

Seven Peaks Case: Part I

Seven Peaks Development Corp.

It was April, 1994 and Brent McQuarrie looked at the check he was about to sign. That check would make the Seven Peaks Development Corp., which he owned with his brother Scott, the owner of nearly 51 acres of prime real estate. The property was located along the eastern bench of south Provo and included the Seven Peaks water park as well as the Seven Peaks golf course. The land was currently zoned as public use land, but he and his brother had a dream to rezone the land and develop it into 500 residential and multi-family homes. Provo was in need of additional housing, and this land would be coveted as the last remaining piece of real estate along the east bench.

The McQuarrie brothers were going to buy the Seven Peaks land through a bankruptcy sale. Though the land was zoned as a public use facility, after six weeks of due diligence and informal talks with the mayor of Provo City and the city development commissioner, the brothers felt comfortable in their ability to have the land rezoned for residential use. It was generally well-known that the golf course was not supporting itself financially, and an alternate use would have to be found. They had even spoken to several residents of the area about the development and the sentiment seemed to be somewhat favorable. There were no other known restrictions on the land aside from the zoning issue. They were aware of the risk involved. They knew there was not a guarantee that the land would be rezoned and it was a risk they thought they would be willing to take. The company had developed land before in other cities that required zoning changes, and had been successful in petitioning to have the zoning changes made.

But before he signed the check over, he wanted to be sure he had considered everything. What worries should he be concerned with? What exactly were the risks involved with this purchase? He knew the potential rewards would be great with a need for additional housing in Provo, combined with the prime location of the property. He thought that with the right mix of open space and single-family homes with condominiums and twin homes, they would appeal to a wide market. Was he doing the right thing with this purchase?

June 22, 1998

Seven Peaks Case: Part II

Brent McQuarrie sat at his desk, staring out at the foothills of Provo in frustration. The dream he shared for the last three years with his brother, Scott, had been thwarted. The day before, June 16, 1998, Provo City Council voted 4-3 to deny a rezone request that would have allowed the McQuarrie brothers the opportunity to develop nearly 51 acres of land on the east foothills of Provo, above the Seven Peaks resort. They had hoped to build a 300-unit housing development (pared back from 500), consisting of a mix of single-family and multiple-dwelling complexes. That vision seemed to have ended abruptly, the night before. As he looked over the Seven Peaks golf course, where the development would have gone, several questions plagued him. What could his company, Seven Peaks Development, do with this land that remained with its current zoning as public use land? What choices remained? The golf course wasn't financially viable any longer. What could he have done differently, if anything, to change the outcome of the City's vote? Looking forward, what lessons could be taken from this experience, so his company wouldn't face this situation again? His problems were just beginning it seemed.

The History of the Seven Peaks land

Back in 1881, this land was identified as valuable, and added for the establishment and needs of the Utah State Mental Hospital. It stayed in the hands of the State as Trust Lands until the early 1970's, when Provo pushed the State to declare the land surplus, so it could be developed. In 1975, Provo City officials convinced the governor of Utah to make about 117 acres of this Trust Land available for an elaborate ski resort. This is where the Seven Peaks name originated. The land was sold to Wilderness Associates, to develop into the ski resort. The state was assured that if the project failed, the land would revert to the city for public use. This Reversionary clause[@] was included to address the issues of residents and the State Hospital, who opposed the use of the land for residential purposes. When the ski resort concept failed, the land went back into the hands of the city, then was sold again, however, this time, when title was transferred, the reversionary clause was not included. The developer required unencumbered land as collateral, so the clause was left out, with the assurances from the mayor of the city that it

would be protected by its zoning. The property changed hands a couple of times over the years until 1994, when a bankruptcy sale placed it in the hands of the McQuarrie brothers with their dream to address Provo's housing problem with a master planned development where the golf course now stands.

The Rezoning Procedure

The rezoning procedure is rarely a simple one. It normally begins with a petition to change the general plan of a city, especially when the zoning change is drastic, as a change from public facility to residential use. A less subtle change, such as between commercial or industrial uses, may not have to include this step. Typically, a municipality will fight the change of the city's general plan. This is the point where the battle for rezoning is typically fought between the developer and the city. Once the general plan has been changed successfully, a petition must then be taken to the planning commission to change the zoning. If it is approved by the planning commission, it must then be ratified by the city council. If the zoning is successfully changed by the planning commission and ratified by the city council, the actual site plan still has to get approved by the planning commission. This is the final step.

Exhibit 1: The Seven Peaks Development Timetable

Mid - 1995	The McQuarries meet with neighbors, the zoning commission and the city council about the possibility of a 500-unit housing project above Seven Peaks
Dec. 1995	Provo changes its general plan to allow for residential housing in the Seven Peaks vicinity without zoning approval or a public hearing. The McQuarries reduce the number to 459 units in the proposed development
April 1997	The zoning is approved by the planning commission, but not yet ratified by the city council. Neighbors and the State Mental Hospital begin to raise concerns about the proposed amount of housing in the area. The project is reduced to 429 units
May 1997	The decision to ratify the zoning change is tabled by the city council. The Task 2000 committee is in the process of recommending a new general plan to the city
Aug. 1997	A new general plan for the city is approved. The McQuarries reduce the number of units in the project to 340 amid concerns from neighbors and the city regarding traffic other growth issues
Nov. 1997	The planning commission votes 7-0 to pass the zoning change and calls for the McQuarries to conduct a citywide traffic report to assess the impact
March 1998	A group of citizens called Concerned Families of Provo form to oppose the development. They oppose the high-density housing, concerned about extra traffic, air pollution and the extra burden put upon the city's resources. Many just want it to remain open green space for use by the community. The McQuarries reduce the number of units to 300. The city delays the vote to ratify the zoning change
April 1998	The Reversionary clause issue comes to light. The debate shifts from an acceptable number of houses for development, to whether it should legally remain zoned as public use and not residential at all
May 1998	The Utah Attorney General investigates the disappearance of the reversionary clause to determine if there is liability to the state if the zoning is changed. The McQuarries traffic study shows the development will add over 4,000 additional vehicles per day to the area. Residents question the validity of the study and call for an independent audit
May 1998	Citizens propose that the city buy the land back from the McQuarries and develop Heritage Park, a site that would include trails, an amphitheater, an outdoor science lab and a park. The city questions its ability to pay for the land with the improvements already put in place by the McQuarries, or its ability to pay for additional improvements and upkeep of the park. McQuarrie

brothers still holding on to their vision, pushing a vote by the city

June 1998 Some residents feel the general plan was changed illegally in 1995 without a proper public hearing. On June 16, 1998, the Utah Attorney General's office declares that the amendment to the general plan in 1995 was indeed illegal. It was unable to determine the validity of the reversionary clause

June 16, 1998 Provo City Council votes 4-3 to deny the rezone request of the McQuarrie brothers Seven Peaks development, citing bad timing and the growth concerns of the public

****Please see the attached articles from the Daily Herald for public comments and issues during the time the vote was to have taken place (Exhibits 1-8).**

Analysis of issues from perspective of Brent McQuarrie

Why was this rezoning issue so hotly debated and what made it different from most rezoning situations? The fact that the land is currently used as a golf course. It is green and aesthetically pleasing and people don't want to change that. Even though the golf course is private, not public, people have the perception that the land is public property and resist developing it. Additional traffic is a legitimate concern for many residents and the foothills are more visible than other land might be, so a change is very noticeable.

What are the biggest issues and lessons to be learned from this experience? First, try not to buy land that you have to have rezoned. There are never guarantees. Second, discuss your plans with the community development department, city council members and neighbors first, to see what kind of support you have. Without all of them behind you, your chances of success are limited. Find out the feelings of the city fathers and residents. Are they for or against growth? Do they want planned growth, or do they want to cut it off? See what the mayor and city council have been doing in the past. What kind of projects are getting approved? Lastly, once you have a site plan, don't change it and if you don't know much about politics, don't get involved. You are likely to get burned.

Other issues to debate? 1) The validity of the reversionary clause. Should we have the right to change it now? 2) How far should the govt. go in telling private citizens what they should be able to do with their land, if obtained legally? 3) What are the broader implications of a large scale housing project to the immediate neighborhood and community in general? Both good and bad (increase tax base, housing solutions, traffic, pollution, increase use of resources such as school, fire, police etc.) 4) If a city is against growth, are they willing to make the sacrifices to not develop? (Forego possible new taxes, pay more taxes to have more green, open space etc.)

Heated debate prompts delay in Seven Peaks housing plan

02/19/98 12:00:00 AM

By RYAN VAN BENTHUYSEN

The Daily Herald

PROVO - A development plan by Seven Peaks Water Park officials is still a bit wet by City Council standards.

So the 300-unit housing project will hang out to dry for two more weeks.

In front of a packed house Tuesday night, the council postponed rezoning 51 acres east of Seven Peaks water resort for development. Brent and Scott McQarrie, owners of the land and the adjacent water park, want to build apartments, condos and single-family homes on the property. There is strong support for the rezone if a development agreement is drawn up that both the developer and the council can agree on.

Thirty-three Provo residents spoke on the issue; 17 were in favor of the development and 16 opposed it.

So many people showed up for the discussion that chairs had to be set up in the foyer of the City Center.

The project faces a wide range of support and opposition by the residents of southeast Provo. One neighborhood chair said he's appalled at the council for even considering the idea, which will bring a mixture of single-family homes and high-density condominiums to the area.

"The real issue is no more high-density," said Bert Cherry, chairman of the Maeser Neighborhood Committee.

"You each ran on that platform," he told the council. "How can you even hear this thing?"

Seventy percent of the development would be apartments or condos. Some people argue there's a need for high-density housing because of the substantial number of people looking for starter homes in Provo.

Keith Mildenstein of North 1260 East cited state statistics that show 40,000 people a year seek homes in Utah. He said a majority of those people are the offspring of others, meaning it's not the outsiders that are clogging the housing channel.

"We've got to put them somewhere," Mildenstein said. "We have to provide something in the starter home range and this proposal meets that goal."

Seven Peaks owns 150 acres of undeveloped land behind the water park.

However, only 65 acres of it is developable. The housing project would use 51 acres of that, leaving 14 acres of permanent open space that can be used for a golf course or parks.

Scott McQarrie said the diversity of housing styles coupled with open space and parks will make the neighborhood a tight-knit community.

One resident who has lived in similar neighborhoods much of her life disagrees.

"The reality is, that doesn't happen," said Kim Santiago, who lives just east of the area. "That's typical of condo living; it's a transient population. I'm concerned about having a sense of community."

In response to an earlier council request, Seven Peaks officials paid for a traffic study. The study shows that the development will bring more than 19,000 additional automobile trips per day to

the neighborhood.

"That's a big safety concern for me," said Mary Rasmussen, of southeast Provo. Rasmussen said she's particularly concerned about the extra traffic on University Avenue. That road, she added, will become a major access road for the area.

"Whether you vote for or against this, that needs to be looked at," she said.

The McQarries face other road blocks. First, the property is zoned for public facility use, not residential. In addition, the proposed development doesn't follow the Provo General Plan that was approved last summer.

The council will consider rezoning the property at its March 3 meeting. The contract will outline specific guidelines the developer has to follow, including only allowing up to three 20-plex buildings. Several board members were uneasy with the original plan, which called for at least six 20-plex buildings. Some didn't like the idea of multiple dwellings at all.

"I would like to see single-family housing in there," said Councilman Dennis Poulsen. "I'm going to get that off my chest right off the bat."

But Councilman David Rail said he just wants the matter resolved within two weeks.

"We've listened to this thing, we've beat it with a stick, we've kicked it like a dead horse," he said. "We need to give closure to it."

Provo must not cave in to developers on Seven Peaks land issue

03/15/98 12:00:00 AM

Scott Ellis Ferrin is a BYU assistant professor of educational leadership and resident of Provo.

I write to urge my fellow citizens to lead their leaders to a fresh perspective on the Seven Peaks land issue.

The Provo City Council will soon decide whether to grant a request from a developer to change the zoning of the land surrounding Seven Peaks and its golf course from its current designation as "PF" zoning, or public facility land, to high-density zoning that will allow this last vestige of beautiful and environmentally sensitive green space in our city to be turned into condos.

Let's remember the history of this beautiful land. Some years ago, when a group of developers sold the city on the idea that they could develop a ski resort here in Provo (the origin of the Seven Peaks name), they sought this land, most if not all of which was owned by the State Hospital. The State Hospital did not want to sell this land, wanting to hold it for planned future growth and as recreational open space for its patients. To assist in the developers' plans for a ski resort, state lawmakers directed that this land be sold over the hospital administration's objections - but the land was always intended to be used for a publicly beneficial purpose and was zoned for public facility use only. It was meant to help us realize the enduring economic and recreational benefits of having a ski resort here in Provo.

Now a developer has purchased this precious land - land the State Hospital would still like to have back - knowing it was zoned public facility land, and he is asking the city to rezone it so he can build high-density housing. Too many members of the City Council seem to see the issue as whether they should try to modestly scale back the developer's plan for a high number of twenty-plexes, twin homes and other types of condos. They recognize that high-density housing here will bring problems to the existing neighborhoods and to all drivers in Provo, but they are trying to mitigate those problems slightly.

The real question is why we should remove the public facility zoning designation from this property at all. If the developer who bought the land doesn't want it as public facility zoned land, why don't we buy the land at its relatively low cost as public facility zoned land and return it to its intended public use? Why shouldn't we learn from other cities before it is too late and preserve this beautiful green space as some sort of publicly beneficial land - perhaps a golf course, as it is currently, or an outdoor amphitheater or a park with a Holocaust memorial that would enrich Provo's Freedom Festival; perhaps a nordic ski center that links up with existing trails; a baseball stadium, public stables, a petting zoo?

Some years ago, Phoenix went through a difficult battle to create the Phoenix Mountains Preserve, one of the few examples of positive planning in that city's rapid growth. What was once seen as controversial - creating and preserving the Phoenix Mountains Preserve - is now seen as self-evident and is an enduring benefit to that city.

When the Winter Olympics comes to Seven Peaks and its ice rink, and the world's attention is focused on Provo, will the world see evidences of a city of vision and hope that makes decisions that include environmentally sensitive and gracious planning? Or, will they see a glut of greed and condos and traffic problems caused by lack of planning and leaders who are too easily captured or intimidated by developers?

We only have a brief window of opportunity in which to make decisions about Provo's future while they will make a difference.
Don't put condos on Seven Peaks.

Seven Peaks condo plan hits Provo at pivotal time

04/14/98 12:00:00 AM

This editorial reflects the opinions of The Daily Herald editorial board. Members of the editorial board are Publisher Kirk Parkinson, Managing Editor Mike Patrick, Opinion Page Editor Mark Eddington, City Editor Mitch Wilkinson and Provo resident Jared Patzke.

No question: the prospect of putting up hundreds of condos near Seven Peaks is a big issue. Years from now, it may be remembered as more than a mere rezoning battle. The Seven Peaks predicament is laced with intriguing issues. One of the hottest is that opponents of developing the property say the land once was and still should be in the public domain. Another is the accusation that Provo City is not realistically weighing the impact of the proposed development on area schools and streets. Still another is that critics of the development adamantly believe city leaders are turning deaf ears toward them. They've been denied carte blanche access to public comment before the city council, leading them at one point to hold their own press conference prior to a council meeting.

As of this moment, groups on both sides of the Seven Peaks rezoning debate are doing their research, trying to clarify a muddled issue. This is a good time to catch our breath as a community and take stock on several important fronts. Some citizens think the council hasn't given them enough of a public forum to be heard. On the Seven Peaks issue specifically, we don't agree with that assessment. Council meetings go on far too long already; it's unreasonable to expect that everyone who has an opinion should have unlimited opportunity to express it before the council as a whole.

On the other hand, we think the community has arrived at a critical juncture and that the council should listen well and think hard before proceeding.

In speaking with opponents of the Seven Peaks development, we hear repeatedly that many citizens want more green space and parks, not new condos and office buildings. We hear people suggest that despite having a general plan, Provo has an inadequate vision of what it wants to become.

What's the truth? Do you, Provoans, think you should keep what open space remains even if it means keeping some tax base and housing out? Do you feel like you have enough say in how your community grows? Has the time come for a community-wide discussion on land use or are a few malcontents overstating their personal opinions?

These are questions we aren't sure the city can accurately answer, and the city is far from alone. As a state, Utah is working feverishly to identify how residents want it to grow.

It's true that most people won't speak up until something they don't like is proposed for their backyard. But we think the city should dedicate itself to piecing together the most accurate picture it can of what residents want Provo to become. The city could informally poll residents by including a simple land-use survey in their utility bills. As always, our Letters to the Editor column is open for people to discuss and debate these important issues. Neighborhood forums might be another avenue for public comment.

Civic leaders can only deliver the vision their constituents care enough to present. So speak up now, people of Provo, before your city becomes something you no longer love.

Seven Peaks questions numerous

05/06/98 12:00:00 AM

By RYAN VAN BENTHUYSEN

The Daily Herald

PROVO - Not enough housing, coupled with a lack of land, has stirred one of the city's most emotional debates in recent history.

Seven Peaks Development Corporation will once again go before the city tonight to request rezoning 51 acres of undeveloped land just east of Seven Peaks Water Park.

Brothers Scott and Brent McQuarrie, owners of Seven Peaks, want to build a 300-unit housing development on the property. The housing would include single-home units and condominiums in the form of duplexes, four-plexes and eight-plexes.

But before that can happen, the City Council has to rezone the land from public facility use to residential, a move that has been postponed on several occasions because of council debate. That dialogue will continue at 5:30 p.m. today in the council chambers of the Provo City Center, 351 W. Center St.

The council is divided and it's uncertain what the final decision will be. Some say the housing is needed while others say rezoning and subsequent development would be premature.

"I'm not at all sure that the citizens' concerns have been addressed yet and that concerns me," Councilwoman Cindy Richards said.

Although the council is divided on whether to rezone the property, the majority of the governing body said it's too early to make a decision. They agree there are too many unresolved issues.

Tonight's meeting could yield one of several decisions by the council, including postponing the matter again, voting the rezone down or approving it. The council could also revert to a past motion to table the issue for six months to study the feasibility of an outright city purchase of the McQuarries' land.

Councilmembers have been exploring the feasibility of the McQuarries' project for several months. The topic has become heavily debated as a group of residents have pitted themselves against the McQuarries and the prospect of the land being developed. The group, called Concerned Families of Provo, has gathered more than 1,000 signatures on a petition opposing the project.

Numerous residents in the affected area say they don't want the added traffic in their neighborhoods or the loss of open space in Provo. During the past several months, neighbors have heard traffic projections that say anywhere from 9,000 to 40,000 trips each day would be generated by the development.

"It doesn't make sense to develop without doing a citywide traffic study first," says Bonnie Callis, neighbor to the McQuarries' land.

Brent McQuarrie has been out of town and unavailable for comment. But in a recent newspaper advertisement, McQuarrie said he believes the high traffic estimates are unfounded.

"This is a ridiculous charge," McQuarrie stated in the ad. "Neither the University Mall nor UVSC generates this amount of traffic."

Even so, Councilman Greg Hudnall says he wants further proof that traffic won't be a problem. The McQuarries funded a private traffic study that estimates their prospective housing development will add 4,000 automobile trips a day to the neighborhood. But residents say the estimates are low and want an independent study done that the McQuarries didn't pay for. The McQuarries agreed to let an outside traffic engineer review their study to see if it's accurate. But Hudnall says he wants more results before he's willing to vote in favor of the rezoning. "Personally, I am not willing to approve something this large until I see the citywide traffic study," Hudnall says.

That study is under way and could take six months to a year to finish, he added.

The 51 acres the McQuarries want to develop, included in the 117 acres they own at the east Provo site, have a long and sometimes mysterious history.

Provo City received the property from the state in 1978 and agreed to sell it to a company that wanted to build a ski resort in the mountains east of the land. A reversion clause in the sale agreement stated the property would be returned to the city if the ski resort fell through.

The ski resort has not been built, but the land never returned to the city and has since changed ownership several times. During one of the land sales, the reversion clause mysteriously disappeared and nobody seems to know where it went.

Council Attorney Neil Lindberg has said he doesn't believe the missing reversion clause puts any restrictions on the owners of the land. But as long as the site is zoned for public recreation, a restriction still exists.

The McQuarries bought the 117 acres four years ago in an auction and originally wanted to build nearly 500 homes on the land. They have since scaled down their plan to 300 homes in hopes of a compromise with councilmembers and residents.

"The development agreement gives the city a lot of protection," says Clark Mitchell, Seven Peaks project manager.

But before any deals are struck for the McQuarries, the Utah Attorney General's office wants to know where the reversion clause went. Brian L. Farr, assistant attorney general, fired off a letter May 1 to the City Council that the Attorney General's office is looking into the reversion clause and also the possible rezoning of the land.

In the letter, Farr asked the council not to vote on the rezoning until after a group of attorneys in his office reviews the matter on Tuesday.

As part of the compromise, the McQuarries drafted a planned development agreement that outlines their housing project plan. Although the agreement caps the number of housing units at 300, keeps the largest unit at an eight-plex and offers the city 52 acres of free land for park space, some critics of the project say the agreement isn't specific enough.

David Knecht, chair of the Provo 2000 Task Force, said in a recent letter to the City Council that he believes the planned development agreement leaves the door open too far for the McQuarries.

"The agreement makes it clear that the city cannot do many things, including reduce the number of dwelling units below 300," Knecht says. "However, the developer has reserved the right to increase the number and has limited the city's ability to refuse such a request."

One councilmember is opposed to the project altogether.

The open land needs to be preserved, says Councilman Dennis Poulsen, and the McQuarries' development is far too much for a city that is already quickly losing open space.

"It's too much density and we need to have them come in and proffer a proposal that's good for the city," Poulsen says.

But Councilman Mark Hathaway says he believes residents should have the right to develop their private property if they are following the rules.

"If I had a leaning, it would be toward the project," Hathaway says. "As long as they are being legal, I have a hard time telling people they can't do with their property as they want."

Group proposes Seven Peaks solution

05/20/98 12:00:00 AM

By RYAN VAN BENTHUYSEN

The Daily Herald

PROVO - A group of residents have put down the petitions in order to belly up to the drawing board.

Some East Provo residents opposed to a housing development proposed for the land east of Seven Peaks Water Park have a plan. They want the city, which owned the land 20 years ago, to repurchase the property and turn it into a place they're calling Heritage Park. The site would include trails, an amphitheater, an outdoor science lab and other public recreation facilities.

"Everything you see here is a dream," said Jeff Hunt, spokesman for Concerned Families of Provo. "It's an alternative to a difficult situation."

Hunt and other residents from East Provo met with Utah Attorney Brian Farr Tuesday to discuss the future of the property. The attorney general is looking into the city's sale of the land 20 years ago and a reversion clause that disappeared in the process. The clause stated that if a planned ski resort wasn't built on the land, it would return to city ownership. Since then, the land has changed hands several times.

The land is now owned by brothers Brent and Scott McQuarrie, who also own Seven Peaks Water Park. For several months, the council has been exploring the feasibility of rezoning the 51 acres of land so the McQuarries can build a 300-unit housing development.

Hunt said he was encouraged by Tuesday's meeting.

"Mr. Farr definitely thinks there is something to the reversion clause," he said.

Regardless of Farr's inquiries, the McQuarries can't build a housing development on the land unless the council rezones it from public facility to residential. Several neighbors have said they want to keep the open space because the city doesn't have much undeveloped land.

The idea of Provo City buying the land and turning it into a park has been discussed at previous council meetings. Specifically, Councilwoman Shari Holweg suggested the council table the issue for six months while the council studies the possibility of the city purchasing the McQuarries' property. It's questionable at this point if the city could summon the funds for the land, which the McQuarries claim they've poured more than \$4 million into. City officials have also said there's little money for maintaining parks that already exist, let alone any future recreational sites.

Nevertheless, residents drafted a plan and presented it to the council Tuesday night. The plan even suggests the city could trade some of its other property for the McQuarries' land.

Bonnie Callis, another representative of Concerned Families of Provo, said the residents' proposal is aligned with the city's General Plan, which calls for promoting safe development, preserving open space and protecting public access to recreational areas in the city's foothills.

"Are there really any good areas of protected open space in Provo?" Callis asked the council. "Is the General Plan just fluff?"

Housing or park: Seven Peaks land inspires differing dreams

05/21/98 12:00:00 AM

By RYAN VAN BENTHUYSEN

The Daily Herald

PROVO - Seven Peaks Water Park owners say they too have a dream. That dream, they said, doesn't include a land trade or sale any time soon.

Brothers Brent and Scott McQuarrie said they've always envisioned a nice housing development for their property just east of their water park. A group of Provo residents, however, told the City Council Tuesday they have a dream: They want the city to buy the McQuarries' property and build what they are calling Heritage Park.

"It was an interesting presentation they made on the Heritage Park idea," said Clark Mitchell, project manager for the McQuarries' proposed development.

"But the owners of the property have a dream for the property and have had a dream since the day they purchased it."

The Provo City Council has been discussing the pros and cons of rezoning 51 acres of the McQuarries' land so they can build a housing development there.

The McQuarries have offered the city a gift of about 50 additional acres where a park could be built. Before the McQuarries can build housing on the land, the council has to rezone it from public facility to residential use.

Residents opposed to the development, however, want all of the land for a park that could include an amphitheater, an outdoor science lab, trails and other recreation facilities. Three of those residents presented their ideas to the council Tuesday. The proposal includes a land trade between the McQuarries and the city.

Brent McQuarrie told The Daily Herald Wednesday that selling the property, which includes Seven Peaks Golf Course, is not an option right now. But he didn't rule out the possibility completely.

"It's definitely not an option to trade," McQuarrie said. "And, at this point in time, Seven Peaks Golf Course is not for sale.

"However, just like any other real estate or piece of property, usually there is a particular price at which the owner would be willing to sell," he added. "But it would have to be on a cash basis."

It's uncertain what the asking price would be if the McQuarries ever decided to sell. But the McQuarries have said they've spent at least \$4 million on the property so far.

But one thing is certain, McQuarrie said. He wants closure to the issue. The council is holding a special meeting Wednesday to once again discuss and possibly vote on the rezoning.

"I do not think it's fair to the City Council, to the neighbors or to us as developers to delay the vote on our zoning any longer," McQuarrie said. "It is our strong desire that the City Council will vote on it at this next meeting."

Attorney general says Provo land law illegal

06/16/98 01:00:00 AM

By RYAN VAN BENTHUYSEN

The Daily Herald

PROVO - A 1995 amendment to the city's General Plan that allowed residential development east of Seven Peaks Water Park was made illegally, the Utah Attorney General's Office has determined.

The Attorney General's ruling is based on the fact that the city didn't conduct a legal public hearing on the amendment.

"The Dec. 19, 1995 council meeting appears not to meet statutory requirements for a public hearing and therefore the 1995 amendment to the General Plan would be invalid," reads one portion of a 13-page written statement by Assistant Attorney General Brian Farr.

That amendment makes it possible for brothers Brent and Scott McQuarrie to build residential housing on a large chunk of their property in east Provo. The McQuarries, who also own Seven Peaks Water Park, have asked the council to rezone 51 acres of their property from public to residential use so they can build a 300-unit housing development. Numerous residents have approached the council in opposition to the project.

Council Attorney Neil Lindberg has stated repeatedly that he believes subsequent public hearings in 1996 and 1997 void anything done illegally during the council's '95 vote to change the General Plan.

Farr disagrees. In the report, he states that the 1996 public hearing was on another topic and the records of the 1997 meeting don't show sufficient evidence that a proper hearing was conducted.

"There doesn't seem to have been room in [the 1996] discussion for consideration of whether the change to the General Plan ... should have been made," Farr wrote. "It seems inadequate to cure the defect."

While Farr's statement doesn't indicate any further state involvement, it does suggest a public hearing should be held to remedy the lack of public input on the 1995 General Plan amendment.

"If the 1995 defect has not been cured, it should be," Farr's review states. Lindberg said Monday afternoon that he wants to further review Farr's findings and give city officials more time to study the information before he comments on the issue. Lindberg said he would make a statement at tonight's council meeting.

Representatives of Seven Peaks Development Corp. said Monday they believe the '96 and '97 hearings were enough to cover the 1995 meeting, during which no public comment was taken. Furthermore, they said, the council shouldn't hesitate to approve the rezoning.

"The public hearings in '96 and '97 were publicly noticed and specific to this property," said Clark Mitchell, project manager for the McQuarries' proposed development. "We think the council and the planning commission have led us down the path that this could be residential development."

The City Council has postponed a decision on rezoning the McQuarries' land for several months, most recently because of the Attorney General's review relating to the property and how it changed hands 20 years ago.

In 1978, Provo City sold the land to a company that planned to build a ski resort there. A

reversion clause in the land sale agreement stipulated that ownership would return to the city if the ski resort wasn't built. The ski resort was never built and the land has since changed hands several times.

Farr and other state attorneys later began studying how the General Plan amendment was made after a group of residents complained it might have been done without the proper public comment.

While Farr said he found that he couldn't determine at this late date if there's any validity to the reversion clause, he did determine that the General Plan amendment was made without a proper public hearing.

The vote to amend the citywide plan was made as part of a consent agenda with several other issues that didn't require a public hearing.

The City Council is scheduled to discuss and possibly vote on rezoning the McQuarries' land tonight. It's unclear if the issue will be continued again because the council has several options: It can disregard Farr's review and vote to approve the rezoning, it can vote it down or it can continue the item until there has been a public hearing on the 1995 General Plan amendment. Residents who oppose the development consider Farr's findings a small victory.

"I was very pleased that he concluded that the amendment was invalid," said Lilian Hayes, an east Provo resident who has helped spearhead the movement against the proposed housing project. "The council really needs to do it again to avoid a lawsuit because I think lawsuits are very expensive."

Provo denies 7 Peaks development

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By RYAN VAN BENTHUYSEN

The Daily Herald

PROVO - One of the longest stories in Provo's recent history has entered what appears to be the final chapter.

With a slim-margin vote of 4-3, the Provo City Council on Tuesday night denied to rezone nearly 51 acres of east Provo property where brothers Brent and Scott McQuarrie had hoped to build a 300-unit housing development. Councilmembers Shari Holweg, Dennis Poulsen, Cindy Richards and Gregory Hudnall voted against the rezoning, while councilmembers Mark Hathway, Paul Warner and David Rail voted in favor of it. Some councilmembers said they believed it wasn't the right time to approve that type of development while others said it was a good project that could remedy the lack of housing in Provo.

"I'm not convinced that this proposal before us is good process or that it is good planning," Richards said. "I'm not persuaded that we need more housing right now. It's a timing issue." Hathway said he believes the McQuarries' now-defunct proposal deserved approval.

"I think it is a beautifully designed project," he said, noting that the project called for 60 percent open space. "You don't hear about that anywhere."

For several months, the council has been exploring the pros and cons of rezoning the McQuarries' land. Without the rezone, the land must continue to be used for public facilities and housing can't be built there.

The McQuarries' spokesman said he believes a mass of misinformation in recent months caused the council to vote against the project. Furthermore, he said, the McQuarries toned down their plans several times in order to appease council concerns.

"We did exactly what the council wanted us to," said Seven Peaks Attorney Charles Abbott. "We complied with everything they asked for." Abbott said the McQuarries' next step is unclear but said a lawsuit against the city would be considered. Abbott said he also believes the council's decision was tainted by faulty petitions collected by Concerned Families of Provo, the group heading up the movement against the McQuarries' proposal. Those who collected the petitions disagree.

"There was no statement on the petition that was false," said Jefferson Hunt, spokesman for Concerned Families of Provo. "This is just a continuation of the same rhetoric."

The council's decision came one day after the Utah Attorney General's Office released its review of several issues relating to the land where the Village at Seven Peaks would have been built had it been approved. Brian Farr, assistant attorney general, found that a General Plan amendment approved by the council in December 1995 was passed without the proper public hearing required by law. That amendment allowed for residential housing on the McQuarries' property. Council Attorney Neil Lindberg told the council at the onset of the meeting that he disagreed with Farr's analysis and that subsequent public hearings in 1996 and 1997 mooted anything done illegally during the '95 meeting.

"I respect Mr. Farr and his opinion," Lindberg said. "Bottom line: We have a difference of opinion on the matter."

Abbott said he believes the council's decision was also influenced by Farr's review, although the councilmembers who voted against the project publicly stated reasons unrelated to Farr's report.

"I do believe, very strongly, that the majority of residents don't believe it is time for this development," Holweg said.