

Advisory Opinion #20

Parties: Hamlet Homes and Draper City
Issued: August 9, 2007

TOPIC CATEGORIES:

Entitlement to Application Approval (Vested Rights)
Interpretation of Ordinances

A local government shall approve an application that complies with all of the locality's requirements. An application should be processed and acted upon with reasonable diligence.

DISCLAIMER

The Office of the Property Rights Ombudsman makes every effort to ensure that the legal analysis of each Advisory Opinion is based on a correct application of statutes and cases in existence when the Opinion was prepared. Over time, however, the analysis of an Advisory Opinion may be altered because of statutory changes or new interpretations issued by appellate courts. Readers should be advised that Advisory Opinions provide general guidance and information on legal protections afforded to private property, but an Opinion should not be considered legal advice. Specific questions should be directed to an attorney to be analyzed according to current laws.



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IN RE: DRAPER CITY/HAMLET HOMES ADVISORY OPINION
 STONELEIGH SUBDIVISION
 PHASE 3A

Pursuant to written request of the Office of the Utah Private Property Ombudsman our office has been requested to issue an advisory opinion regarding the approval process and final plat approval for Phase 3A, Stoneleigh Subdivision.

STATEMENT OF FACTS

This office has met with attorneys representing the Applicant, Hamlet Homes and Draper. Each party has provided the office written documents upon which I have relied. The chronology of occurrences and events contained in the documents provided by Hamlet Homes is the most complete prepared record. It is used to recreate the listing on the application.

December 2003	Geologic Hazards Ordinance adopted by Draper City.
January 28, 2004	Geology and Geologic Hazards report completed by James Mccalpin of GEO-HAZ Consulting, Inc.
April 15, 2004	Planning Commission forwards positive recommendation to City Council for the preliminary plat of all phases of Stoneleigh Heights.
April 19, 2004	Review of Geology and Geologic Hazards report completed by Salt Lake County Geologist Darlene Batatian.
May 4, 2004	City Council approves preliminary plat for all phases of Stoneleigh Heights (Oak Vista 12).
June 3, 2004	Supplemental information is provided to Draper City addressing comments received from Darlene Batatian's review. This information is provided by David Fadling of PSI.
June 3, 2004	Geotechnical Engineering Study is completed and submitted to Draper City.
June 4, 2004	Staff Report from Margaret Pahl stating developer's consultants have

responded to the City's consultant's geology and geotechnical review.

June 10, 2004 Planning Commission forwards positive recommendation to City Council for final plat of Phase 1.

June 10, 2004 Request for Council Action prepared by Margaret Pahl for Stoneleigh Heights Phase 1 Final Plat.

June 15, 2004 City Council approves Phase 1 final plat.

January 15, 2005 Planning Commission forwards positive recommendation to City Council for final plat of Phase 2.

February 15, 2005 City Council approves Phase 2 final plat.

August 3, 2006 Planning Commission forwards positive recommendation to City Council for final plat for Phase 3A.

September 5, 2006 City Council continues final approval of Phase 3A until all information requested of staff is supplied and thoroughly analyzed.

December 20, 2006 Darlene Batatian reviews geology and geotechnical information again and agrees that landslides do not affect the development and that mitigation recommendations are not warranted.

January 2, 2007 City Council continues final approval of Phase 3A until legal staff can review and make a recommendation.

January 23, 2007 City Council again continues final plat approval for Phase 3A of Stoneleigh Subdivision for further information.

ADVISORY OPINION

A municipality shall approve an application for subdivision approval when the applicant submits a proposed plat which complies with all of the requirements of the jurisdiction. (Section 10-9a-1a, Utah Code).

In this matter, Hamlet Homes has proceeded with the development of Stoneleigh Subdivision Phase 1-3A. Phases 1 and 2 have been previously approved and constructed with no apparent development difficulties.

Phase 3A was recommended by the Planning Commission for approval in August, 2006 to the City Council.

The matter was on the City Council agenda for approval on September 5, 2006. It was continued to a later date pending receipt of additional information and further staff review.

It was placed back on the City Council agenda on January 2, 2007, presumably because staff had received sufficient information as requested in the September, 2006 City Council meeting. No action was taken at the January 2, 2007 meeting.

The plat approval was again placed on the agenda on January 23, 2007. Again it was continued after the passage of the following motion:

Council member Edwards moved to continue the final plat for Stoneleigh Heights Phase 3 Subdivision until such time as the City can proceed with additional review of the documentation and information that is before them by accepted landslide specialist to determine the impact of the addition of fill on top of a relic slide. Because of the questions relating to the landslide and also the addition of a retention basin after the approval of preliminary plat that the Council finds that there is a compelling public interest to approving this application and if approved at this time that the public interest may be jeopardized by the approval of this. Council member Edwards indicated that it is prudent for the City Council to proceed with the information they have to allow recognized landslide specialist to review and come to a conclusion as to whether this slide area can withstand the addition of fill slopes and homes. Council member Colbert seconded the motion.

The motion states that because of concerns regarding a "relic landslide" and a "retention basin", additional staff review is necessary.

It appears to this office that the motion was not based on any "compelling or credible information" in the file or presented to either City staff or the City Council. While not the "traditional or frequently seen public clamor", the decision to continue the approval for additional information is without a factual or legal basis and is contrary to the intent of Sec 10-9a-509(1a).

This office has reviewed all of the file and information provided to the City staff and City Council. There is no information in the file that is contrary to or contradictory to the analysis and solutions put forth by the applicant or its consultants. Findings beginning in the 2004 PSI report dated June 3, 2004 and as recent as December 20, 2006 indicate that no additional "landslide mitigation recommendations" are warranted.

This office has further reviewed Chapter 9-19 Geologic Hazards Ordinance of the City. Based on the reports contained in the file, no disqualifying conditions are present which would preclude the final plat approval of Phase 3A Stoneleigh Heights.

Without further information or contrary professional opinions, the staff recommendations contained in the staff report dated June 4, 2004, attached as EXHIBIT A must be adopted. If during the development or construction phase, seismic or other concerns are discovered, such issues can be addressed, mitigated and/or corrected at that time.

CONCLUSION

It is the opinion of this officer that no information contained in the file justifies the continued denial of Phase 3A Stoneleigh Heights Subdivision.

DATED this 9th day of August, 2007.

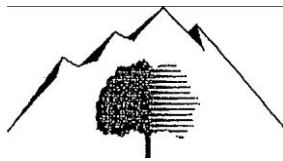
A handwritten signature in black ink, appearing to read 'H. Craig Hall', written over a horizontal line.

H. Craig Hall
Chapman and Cutler LLP

Law Offices of
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EXHIBIT A

[June 4, 2004 STAFF REPORT]



DRAPER CIT-7

Community Development Department

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STAFF REPORT

June 4, 2004

To: Planning Commission
Hearing Date: June 10, 2004

From: Margaret Pahl, Senior Planner
Community Development Department

Re: Stoneleigh Heights
Application No.: JS-2004-0206
Applicant: Hamlet Homes
Project Location: Traverse Ridge Road & Suncrest Drive
Zoning: RM-Suncrest Master Plan
Acreage: 6.19
Request: Final Plat approval for 42 townhouse units

BACKGROUND:

The Planning Commission reviewed the subject project on April 15, 2004. A positive recommendation was forwarded to the City Council. The City Council reviewed the project in May and approved the preliminary plat with the original conditions. The applicant is requesting final plat approval for Phase 1, a 42 unit project within a 6.2 acre parcel. Approval of this phase will require open space dedication of approximately 34.6 acres.

ANALYSIS:

Final Plat is regulated by Title 17-4 which dictates the technical requirements for final plat approval. Most of the requirements are to satisfy the conditions of preliminary plat approval and provide technical drawings addressing all required corrections identified during preliminary review. The applicant has submitted improvement drawings showing all utility installation guidelines, street pavement designs, and proposed final grading plans. These drawings have been reviewed and stamped *approved for construction* by the City Engineer. The bond estimate has been submitted and is under review. These drawings address the Fire Marshal's requirements also for hydrant location and turn-arounds. The geotechnical engineering consultants have responded to the City's consultant review issues and reviewed and approved the grading plans as requested. Though the original conditions remain, most have been resolved and the others regarding the open space deeds and the roll back taxes will be addressed as the final plat records. The proposed plat includes the required disclosure language that the property is included within a geologic hazards area and that the study is on file and available for review. The plat includes a legend identifying the ownership and responsibility delineations among the lettered lots as required by preliminary approval.

STAFF RECOMMENDATION:

Staff recommends that the Commission forward a positive recommendation to the City Council regarding the application for final plat approval by Hamlet Homes, application JS-2004-0206, subject to the following conditions:

1. That the applicant provide to the City the required open space areas to be dedicated prior to recordation of the final plat, and that the areas selected be consistent with those identified in the Master Plan for preservation.
2. That any and all greenbelt rollback taxes for said open space be paid prior to open space dedication.
3. That all requirements of the Engineering Department and Fire Marshall be satisfied.
4. That all applicable City standards, ordinances and requirements are followed.
5. That all lettered lots be designated for ownership and maintenance purposes on the final plat.
6. That the landscaping plan is installed with the phases as allowed by weather conditions.
7. That all areas of non-disturbance and vegetation preservation be protected throughout construction.
8. That the final landscaping plan for the Suncrest Drive buffer zone be delegated to staff.
9. That a geotechnical engineer be present during construction and recommendations followed.
10. That the grading plan be reviewed and approved by the geotechnical engineer working on the project

This recommendation is based on the following findings:

1. That the proposed plan for 42 units on 6.2 acres is consistent with the approved Master Plan.
2. That the townhouse type of housing is a valued addition to the Suncrest Community.
3. That the subdivision, as proposed, would not be detrimental to the health, safety or welfare of the public.
4. That there is adequate infrastructure capacity to accommodate the additional residential units.
5. That the final plat addressed concerns identified during preliminary review and has been approved for construction by the City Engineer.

MODEL MOTION

Sample Motion for Approval — "I move we forward a positive recommendation to the City Council regarding the request by Hamlet Homes for final plat approval, application JS-2004-0206, based on the findings and conditions listed in the Staff Report dated June 4, 2004 and as modified by the conditions below:"

1. List any additional findings and conditions....

Sample Motion for Denial — "I move we forward a negative recommendation to the City Council regarding the request by Hamlet Homes for final plat approval, application JS-2004-0206, based on the findings and conditions listed in the Staff Report dated June 4, 2004 and based on the following findings:"

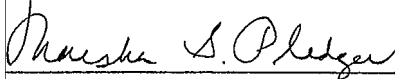
CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing ADVISORY OPINION was served by United States first class mail, postage prepaid, on the 9th day of August, 2007 on the following:

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