelling, not including side yards.

The Planning Commission also discussed how much energy could be produced and put back into the power grid.

C. Spear asked if they needed to include language regarding efficiency standards. C. Thomas said that those standards were included in the National Electric Code. Mr. Goodwin did not think that language needed to be included again in the City Code.

C. Driggs commented that one purpose of the City Code was to educate the public regarding acceptable ground mounted solar panels.

C. Dodge asked the Planning Commission if they felt that 5% of the lot area was sufficient. C. Driggs said that he would be comfortable increasing that to 10%.

Mr. Goodwin reminded them that the calculation only involved the back portion of the property, so 5% may be too small. He stated that anyone who applies for ground mounted solar panels would have to show that they have adequate space for them on their property.

C. Clement asked if there was language requiring a plan to be submitted by the applicant. Mr. Goodwin said that there was not, but the Planning Commission could include that in their motion.

Mr. Goodwin said that the Planning Commission had now discussed making this a conditional use, requiring the applicant to submit plans, and only allowing the panels in certain zones.

C. Clement said that item four seemed redundant and could be removed. C. Driggs commented that the language was an attempt to mitigate views from being obstructed. Mr. Goodwin said that this standard was already established in 10-5-37 which protects the health, safety, and welfare of others.

MOTION: C. Clement—To recommend amending Title 10 Chapter 5, Section 38, with conditions referenced on the document provided, with the addition of requiring a conditional use permit, and requiring plans of a ground mounted solar system submitted for approval, and that it be only allowed in R-1-15,000 & R-1-20,000 zones.

Mr. Goodwin asked for clarification on the request to provide building plans to be approved by building and zoning. The Planning Commission agreed to include the language.

MOTION: C. Clement—To amend motion to add that the plan submitted be approved by the building and zoning departments and in section C adding the language: no more than 5 percent of the rear setback area. Seconded by C. Dodge.

Aye	-	C. Clement	
		C. Dredge	
		C. Dodge	
		C. Spear	
Nay	-	C. Driggs	Motion passes

7. Review/Recommendation on Amendments to the City Code Title 10, Chapter 5, Section 27: Landscaping, Relating to Artificial Turf

Mr. Goodwin presented the proposed amendments and explained that he broke it down into three sections that addressed the look and general appearance of the artificial turf, dictated the minimum standards for installation, and outlined maintenance requirements.

C. Driggs said that during the previous discussion of this issue they had talked about requiring a setback of four feet from the property lines. Mr. Goodwin said that he had included language requiring certain vegetation along property lines, but the Planning Commission could include language about the setback in their motion.

After subsequent discussion, the Planning Commission determined that they would require a setback of four feet for on each property line.

C. Driggs said that the language of C-3 should be more specific. It says that the turf needs to be cleaned regularly and maintained in a neat manner. The word “regularly” could be interpreted

many ways. The Planning Commission discussed including a specific timeframe for cleaning. C. Thomas said that it would be difficult to define how often the turf should be cleaned. It would be better to say that the owner would receive a citation if the turf started to deteriorate.

Mr. Goodwin commented that C-4 seemed unnecessary, as the code spoke about turf replacement in another section.

The Planning Commission decided to add language to C-1 to include a timeframe for turf replacement within six months.

C. Driggs asked if someone was ready to make a motion. C. Dodge commented that the City Council specifically requested that the Planning Commission help to draft this code, even if the Planning Commission was not favorable to the idea of artificial turf. The proposed language would outline how to mitigate potential issues with artificial turf.

MOTION: C. Spear – To recommend amending Title 10 Chapter 5 Section 27 by adding artificial turf as an acceptable landscaping method for the front and side yard areas pending the following changes from staff including the amendments made to C-1 and adding B-8 that describes the 4-foot setback from the side and back property lines.

Seconded by C. Dodge.

Aye	-	C. Clement	
		C. Dredge	
		C. Dodge	
		C. Spear	
Nay	-	C. Driggs	Motion passes

8. Review/Action on the 2018 Planning Commission Meeting Schedule

The Planning Commission had no concerns with the proposed meeting schedule.

MOTION: C. Dredge – To approve the 2018 Planning Commission meeting schedule.

Seconded by C. Spear.

Aye	-	C. Clement	
		C. Dredge	
		C. Dodge	
		C. Driggs	
		C. Spear	Motion passes

ADJOURNMENT

This meeting was adjourned at 9:51 p.m. on a motion by C. Thomas, seconded by C. Dredge and unanimously approved.

Approved:
January 23, 2018

/s/ Colleen A. Mulvey, MMC
City Recorder