



# Staff Report

PLANNING DIVISION  
DEPARTMENT of COMMUNITY and NEIGHBORHOODS

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To: Salt Lake City Appeals Hearing Officer

From: Joel Paterson, [joel.paterson@slcgov.com](mailto:joel.paterson@slcgov.com) or 801-535-6141

Date: December 9, 2021

Re: PLNAPP2021-01026 – Appeal of a Planning Commission Decision to deny a Special Exception for additional building height and grade changes (PLNPCM2021-00372)

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## Appeal of a Planning Commission Decision

**PROPERTY ADDRESS:** 1484 E Tomahawk Drive  
**PARCEL ID:** 09-33-127-037  
**ZONING DISTRICT:** FR-3– Foothills Residential District and Groundwater Source Protection Overlay District  
**MASTER PLAN:** Avenues Master Plan

**APPELLANT:** Jeff Black, abutting property owner

Attached is the documentation submitted for an appeal (PLNAPP2021-01026) regarding the decision of the Planning Commission to approve a special exception request which granted additional building height of up to 5.5 feet and excess grade changes in the buildable area the required rear and side yards (PLNPCM2021-00457).

### **BACKGROUND AND PROJECT DESCRIPTION:**

Mitchell Peterson submitted a special exception application requesting additional building height and an increase in the allowed grade change as part of a process to obtain a building permit for a new single-family dwelling on his vacant lot at 1484 E Tomahawk Dr.

The single-family dwelling is proposed to be three stories with approximately 4,000 square feet of floor area and a lot coverage of approximately 16%. The proposed design complies with the Special Foothills Regulations in City Code section 21A.24.010.P (with the exception of the building height and grade changes) and the specific standards for the FR-3 district in City Code section 21A.24.040.

The Special Foothills Regulations allow the Planning Commission to consider special exception requests for building heights in excess of 28 feet in the FR-3 district and changes of grade in excess of 6 feet within the buildable area of the lot and in excess of 4 feet in required yards. On September 22, 2021, the Planning Commission granted approval of the special exception request to allow up to an additional 5.5 feet of building height and grade changes up to approximately 7 feet.

**September 22, 2021 Planning Commission Meeting** - The request was heard by the Planning Commission at the September 22, 2021 public hearing. A video recording of the Commission meeting can be viewed here - [https://www.youtube.com/watch?v=fFv3Erp\\_hGs](https://www.youtube.com/watch?v=fFv3Erp_hGs). The public hearing for requested

special exceptions begins at time stamp 18:52. The minutes from the September 22, 2021 meeting can be found in [Attachment F](#).

The Planning Commission approved the Special Exception requests based on the analysis and findings listed in the staff report, information presented, and the input received during the public hearing.

The Staff Report for the September 22, 2021 meeting, can be accessed in [Attachment G](#).

**BASIS FOR APPEAL:**

The appellant's application and brief are included as [Attachment B](#) and the City Attorney's response to the appeal is included as [Attachment C](#).

This is an appeal of a Planning Commission decision. Therefore, the Appeal Hearing Officer's decision must be made based on the record. This is not a public hearing; therefore, no public testimony shall be taken.

**ATTACHMENTS:**

- A. [Vicinity Map](#)
- B. [Appeal Application and Documentation](#)
- C. [City Attorney's Brief](#) (Attached Separately)
- D. [Record of Decision](#)
- E. [Motion Sheet](#)
- F. [Minutes from September 22, 2021 Meeting](#)
- G. [Staff Report from September 22, 2021 Meeting](#) (Attached Separately)
- H. [Additional Public Comments Provided to the Planning Commission](#)

**NEXT STEPS:**

If the decision is upheld by the Appeals Hearing Officer, the decision of the Planning Commission stands. If the Planning Commission's decision is not upheld, the matter could be remanded back to the Commission. The decision made by the Appeals Hearing Officer can be appealed to Third District Court within 30 days.

# ATTACHMENT A: VICINITY MAP

## Vicinity Map



# ATTACHMENT B: APPEAL APPLICATION



SALT LAKE CITY PLANNING

## Appeal of a Decision

OFFICE USE ONLY		
Petition #:	Received By:	Date Received:

Appealed decision made by:

Planning Commission       Administrative Decision       Historic Landmark Commission

Appeal will be forwarded to:

Planning Commission       Appeal Hearing Officer       Historic Landmark Commission

Petition Name and # Being Appealed:  
Special Exceptions at 1484 E Tomahawk Dr - PLNPCM2021-00372

### PLEASE PROVIDE THE FOLLOWING INFORMATION

Decision Appealed:  
Approval of building height and grading special exceptions

Address of Subject Property:  
1484 E Tomahawk Dr

Name of Appellant: Jeff Black      Phone: [REDACTED]

Address of Appellant: [REDACTED]

E-mail of Appellant: [REDACTED]      Cell/Fax: [REDACTED]

Name of Property Owner (if different from appellant):  
Mitchell Peterson

E-mail of Property Owner: [REDACTED]      Phone: [REDACTED]

Appellant's Interest in Subject Property:

### AVAILABLE CONSULTATION

Please email [zoning@slcgov.com](mailto:zoning@slcgov.com) if you have any questions regarding the requirements of this application.

### APPEAL PERIODS

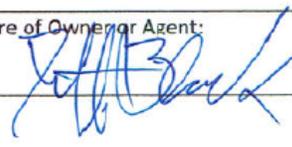
- An appeal shall be submitted within ten (10) days of the decision.
- The Applicant of an HLC decision being appealed can submit within thirty (30) days of the decision.

### REQUIRED FEE

- Filing fee of \$269, plus additional fees for required public notices and multiple hearings. Filing fees must be submitted within the required appeal period. Noticing fees will be assessed after application is submitted

### SIGNATURE

If applicable, a notarized statement of consent authorizing applicant to act as an agent will be required.

Signature of Owner or Agent:       Date: 9/29/21

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## SUBMITTAL REQUIREMENT

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A written description of the alleged error and the reason for this appeal.

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## WHERE TO FILE THE COMPLETE APPLICATION

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Apply online through the [Citizen Access Portal](#). There is a [step-by-step guide](#) to learn how to submit online.

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## INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

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\_\_\_\_\_ I acknowledge that Salt Lake City requires the items above to be submitted before my application can be processed. I understand that Planning will not accept my application unless all of the following items are included in the submittal package.

### **Additional Guidelines for Those Appealing a Planning Commission or Landmarks Commission Decision [Section 21A.16 c<sup>4</sup>](#) of the City Ordinance:**

A person who challenges a decision by the Planning Commission or the Landmarks Commission bears the burden of showing that the decision made by the commission was in error.

The hearing officer, according to state statute, must assume that the decision is correct and only reverse it if it is illegal or not supported by substantial evidence in the record.

"Substantial evidence" means information that is relevant to the decision and credible. Substantial evidence does not include public clamor and emotion. It involves facts and not mere speculation. A witness with particular expertise can provide substantial evidence, but conjecture and public opinion alone are not substantial evidence.

The "record" includes information, including the application by the person seeking approval, the staff report, the minutes of the meeting, and any information submitted to the commission by members of the public, the applicant or others, before the decision was made. It does not include facts or opinion, even expert opinion, expressed after the decision is made or which was not available to the commission at the time the decision was made.

A decision is "illegal" if it is contrary to local ordinance, state statute or case law, or federal law. An applicant is entitled to approval if the application complies with the law, so a person challenging a denial should show that the application complied with the law; a person challenging an approval should show that the application did not conform to the relevant law. Issues of legality are not restricted to the record of the decision, but the facts supporting or opposing the decision are limited to those in the record.

With regard to the factual information and evidence that supports a decision, the person bringing the appeal, according to a long line of decisions handed down by the Utah State Supreme Court and the Court of Appeals, has a burden to "marshal the evidence" and then to demonstrate that the evidence which has been marshaled is not sufficient to support the decision.

The appellant is therefore to:

1. Identify the alleged facts which are the basis for the decision, and any information available to the commission when the decision is made that supports the decision. Spell it out. For example, your statement might begin with: "The following information and evidence may have been relied upon by the Commission to support their decision . . ."
2. Show why that basis, including facts and opinion expressed to the commission is either irrelevant or not credible. Your next statement might begin with: "The information and evidence which may have been relied upon cannot sustain the decision because . . ."

If the evidence supporting the decision is not marshaled and responded to, the hearing officer cannot grant your appeal. It may be wise to seek the advice of an attorney experienced in local land use regulation to assist you.

## ATTACHMENT B: APPEAL DOCUMENTATION

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I would like to request a review of the approval of the PLNPCM2021-00372 special exception request. Two FR-3/12000 residential district rules that clearly apply to this request for special exceptions on height, grade and slope were flagrantly flouted, and another was treated as nonexistent when Planning Commissioner Christensen moved to approve motion [PLNPCM2021-00372 \(1484 E Tomahawk Drive\)](#). A motion to approve was made before there had been any discussion (well one commissioner thanked the staff for their report and said we do indeed take this responsibility seriously - but that was the extent of the discussion). The motion indicated that it was "*Based on the information in the staff report, the information presented, and the input received during the public hearing...*" I find it hard to believe that any public input was considered at all. Especially given the fact that Commissioner Christensen was being kidded about this being his very first hour on the job. When the rest of the commissioners voted unanimously to approve the motion - with no deliberation - they voted to essentially declare null and void two clearly applicable sections of Salt Lake Zoning Code - both specifically regulating the commission's ability to even consider granting special exceptions. If the commissioners had paid any attention to the public comments during the meeting or to the many emails sent to commission staff over the past several months, they might have had a robust discussion that went something like this:

Commissioner 1: Hey aren't we restricted by statute to considering only up to six feet of special exception for slope change on this driveway?

Commissioner 2: No way! The staff report said nothing about that. And what do those neighborhood rabble rousers know about Salt Lake code anyway?

Commissioner 3: How about we look up **21A.24.010.P.6.C** and see what it says?

Commissioner 4: What does the "shall" (in the slope rules) and the "shall not" (in the height rules) mean? Are they directives or are they more like guidelines?

That is the sort of discussion I was expecting.

What we got instead was a staff powerpoint essentially abrogating two of these rules, a staff report with a supposedly comprehensive tables of applicable regulations that left out rules imposed on the Commission regarding slope change and height exceptions and blatantly misinterpreting a crucial definition in FR-3-12000 specific slope restrictions and the commissioners all concurring - with no exchange of views whatsoever.

**21A.24.010.P.2** Limiting the commission's ability to grant additional stories in a FR-3/12000 height special exception request by saying in a powerpoint presentation (the official staff report ignores this rule) "we stopped doing it that way - oh - back in the early 2000's. So if the code does it that way now - there is a conflict in the code with the stuff we deleted. Therefore we should ignore this rule." This is an accurate summary of the actual argument made by the commission staffer. The issue was not even addressed in Mr. Mitchell's presentation. His burden of proof - not met.

**21A.24.10.P.6.C** Restricting to six feet the driveway grade change the commission is allowed to consider in a special exception request was not even considered. It was not mentioned by the staff or in Mr. Mitchell's presentation. Mr. Mitchell's plans, however did show actual illustrations of the ten feet of grade change that would be necessary to build the driveway. This restriction on the commission was the main point of my 2 minute public comment. This was audacious - actually illustrating how you are flouting a rule while ignoring the fact that the rule exists.

**21A.24.40.G** FR-3/12,000 specific rules prohibiting development on slopes greater than 30% on lots subdivided after 1994 was declared inapplicable because according to the staff report, the only instance of 'subdivision' this rule applies to is the original creation of the lot. The subsequent subdivisions of the property are either ignored (in the staff report) or claimed to not count as a subdivision (in email communication with the staff). Rule 21A.24.40.G says nothing that restricts its applicability exclusively to a lot's original creation date. The definition of subdivision in 21A.62.40 defines the term broadly and specifically allows property to be subdivided again (and again as lot 1 has) simply by being divided into two or more units for sale. For the staff interpretation of this rule to stand, you would have to pretend that words - like original, initial, or first - are in the rule. Those concepts are not in the rule. However the word 'resubdivision' is actually in the official definition of "subdivision." There are three post 1994 recorded deeds for Arlington Hills plat G lot 1 that fit the definition of 'subdivision' to a tee. Rule G applies to lot 1. To say otherwise is to ignore the 21A.62.40 definition of word 'subdivision' and to ignore the recorded deeds and legal descriptions of lot 1 that describe it as A lot divided into two units with two different owners.

Specific facts about each of these claims are outlined in the following three sections:

**21A.24.010.P.2 limiting the commission's ability to grant additional stories in a FR-3/12000 height special exception**

**21A.24.10.P.6.C restricting to six feet the driveway grade change the commission is allowed to consider in a special exception request**

**21A.24.40.G FR-3/12,000 specific rules prohibiting development on slopes greater the 30% on lots subdivided after 1994**

As I write this appeal – a full 8 days after the planning commission meeting on Sept 22, 2021 – two days before the appeal is over due - the minutes of the meeting have not been posted on the public meetings web site – so I am unable to quote directly from the minutes. My claims about public comments made during the meeting and staff claims made in the powerpoint presentation given by the planning staff are supported by emails I personally sent to the planning staff and the city attorney and their replies. I'd like to point out the staff email replies were not included in the public comment section of the staff report. I believe they should have been. I have had to quote from some of them in this appeal – because the staff power point is not in the record yet. I would also like to point out that an email I sent to [planning.comments@slcgov.com](mailto:planning.comments@slcgov.com) on the morning of Sept 22 outlining this appeal's concerns was not included in the staff report supposedly reviewed by the commissioners. Several other email exchanges with planning staff were not included in the record either. Only two of my emails outlining two of these three concerns were included in their packet. 21A.24.10.P.6.C was only formally brought to their attention in my public comments during the meeting – no one listened.

## 21A.24.010.P.2 - prohibiting the commission from granting additional stories in a FR-3/12000 height special exception

**The record** (staff report attachment D – Standard A – Rational Column entry) **shows that the applicant is requesting a special height exception in order to build a 3 story house (there is no basement) – the decision to allow this is contrary to FR-3/12000 rules and therefore illegal.**

21A.24.010: GENERAL PROVISIONS: P. Special Foothills Regulations:

2. Height Special Exception: The Planning Commission, as a special exception to the height regulations of the applicable district, may approve a permit to exceed the maximum building height but shall not have the authority to grant additional stories.

21A.62.040: DEFINITIONS OF TERMS:

**BASEMENT:** A story wherein each exterior wall is fifty percent (50%) or more below grade. **For purposes of establishing building height, a basement shall not count toward the maximum number of stories allowed. The exposed portion of the basement wall shall not exceed five feet (5').**

### PowerPoint presentation by staff:

Here is the Planning staff's argument that deleted portions of the ordinance are reaching into the future to cause the current code to have no legal force. This is the same bizarre argument made in the powerpoint presentation to the commissioners:

from: Mills, Wayne <wayne.mills@slcgov.com>  
to: J Black <blackjeffblack@gmail.com>  
cc: "Nielson, Paul" <paul.nielson@slcgov.com>  
date: Sep 21, 2021, 8:28 AM  
subject: RE: (EXTERNAL) PLNPCM2021-00372 - 1484 Tomahawk special exception requests  
.... The prohibition on granting additional stories is a carry-over from zoning regulations that no longer exist...Sometime in the early 2000's the code was changed, and the stories limitation was removed so building height is no longer regulated by the number of stories. Unfortunately, the special exception provisions were not amended, which has created a conflict in our code. The language stating that the Planning Commission cannot grant additional stories is not applicable because there is no limitation on the number of stories that can be built...

I would argue that the city council made it very clear that the residential district rules are stand-alone, independent rules.

### 21A.24.010: GENERAL PROVISIONS:

P. Special Foothills Regulations: The FP Foothills Protection District, section [21A.32.040](#) of this title, and the ... FR-3/12,000 Districts shall be subject to the regulations of this subsection, other general provisions for residential districts, and the district regulations of each district.

1. Special Building Height Controls: Uses and buildings in the ... FR-3/12,000 ...Districts shall conform to the following special height regulations: [section P.2 follows with its 'commission shall not' directive ]

**staff report:**

The staff report on the requested Height Special exception repeatedly refers to the house as a three story house but never addresses the 3 story rule in any of the attachment tables which supposedly list all of the FR-3/12000 Special exception standards:

**p.2: PROJECT DESCRIPTION:**

*"The applicant is requesting approval for the special exceptions in order to construct a new three story single-family residence"*

**ATTACHMENT C: FR-3/12,000 LOT AND BULK REQUIREMENTS**

This table of standards neglects to mention the 3 story height exception prohibition found in 21A.24.010 p.2

It also refers to pages 4-6 of the staff report that also fail to mention this prohibition.

**ATTACHMENT C: FR-3/12,000 LOT AND BULK REQUIREMENTS**

**FR-3/12,000 Foothills Residential District**

**Purpose Statement:** The purpose of the FR-3/12,000 Foothills Residential District is to promote environmentally sensitive and visually compatible development of lots not less than twelve thousand (12,000) square feet in size, suitable for foothills locations as indicated in the applicable community Master Plan. The district is intended to minimize flooding, erosion, and other environmental hazards; to protect the natural scenic character of the foothill areas by limiting development; to promote the safety and wellbeing of present and future residents of foothill areas; to protect wildlife habitat; and to ensure the efficient expenditure of public funds. The FR-3/12,000 Foothills Residential District is intended for application in most areas of foothills development existing as of April 12, 1995.

Standard	Finding	Proposed
Minimum Lot Area: 12,000 sq ft Minimum Lot Width: 80 ft	Complies	The subject lot is approximately 0.36 acre (15,681 square feet) in size.  The subject lot is 90 feet wide.
Maximum building Height: In the FR-2, FR-3 and FP Districts, the maximum building height shall be twenty-eight (28') measured from established grade. The front and rear vertical building walls shall not exceed twenty-five feet (25') measured from finished grade.  On a corner lot, roof gable ends which face onto either the front or corner side yard, but not both, are permitted to a height of twenty-eight feet (28').	<b>Requires Special Exception Approval</b>	The applicant is requesting additional building height. The requested height ranges from 1'-3 3/8" to 4'-1 1/2". The tallest point is located on the street facing elevation. The additional height is for three sections of the roof overhangs. For additional information on this exception, refer to pages 4-6 of the Staff Report.

**Attachment D - Standard A:**

Admits that the request for additional height is for a 3rd story:

***"The proposed construction reduces extensive grading by requesting for additional height to achieve the three-story single-family structure."***

**ATTACHMENT D: SPECIAL EXCEPTION STANDARDS**

**21A.52.060: General Standards and Considerations for Special Exceptions:**

No application for a special exception shall be approved unless the planning commission or the planning director determines that the proposed special exception is appropriate in the location proposed based upon its consideration of the general standards set forth below and, where applicable, the specific conditions for certain special exceptions.

Standard	Finding	Rationale
<b>A. Compliance with Zoning Ordinance and District Purposes:</b> The proposed use and development will be in harmony with the general and specific purposes for which this title was enacted and for which the regulations of the district were established.	Special Exception for Grading: <b>Complies</b>  Special Exception for Additional Height: <b>Complies</b>	The proposed Special Exceptions are generally in harmony with, and does not hinder, the overall intent of the zoning ordinance found in 21A.02.030.  <i>"The purpose of the FR-3/12,000 Foothills Residential District is to promote environmentally sensitive and visually compatible development of lots not less than twelve thousand (12,000) square feet in size, suitable for foothills locations as indicated in the applicable community Master Plan. The district is intended to minimize flooding, erosion, and other environmental hazards; to protect the natural scenic character of foothill areas by limiting development; to promote the safety and wellbeing of present and future residents of foothill areas; to protect wildlife habitat; and to ensure the efficient expenditure of public funds. The FR-3/12,000 Foothills Residential District is intended for application in most areas of foothills development existing as of April 12, 1995."</i>  Staff finds that the proposed special exceptions comply with the purpose statement of the FR-3 zoning district. The proposed construction attempts minimal grading to achieve a development that is similar to what is found in the neighborhood. The proposed construction reduces extensive grading by requesting for additional height to achieve the three-story single-family structure. The proposal aligns with the natural slope of the subject property.

However, attachment D entry on Special Exception Standards also neglects to mention the additional standard this request can't meet - 21A.24.010: GENERAL PROVISIONS: P. Special Foothills Regulations: 2 :

	Height: <b>Complies</b>	
<b>G. Compliance with Standards:</b> The proposed use and development complies with all additional standards imposed on it pursuant to this chapter.	<b>D Special Exception for Grading: Complies</b>  Special Exception for Additional Height: <b>Complies</b>	The table in the next attachment analyzes the proposal's compliance with the special exception standards for additional building height, which are specific to requests being made for developments within the Foothills Residential zones. Staff finds that the project is in compliance with all of those standards.

## Attachment E on Standards for Additional Height

This is completely misleading. It does quote the 21A.24.10.p rule but then neglects to include it in the table of standards - this is the only mention of the 3 story height exception prohibition in the entire staff report – If it had been included in the table of standards, how could staff possibly put a “complies” in the “finding” column? They couldn't, so they left it out of the list of standards. Careless at best. But it fits a pattern of staff actually advocating on the applicant's behalf.

### ATTACHMENT E: STANDARDS FOR ADDITIONAL HEIGHT

**21A.24.P.2: Height Special Exception:** The Planning Commission, as a special exception to the height regulations of the applicable district, may approve a permit to exceed the maximum building height but shall not have the authority to grant additional stories. To grant a height special exception the Planning Commission must find the proposed plan:

Standard	Finding	Rationale
a. Is a design better suited to the site than can be achieved by strict compliance to these regulations; and	Complies	In the submitted narrative, the applicant claims that the proposed two-story structure and requested height minimizes the degree of slope disturbance on the property. If the height was lowered, the degree of grade changes would increase. Staff finds that the proposal complies with this standard, since the area of greatest height is along the east building facade and directly reflects the greatest drop in grade on the lot.
b. Satisfies the following criteria:  (1) The topography of the lot presents difficulties for construction when the foothill height restrictions	(1) Complies	Regarding topographical challenges, the subject property has between 20% and 82%. The degree of existing grade poses difficulties for construction. The proposed structure is placed on the lesser degree of slope, so that the remaining activities to be constructed. The

## Motion Sheet:

Finally - the motion sheet itself - actually quotes the prohibition on granting additional stories in a height special exception - yet commissioner Christensen moved to grant the height special exception for the 3 story house. This motion actually denies itself with its own motion sheet. Yet the commissioners all voted yes on the motion to approve - presumably based on the staff powerpoint presentation - where the claim was made that this rule has no legal force and can be ignored.

### **Motion Sheet for PLNPCM2021-00372 (1484 E Tomahawk Drive)**

#### **Motion to approve:**

Based on the information in the staff report, the information presented, and the input received during the public hearing, I move that the Planning Commission approve PLNPCM2021-00372.

#### **SPECIFIC HEIGHT SPECIAL EXCEPTION STANDARDS**

Height Special Exception: The Planning Commission, as a special exception to the height regulations of the applicable district, may approve a permit to exceed the maximum building height but shall not have the authority to grant additional stories. To grant a height special exception the Planning Commission must find the proposed plan:

- a. Is a design better suited to the site than can be achieved by strict compliance to these regulations; and

## Emails re. height and story prohibition

From: pat richards <>

Sent: Wednesday, September 15, 2021 11:33 AM

To: Mitchell, Linda

Subject: (EXTERNAL) request for special exception PLNPCM2021-00372

*Regarding the height special exception request, the Approval Criteria for Additional Building Height in the Foothills Residential Districts (21A.24.010P: Special Foothills Regulations) #2 States, "The Planning Commission, as a special exception to the height regulations of the applicable district, may approve a permit to exceed the maximum building height, but shall not have the authority to grant additional stories." The architectural drawings shared with the GACC clearly show that the proposed design is a multi-level structure with 3 levels – a lower level, a main level on the street level, and a third level (second story above the street level). Approval of this additional story (above the main street level) appears to fall outside of the approval authority of the Planning Commission.*

From: J Black <blackjeffblack@gmail.com>

Sent: Friday, September 17, 2021 11:10 AM

To: Mills, Wayne <wayne.mills@slcgov.com>; Mitchell, Linda <linda.mitchell@slcgov.com>

Subject: PLNPCM2021-00372 - 1484 Tomahawk special exception requests

*..... The structure proposed for the new construction is a 3 story house – the lower floor does not meet the definition of a basement. The Salt Lake ordinance 21A.24.010P expressly states that the Planning Commission "shall not have the authority to grant additional stories" when approving special height exceptions. As the existing code has been written to expressly provide for safety and minimize risk, I strongly encourage you to adhere to the ordinance as written. I believe the design as presented does not conform to the regulations and therefore the special exception should not be granted in this situation unless an appropriate modification to the design (limiting it to 2 stories) can be submitted.....*

**21A.24.10.P.6.C - restricting to six feet the driveway grade change the commission is allowed to consider in a special exception request**

**The applicant, planning commission and staff completely ignored one section of the FR-3/12000 zoning ordinance (21A.24.010.P.6.c) explicitly limiting their ability to grant grade change special exceptions to six feet for the construction of a driveway.**

**21A.24.10.P.6.C:**

*As necessary to construct driveway access from the street to the garage or parking area **grade changes and/or retaining walls up to six feet (6')** from the established grade shall be reviewed as a special exception subject to the standards in [chapter 21A.52](#) of this title.*

**21A.52.30.5:**

*Additional foothills building height, including wall height, shall comply with the standards in [chapter 21A.24](#) of this title.*

Note that chapter 21A.52 does not allow for any special exceptions to the driveway rule. It does however reiterate that 21A.24 is in fact intended to regulate building height – contradicting the planning staff claim that the height and stories regulations don't apply.

The existence of 21A.24.10.P.6.C was pointed out to [planning.comments@slcgov.com](mailto:planning.comments@slcgov.com) on the morning of Sept 22nd. The email was not included in attachment F (public comments). I did bring this issue to the attention of the commissioners in my 2 minute comment period. They may remember that I told the commissioners that after I moved in next door 5 years ago I obtained a color coded topo map from the County surveyor's office and took it to the planning department and asked whether the lot was buildable. I was told about the driveway rule and was also told that planning's hands were tied by this rule. They would never approve a driveway on such a steep slope. I suggested that they are bound by rule 21A.24.010.P.6.c as much now as they were then. I pleaded with them to read this rule for themselves before they voted. It generated no discussion whatsoever.

The staff report actually illustrates that the proposed driveway needs 10 or more feet of slope change. Here is a more accurate, much larger red triangle:

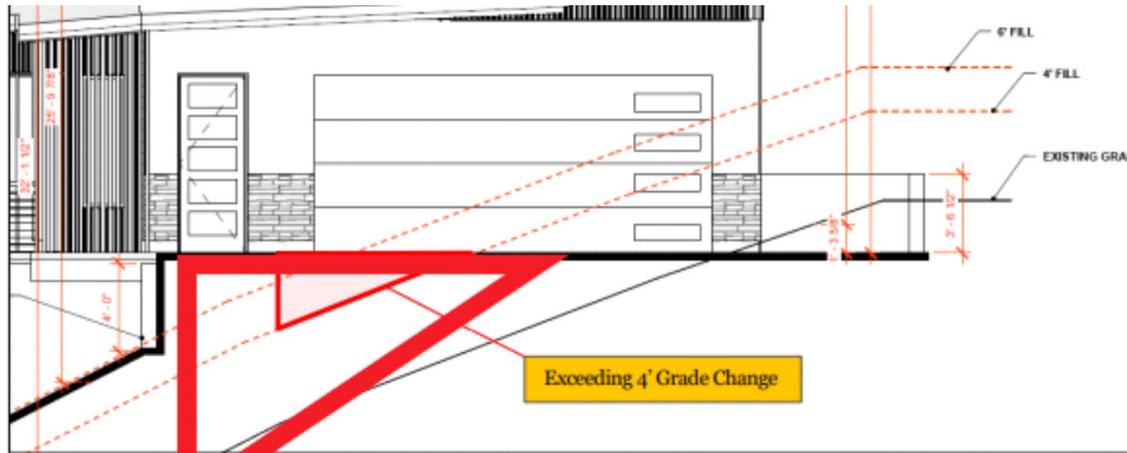
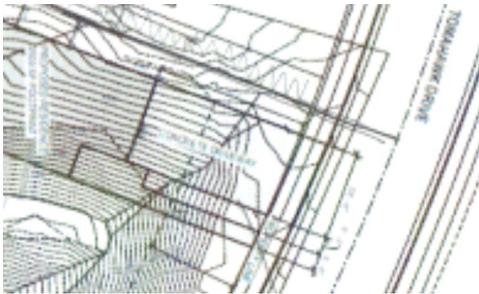


Figure 1: Grade Change Exception in the Front Yard for the Driveway (North Elevation)  
 exceeding allowed (up to 6') grade change by over 4 feet



Driveway topo shows over 10 feet of contour lines between both E. to W. Sides of the driveway and the N. to S. Ends of the driveway.

P. 7 of the staff report references 21A.24.010.P.6. A and B which says "grade shall not be altered by more than 4' but then outlines how changes over 6' in the buildable area and 4' in the side and rear can be granted as a special exception (see P.6.A & B). These are not the driveway rules! **The existence of 6.C - specifically addressing driveways is completely ignored in the staff report.** Here is what 21A.24.010.P.6.c says about the driveway:

*"As necessary to construct driveway access from the street to the garage or parking area **grade changes and/or retaining walls up to six feet (6')** from the established grade shall be reviewed as a special exception subject to the standards in [chapter 21A.52](#) of this title."*

Even the public announcement of the Sept 22 Commission meeting misstates the rule. It said "The grade changes require approval to exceed ... 4 feet ... for a portion of the driveway..."

It should have read: "A special exception in Grade changes necessary to construct a driveway may be considered only up to six feet..."

The commission has exceeded its authority by ignoring **21A.24.10.P.6.C** entirely.

**21A.24.40.G FR-3/12,000 specific rules prohibiting development on slopes greater than 30% on lots subdivided after 1994**

**According to the staff report, the only instance of subdivision this rule applies to is the original creation of the lot. This interpretation is not supported by the actual wording of the rule nor by the actual definition of the word 'Subdivision' found in 21A.62.040 Definition of Terms or by Utah State law which recognizes subdivision by deed.**

**21A.24.40 FR-3/12,000 FOOTHILLS RESIDENTIAL DISTRICT:**

A. **Purpose Statement:** The purpose of the FR-3/12,000 Foothills Residential District is to promote environmentally sensitive and visually compatible development of lots not less than twelve thousand (12,000) square feet in size, suitable for foothills locations as indicated in the applicable community Master Plan. **The district is intended to minimize flooding, erosion, and other environmental hazards; to protect the natural scenic character of foothill areas by limiting development; to promote the safety and well being of present and future residents of foothill areas; to protect wildlife habitat; and to ensure the efficient expenditure of public funds. The FR-3/12,000 Foothills Residential District is intended for application in most areas of foothills development existing as of April 12, 1995.**

D. **Maximum Building Height:** See subsections [21A.24.010P1](#) and P2 of this chapter.  
[Note that once again the height and stories rule is reiterated]

G. **Slope Restrictions:** For lots subdivided after November 4, 1994, no building shall be constructed on any portion of the site that exceeds a thirty percent (30%) slope. All faces of buildings and structures shall be set back from any nonbuildable area line, as shown on the plat if any, a minimum of ten feet (10') and an average of twenty feet (20').

**21A.62.010: DEFINITIONS GENERALLY:**

For the purposes of this title, **certain terms and words are defined and are used in this title in that defined context.** Any words in this title not defined in this chapter shall be as defined in "Webster's Collegiate Dictionary". (Ord. 26-95 § 2(31-1), 1995)

**21A.62.040: DEFINITIONS OF TERMS:**

[https://codelibrary.amlegal.com/codes/saltlakecityut/latest/saltlakecity\\_ut/0-0-0-72045](https://codelibrary.amlegal.com/codes/saltlakecityut/latest/saltlakecity_ut/0-0-0-72045)

**SUBDIVISION:** Any land that is divided, resubdivided or proposed to be divided into two (2) or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.

**BASEMENT:** A story wherein each exterior wall is fifty percent (50%) or more below grade. For purposes of establishing building height, a basement shall not count toward the maximum number of stories allowed. The exposed portion of the basement wall shall not exceed five feet.

**PLAT:** to make a plan, map, or chart of a piece of land with actual or proposed features (such as lots) [this word is not defined in 21A.62.040 so we are instructed to use <https://www.merriam-webster.com/>]

Utah State code also recognizes subdivision with deeds:

**Effective 5/5/2021**

**10-9a-103. Definitions.**

(65) (a) *"Subdivision" means any land that is divided, resubdivided, or proposed to be divided into two or more lots or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.*

**"Subdivision" includes:**

- (b) *the division or development of land, whether **by deed**, metes and bounds description, (i) devise and testacy, map, plat, or other recorded instrument, regardless of whether the division includes all or a portion of a parcel or lot*
- (c) *"Subdivision" does not include:*
  - (i) *a boundary line agreement recorded with the county recorder's office between owners of adjoining parcels*

<https://le.utah.gov/xcode/Title10/Chapter9A/10-9a-S103.html>

Rule 21A.24.40.G is the only one of these three rules that was actually admitted in the staff report. But in the report and presentation to the commissioners, it was completely mischaracterized. The key term that triggers this rule is the word 'Subdivision'. A fair minded evaluation of this rule requires the definition to be consulted. The staff report does no such thing. The staff simply reports: "The lot was subdivided before 1994..." implying that it could not possibly have been subdivided again later.

**ATTACHMENT C: FR-3/12,000 LOT AND BULK REQUIREMENTS**

**FR-3/12,000 Foothills Residential District**

**Purpose Statement:** The purpose of the FR-3/12,000 Foothills Residential District is to promote environmentally sensitive and visually compatible development of lots not less than twelve thousand (12,000) square feet in size, suitable for foothills locations as indicated in the applicable community Master Plan. The district is intended to minimize flooding, erosion, and other environmental hazards; to protect the natural scenic character of the foothill areas by limiting development; to promote the safety and wellbeing of present and future residents of foothill areas; to protect wildlife habitat; and to ensure the efficient expenditure of public funds. The FR-3/12,000 Foothills Residential District is intended for application in most areas of foothills development existing as of April 12, 1995.

Standard	Finding	Proposed
Slope Restrictions: For lots subdivided after November 4, 1994, no building shall be constructed on any portion of the site that exceeds a thirty percent (30%) slope. All faces of buildings and structures shall be set back from any non-buildable area line, as shown on the plat if any, a minimum of ten feet (10') and an average of twenty feet (20').	NA	The lot was subdivided before 1994 and the plat does not reference any development restrictions.

The definition and understanding of the term 'Subdivision' that we are to use is clear. The definition section of chapter 21A tell us that words in the 21A.62.040 list are to be understood as defined in 21A.62.010 and 'subdivision' is not defined as the original creation/platting of a lot.

**21A.62.010:**

*For the purposes of this title, **certain terms and words are defined and are used in this title in that defined context.***

Subdivide is defined broadly as land that is subdivided or resubdivided into 2 or more units of any kind for sale or development. The staff report implies – there is no discussion or rationale provided – it simply implies that the subdivision that occurred when the lot was first platted is the only subdivision we need to consider. That is clearly wrong. The definition plainly includes repeats. Deeds that describe lot 1 as having an Easterly and Westerly unit have been recorded three times since 1994.

Here is the current legal description of lot 1, 1484 E Tomahawk – it clearly has been divided into two units:

*LOT 1, ARLINGTON HILLS PLAT G. EXCEPT THE W'LY 10 THEREOF.*

Here is the legal description of 1474 E Tomahawk:

*LOT 2, & THE W'LY 10 FT OF LOT 1, ARLINGTON HILLS PLAT G.*

The issue of what qualifies as a subdivision is particularly important to me as the legal owner of the Westerly 1500 square feet of lot 1. When I inquired about incorporating the portion of lot 1 that I own into my lot 2 of Arlington Hills Platt G, I was told that I would need a recorded survey or a recorded subdivision by deed document. The only survey recorded with Salt Lake County shows the original 1975 lot lines – there has been no relocation of lot lines – hence the legal description describing an Easterly and Westerly portion of lot 1. To perform a lot line adjustment – of which there is currently no record – I will need the planning commission staff to recognize my recorded deed as a subdivision by deed. In the context of this controversy, they seem unwilling to do that. I'm left hanging, while planning staff contorts themselves to maintain that the division, resubdivision and sale of lot 1 are actually just a lot line adjustments not subdivisions, while simultaneously acknowledging that an official recorded lot line adjustment never occurred. I include the emails below simply as an example of the crazy making contortions of logic the planning staff have had to go through in order to maintain that lot 1 has been subdivided once and only once. These are all responses to my emails questioning the legality of the [PLNPCM2021-00372 \(1484 E Tomahawk Drive\)](#) request. Every email had the case number in the subject heading. They should be considered part of the public record as should the responses from planning staff.

In an email to me dated 9/1/2021 at 3:04 pm Linda Mitchell wrote:

*"I could not find any official city record showing that a lot line adjustment was processed through the city for the additional 10 foot that is noted on your deed..."*

In an email to me on 9/3/2021 at 1:39 pm, Wayne Mills wrote something I can make no sense of but it seems to be saying that the deeds actually are lot line adjustments:

*“This restriction does not apply to the subject property because the subdivision that created the lot occurred prior to 1994. I understand the confusion regarding lot line adjustments, but a lot line adjustment is not a subdivision. A subdivision results in the creation of additional lots. [not true] A lot line adjustment does not create new lots. It is simply the relocation of existing property lines as stated in the definition section of the Subdivision ordinance in City Code (Section 20.08.020). Utah State Code supports this argument further by specifically stating that a subdivision does not include “a lot line adjustment” (Utah State Code, 10-9a-103(65)(c)(vii). Even if there is a claim that a lot line adjustment is a subdivision (and that claim would be incorrect), the 30% non-buildable slope rule would still not apply to this lot because the lot line adjustment occurred in 1987.*

In an email to me dated 9/9/2021 at 4:30 pm Wayne Mills wrote:

*“We quite often deal with situations where ... property was subdivided with simple deeds recorded at the county. This was a pretty common occurrence ...”*

The staff report simply states that “the lot was subdivided before 1994” and finds that the standard is not applicable. Numerous emails and phone calls pointed out that there were subsequent subdivisions, several after 1994. These are in the record of public comments. The staff presentation and report don't even attempt to address this issue. Although you can see in email responses, the staff does recognize the legal description of lot 1 divided into two units. They simply restate the non-sequitur. This is a lot like saying “you got married in 1975 – your 2021, 2018 and 2016 marriages don't count. For the staff interpretation of this rule to stand you would have to pretend that words - like original, initial, or first - are in the rule. Those concepts are not in the rule. However the word “resubdivision” is actually in the official definition of “subdivision”. There are three post 1994 recorded deeds for 'Arlington Hills plat G lot 1' that fit the definition of 'subdivision' perfectly. Rule G applies to lot 1. To say otherwise is to ignore the 21A.62.40 definition of the word 'subdivision' and to ignore the legal descriptions and subdivisions by deed of lot 1 that describe it as lot divided into two units with two different owners.

I expect that if this unassailable line of reasoning is accepted by the hearing officer, the applicant will argue that a 1987 deed with the subdivision language still grandfathered him out of this rule. I would argue that if language in the deed describing lot 1 as divided into two units for sale meets the definition of 'subdivision' then similar language in subsequent deeds also meet the definition since subdivision equals resubdivision. Remember, subdivision is a lot like marriage, you can do it again and again by saying the same words.

*21A.24.40.G FR-3/12,000 specific rules - rules that have been in place for 2 generations now - prohibiting development on slopes greater the 30% on lots subdivided after 1994 absolutely apply here. The applicant never even addressed this issue therefore did not meet his burden. The staff response can only be described as non sequitur.*

**Addendum 1**

**for the hearing officer assigned to review this appeal:**

*Next time a foothills special exception request comes before the commissioners and they all decide to take their marching orders from their staff rather than the city council's ordinance, I have written marching chant that will help them remember that the commission has their own staff house rules on the subject:*

1, 2, 3, 4

I don't know but I've been told

1, 2, 3, 4

We're exempt from Salt Lake Code

1, 2, 3, 4

FR3 slash 12 thous- und

1, 2, 3, 4

can't do re – sub – div – ision

1, 2, 3, 4

Rules gov - ern – ing the foothills

1, 2, 3, 4

Abrogated by Wayne Mills

1, 2, 3, 4

## Addendum 2

### Reading comprehension quiz:

1. How many 1' contour lines can be found between the East and West sides of the proposed driveway? \_\_\_\_\_
2. According to Salt Lake Zoning Ordinance 21A.24.10.P.6.C, to construct driveway access from the street to the garage, what is the maximum number of feet the Commission may consider in a special exception request? \_\_\_\_\_
3. Where in the Staff report list of applicable standards is 21A.24.10.P.6.C mentioned?

- 
4. Which attachment to the staff report contains the following statement? *"The proposed construction reduces extensive grading by requesting for additional height to achieve the three-story single-family structure."*  
\_\_\_\_\_
  5. What is the one thing that ordinance 21A.24.10.P.2 says the Commission shall not have the authority to do do? \_\_\_\_\_
  6. How many warranty deeds describing Arlington Hills Plat G Lot 1 as being divided into two units have been recorded since 1994? \_\_\_\_\_
  7. *Extra credit bonus question.* What is the Guinness word record for most legal marriages by one man?  
\_\_\_\_\_ By one woman? \_\_\_\_\_

### Quiz answers:

1- 10 2- 6 3- nowhere 4- attachment D 5- grant additional stories 6- 3

7- Glynn "Scotty" Wolfe was married 29 times. His widow, Linda Essex-Wolfe, has held the record as world's most often married woman with 23 husbands



**ATTACHMENT C: CITY ATTORNEY'S BRIEF**

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**Attached Separately**

# ATTACHMENT D: RECORD OF DECISION

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DEPARTMENT of COMMUNITY AND NEIGHBORHOODS

Erin Mendenhall  
MAYOR

Thomas Blake  
DIRECTOR

September 23, 2021

Mitchell Peterson  
39 Q Street  
Salt Lake City, Utah 84103

Re: RECORD OF DECISION FOR SPECIAL EXCEPTION – 1484 E Tomahawk Drive

Mr. Peterson,

This letter is the Record of Decision relative to petition PLNPCM2021-00372 regarding a request for Special Exceptions to exceed the grade changes in the front yard, rear yard, and the buildable area, as well as to exceed the 28' height limitation as shown on the plans reviewed and approved by the Planning Commission. The property is located in the FR-3/12,000 Foothills Residential District.

On September 22, 2021, the Salt Lake City Planning Commission approved the request. The decision of the Planning Commission was based on the analysis and findings listed in the staff report, testimony and plans presented during the meeting. The decision considers the general purpose of the zoning ordinance as well as the purpose of the zoning districts where the proposal is located.

The purpose of the FR-3/12,000 (Foothills Residential) zoning district is as follows:

*The purpose of the FR-3/12,000 Foothills Residential District is to promote environmentally sensitive and visually compatible development of lots not less than twelve thousand (12,000) square feet in size, suitable for foothills locations as indicated in the applicable community Master Plan. The district is intended to minimize flooding, erosion, and other environmental hazards; to protect the natural scenic character of foothill areas by limiting development; to promote the safety and wellbeing of present and future residents of foothill areas; to protect wildlife habitat; and to ensure the efficient expenditure of public funds. The FR-3/12,000 Foothills Residential District is intended for application in most areas of foothills development existing as of April 12, 1995.*

Special Exception:

*A "special exception" is an activity or use incidental to or in addition to the principal use(s) permitted in a zoning district or an adjustment to a fixed dimension standard permitted as exceptions to the requirements of this title of less potential impact than a conditional use but which requires a careful review of such factors as location, design, configuration and/or impacts to determine the desirability of authorizing its establishment on any given site.*

The minutes of the Planning Commission meeting are tentatively scheduled to be adopted on October 13, 2021. Copies of the adopted minutes will be posted on the Planning Division's website the day after they are adopted at: <https://www.slc.gov/planning/planning-commission-agendas-minutes/>

DEPARTMENT OF COMMUNITY & ECONOMIC DEVELOPMENT  
P.O. BOX 145480  
451 SOUTH STATE STREET, ROOM 406  
SALT LAKE CITY, UT 84114-5480

WWW.SLCGOV.COM/CED  
TEL: 801-535-7757 FAX: 801-535-6174

This Record of Decision is provided to you indicating the date, the action taken, to approve the request with conditions, the pertinent appeal periods; and, to what body an appeal can be made.

To obtain a building permit, the element of the development subject to the special exception approval must be consistent with the plans reviewed and approved by the Planning Commission. Modifications require review by Planning Division and may require additional review by the Planning Commission depending on the extent of the modification.

The special exception approval shall expire in one year unless a building permit has been issued or complete building plans have been submitted to the division of building services and licensing within that period and is thereafter diligently pursued to completion, or unless a certificate of occupancy is issued and a use commenced within that period, or unless a longer time is requested and granted by the planning commission. Any request for a time extension shall be required not less than 30 days prior to the 12 month time period.

Appeal by an Affected Party

There is a 10-day appeal period in which any party entitled to appeal can appeal the Planning Commission's decisions to the city's Appeals Hearing Officer. This appeal period is required in the City's Zoning Ordinance and allows time for any affected party to protest the approval, if they so choose. Any appeal, including the filing fee, must be filed by the close of business on October 4, 2021.

If you have any further questions about the Planning Division's processes, please contact me at (385) 266-8461 or by e-mail at [wayne.mills@slcgov.com](mailto:wayne.mills@slcgov.com).

Sincerely,



Wayne Mills  
Planning Manager

cc: Case file PLNPCM2021-00372

# **ATTACHMENT E: MOTION SHEET**

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## **Motion Sheet for PLNPCM2021-00372 (1484 E Tomahawk Drive)**

### **Motion to approve:**

Based on the information in the staff report, the information presented, and the input received during the public hearing, I move that the Planning Commission approve PLNPCM2021-00372.

### **Motion to approve with conditions modified by the Commission:**

Based on the information in the staff report, the information presented, and the input received during the public hearing, I move that the Planning Commission approve PLNPCM2021-00372 with the conditions listed in the staff report, with the following modifications:

1. List the conditions that are to be modified, added, or removed.

### **Motion to deny:**

Based on the information in the staff report, the information presented, and the input received during the public hearing, I move that the Planning Commission deny PLNPCM2021-00372 because evidence has not been presented that demonstrates the proposal complies with the following standards:

1. (the commission should make findings related to which standards are not complied with)

## **STANDARDS FOR THE ADDITIONAL HEIGHT AND GRADE CHANGES 21A.52.060: GENERAL STANDARDS AND CONSIDERATIONS FOR SPECIAL EXCEPTIONS:**

- A. Compliance With Zoning Ordinance And District Purposes: The proposed use and development will be in harmony with the general and specific purposes for which this title was enacted and for which the regulations of the district were established.
- B. No Substantial Impairment Of Property Value: The proposed use and development will not substantially diminish or impair the value of the property within the neighborhood in which it is located.
- C. No Undue Adverse Impact: The proposed use and development will not have a material adverse effect upon the character of the area or the public health, safety and general welfare.
- D. Compatible With Surrounding Development: The proposed special exception will be constructed, arranged and operated so as to be compatible with the use and development of neighboring property in accordance with the applicable district regulations.
- E. No Destruction Of Significant Features: The proposed use and development will not result in the destruction, loss or damage of natural, scenic or historic features of significant importance.
- F. No Material Pollution Of Environment: The proposed use and development will not cause material air, water, soil or noise pollution or other types of pollution.
- G. Compliance With Standards: The proposed use and development complies with all additional standards imposed on it pursuant to this chapter. (Ord. 10-16, 2016)

## **SPECIFIC HEIGHT SPECIAL EXCEPTION STANDARDS**

Height Special Exception: The Planning Commission, as a special exception to the height regulations of the applicable district, may approve a permit to exceed the maximum building height but shall not have the authority to grant additional stories. To grant a height special exception the Planning Commission must find the proposed plan:

- a. Is a design better suited to the site than can be achieved by strict compliance to these regulations; and

- b. Satisfies the following criteria:
  - 1. The topography of the lot presents difficulties for construction when the foothill height limitations are applied,
  - 2. The structure has been designed for the topographic conditions existing on the particular lot, and
  - 3. The impact of additional height on neighboring properties has been identified and reasonably mitigated.
- c. In making these considerations the Planning Commission can consider the size of the lot upon which the structure is proposed.
- d. The burden of proof is upon the applicant to submit sufficient data to persuade the Planning Commission that the criteria have been satisfied.
- e. The Planning Commission may deny an application for a height special exception if:
  - 1. The architectural plans submitted are designed for structures on level, or nearly level, ground, and the design is transposed to hillside lots requiring support foundations such that the structure exceeds the height limits of these regulations;
  - 2. The additional height can be reduced by modifying the design of the structure through the use of stepping or terracing or by altering the placement of the structure on the lot;
  - 3. The additional height will substantially impair the views from adjacent lots, and the impairment can be avoided by modification; or
  - 4. The proposal is not in keeping with the character of the neighborhood.

# **ATTACHMENT F: MINUTES FROM SEPTEMBER 22, 2021 MEETING**

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## **SALT LAKE CITY PLANNING COMMISSION MEETING**

**This meeting was held electronically**

**Wednesday, September 22, 2021**

A roll is being kept of all who attended the Planning Commission Meeting. The meeting was called to order at approximately 5:30 pm. Audio recordings of the Planning Commission meetings are retained for a period of time. These minutes are a summary of the meeting. For complete commentary and presentation of the meeting, please visit <https://www.youtube.com/c/SLCLiveMeetings>.

Present for the Planning Commission meeting were: Chairperson, Brenda Scheer; Vice Chairperson, Amy Barry; Commissioners, Maurine Bachman,Carolynn Hoskins, Jon Lee, Adrienne Bell, Andres Paredes, Sara Urquhart, and Mike Christensen.

Planning Staff members present at the meeting were: Nick Norris, Planning Director; John Anderson, Planning Manager; Paul Nielson, Attorney; Wayne Mills, Planning Manager; Amanda Roman, Principal Planner; Katia Pace, Principal Planner; Daniel Echeverria, Senior Planner; Aubrey Clark, Administrative Secretary.

### **APPROVAL OF THE SEPTEMBER 8, 2021, MEETING MINUTES.**

**Commissioner Adrienne Bell motioned to approve the September 8, 2021 meeting minutes. Commissioner Maurine Bachman seconded the motion. Commissioners Maurine Bachman, Amy Barry, Jon Lee, Carolynn Hoskins. Commissioner Sara Urquhart, Adrienne Bell, and Michael Christensen abstained from voting. Commissioner Andres Paredes was not yet connected to the meeting.**

### **REPORT OF THE CHAIR AND VICE CHAIR**

Commissioner Scheer mentioned the new Commissioner Mike Christensen. Vice-Chairperson Amy Barry stated that she has nothing to report

### **REPORT OF THE DIRECTOR**

Direct Nick Norris remarked that Commissioner Mike Christensen had done his State required training. He also remarked on City Council's adoption of the changes to fence heights. He also spoke on off-street parking regulations and the process to eliminate special exceptions in the city code.

### **PUBLIC HEARINGS**

**Building Height & Grading Special Exceptions at approximately 1484 E Tomahawk Drive -** Mitchell Peterson, the property owner, is requesting special exception approval to construct a new single-family detached structure that exceeds the maximum permitted building height and maximum allowable grade changes in the FR-3/12,000 Foothills Residential District. The subject property is located at 1484 E Tomahawk Drive and is undeveloped. The additional building height ranges between 1.5 and 5.5 feet along the northeast and east building façades. The grade

changes require approval to exceed 6 feet within the buildable area and 4 feet within the required front and rear yard areas for a portion of the driveway and to create a backyard patio. The subject property is located within the FR-3/12,000 Foothills Residential and is located in Council District 3, represented by Chris Wharton. (Staff contact: Wayne Mills at (385) 226-8461 or wayne.mills@slcgov.com) **Case Number PLNPCM2021-00372**

Wayne Mills, Planning Manager, reviewed the petition as outlined in the staff report. He stated that Staff recommends approval of the project. He briefly covered the project.

Chairperson Brenda Sheer turned the meeting over to the applicant.

Mitchell Peterson, the applicant, stated that he has worked closely with the architect to design a home that fits as closely as possible with the guidelines. He shared slides of the proposed project to show the grade changes. He also commented on the natural space of his lot and that the design of the home is to keep the natural feel of the property. He says the home works with the topography of the lot to try and create a home that limits the environmental and visual impact, gets as close as possible to the regulations as it can and exceeds the limits in the areas where it will not impair view or impact surrounding properties. The home's small footprint reduces the required deforestation which reduces erosion and environmental impact.

Commissioner Barry asked about the rear grade exception on the patio. The applicant stated that he is trying to increase the upper yard area, stating that it will be accomplished over a grade change versus a 6ft wall.

Commissioner Scheer opened the public hearing.

Jeff Black is wondering why the applicant isn't building on the flat southern end. He commented on section P regulations for the Foothill District. He is against the petition.

Tom Brooks, a neighbor to the property, stated that the lot was subdivided and is subject to up to a 30 percent grade. Against the petition.

Chairperson Scheer commented that the Commission had received several emails regarding the matter, and they read them all and are considering them.

Shane Wright is a resident of Spring Village Neighborhood. Worried that the area would be overdeveloped. He commented on the buildable area being an animal highway. Against the petition.

Trapper Roderick, the contractor for the project, commented on the soundness of the project.

Commissioner Scheer closed the public hearing.

Commissioner Scheer asked the applicant if he would like to respond to any of the questions. The applicant stated that he is not allowed to build the home on the rear 35 feet. He also responded to Tom Brooks's comments that he received multiple bids from multiple engineers. He stated that he is asking for a special exception to maintain as much of the unique topography of the lot as possible.

Chairperson Scheer opened the meeting to the Commission.

Commissioner Bell commented on the special exception process, saying that it is not an opportunity for every landowner to come before the commission and ask anything they want. She said there is a process outlined in the code.

Director Nick Norris let the Commission know that Andres Paredes is now connected to the meeting via a call-in number.

## **MOTION**

**Commissioner Mike Christensen stated, Based on the information in the staff report, the information presented, and the input received during the public hearing, I move that the Planning Commission approve PLNPCM2021-00372.**

**Commissioner Sara Urquhart seconded the motion.**

Director Nick Norris interjected that Andres Paredes had not been in the meeting long enough to hear the item. Chairperson Scheer stated she would skip him for the vote of this item.

**Commissioners Maurine Bachman, Sara Urquhart, Amy Barry, Jon Lee, Michael Christensen, Adrienne Bell, andCarolynn Hoskins voted “yes”. The motion passed.**

**Jefferson Court Planned Development & Preliminary Condo Plat** - Northstar Builders, represented by Kaia Ragnhildstveit, is requesting planned development and preliminary condo plat approval for an infill development at approximately 850 S Jefferson Street. The property is located in the FB-UN1 Form-Based Urban Neighborhood District. The proposal is to construct one new "urban house" and three new "row houses". There is an existing single-family home on the property that will be retained and renovated as a part of the proposal. Planned Development approval is required to modify the project's front and rear yard setbacks. The property is located in Council District 4, represented by Ana Valdemoros. (Staff contact: Amanda Roman at (385) 386-2765 or amanda.roman@slcgov.com) **Case numbers PLNPCM2021-00421 & PLNSUB2021-00789**

Amanda Roman, Principal Planner, reviewed the petition as outlined in the staff report. She stated that Staff recommends approval with the conditions listed in the staff report.

Kaia Ragnhildstveit, the applicant, spoke to the reason they are asking for the setback exceptions. She stated they want to add more parking and provide greater space between the homes on the street and the new housing.

Chairperson Scheer opened the public hearing.

Seeing that no one wished to speak, Chairperson Scheer closed the public hearing.

Commissioner Barry stated that she enjoys when Northstar builds around her neighborhood and feels the setbacks are appropriate.

## **MOTION**

**Commissioner Amy Barry stated, Based on the findings listed in the staff report, the information presented, and input received during the public hearing, I move that the Planning Commission approve the Planned Development petition (PLNPCM2021-00421) and Preliminary Condo Plat (PLNSUB2021- 00789) as proposed, subject to complying with the conditions listed in the staff report.**

**CommissionerCarolynn Hoskins seconded the motion. Commissioners Maurine Bachman, Sara Urquhart, Jon Lee, Amy Barry, Andres Paredes, Michael Christensen, and Carolynn Hoskins voted “yes”. The motion passed.**

**@2100 Apartments II Design Review** - G. Lyman Adams, the property owner, is requesting approval for a new multi-family residential building located at approximately 1967 S 300 West. The proposed project is for a 160-unit apartment building that would sit on 1.98 acres and would range from a studio, one-bedroom, and two-bedroom floorplans. The proposed building height would be 77 feet and 3 inches tall, consisting of 4 levels of apartments over two levels of parking. The Design Review process is needed for the additional 17 feet and 3 inches of building height over the 60-feet allowed in the CG General Commercial Zone. The subject property is located in Council District 5, represented by Darin Mano. (Staff contact: Katia Pace at (385) 226-8499 or [katia.pace@slcgov.com](mailto:katia.pace@slcgov.com)) **Case number PLNPCM2021-00204**

Katia Pace, Principal Planner, reviewed the petition as outlined in the staff report. She stated that Staff recommends approval of the project.

Commissioner Barry is concerned the CG may not be the best zone for this project. Nick Norris commented that there is a plan to submit a grant to the Wasatch Front Regional Council through their transportation land use connection to update the plan and the zoning along the 300 West corridor from 2100 South to 900 S. He stated that if awarded, the grant it would be allotted in spring.

Commissioner Scheer opened the meeting to the applicant.

David Kocherhans, the applicant, shared that he believes it will be a good addition to the area. He said it would be a positive influence on the neighborhood.

Brent Hilton spoke on the project and stated that they would be willing to adjust the design to comply with the Commission’s decision.

Commissioner Barry stated that she is concerned about the lack of pedestrian-owned spaces. Brent Hilton spoke on the interior court that will include a pool area, a meeting area, and a gym. Lyman Adams stated that there will be a new eight-foot sidewalk that will increase accessibility.

Commissioner Scheer opened the public hearing.

Seeing that no one wished to speak Commissioner Scheer closed the public hearing.

Nick Norris commented that if the Commission approved the proposal the applicant has mentioned there may be a little give and take on the height as they get through their final designs and start construction drawings. He stated that the Commission may want to consider granting some flexibility within a certain range for that height. Chairperson Scheer asked for some clarification.

Commissioner Urquhart stated that she spent time at the subject property and wonders if there will be fencing. The applicants stated there will not be fencing on phase two but that phase one will maintain the installed fencing.

Commissioner Lee is upset with the quality of the materials used on the project.

## **MOTION**

**Commissioner Sara Urquhart stated, Based on the findings and analysis in the staff report, testimony, and discussion at the public hearing, I move that the Planning Commission vote to APPROVE the Design Review application for the @2100 II Apartments located at approximately 1967 S 300 West, file PLNPCM2021-00204. Delegating back to staff within reason, or within 5 feet of the proposed height, Staff has final approval.**

**Commissioner Adrienne Bell seconded the motion. Commissioner Maurine Bachman, Sara Urquhart, Amy Barry, Jon Lee, Andres Paredes, Michael Christensen, Adrienne Bell, and Carolynn Hoskins voted “aye”. The motion passed unanimously.**

**Significant Water Consuming Land Uses Text Amendment** - Mayor Erin Mendenhall has initiated a petition to amend the text of the zoning ordinance related to land uses that consume significant amounts of water. The proposal would implement a limit on the amount of water that certain land uses can utilize. The limit affects multiple zones and multiple land uses citywide. The ordinance also amends and clarifies the definitions of related land use terms. Other related standards of Title 21A Zoning may be amended as part of this petition. (Staff contact: Daniel Echeverria at (801) 535-7165 or daniel.echeverria@slcgov.com) **Case number PLNPCM2021-00635**

Senior Planner Daniel Echeverria review the petition as outline in the staff report. He stated that Staff recommends a positive recommendation be forwarded to City Council.

Commissioner Scheer asked for clarification on how use is defined. Daniel Echeverria clarified. Commissioner Bell asked for clarification on existing uses that exceed the proposed amount. She wanted to know if they are frozen at what their current water use is or if they want to expand can they increase their water consumption. Daniel Echeverria stated the City would not issue a building permit that would allow more water use.

Commissioner Bell asked if the City cemetery used culinary water to water their grounds. Laura Briefer answered that yes, they do.

Chairperson Scheer wanted to know if the City has a secondary water source. Laura Briefer stated that there is nothing widespread. She clarified that a couple of the city parks and golf courses are water with Jordan River water rights but there is not a city-wide secondary water system.

Chairperson Scheer asked about water reuse at refineries and data centers and whether that was allowable. Laura Briefer stated that the data center water is evaporated but the water at the refinery could potentially be recycled for their uses.

Chairperson Scheer opened the meeting for public hearing.

Connor Peterson with the Utah Department of Agriculture and Food said his main concern is with how this would impact agricultural producers. He said the drought has already had a hard impact on the agricultural community and noted his department's support of the agricultural exemption in the language.

Brad Shafer with Marathon Petroleum said that they are cognizant of how much water they use but they are always looking for ways to reduce their water use. They would like the opportunity to work with the public utilities on their usage.

Seeing that no one else wished to speak Chairperson Scheer closed the public hearing.

Commissioner Sara Urquhart asked how the number were calculated. Daniel Echeverria stated that they compiled the data from January to June of 2021 and also the last 3 years. Laura Briefer spoke on how the city utilities calculate to those usages.

## **MOTION**

**Commissioner Maurine Bachman stated, Based on the information in the staff report, the information presented, and the input received during the public hearing, I move that the Planning Commission recommend that the City Council approve the proposed text amendment, PLNPCM2021-00635 Significant Water Consuming Land Uses Text Amendment.**

**Commissioner Amy Barry seconded the motion. Commissioners Maurine Bachman, Sara Urquhart, Amy Barry, Jon Lee, Andres Paredes, Michael Christensen, Adrienne Bell, and Carolynn Hoskins all voted "yes". The motion passed with a positive recommendation to City Council.**

## **OTHER BUSINESS**

### **Chairperson and Vice-Chairperson Elections**

**Commissioner Amy Barry is nominated for Chair.**

**Commissioners Bachman, Urquhart, Lee, Paredes, Christensen, Bell, Hoskins all voted "yes".**

**Amy Barry is the next Chairperson for the Planning Commission.**

**Commissioner Bell was nominated. Commissioner Lee was nominated. Both turned down their nomination.**

**Commissioner Bachman was nominated.**

**Commissioners Urquhart, Barry, Lee, Paredes, Christensen, Bell, and Hoskins all voted “yes”.**

**Commissioner Maurine Bachman is the new Vice-Chairperson for the Planning Commission.**

The meeting adjourned at 7:55 pm.

**ATTACHMENT G: STAFF REPORT FROM  
SEPTEMBER 22, 2021 MEETING**

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**Attached Separately**

# ATTACHMENT H: ADDITIONAL PUBLIC COMMENTS PROVIDED TO THE PLANNING COMMISSION

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**Clark, Aubrey**

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**From:** Mills, Wayne  
**Sent:** Tuesday, September 21, 2021 8:46 AM  
**To:** Clark, Aubrey  
**Subject:** FW: (EXTERNAL) Input on 1484 Tomahawk

Hi Aubrey-

Please include in the PC dropbox. Thanks.

**WAYNE MILLS**  
Planning Manager  
Planning Division

**DEPARTMENT of COMMUNITY and NEIGHBORHOODS**  
SALT LAKE CITY CORPORATION

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FAX 801-535-6174

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**From:** Mills, Wayne  
**Sent:** Tuesday, September 21, 2021 8:42 AM  
**To:** Tom Brooks [REDACTED] >  
**Subject:** RE: (EXTERNAL) Input on 1484 Tomahawk

Thank you for your participation in this process. This email seems to be implying that I am partners with the applicant. Please be advised that I, as well as Linda and all of the other planning staff work for the City. Our role is to review and process the applications that have been submitted. We gather all of the information, analyze it, and do our best to deliver the information to the decision makers so that they can make an informed decision in the matter. We are not advocates for the project.

Again, thank you. I will forward your comments, as well as my response to the Planning Commission.

**WAYNE MILLS**  
Planning Manager  
Planning Division

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---

**From:** Tom Brooks <[REDACTED]>  
**Sent:** Monday, September 20, 2021 5:40 PM  
**To:** Mills, Wayne <[wayne.mills@slcgov.com](mailto:wayne.mills@slcgov.com)>  
**Cc:** Tom Brooks <[REDACTED]>  
**Subject:** (EXTERNAL) Input on 1484 Tomahawk

Mr. Mills,

You are welcome! I added slips for access to the meeting. (The 1st batch went missing.)

I've been giving this whole project a lot of thought. I am hoping that you will pass this information on, to Mitchell Peterson:

Our neighborhood has met several times about this project. Of course, we aren't thrilled with having green space, that we've become so accustomed to, be eliminated. We sat idly by, having been reassured many times, that this lot was not suitable for the construction of a house. We relied on that declaration, by several people (one, a good friend who spent a year on trying to create legal/conforming houseplans). Many folks spent a lot of time and money trying. They, like my wife and I, were playing by the rules. We spent about a year, creating plans that met every single one of SLC ordinances. Of course, any house can be built, if you do not have to comply to a city's ordinances.

You, and Mr. Mitchell, might think that my wife and I wish we could have applied for exceptions and gotten our plans 'rubber stamped' too? On the contrary, we are extremely grateful for every requirement SLC required of us. Our home is on much less of a grade and about the same ground.

In a tale of two homes; we are directly across the street (lesser grade and same ground); our home has had no issues - because we met legal ordinances. The house next door did not. The plans were 'rubber stamped' because of tie-ins to the mayor at the time it was built. (When asked about difficulties getting their plans approved, I was told, "It helps to have an in with the Mayor.") - With nowhere near the slope as 1484 Tomahawk, that home has required almost one million in remediation. It was literally pushed completely off the foundation. Again, Mr. Mitchell has the same unstable ground, and a steeper slope.

This neighborhood is extremely "neighborly". We all know and genuinely like each other. We've welcomed all newcomers. Mr. Mitchell, with your support, has created a very hostile environment for himself. (That would completely change, if he designs and builds a compliant house.) We all wonder why he feels the desire to ignore SLC's Ordinances? We wonder why he's creating such a hostile environment for himself and his family?

Mr. Mitchell, clearly doesn't know enough about construction to build a structurally safe house. A self-proclaimed bicyclist, he truly needs you, and the SLC Planning Commission, to step up, step in, and protect him from himself.

It's alarming to hear Mr. Mitchell say that he went through 10 Structural Engineers. Finally, he found the 10th one to accept the risk? (Structural failures are likely included.) Is SLC liable for this, when the ground and resulting structure fails? It's revealing that he doesn't know the difference between concrete and cement (Expected, from someone who doesn't know enough about construction and needs your supervision).

Are you aware that the stretch of Tomahawk, along the north border is completely fill dirt at an 88% grade? The road has eroded and been repaired several times. Right now, the ground underneath is literally cavernous and washing away.

This is where Mr. Mitchell has gotten his 'gang-plank' to the front door approved. Instead of a practical/usable walkway from the front of his garage, where he might walk from his driveway to his home, he/and guests will walk back out/north the long driveway, head east 30' down the public sidewalk, and then south down the 'gang plank'. It is attached to fill dirt and is 25' above the ground heading to the front door. Impractical, dangerous, and senseless! Maybe he thinks that's cool? The neighbors see it as a dangerous hazard. It's on the north side where winter ice builds up and makes it even more of a liability. It'll be a magnet for kids to play on. We were told it was approved based on the White home walkway. The White's walkway is 6-7' off the ground, in front of their garage leading to their front door. It's practical. Falling 25' (the height of a telephone pole) doesn't compare to a 6' fall. You should try it sometime? Seriously, Do Not try this - You both know, you could die.

I am positive, that SLC is NOT looking out for EVERYONE'S best interests, if these ordinances are granted "Special Exceptions".

Mr. Mills, we all know you are being extremely modest when you say your opinion doesn't matter to the SLC Planning Commission. If you truly believe that, I respectfully ask for you to retract your recommendations. If you will not do so, PLEASE reconsider your recommendations and include the neighbor's concerns. In my experience, your opinion is the only one the SLC Planning Commission will listen to. Our wonderful mayor backs her employees 100%.

Mr. Mitchell should not be allowed to ignore grade ordinances or SLC's 2 story limit. He clearly has 3 stories/levels directly on top of each other. We had to comply by eliminating an entire bedroom above our main floor and basement, and so should he. He can come to this neighborhood with respect and sense of community or total hostility. Why would he prefer the latter? Why would you let him fall into such a situation? There are a lot of people being stepped on, to please one person. A person who doesn't understand what is best for his own good.

We noticed that Mr. Mitchell also convinced someone that his project should be "Grandfathered" into the less restrictive ordinances regarding grade, that existed when his lot was plotted. We can all, reluctantly and objectionably, accept this for the original owner. However, Mitchell is the 3rd owner and knew the exact grade ordinances that existed for his project. He was even told to make his offer subject to getting plans approved. Mr. Peterson said, it wasn't a problem, "I only need to get a few variances.". Caveat Empture! Buyer beware! As I recall, 2-3 years ago, the contractor for the Barnett, home, across the street from 1484, told me that SLC required Barnetts to remediate through remodeling and didn't discuss the option with the homeowners. This was because SLC would not allow a tear down and rebuild, due to grade restrictions. (It would be less time consuming and less expensive to stick with the same footprint.) Why were Barnetts required to comply and not Mr. Peterson, when his structure is on the same moving ground and a much steeper slope?

Please try and relate and/or empathize with this situation. Require that this structure meet all of SLC's current Ordinances and Codes. No one, in this situation, is served by ignoring them. These ordinances are in place for a reason. They are in accordance with National standards and they affect all of our foothills and Avenues. This is true,, whether you live in them or enjoy their many nature walking and biking trails. No one in SLC deserves to have their rights and legally established, protective ordinances, trampled on.

Sincerely and respectfully,

Tom Brooks  
Hm [REDACTED]  
Cell [REDACTED]

On Thu, Sep 16, 2021, 2:08 PM Mills, Wayne <[wayne.mills@slcgov.com](mailto:wayne.mills@slcgov.com)> wrote:

Thanks for the heads up on that Tom. The planner managing the project on our end posted it on the stake. Unfortunately, it appears that nature (or a human) decided to remove it from the stake. Thanks for attaching it to the tree. I'll monitor it as best as I can.

**WAYNE MILLS**

Planning Manager

Planning Division

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**From:** Tom Brooks <[REDACTED]>  
**Sent:** Thursday, September 16, 2021 1:09 PM  
**To:** Mills, Wayne <[wayne.mills@slcgov.com](mailto:wayne.mills@slcgov.com)>  
**Subject:** (EXTERNAL) Notice on lot

Mr. Mills,

I take it that this notice was supposed to be posted on the lot. There is a blank stake near by, which it must have been attached to. Brent and Mia Hatch showed this to me last night. It was laying on the ground. I'm sure it was on the stake when installed, but we never did see it and would never have seen it, if Brent and Mia, hadn't noticed it.

I'm going to attach it to a nearby tree. If this was a required notice, it shouldn't qualify, as it hasn't been visible.

Thank you,

Tom

Terry B. Becker  
[REDACTED]  
Salt Lake City, UT 84103

September 14, 2021

Brenda Sheer  
Chair, Salt Lake Planning and Zoning Commission  
451 South State Street  
Salt Lake City, UT 84114-5480

Dear Ms. Sheer,

As a former member of the Salt Lake Planning Commission, albeit many years ago, I received a staff recommendation for each item on the public hearing agenda, and a van would pick us up to walk the properties to be discussed. I realize the hearings are now virtual and most likely P&Z Commissioners are not able to take a staff-led tour. However, I am writing this to respectfully request you and the other members visit the property at 1484 E. Tomahawk Drive.

The application PNPCM2021-00372 for Special Exception to grade changes and height is on the September 22 agenda. There are many concerns we, as neighbors, have regarding this application. If the planning commission is unaware of the challenges of building on this property, and grants approval before a thorough study of the property can be made, a harmful precedent will be set. We already have two twenty foot walls on this gully which were granted as special exception to four foot walls. Not being the applicant, we have no opportunity to appeal.

Again, I would like you to meet with the adjacent property owners, so we can discuss these concerns, and it's my understanding that Linda Mitchell, the principal planner since the beginning of the project, leaves her position on Friday, the day the staff report is made available. A coincidence? If the commission members have a clear, visual understanding of what these special exceptions entail, and not just have a virtual discussion on September 22<sup>nd</sup>, you will have a better understanding on which to base your decision.

Respectfully,

Terry B. Becker

## Clark, Aubrey

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**From:** J Black <[REDACTED]>  
**Sent:** Wednesday, September 22, 2021 12:09 PM  
**To:** Planning Public Comments  
**Subject:** (EXTERNAL) Case Number PLNPCM2021-00372 1484 Tomahawk Dr

I would like to provide comments on the height and grade special exceptions request at 1484 Tomahawk Dr.

My name is Jeff Black. I am one of the owners of [REDACTED] - I live next door at [REDACTED].

I was disappointed to see the planning dept. staff report completely ignore or misstate several relevant Title 21A rules that specifically apply to the FR-3-12000 district regarding height, grade and slope.

**21A.24.010 P.2** - On height special exceptions - *"The Planning Commission may approve a permit to exceed the maximum building height but shall not have the authority to grant additional stories."*

If this were a two storey house like every other house on the street face they wouldn't need a height special exception. The applicant is asking for a 3rd storey that you are not allowed to approve. If they want 3 levels, just have them build a basement like everyone else.

**21A.24.010 P.6** - Grade Changes – **section c:**

*"..to construct driveway access, grade changes ..up to six feet 6 feet from the established grade shall be reviewed as a special exception."*

The site plan shows up to 11 contour lines between the E. and W. sides of the driveway.

I don't believe the commission has authority to approve more than 6 feet of grade change for driveway access. When I looked into buying this property in 2016, I was told by the planning department that "If you can't build a driveway to your house you can't get a building permit. And you can't put a driveway on that slope."

What changed since 2016? I think this applicant should get the same answer I got 5 years ago.

**21A.24.40 section G** - specific to the FR-3-12000 district

Slope Restrictions: *"For lots subdivided after 1994 - no building shall be constructed on any portion of the site that exceeds a 30% slope."*

The entire footprint of this proposed house is on a 60% slope.

The planning staff report dismisses this issue by pointing out that the lot was platted in 1975 and therefore this rule does not apply. I believe this completely mischaracterizes the zoning ordinance definition of 'Subdivision'

**21A.62.40** - The definition of terms section - defines Subdivision: (it has nothing to do with platting)

*"Any land that is divided or resubdivided ... into 2 or more units ...for the purpose of sale or development.."*

The fact that I am one of the owners of lot 1 -I own the Westerly 1500 sq ft section -

means that lot 1 had to have been subdivided or resubdivided . I would argue that every time this lot changed hands, there was a resubdivision - by deed. Subdivision by deed is recognized as subdivision in Utah state code as well. My deed from 2016 says that lot 1 has two sections and Mitchel's deed from this year had better indicate the same thing. If it does, he participated in a subdivision by deed also.

The planning staff maintains that what happened was a lot line adjustment - that simply never happened. There has not been a lot line adjustment of lot 1.

The burden of proof is on the applicant to show why these rules don't apply - and they have not even been addressed by the planning staff report or in the applicant's previous presentation to the GACC.

I think it's the planning commissions' obligation to ensure that the rules are enforced as written. Clearly - these rules get changed all the time - but until these particular rules get changed - please enforce them.

Jeff Black



## Clark, Aubrey

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**From:** Mills, Wayne  
**Sent:** Tuesday, September 21, 2021 8:29 AM  
**To:** Clark, Aubrey  
**Subject:** FW: (EXTERNAL) PLNPCM2021-00372 - 1484 Tomahawk special exception requests

Hi Aubrey-

Please include this email in the PC drobox. Thanks.

**WAYNE MILLS**  
Planning Manager  
Planning Division

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**From:** Mills, Wayne  
**Sent:** Tuesday, September 21, 2021 8:28 AM  
**To:** J Black [REDACTED]  
**Cc:** Nielson, Paul <paul.nielson@slcgov.com>  
**Subject:** RE: (EXTERNAL) PLNPCM2021-00372 - 1484 Tomahawk special exception requests

Jeff-

Thank you for your comments.

First and foremost, Planning Staff has visited the site. In fact, the planner who was assigned to review this project spent approximately two hours with neighbors at the site. In addition to those two hours, the planner, as well as myself, have been to the site to take photos and post a public hearing notice on the site.

The prohibition on granting additional stories is a carry-over from zoning regulations that no longer exist. When the Foothill zones were adopted, the dimensional height regulation in the FR-3 zoning district was the same it is now; however, there was also a limit on the number of stories that could be built. In the FR-2 and FR-3 zones the limit was 2 ½ stories. Sometime in the early 2000's the code was changed, and the stories limitation was removed so building height is no longer regulated by the number of stories. Unfortunately, the special exception provisions were not amended, which has created a conflict in our code. The language stating that the Planning Commission cannot grant additional stories is not applicable because there is no limitation on the number of stories that can be built.

Regarding the driveway grade change, there is a small portion of the driveway that, if approved, will require a grade change over six feet. This ordinance section has been reviewed in the past and the opinion has been that the codified language does not meet the intent and purpose of the code when it was amended. This section of code was amended in early 2013 and the purpose was to state that any grade change over six feet for the purpose of constructing a driveway requires a special exception. It has been determined that the way the code is currently written, it is unenforceable because it would require a special exception for change of grade to construct a driveway. This puts a development requirement into a subjective process, which could strip all development rights from the property.

I will forward your comments and my response to the Planning Commission for their consideration.

**WAYNE MILLS**  
Planning Manager  
Planning Division

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---

**From:** J Black [REDACTED]  
**Sent:** Friday, September 17, 2021 11:10 AM  
**To:** Mills, Wayne <[wayne.mills@slcgov.com](mailto:wayne.mills@slcgov.com)>; Mitchell, Linda <[linda.mitchell@slcgov.com](mailto:linda.mitchell@slcgov.com)>  
**Subject:** (EXTERNAL) PLNPCM2021-00372 - 1484 Tomahawk special exception requests

Dear Wayne,

As the homeowners of the property adjacent to 1484 Tomahawk Drive, we are submitting two issues that we would like considered regarding the proposed construction on this site, prior to your public hearing regarding the special height and grade exceptions requested:

- The structure proposed for the new construction is a 3 story house – the lower floor does not meet the definition of a basement. The Salt Lake ordinance 21A.24.010P expressly states that the Planning Commission “shall not have the authority to grant additional stories” when approving special height exceptions. As the existing code has been written to expressly provide for safety and minimize risk, I strongly encourage you to adhere to the ordinance as written. I believe the design as presented does not conform to the regulations and therefore the special exception should not be granted in this situation unless an appropriate modification to the design (limiting it to 2 stories) can be submitted.

**21A.24.010: GENERAL PROVISIONS: P. Special Foothills Regulations:**

**2. Height Special Exception: The Planning Commission, as a special exception to the height regulations of the applicable district, may approve a permit to exceed the maximum building height but shall not have the authority to grant additional stories.**

**21A.62.040: DEFINITIONS OF TERMS:**

*BASEMENT: A story wherein each exterior wall is fifty percent (50%) or more below grade. For purposes of establishing building height, a basement shall not count toward the maximum number of stories allowed. The exposed portion of the basement wall shall not exceed five feet (5').*



This design clearly shows a 3 story house on the East, North, and South elevations.

- Planning is restricted by Salt Lake ordinance to granting no more than a 6 foot grade change along the driveway. I count up to 11 contour lines from the East to West side of the driveway. Won't this driveway need 100% more slope change than you are allowed to give?

**21A.24.010: GENERAL PROVISIONS: P. Special Foothills Regulations:**

**6. Grade Changes:** *As necessary to construct driveway access from the street to the garage or parking area **grade changes and/or retaining walls up to six feet (6')** from the established grade shall be reviewed as a special exception subject to the standards in [chapter 21A.52](#) of this title.*

[65E296274\\$we}w\\$rsxlmk\\$fsy\\$vehi\\$lerkiw\\$fy\\$siw\\$imivexi\\$di\\$inkl\\$ypw>](#)

**5. Additional foothills building height, including wall height, shall comply with the standards in [chapter 21A.24](#) of this title.** æ

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§

Existing regulations regarding grade have been carefully crafted around safety and risk considerations. The grade on this property is significantly greater than current regulations permit although I understand that historical precedent is being invoked in requesting the exception. Given that this terrain has never been developed before, we would like to request that members of the planning department actually visit the site and see for themselves how steep this slope is and the risk it presents to both the proposed structure and the neighboring structures and hillside before either of these requested exceptions are considered.

Thank you for your consideration,

Jeff Black and Deepika de Silva

Sent from [Mail](#) for Windows

Tomahawk Drive Neighbors  
Salt Lake City, Utah

September 18, 2021

Ms. Brenda Sheer  
Chair, Salt Lake City Planning Commission  
451 South State Street  
Salt Lake City, Utah 84114-5480

Mr. Nick Norris  
Director, Salt Lake City Planning Division  
451 South State Street, Room 406  
Salt Lake City, UT 84114-5480

Mr. Wayne Mills  
Planner, Salt Lake City Planning Division  
451 South State Street, Room 406  
Salt Lake City, UT 84114-5480

Re: Special Exceptions Requests for 1484 Tomahawk Drive

Dear Ms. Sheer, Mr. Norris, and Mr. Mills:

The first homes in the Arlington Hills Neighborhood were built in the 1970s in the upper Avenues west of the Block U in the Foothills. It is a welcoming and diverse community of teachers, researchers, students, medical professionals, retirees, librarians, administrators, and others, including some who lost jobs due to the pandemic.

We welcome development and new residents. New homes, remodeled homes, and tear-down/rebuild homes continue to join the neighborhood. In nearly all cases, minor changes in design will eliminate the need to grant a special exception. We also believe Salt Lake City's Planning and Zoning regulations should be respected and enforced to ensure the future integrity of the community. Your approval of variances and special exceptions must be carefully considered and sparingly given.

We believe the staff recommendation for approval are not in accordance with the Code. As the Commission reviews the faulty conclusions of the report, we urge you to consider the Salt Lake Planning and Zoning Regulations Compliance Standards and Consideration for Special Exceptions in the Foothills Protection District. In bold face below, following each applicable Standard, are our specific reasons you should deny the application for special exception.

#### Four Applicable Sections of the SLC Code

e. The Planning Commission may deny an application for a height special exception if:

(1) The architectural plans submitted are designed for structures on level, or nearly level, ground, and the design is transposed to hillside lots requiring support foundations such that the structure exceeds the height limits of these regulations;

**The applicant claims this is not applicable because the design was created specifically for this lot. However the size of the structure exceeds the lot's capacity due to extremely steep slopes, and the design should be refined to be more compatible with the topographic conditions and terrain, and thereby eliminate the need for special exceptions to height and grade change.**

(2) The additional height can be reduced by modifying the design of the structure through the use of stepping or terracing or by altering the placement of the structure on the lot;

**The current design, which exceeds maximum building heights by 6 feet, can be mitigated by the applicant through redesign. A reduced footprint, smaller decking, alternate entry, and other design features should be adjusted to bring the structure into compliance without your approval of a special exception. The burden of proof is upon the applicant to submit sufficient data to persuade the Planning Commission that these criteria have been satisfied. It is the applicant's responsibility to complete due diligence prior to purchasing the property.**

(3) The additional height will substantially impair the views from adjacent lots, and the impairment can be avoided by structural modification;

**The applicant claims to have "positioned the home....to reduce already minimal impact to the views from the street and neighboring homes." The building location may take that into consideration. The height does not. It is important to acknowledge that views go in all directions: Across Spring Gulch, above to Twin Peaks, west on Tomahawk Drive, as well as to the Salt Lake Valley, the Wasatch and Oquirrh Mountains. Unreasonable height, exceeding your Standards in the Foothills Protection District, makes this planned new construction excessively visible and impairs the views from multiple adjacent lots on Tomahawk Drive, Chandler Drive, and Perry's Hollow.**

(4) The proposal is not in keeping with the character of the neighborhood.

**This subdivision was established nearly 50 years ago. All 15 homes between Chandler Drive and Perry's Hollow on the west side of the street, except the adjacent home built by the developer, are single story. We acknowledge that styles change over the years, that improvements and updates have occurred, and that new construction takes place. However the integrity of the neighborhood has been maintained because these changes have been compatible with the existing framework of the neighborhood. The changes to grade and additional height requested by the applicant to construct the residence now under consideration violates this character.**

We urge you to deny a special exception based on the four cited specifics, and we also encourage you to consider these additional important impacts to the neighborhood, environment, and lifestyle.

1. Spring Gulch, with steep grades of 30% to 80%, is a natural drainage and wildlife corridor with yet unexplored geology and hydrology. This dwelling, as proposed, will have negative impact on animals. Slope instability and underlying geology and hydrology may contribute to an unacceptable building location and negatively impact natural drainage in the canyon culvert, whether this drainage is visible or underground.
2. A significant question remains undetermined by staff: When was the lot last subdivided and is it or is it not subject to slope restriction amendments in 1994.
3. Wildfire is a constant threat, growing even more dire as the western drought continues. Public safety is at risk. Construction activity on the property creates a hazard for the entire Arlington Hills area. It is essential any development on this property be approved only if appropriate fire mitigation steps are undertaken by the owner and contractor, which should be subject to frequent review and enforcement by city officials.
4. Granting unnecessary special exceptions sets a dangerous precedent for all future construction, remodels, and upgrades in an established neighborhood in the Foothills Protection area.
5. Retaining walls, grading changes, and excessive heights will have significant impact on the historic nature, existing framework, and harmony of Spring Gulch and the neighborhood.
6. Some design features, like a suspended bridge walk-way to the proposed dwelling, create excessive cuts and fills to the hillside.

Thank you for your careful review and consideration of these points. We believe the Salt Lake Planning and Zoning Commission should deny the requests for special exceptions for height and slope at 1484 Tomahawk Drive, and instruct the applicant to make design changes to bring the applicant's proposal into compliance. Your own regulations state:

*“The burden of proof is upon the applicant to submit sufficient data to persuade the Planning Commission that the criteria have been satisfied.”*

Sincerely,

Jeff Black and Deepika deSilva, John and Terry Becker  
Jim Carlisle and Kris Kokany, Janet and Phil Barnette

**Clark, Aubrey**

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**From:** Terry Becker [REDACTED]  
**Sent:** Wednesday, September 22, 2021 1:54 PM  
**To:** Planning Public Comments  
**Subject:** (EXTERNAL) 1484 Tomahawk Dr. PCNPM2021-00372

I appreciate the fact that the applicant has reputable licensed engineers and contractors who will participate in development of this property, at least I hope they are. Construction still poses many problems on STEEP hillsides, including landscaping equipment when natural vegetation is replaced. I would like to see a copy of the applicant's **Certificate of Liability Insurance** before construction of any kind begins on this property.

**Clark, Aubrey**

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**From:** Terry Becker <[REDACTED]>  
**Sent:** Wednesday, September 22, 2021 8:48 AM  
**To:** Planning Public Comments  
**Subject:** (EXTERNAL) 1484 Tomahawk Dr. PLNPCM2021-00372

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

As an adjacent property owner to this property, I would like a copy of the applicant's **Certificate of Liability Insurance**. If this document is not available through the Planning Department, would you please indicate which city office can provide it.

If in construction and digging into such a steep hillside, equipment should fall onto our property, I don't want to be responsible. In case construction starts a fire, it is important to know the responsible party. And the City should be concerned as well. Please make this available to me, and consider this in your deliberations.  
Terry B. Becker



The Greater Avenues Community  
Council  
PO Box 1679  
Salt Lake City, UT 84110  
[www.slc-avenues.org](http://www.slc-avenues.org)

Linda Mitchell  
Planning Division  
Salt Lake City

September 16, 2021

Re: Height Exception for 1484 Tomahawk Drive

Dear Ms. Mitchell

Thank you for attending and presenting at the GACC General Meeting on September 1, 2021. Your presentation and Mitchell Peterson's on his application for a height exception at 1484 Tomahawk Drive were very informative. Several questions had been raised about the status of the lot and its history. Your research helped everyone to understand which regulations and standards apply in this case.

A vote was not held to determine support or opposition to the project. However, several issues and concerns were raised by those in attendance. I have grouped these issues into two broad categories.

Constructability – The lot is very steep, and this raised many concerns. As mentioned in your presentation, this lot would be considered unbuildable if newer standards were used. While the slope of the lot presents an engineering problem that can presumably be solved with enough money, there were concerns about the unintended secondary effects of building on this lot. For example, changes in snowmelt and stormwater run-off could impact the surrounding areas and those downhill. These secondary effects should be considered and mitigated if a building is constructed. These constructability issues would apply to any building constructed on this lot.

Neighborhood Compatibility and Views – The other major category for concern was compatibility with the existing streetscape. The applicant appears to have considered the viewpoint from the street when making his plans. However, it was pointed out that the views are from all angles and the increased height would impact neighbors' view. Additionally, most homes are single story. While the plan would appear single story from the street, it would be larger from other viewpoints.

These issues should be considered by the Planning Commission when reviewing the request for a height exception.

We appreciate the opportunity to comment. Please contact me at [gaccchair@slc-avenues.org](mailto:gaccchair@slc-avenues.org) with any questions.

Regards

*David H. Alderman*

David H. Alderman  
GACC Chair