

PLANNING COMMISSION STAFF REPORT

PROPOSED ORDINANCE

TITLE 14, CHAPTER 14.54 – DEDICATION OF PRIVATE STREETS TO PUBLIC OWNERSHIP

June 9, 2010



Planning and Zoning Division
Department of Community and
Economic Development

Applicant: Salt Lake City Council

Staff: Wayne Mills
801-535-7282
wayne.mills@slcgov.com

Tax ID: N/A

Current Zone: N/A

Master Plan Designation: N/A

Council District: All

Community Council: All

Lot Size: N/A

Current Use: N/A

**Applicable Land Use
Regulations:** None

Notification

- Notice mailed on May 28, 2010
- Agenda posted on the Planning Division and Utah Public Meeting Notice websites May 28, 2010

Attachments:

- A. Map of Salt Lake City Private Streets
- B. Proposed Ordinance – Dedication of Private Streets to Public Ownership
- C. Letter from Capitol Park Homeowners' Association

Request

The City Council has requested that the Administration draft a policy regarding the dedication of private streets to public ownership. At the request of the City Council, a work group was organized representing various City Departments and Divisions. The work group developed a draft policy that is proposed to be adopted as an ordinance in the City Code.

The proposed ordinance would not be an amendment or addition to the Zoning Ordinance, but would be an addition to Title 14 – Streets, Sidewalks, and Public Places – of the City Code. It is being presented to the Planning Commission for discussion and, if the Planning Commission chooses to do so, a recommendation to the City Council.

Staff Recommendation

It is the Planning Staff's opinion that the Planning Commission review the proposed policy and transmit a favorable recommendation to the City Council to adopt Chapter 14.54 – Dedication of Private Streets to Public Ownership.

Background

There are approximately 25 miles of private streets in Salt Lake City. The various types of private streets include (see Map of Salt Lake City Private Streets, Attachment A):

- **Private Access:** Adjacent property owners own the street, usually to the centerline. These streets are located in older residential areas of the City and were not created through a formal subdivision process. In most cases there is no recorded documentation referring to maintenance responsibilities.
- **Private Right-of-Way:** Adjacent property owners do not own the street; however, they have a right-of-way easement over the street. These streets are located in older residential areas of the City and were not created through a formal subdivision process. In most cases the streets were developed by the original property owner and developer of the adjacent residential lots. The ownership of the roadway was never dedicated to the City or transferred to the abutting property owners. In most cases there is no recorded documentation referring to maintenance responsibilities.
- **Condominium/Apartment and Mobile Home Park Private Roadways:** These streets provide driveway access or internal circulation within the development. In most cases, access is for residents of the development only and the streets do not provide through access to adjacent public streets. Maintenance of these streets is handled through homeowners associations or other mechanisms internal to the development.
- **Planned Development Roadways:** These streets were created through the Planned Development Subdivision process and were approved as private streets at the request of the developer because they do not meet a particular City standard. Some of these streets are located in gated communities, which do not allow public access. Others were created to allow additional development opportunities, such as additional buildable lots. Since 1997, the Zoning Ordinance requires funding mechanisms, the costs of which are shared between the property owners in the development, to maintain the private infrastructure.

The City occasionally receives requests from property owners along a private street for the City to take ownership of the street. In many instances, especially when the street is a private right-of-way or private access (see above), the property owners are unaware that the street is private and contact the City to repair defects. The City then explains that the street is not publicly owned and will not make the repairs. This has been confusing for the property owners because the City, in some cases, has repaired the street in the past. The property owners also claim that they pay the same taxes for municipal services as everyone else in the City and should receive the same benefits. In the case of property owners in Planned Developments, they are often aware that the street is private but would like the City to take over the street because they no longer want to maintain the street through their homeowners' association.

There are additional concerns related to underground utilities along private streets. In some cases, the utilities were constructed to City standards and are publicly owned. In others, the utilities are private and substandard. There have been incidents in the past where a substandard private main utility line has failed and has created a health and safety problem for the residents along the street. The residents were not able to pay the cost of the improvement through a private contractor, so the City has had to repair the private line.

There have been a number of private streets, specifically private rights-of-way and private accesses, which have been improved and dedicated to the City. In most cases, the property owners applied for Community Development Block Grant (CDBG) funding for the street improvement design. The City then took ownership of

the street and either applied for additional CDBG funds or established a Special Assessment Area (SAA) for construction of the street improvements. The Planning Division is unaware of any streets created in a Planned Development that have later been dedicated to the City.

The City has not had a policy or guidelines that the decision makers can use when reviewing requests to dedicate private streets to public ownership. In order to dedicate the street to public ownership, it must meet minimum safety standards. Improving the street to meet these standards can be costly and on-going maintenance of the roadway may diminish resources needed to maintain existing public infrastructure. In response to this issue, the City Council requested that the Administration draft a proposed policy to guide decision makers when reviewing requests from property owners to dedicate a private street to public ownership.

Proposal

At the request of the City Council, a work group was organized to develop the proposed policy. The work group consisted of City staff representing the Engineering Division, Department of Public Utilities, City Attorney, Planning Division, Transportation Division, Streets and Sanitation Division, and City Council. The proposed policy attempts to address funding issues, minimum design standards, underground utility issues, and objectives that the street must meet to be considered for public ownership. The policy is proposed to be an adopted ordinance (see Attachment 2). The following is a bullet point summary of the policies in the proposed ordinance:

- The City will not make a pro-active effort to dedicate private streets to public ownership.
- Private streets created in a platted subdivision will not be considered for public ownership unless there is a compelling public interest.
- Property owners representing 100% of the total lineal front footage of the private street must sign a petition for the City to consider dedicating the private street.
- In order for the street to be considered for public ownership:
 - Underground utilities must meet City standards;
 - The street surface must meet current City standards or an acceptable degree of compliance;
 - The street must have at least 16 feet of clear paved width (not including parking);
 - The grade of the street must meet current City street grade standards; and
 - Deteriorated private property features abutting the street are removed, repaired, or replaced by the property owner(s) to ensure public safety.
- Salt Lake City will not pay for required street improvements. Property owners may pursue funding through the CDBG, Capital Improvement Program (CIP), or Special Assessment Area (SAA) programs through the routine processes for allocation of these funds. The CDBG, CIP, and SAA programs will not be used to fund improvements to streets created in a platted subdivision.
- The City may repair water and sewer lines in an emergency on the basis that the utility owners will reimburse the City.
- The City will not split the ownership of utilities and streets unless there is a compelling public benefit.
- The City will not share the cost of improving a private street created in a planned development. In order to accept a private street created in a planned development, the planned development must be amended.
- The City will make a reasonable effort to inform new residents that their street or water line is private when they sign up for water service.
- The City will not take ownership of a street that does not allow public access.
- The City will not take ownership of a street that is targeted for redevelopment.
- The City must be able to safely and efficiently provide services along the street.

- No specific rights or guarantees for use of the street, such as on-street parking, are conveyed to the property owners when a private street is dedicated.
- The City will consider the dedication of a private street only if it is demonstrated that the street dedication achieves at least one of the following:
 - The street currently provides, or can provide with improvements:
 - Access to open space, public facilities/uses or other public amenities
 - Mid-block pedestrian access
 - An improvement to the surrounding pedestrian or vehicular circulation pattern
 - An identified planning goal as noted in the adopted master plan for the neighborhood
 - Dedicating the private street will encourage reinvestment in the community
 - Dedication of the street will improve the public health, safety, and general welfare.

Comments

Public Comments

The Planning Division conducted an open house meeting on April 15, 2010 to solicit public comment on the proposed ordinance. Notification of the open house was sent via the Planning Division e-mail listserve. One person, an attorney representing the Capitol Park Homeowners' Association (CPHA), attended the meeting. The Capitol Park planned development was approved in 1995 with a private street and the CPHA has made application to the City to amend the planned development and dedicate the private street to public ownership. The attorney representing the CPHA submitted a letter on April 23, 2010 commenting on the proposed ordinance (see Attachment 3). The following points were made in the letter:

1. The standard "compelling public interest" is an unreasonably high standard for considering the dedication of private streets that were created in a platted subdivision.

Staff Comment: The developers of private streets consciously did so in order to circumvent certain City street standards. When these streets are dedicated to public ownership, the City will be held liable and will be responsible for maintaining the street. Therefore, it is the opinion of Staff that the standard should be high when considering the dedication of a private street that was created in a platted subdivision.

2. The policy should not require 100% of the property owners along the street to sign a petition to dedicate the street, but should require 100% of the owners of the street.

Staff Comment: The language in the proposed ordinance states, "Existing private streets may be considered for public ownership when requested by property owners abutting the private street. That request will come in the form of a Private Street Dedication Petition. The petition must be signed by property owners representing 100% of the total lineal front footage of the street. By signing the petition, the petitioners agree it is their intent to dedicate the street to public ownership". The property owners along a private street may or may not have fee title ownership to the street, but could have prescriptive rights to use the street. Staff is of the opinion that the language remains as proposed to ensure that all individuals that have a legal interest in the street are in favor of dedicating the street to the City.

3. There should not be a provision that city standards will not be waived. Instead, applicants should be given the same opportunities to obtain a variance as contained in the current city ordinances pertaining to variances.

Staff Comment: Comment #3 is referring to Section D(2) of the proposed ordinance. This section states, "The street surface features meet current City standards or are brought in an acceptable degree of compliance... There are certain City standards that the City will not consider waiving or reducing (grade, surface, width), as they relate to health and safety and ability to provide services." The ordinance further states that a street must have at least 16 feet of clear paved way, not including parking and that the grade of the street must meet current City street grade standards. The proposed language was developed by representatives from the Engineering and Transportation Divisions to ensure that the City can adequately provide services.

The attorney representing the CPHA states that applicants should be able to apply for a variance for relief from the current street standards (see attached letter) and references Section 21A.18 of the Zoning Ordinance. Section 21A.18 is the section of the Zoning Ordinance that allows property owners to request a Variance from zoning regulations. A Variance is defined as, "a reasonable deviation from those provisions regulating the size or area of a lot or parcel of land, or the size, area, bulk or location of a building or structure under this title and authorized according to the procedures set forth in chapter 21A.18 of this title" (Chapter 21A.62 – Definitions, SLC Zoning Ordinance). As stated in the definition, a Variance can be granted from regulations pertaining to the size or area of a lot or the size, area, bulk or location of a building. A Variance cannot be granted from City street standards. In the case of private streets created through the Planned Development process, relief was granted to the developer by allowing the construction of a private street that does not meet City standards with the provision that the property owners maintain the street, not the City.

City Department Comments

Representatives from the Engineering Division, Department of Public Utilities, City Attorney, Planning Division, Transportation Division, Streets and Sanitation Division, and City Council Staff participated in the development of the proposed ordinance. Planning Division Staff also forwarded the proposed ordinance to Fire, Police, Building Services, and Property Management. There were no comments received.

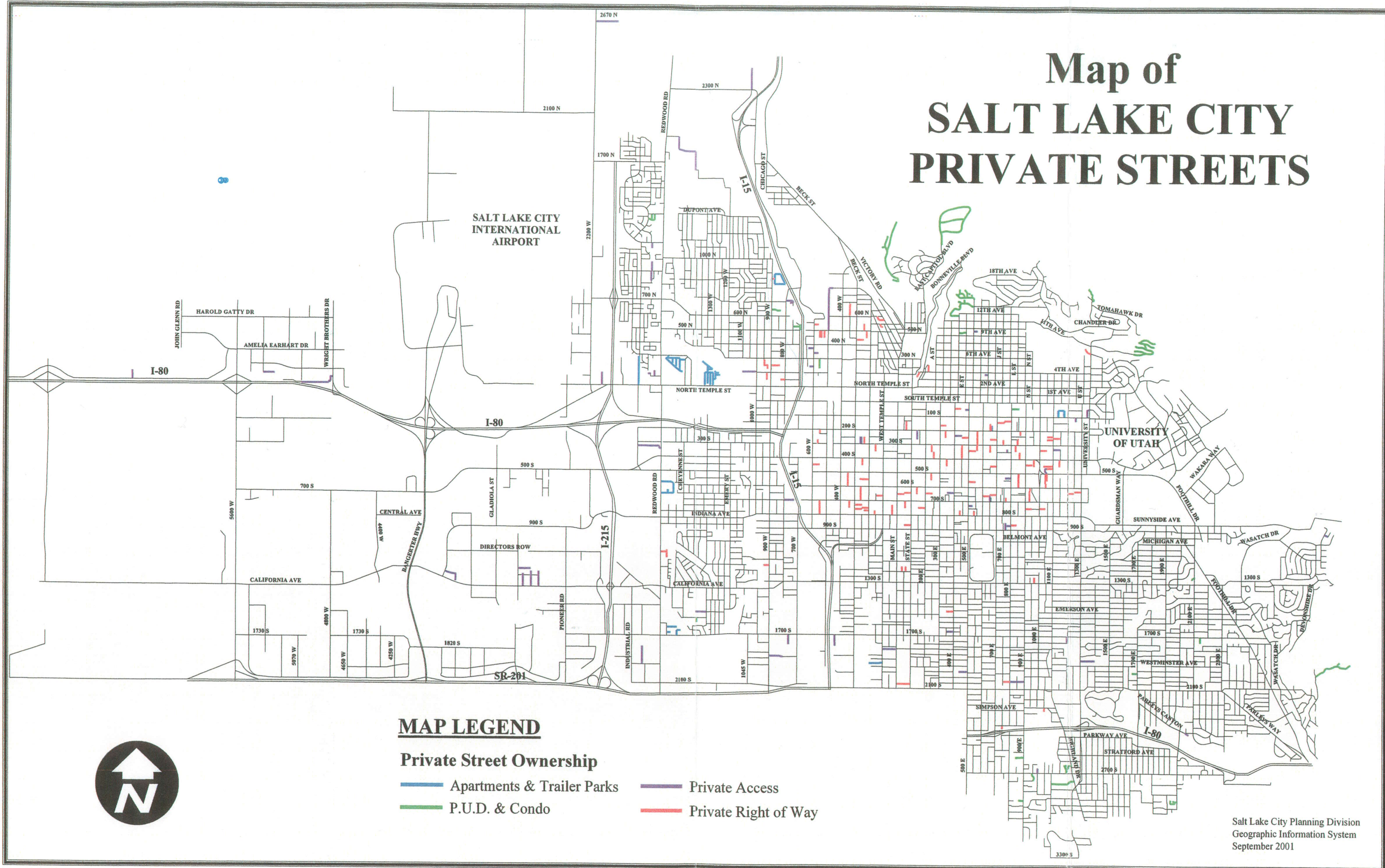
Analysis and Findings

The proposed ordinance is not an amendment or addition to the Zoning Ordinance, but is an addition to Title 14 – Streets, Sidewalks, and Public Places – of the City Code. There are no specific standards for the Planning Commission to consider when reviewing the proposed ordinance. The policies in the proposed ordinance were developed by representatives from all pertinent City departments and divisions in an effort to ensure that the dedication of an existing private street is in the best interest of the City. The policies in the proposed ordinance address issues that have been encountered through the review of previous requests to dedicate private streets, such as minimum design standards, underground utility issues, and objectives that the street must meet to be considered for public ownership. It is the opinion of the Planning Staff that the Planning Commission transmits a favorable recommendation to the City Council to adopt Chapter 14.54 – Dedication of Private Streets to Public Ownership.

Attachment A

Map of Salt Lake City Private Streets

Map of SALT LAKE CITY PRIVATE STREETS



MAP LEGEND

Private Street Ownership

- Apartments & Trailer Parks
- P.U.D. & Condo
- Private Access
- Private Right of Way



Attachment B

Proposed Ordinance – Dedication of Private Streets to Public Ownership

Chapter 14.54
DEDICATION OF PRIVATE STREETS
TO PUBLIC OWNERSHIP

Sections:

14.54.010	Purpose
14.54.020	Policy
14.54.030	Administrative Procedures

14.54.010 Purpose

The purpose of this chapter is to establish policy and procedures for the dedication of private streets to public ownership. Private alleys are excluded from this policy.

14.54.020 Policy

It is the policy of Salt Lake City Corporation that:

- A. The City will not make a pro-active effort to bring private streets into public ownership unless there is a compelling public interest;
- B. Private streets created as part of a platted subdivision will not be considered for public ownership unless there is a compelling public interest;
- C. Existing private streets may be considered for public ownership when requested by property owners abutting the private street. That request will come in the form of a Private Street Dedication Petition. The petition must be signed by property owners representing 100% of the total lineal front footage of the street. By signing the petition, the petitioners agree it is their intent to dedicate the street to public ownership;
- D. Private streets will not be considered for public ownership unless:
 - (1) The underground utilities meet City standards or until the utilities are brought up to City standards;

- (2) The street surface features meet current City standards or are brought into an acceptable degree of compliance. Numerous factors will be considered through the petition process and the fact that the underground and surface standards are met does not guarantee that the street will be brought into public ownership. There are certain City standards that the City will not consider waiving or reducing (grade, surface, width), as they relate to health and safety and ability to provide services. Streets will not be considered for public ownership if they have less than 16 feet of clear paved way, not including parking. If the clear paved width, not including parking, is between 16 and 20 feet, the City will consider public ownership if there is a compelling public interest. Grade of the street must meet current City street grade standards; and
- (3) Deteriorated retaining walls and other private property features abutting the proposed public ownership are removed, repaired, or replaced by the property owners to ensure public safety;

E. Salt Lake City will not pay the cost of underground (utilities, etc.) or surface (curb, gutter, sidewalks, concrete, etc.) improvements to bring the street up to City standards. The burden is on the private street property owners to fund necessary improvements. Private street property owners may pursue funding options to upgrade the street to City standards through the City's Community Development Block Grant (CDBG), Capital Improvement Program (CIP), or Special Assessment Area (SAA) programs) if the private street was not expressly created in a platted subdivision. City funds will not be expended on streets created as a part of a platted subdivision, on the policy basis that taxpayer funds should not be expended to address deficiencies in standards consciously chosen by the property developer. If directed by the

Mayor, the City may make repairs to water or sewer lines in an emergency situation involving a substantial risk to health or safety and on the basis that the owner will reimburse the City;

F. If matching funding is requested from the City through the CDBG or CIP programs, or through creation of a SSA, the request will be considered through the routine processes for allocation of those funds and will not be given priority;

G. The City will not agree to split the ownership of utilities and streets unless there is a compelling public benefit;

H. If a private street was created as part of a Planned Development, the City will not pay, or share the cost of repairing or improving the street. If the street was created through a Planned Development, an amendment to the Planned Development is required. There must be a compelling public interest proven for public ownership to be considered. The amendment process will be reviewed by the Planning Commission with a recommendation forwarded to the City Council;

I. The City has no affirmative duty to inform residents if their street or utility is private. However, as a courtesy, when a customer signs up for water service, the City will make a reasonable effort to inform the customer if their street or the water utility line is private;

J. The City will not take ownership of a street that does not allow public access;

K. The City will not take ownership of a street that is targeted for redevelopment as identified in a City master plan;

L. The City must be able to safely and efficiently provide services (fire protection, garbage collection, snow removal, etc.) along the street in order to dedicate a private street to public ownership;

M. No specific rights or guarantees for use of the street, such as on-street parking, are conveyed to private street owners when a private street becomes publicly owned; and

N. The City will not consider the acceptance of an existing private street to public ownership unless it is demonstrated that the street dedication achieves at least one of the following objectives:

- (1) The street currently provides, or can provide with improvements:
 - i. access to open space, public facilities/uses or other public amenities
 - ii. mid-block pedestrian access
 - iii. an improvement to the surrounding pedestrian or vehicular circulation pattern
 - iv. an identified planning goal as noted in the adopted master plan for the neighborhood
- (2) Dedicating the private street to public ownership will encourage reinvestment in the community
- (3) Dedication of the street will improve public health, safety, and general welfare.

14.54.030 Administrative Procedures

The Mayor is authorized to adopt additional, consistent administrative procedures necessary to implement this policy.

Attachment C

Letter from Capitol Homeowners' Association

HIRSCHI STEELE & BAER^{PLLC}
ATTORNEYS AT LAW

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JUSTIN R. BAER
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April 23, 2010

Via email only to wayne.mills@slcgov.com

Wayne Mills
Salt Lake City Planning Division
PO Box 145480
Salt Lake City, UT 84114-5480

Re: Dedication of Private Streets to Public Ownership
Public Comments

Dear Mr. Mills:

This firm represents the Capitol Park Homeowners Association (“Association”). My client has asked me to provide you with the Association’s comments pertaining to the proposed policies for the dedication of private streets to public ownership.

Generally, the Association supports the policies. As you know, for some time the Association has been requesting that the City accept dedication of the private streets in the Capitol Park Planned Development (“Capitol Park”). The Association has filed two separate applications with the City: PLNSUB2008-0092 Subdivision Amendment, requesting that the private streets in Capitol Park be dedicated to the City; and PLNSUB2009-00445 Planned Development Amendment, requesting that the Capitol Park Planned Development be amended to dedicate the private streets.

The Association has had significant involvement with the City pertaining to the issue of the dedication of private streets, so these comments to the proposed policies stem from personal experience as well as experience in attempting to dedicate private streets.

Proposed Section 14.54.020(B) provides, “Private streets created as part of a platted subdivision will not be considered for public ownership unless there is a compelling public interest.” The Association believes that the standard “compelling public interest” is an unreasonably high standard for this situation. Typically, a “compelling public interest” stems from zoning laws, and has reference to whether a city can deny a building permit even if the permit application complies with applicable zoning regulations. *See Western Land Equities v. Logan*, 617 P.2d 388 (Utah 1980) (“We do not find the reasons given by the city for withholding

approval of plaintiffs' proposed subdivision to be so compelling as to overcome the presumption that an applicant for a building permit or subdivision approval is entitled to affirmative official action if he meets the zoning requirements in force at the time of his application.") A "compelling public interest" is a high standard to meet, and that could be difficult to attain for the dedication of private streets since most of the private streets throughout the City are small and impact only a fraction of the public. Therefore, the Association believes that the better standard to be to simply to say that there must be a "public interest," rather than a "compelling" public interest.

Section 14.54.020(C) provides that "[t]he petition must be signed by property owners representing 100% of the total lineal front footage of the street." This is an unreasonable requirement. The better standard should be "100% of the owners of the private street." It is conceivable that there are residents along private streets that have no ownership interest in the private street. In that situation, one resident living along a private street, even though that person has no ownership in the private street, could prevent the owners of the street from public dedication. Therefore, the better requirement is for 100% of the owners of each private street to approve the dedication. If there are situations where the owner is unknown, then perhaps the City could require approval from 100% of the residents along the street.

Section 14.54.020(D)(2) states, "There are certain City standards that the City will not consider waiving or reducing (grade, surface, width) as they relate to health and safety and ability to provide services." This requirement would remove any flexibility on the part of the City to consider public dedication for streets that may not strictly comply with the current City standards. With this provision in place, it is conceivable that streets in compliance when they were constructed cannot now be dedicated because the current standards are different. It is also conceivable that there exist private streets that are closer to city standards than many public streets, but those private streets would not be subject to dedication simply because they do not meet the current standards.

Although the Association understands the requirements to comply with city standards, it seems unreasonable that the City would not allow any "waiver" or "variance" of city standards in a dedication procedure. The City currently has ordinances pertaining to variances for new construction that give some flexibility under certain circumstances. Section 21A.18.010 of the Salt Lake City Ordinances states, "The variance procedures are intended to provide a narrowly circumscribed means by which relief may be granted from unforeseen particular applications of this title that create unreasonable hardships." Therefore, although current City ordinances provide a means to obtain a variance for "unreasonable hardships," the proposed dedication policies would prescribe no waivers or variances.

Rather than state that there will be no waiver as to standards, the policies should provide at least some of the flexibility that is currently contained in the City's ordinances pertaining to variances. Therefore, the Association suggests that the strict standard of "no waiver" be modified to provide that while there will be an emphasis on meeting current city standards, any

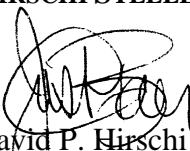
applicant for a dedication will have at least the same opportunity for a variance that is available in new construction. In other words, the dedication policies should at the very least contain policies similar to those in Title 21A, Chapter 18 of the Salt Lake City Ordinances pertaining to variances.

In sum, the Association has the following comments and requested changes to the proposed policies for the public dedication of private streets:

1. The standard should not be as high as a “compelling public interest,” but should be something more attainable such as simply “public interest.”
2. The policies should not require 100% of the property owners along the street, but should instead be 100% of the owners of the private street.
3. There should not be a provision that city standards will not be waived. Instead, applicants should be given the same opportunities to obtain a variance as contained in the current city ordinances pertaining to variances.

If you would like to discuss these suggestions, please feel free to contact me. Thank you.

Sincerely,
HIRSCHI STEELE & BAER, PLLC



David P. Hirschi
Justin R. Baer