

**FINDINGS OF FACT and FINAL ORDER
TYPE III DECISION**

DATE: November 18, 2021

FILE NO.: 21-014 SUB/TREE

PROJECT NAME: Deer Meadows Subdivision

APPLICANT/OWNER: Roll Tide Properties, Corp.

PHYSICAL ADDRESS: 40808 and 41010 Highway 26

LEGAL DESCRIPTION: T2 R5E Section 18CD, Tax Lots 900 and 1000

FINDINGS OF FACT

GENERAL FINDINGS

1. These findings are based on the applicant's submittals and other evidence and testimony presented to the Planning Commission. In a letter dated June 11, the applicant agreed to toll the 120-day clock until July 27, 2021. The original 120-day clock was November 24, 2021.
2. On September 27, 2021 the Planning Commission held a public hearing on the Deer Meadows Subdivision and decided to create an open record period prior to deliberating on the subdivision request at a special meeting scheduled for November 8, 2021. The first open record period closed on Monday, October 11 at 4 pm. During the first open record period, anyone could submit additional written information for the Planning Commission to consider. The second open record period closed on Monday, October 18 at 4 pm. During the second open record period, parties could only submit information that rebutted or responded to information that was submitted during the first open record period. The third open record period closed on Monday, October 25 at 4 pm. This third open record period was reserved solely for the applicant to submit their final written argument.
3. With the creation of the open record period the applicant agreed to extend the 120-day clock by an additional 42 days. The existing 120-day clock is January 5, 2022.
4. The subject site is approximately 15.91 acres. The site is located at 40808 and 41010 Highway 26.

5. The parcel has a Comprehensive Plan Map designation of Village and a Zoning Map designation of R-1, Low Density Residential; R-2, Medium Density Residential; and C-3, Village Commercial.
6. The applicant, Roll Tide Properties Corp., seeks approval for a 32-lot subdivision at 40808 and 41010 Highway 26. The development proposal included two partial street extensions and the creation of two new streets. The applicant proposed 30 lots of Low Density Residential (R-1) that would contain single family homes or duplexes, one small lot (9,023 square feet) of Medium Density Residential (R-2), and one large lot (7.35 acres) with a combination of Medium Density Residential (R-2) and Village Commercial (C-3). The proposed 30 lots with R-1 zoning range in size from 5,500 square feet to 32,189 square feet. The applicant proposed to retain 48 existing trees and proposed to remove the remainder of the trees from the site.
7. The exact number of multifamily units was not determined at the time of the subdivision request as the applicant wanted to process the multi-family development in a subsequent design review application. However, the applicant claimed the number of multifamily dwelling units on the R-2 zoned land would have been between 38 dwelling units and 66 dwelling units. The C-3 zoned land would have likely contained a mix of commercial and residential development.
8. Due to the interest in the previous proposal at the subject site, the Development Services Director elevated this application to a Type III decision to be heard and considered by the Planning Commission.
9. Throughout the project narrative (Exhibit B) the applicant failed to submit required information. Instead, on 14 occasions in the narrative the applicant stated that the development code is subjective (i.e., not clear and objective) and because the subdivision is a housing application the alleged subjective development code language is not applicable. Staff explained at the Planning Commission meetings that they did not agree with the applicant's interpretation of what constitutes and does not constitute subjectivity.
10. The applicant previously proposed a development at the site that was denied by the City Council (File No. 19-050 CPA/ZC/SUB/SAP/TREE Bull Run Terrace). This application was substantively different from that prior proposal. The applicant did not propose a Comprehensive Plan amendment or Zone Change amendment. The applicant chose not to expand Deer Pointe Park or connect Dubarko Road to Highway 26. The existing parks master plan details the Deer Pointe neighborhood to have a Community Park. The existing transportation system plan classifies Dubarko Road as a minor arterial and shows it connecting to Highway 26.
11. The City of Sandy provided the following notices:
 - A. A transmittal was sent to agencies asking for comment on August 2, 2021.
 - B. Notification of the proposed application was mailed to affected property owners within 300 feet of the subject property on August 10, 2021.

- C. A supplemental notice regarding the Planning Commission meeting was mailed to affected property owners within 300 feet of the subject property on August 24, 2021.
- D. A legal notice was published in the Sandy Post on September 15, 2021.

BASIS FOR DENIAL 1: The application does not meet subdivision criteria 17.100.60(E)(1)

12. Section 17.100.60(E)(1) requires subdivisions to be consistent with the density, setback, and dimensional standards of the base zoning district, unless modified by a Planned Development approval. Each base zoning district requires that residential development comply with Chapter 17.82. First, the Preliminary Plat Map (Exhibit C, Sheet C2) details setbacks for Lots 2, and 27-31 showing the front setback facing the local street or public access lane, instead of the Transit Street as required by Chapter 17.82. Second, Sheet C2 does not identify that lots abutting Highway 26 shall face Highway 26 as required by Chapter 17.82, nor does the plan set detail frontage improvements along Highway 26 as required by Chapter 17.86. Third, by not proposing the extension of Dubarko Road to connect with Highway 26, the lots that would otherwise abut Dubarko Road do not have the required frontage to Dubarko Road as required by Chapter 17.82. Fourth, by not proposing Dubarko Road or parkland dedication, some of the proposed lots are in the required right-of-way for Dubarko Road and also located across required parkland. Therefore, this proposal does not meet approval criteria 17.100.60 (E)(1).

BASIS FOR DENIAL 2: The application does not meet subdivision criteria 17.100.60(E)(3)

13. Section 17.100.60(E)(3) requires the proposed street pattern to be connected and consistent with the Comprehensive Plan or official street plan for the City of Sandy. The proposed street pattern is not consistent with the Comprehensive Plan and the city's standards, including connecting Dubarko Road to Highway 26.
14. The 2011 Sandy Transportation System Plan (TSP) was adopted by Ordinance 2011-12 as an addendum to the Comprehensive Plan. Exhibit A of Ordinance 2011-12 is the TSP. The TSP is referenced by ordinance as 'the transportation element of the City of Sandy Comprehensive Land Use Plan.' The 2011 TSP includes the official street plan for the City of Sandy. Project M20 in the TSP is the connection of Dubarko Road to Highway 26.
15. On pages 9, 10, and 14 of the project narrative (Exhibit B) the applicant references the City's TSP and states that the TSP identifies Dubarko Road as a minor arterial. On page 32 of the project narrative (Exhibit B) the applicant claims that subdivision approval criteria 17.100.60 (E)(3) is not clear and objective and therefore the subdivision does not need to meet the Comprehensive Plan or official street plan for the City of Sandy. The applicant also asserts that if the official street plan is in the TSP, it is not sufficiently incorporated into the development code for the purposes of limited land use decisions. However, in the narrative for Bull Run Terrace (File No. 19-050) for the same subject site the same applicant stated, "*As illustrated on the submitted Future Street Plan (Sheet C1), the proposed street system is consistent with the City's Transportation System Plan and Comprehensive Plan.*" So, with the Bull Run Terrace land use application the applicant conceded that the street system had to be consistent with the City's Transportation System Plan and Comprehensive Plan to meet criteria 17.100.60 (E)(3). The applicant's inconsistent understanding of what is the official street plan (i.e., the City's TSP) is illogical and conflicting even in the applicant's project

narrative. Additionally, in a previous TIS from Ard Engineering (dated September 28, 2020) on page 24 the applicant's traffic engineer referenced the requirement for the Dubarko Road connection by stating, "it is the completion of the city's planned connection of Dubarko Road to Highway 26." Furthermore, the proposal is not consistent with OAR 660-012-0045, which requires that local governments implement their TSP. By not providing the connection of Dubarko Road to Highway 26 in the proposal the subdivision request does not meet approval criteria 17.100.60 (E)(3).

BASIS FOR DENIAL 3: The application does not meet the parkland dedication requirements in Chapter 17.86

16. The applicant did not propose any parkland dedication as required by Chapter 17.86 of the Sandy Development Code. Directly west of the subject property is undeveloped land owned by the City of Sandy that has long been reserved for the eventual development of Deer Pointe Park. The Parks and Trails Advisory Board (Board) met on August 11, 2021. The Board recommended that conditions of approval were included that required dedication of land for expansion of Deer Pointe Park. The 1997 Parks Master Plan designated Deer Pointe Park as a community park, and in the Location and Development Polices section of the Plan states that community parks should be 20 acres or more. Because the Deer Meadows subdivision did not propose parkland dedication abutting Deer Pointe Park, the proposed subdivision is inconsistent with the 1997 Parks Master Plan.

17. Section 17.86.10 contains a clear and objective formula for determining the amount of land required to be dedicated. The formula is $\text{acres} = \text{proposed units} \times (\text{persons/unit}) \times 0.0043$. For the 30 single family homes, $\text{acres} = 30 \times 3 \times 0.0043 = 0.39$ acres. For the maximum development of 66 multifamily units, $\text{acres} = 66 \times 2 \times 0.0043 = 0.57$ acres. Combined, this totals 0.96 acres. The dedication of 0.96 acres was required to meet the clear and objective criteria in Chapter 17.86. NOTE: The number of dwelling units on the subject site does not account for the additional land required to be dedicated for Dubarko Road to connect to Highway 26 or the parkland dedication, therefore the calculations related to parkland dedication are based on unreliable assumptions.

DECISION: For the reasons stated above, the Planning Commission **denies** the Deer Meadows subdivision application.



Jerry Crosby
Planning Commission Chair

RIGHT OF APPEAL

A decision on a land use proposal or permit may be appealed to the City Council by an affected party by filing an appeal with the Director within twelve (12) calendar days of notice of the decision. Any person interested in filing an appeal should contact the city to obtain the form, “*Notice of Appeal*,” and Chapter 17.28 of the Sandy Development Code regulating appeals. All applications for an appeal shall indicate the nature of the interpretation that is being appealed and the matter at issue will be a determination of the appropriateness of the interpretation of the requirements of the Code.

An application for an appeal shall contain:

1. An identification of the decision sought to be reviewed, including the date of the decision;
2. A statement of the interest of the person seeking review and that he/she was a party to the initial proceedings;
3. The specific grounds relied upon for review;
4. If de novo review or review by additional testimony and other evidence is requested, a statement relating the request to the factors listed in Chapter 17.28.50; and,
5. Payment of required filing fees.