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3 **MINUTES OF THE COTTONWOOD HEIGHTS CITY**  
4 **APPEALS HEARING OFFICER MEETING**

5  
6 **Thursday, June 13, 2024**  
7 **5:00 p.m.**  
8 **City Council Workroom**  
9 **2277 East Bengal Boulevard**

10  
11 ***ATTENDANCE***

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13 **Staff Present:** Scott Finlinson, Hearing Officer  
14 Michael Johnson, Community Development Director  
15 Maria Devereux, Deputy City Recorder  
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17 **PUBLIC MEETING**

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19 **1.0 Welcome and Acknowledgements.**

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22 **1.1 Ex Parte Communications or Conflicts of Interest to Disclose.**

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24 There were no Ex Parte Communications or Conflicts of Interest to disclose.  
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26 **2.0 Business Items**

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28 **2.1 Project AHO-24-003 - Consideration of a Request by Adrienne Bell (Holland &**  
29 **Hart, LLP) to Appeal the Cottonwood Heights Planning Commission's Approval**  
30 **of a Preliminary Subdivision Plat to Consolidate Three Lots at 3874, 3892, and**  
31 **3889 East Golden Hills Canyon Road.**  
32

33 Hearing Officer, Scott Finlinson presented the Staff Report and stated that the requested action is an  
34 appeal of the Cottonwood Heights Planning Commission approval of a Preliminary Subdivision Plat  
35 to consolidate three lots located at 3874, 3892, and 3889 East Golden Hills Canyon Road. He pointed  
36 out that no public comments would be heard. Staff will review the record of what has previously  
37 been presented and is prohibited from receiving any added information.  
38

39 Nathan Mitchell identified himself as an attorney with the law firm of Hoggan Lee Hutchinson. He  
40 has been retained to represent and defend the decision of the Planning Commission. He asked the  
41 Hearing Officer to affirm the decision of the Planning Commission, specifically approval of the  
42 Preliminary Plat application. In his view, the application met the requirements of the City Code and  
43 complied with the appropriate process in reaching that conclusion. He reported that the Preliminary  
44 Plat is one step in a process that occurs prior to Final Approval of that Plat, both with different  
45 Ordinance requirements. The City and applicant conducted an analyses and submitted additional  
46 plans to identify where a building may be constructed. The purpose of the Plat Amendment was the  
47 consolidation of three lots into one given the unique geography of the area. The proposal is consistent

1 with the zone, which favors residential development constructed in a manner that is consistent with  
2 maintaining the natural hillsides and the General Plan. The Planning Commission held two separate  
3 meetings and a lengthy public meeting where comment was received from the landowner/appellant.  
4 24 members of the public were present who raised concerns that were considered by the Planning  
5 Commission. The question remained as to whether the requirement in question fits into the  
6 Preliminary Plat or Final Plat.

7  
8 Mr. Mitchell reported that an additional critical aspect pertaining to the appeal is the distinction of  
9 the arguments or theories of access and their distinction. One of the challenges of the Appellate Brief  
10 was the reference to public easements. He claimed that the reference conflicts between two separate  
11 bodies of law and differentiates who holds that right and easement typically established by an  
12 individual. Legal rights generally refer to something that is established and goes through the process  
13 of a court order. He stated that access is a more general term and there is not a prescriptive easement  
14 in this case and an established public right-of-way with many unanswered questions.

15  
16 The arguments raised in the briefing were identified. Mr. Mitchell reported that the first was whether  
17 the request complies with the Ordinance. The application is for a Preliminary Plat Approval and is  
18 complex enough that the City requires the applicant go through the Preliminary Plat process. The  
19 appellant has raised two different arguments with the first being whether this will pose harm to the  
20 public. He explained that regardless of whether rights have been established, the theory of an injury  
21 to the public begins to come apart and the question becomes the location of an established right. The  
22 secondary argument addressed is whether there is compelling cause. He believed the request complies  
23 with the general plan and zoning, giving effect to a property owner's rights that have been entitled  
24 since the original Plat in the 1970s. The request serves the public and is supported by good cause as  
25 there is no legal right to access the canyon through the system.

26  
27 Mr. Mitchell reported that an additional argument was that the Preliminary Plat does not comply with  
28 Section 12.12.010.82, which would ordinarily require a public way. The same issues with the analysis  
29 exist as there is not an established public right-of-way or easements. He questioned why the Planning  
30 Commission would go beyond its purview when it lacks the authority to establish an easement when  
31 the scope, the holder, precise location, and evidence are sufficient to make a determination. Staff  
32 findings were referenced. He explained that the Commission was being asked to determine whether  
33 the Preliminary Plat should be approved subject to final technical issues to be resolved and applied to  
34 an appropriate standard notwithstanding that issue.

35  
36 The last argument raised pertained to the public notice. The appellant has argued there should have  
37 been more notice of the topic, specifically with respect to the relocation proposal. Mr. Mitchell stated  
38 in the City's view, there is no such requirement in the Statute or cited in the Brief. Should the Hearing  
39 Officer look at language, it only requires disclosure of the topic sufficient to give adequate public  
40 notice to those who may wish to attend and provide public comment. He believed the general topic  
41 provided sufficient evidence and identified there was a proposed subdivision amendment with respect  
42 to this property. It was adequate and no indication of prejudice where members of the community  
43 showed up in force to discuss preciseness issues raised.

44  
45 Adrienne Bell from the law firm of Holland & Hart was present representing the appellant, Christine  
46 Mikell. The main issue they wished to focus on was the requirement that the Code had not been  
47 satisfied to support the Planning Commission's approval of the Preliminary Plat Application on

1 March 6, 2024. She respectfully requested that the Planning Commission approval be reversed. She  
2 referenced City Code Section 12.12.010.82 which sets forth the information that a Preliminary Plat is  
3 required to provide. The Code requires that the Plat show all streets, other public ways, areas reserved  
4 for public places, parks, and other public spaces on or adjacent to a proposed subdivision. She stated  
5 their view is that the application does not comply with these requirements and fails to depict public  
6 features of the property, including the area that has been utilized as the public way on the Preliminary  
7 Plat as required by Code. Substantial evidence in the record supports the finding a public way in  
8 some form exists on the property and is not the purview of the Planning Commission to determine  
9 what that is, but there is a public way that should be shown on the Plat.

10  
11 Ms. Bell reported that at least 10 members of the public testified at a Planning Commission hearing  
12 that they have accessed Deaf Smith Canyon over the course of many years. The Planning  
13 Commission Chair also acknowledged that the testimony provides new data and evidence that some  
14 sort of prescriptive road may exist on the Plat. At a minimum, she explained the testimony provided  
15 at the hearing put the Planning Commission on notice that a public way exists across the property that  
16 is not reflected on the Plat Application. It was noted that a public way is not defined in the City  
17 Ordinance but may mean any land used by the public as a passageway or pathway. The testimony  
18 provided at the hearing that a portion of the property has been utilized as a public trail demonstrates  
19 the existence of the public way. She reported that the property is encumbered by a passageway,  
20 pathway, or other public way that is used by members of the public to access Deaf Smith Canyon. In  
21 light of the testimony at the hearing, she felt strongly that the Planning Commission should table the  
22 application to allow it to be amended to include and show the location of the public way. Failure to  
23 include the location of the public way also makes it impossible to evaluate the feasibility of the  
24 proposed trail dedication area against the location of the existing public way.

25  
26 Ms. Bell reported that Commissioner Poulsen noted that the proposed trail dedication area is located  
27 high up on the side and does not connect to anything. As such, it was believed that the public will be  
28 materially injured by the lot consolidation and the proposed trail dedication area is insufficient or  
29 unlikely to provide meaningful access to Deaf Smith Canyon. She reiterated that their effort is not to  
30 challenge the Final Plat and it being required to address technical issues. Their concern is that the  
31 Preliminary Plat scale must meet the standards of the Code. She requested that the Planning  
32 Commission decision be reversed to allow the applicant an opportunity to address deficiencies of the  
33 path location and provide the public with an opportunity to further comment.

34  
35 Hearing Officer Finlinson asked Ms. Bell if the issues will be properly addressed through the Final  
36 Plat approval process. Ms. Bell stated if the Plat is not required to show their concerns at the  
37 Preliminary Plat stage, it was unfair that it would be required at the Final Plat. She believed the  
38 Preliminary Plat does not meet the provisions of the Code and should be tabled and amended until it  
39 does. Hearing Officer Finlinson understood it would not be enough from Ms. Bell's client's position  
40 to say the Preliminary Plat approval remains in place and their issues be addressed in the Final Plat  
41 approval. Ms. Bell reiterated the importance of the Preliminary Plat approval including the location  
42 of the public way and allowed the public an opportunity to comment prior to Final Plat approval. This  
43 information is material and important to the analysis of the consolidation and its impact on the trail  
44 system in general and the potential location of the trail dedication area. Without having this  
45 information available, she felt it inadequate to move forward.

1 Hearing Officer Finlinson asked Mr. Mitchell to speak about the Final Plat approval process and items  
2 still to be discussed and reviewed. Mr. Mitchell stated it was his understanding there would be an  
3 opportunity for public input prior to the Final Plat approval. It was important to understand the  
4 Planning Commission's approval of the Preliminary Plat approval contemplates the technical issues  
5 requiring resolution prior to Final Plat approval. The findings are the same that the Commission  
6 relied on prior to coming to a conclusion. The City intends to work with the property owner and  
7 secure a trail dedication where it would provide legal rights to access. In terms of compelling cause,  
8 the property owner may incur and pay portions of that trail construction which is currently in  
9 negotiations and will be resolved. He noted that the Staff Report states that trail dedication will occur  
10 prior to Final Plat approval and contains distinctions in the Code that deal with Preliminary Plat and  
11 Final Plat. He emphasized that they are not done yet and there are additional issues pertaining to the  
12 process that need to be resolved.

13  
14 Community and Economic Development Director, Michael Johnson, clarified that the process  
15 including the Preliminary Plat being reviewed by the Planning Commission when public input is  
16 received. The review of the Final Plat occurs at an administrative level at which time the applicant  
17 may be asked to clarify or resolve various issues. Mr. Mitchell understood the discussion regarding  
18 the dedication of the trail is ongoing.

19  
20 Hearing Officer Finlinson presumed that if the administrative decision is made and the Final Plat  
21 approval includes a trail dedication, the issues and City process will have been resolved. Mr. Johnson  
22 reported that the process will formalize the location of the Final Subdivision Plat and signed by the  
23 Chair of the Planning Commission prior to recordation. Mr. Mitchell understood that not including  
24 the trail dedication was inaccurate as it is the City's view and position a dedication would be required  
25 to comply with other sections of the Code and its Master Trail Plan. In discussions during the public  
26 hearing, it was noted that issues were raised over the location of the alignment. He felt that although  
27 all interested parties would come to a resolution, some may still have issues with the end alignment.

28  
29 Based on the testimony of the public hearing, Ms. Bell believed it was unfair that the area identified  
30 accurately resolved the issue of access. There has been much discussion regarding its disconnection  
31 which includes key issues with getting to and from the location. She believed that what is proposed  
32 on the subject property should be based on what is likely to be used and useful to the public. She  
33 stressed the need for the public way to be shown on the Preliminary Plat to allow the City to identify  
34 where people have historically accessed the trail.

35  
36 Mr. Mitchell commented that the trails may not connect as the City's authority is fairly limited and  
37 does not have the correct tools to pursue the establishment of public right-of-way. This creates a  
38 unique opportunity as the property owner has requested something from the City that can now require  
39 a dedication providing proper alignment for trail access. A property rendering was referenced. With  
40 respect to Ms. Bell's stance on potential evidence, he believed the question was not with the existence  
41 of the trail but whether substantial evidence supports a finding that there was no public way. He  
42 stated that all that is required is reasonable minds to conclude that there is no public right-of-way or  
43 an established easement and does not need to be included on the Plat. The Planning Commission  
44 discussed the issue at length and rejected a proposed amendment that would have made some findings  
45 to that effect. He pointed out that reasonable minds could conclude that it does not exist and one of  
46 the reasons they should be affirmed. Although the public way is not defined in the referenced section  
47 of Code, it is defined in other sections. He recommended public ways be given a specific meaning

1 and should be rights-of-way. With respect to tabling the item, he believed it turns the analysis and  
2 puts the Planning Commission in a precarious position where there are uncertain questions. In the  
3 absence of a concrete legal right and proof of that right, he stated they do not need to wait for  
4 additional litigation to resolve issues. He respectfully asked that the Hearing Officer affirm the  
5 Planning Commission's decision as it meets the substantial evidence standard.

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7 Hearing Officer Finlinson stated that there is not a public portion and will not receive public input.  
8 He confirmed that he will take the matters under advisement and come to a decision within the allotted  
9 10-day timeframe.

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11 **3.0 Consent Agenda**

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13 **3.1 Approval of Minutes from June 13, 2024.**

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15 The Appeals Hearing Officer will approve the minutes of the June 13, 2024 meeting after the  
16 following process is met. The City Recorder will prepare the minutes and email them to the Hearing  
17 Officer. The Hearing Officer will have five days to review the minutes and provide any changes to  
18 the Recorder. If, after five days there are no changes, the minutes will stand approved. If there are  
19 changes, the process will be followed until the changes are made and the hearing officer is in  
20 agreement, at which time the minutes shall be deemed approved.

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22 **4.0 Adjournment**

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24 The Administrative Hearing adjourned at 5:42 p.m.

1 *I hereby certify that the foregoing represents a true, accurate, and complete record of the*  
2 *Cottonwood Heights City Appeals Hearing Officer Meeting held Thursday, June 13, 2024.*

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4 ***Maria Devereux***

5 Deputy Recorder

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7 Minutes Approved: \_\_\_\_\_