

**MINUTES OF THE REGULAR MEETING OF THE WEST JORDAN PLANNING AND ZONING COMMISSION HELD APRIL 18, 2007 IN THE WEST JORDAN COUNCIL CHAMBERS**

**PRESENT:** David Beecher, David McKinney, Ellen Smith, James Dupaix, Nola Duncan, and Nate Hendricks. Justin Stoker was excused

**STAFF:** Tom Burdett, Greg Mikolash, Peter Simmons, Scott Langford, Nate Nelson, Reed Scharman, Jeff Robinson, and Julie Davis.

**OTHERS:** John Slippey, Rob Kesler, Garrett Wilson, Tim Barton, Ben Tanner, Dean Ericson, Ross Johnson, Dick Downing, Chris Roper, Aaron Roper, Chad Bandil, Lynae Sorensen, Kevin Anderson, Greg Fabiano, and Jeff Prosser.

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The briefing meeting was called to order by David Beecher.

The Consent Calendar was briefly reviewed. Clarification on Item #2 regarding the parking requirement was requested to be given in the regular meeting. An overview of the history for Item #3 was given. An explanation of the proposal for rezoning on Item #4 was given.

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The regular meeting was called to order at 6:05 p.m.

**ITEM #1 CONSENT CALENDAR**

**A. APPROVE MINUTES FROM APRIL 4, 2007**

**B. 27-05-130-047 JORDAN PRESBYTERIAN CHURCH MONUMENT SIGN; 3671 OLD BINGHAM HIGHWAY; CONDITIONAL USE PERMIT; R-1-8A ZONE; SIGN MASTER SERVICE (APPLICANT) [#CUP20070006]**

Staff recommended that the Planning Commission remove the original condition of approval established by the Planning Commission on 6/6/01 that stated, "*The Conditional Use Permit is valid only for the All Saints Baptist Church and may not be transferred*"; and, approve the monument sign and the modification of conditions of approval for the Jordan Presbyterian Church, located at 3671 Old Bingham Highway, with the conditions as set forth below.

1. Meet all conditions of the CUP granted on June 6, 2001:
  - a. All landscaping must be maintained with an irrigation system (drip irrigation system encouraged). General landscaping should be drought tolerant and have low water usage.
  - b. Meet all conditions of the Preliminary and Final Site Plans when approved.
  - c. All signs must meet the zoning ordinance. Because this site is located in the residential zone, no banner signs are allowed.
  - d. Meet all requirements of the Building Official, Fire Marshal, and Engineering Division.
  - e. The Conditional Use Permit is subject to review and/or revocation according to Section 10-3-504 of the Zoning Ordinance.
  - f. Planning Commission approvals do not include Fire, Building and Safety, or Engineering approval. Requirements by those departments must be met and site changes or additions may be required. Building permits will not be issued until all departments' requirements have been satisfied.
  - g. Anything in regards to the parking lot not adjacent to the church must follow City Ordinance.
2. All signs will be maintained in a safe and attractive condition per §89-6-1105(b) of the West Jordan Municipal Code.
3. All signs must obtain a building permit per §89-6-1102(a) of the West Jordan Municipal Code.
4. The Conditional Use Permit is subject to review and/or revocation according to §89-5-404(f)(2) of the West Jordan Municipal Code.

**C. 27-03-453-025 BENCHMARK DENTAL LABORATORY; 9225 SOUTH REDWOOD ROAD; CONDITIONAL USE PERMIT; P-C ZONE; BENCHMARK DENTAL/BENJAMIN TANNER (APPLICANT) [#CUP20070009]**

Staff recommended approval of the conditional use permit for Benchmark Dental Laboratory located at 9225 South Redwood Road, Unit B based on the findings outlined with the conditions set forth below.

Conditions of Approval:

1. Meet all City of West Jordan and State of Utah business licensing requirements.
2. Meet all requirements of the Building Official, Fire Marshal, and Engineering Division.

**D. TEXT AMENDMENT – AMEND THE WEST JORDAN MUNICIPAL CODE SECTION 89-3-602 ESTABLISHMENT STANDARDS IN COMMERCIAL ZONES REGARDING MINIMUM AND MAXIMUM ACREAGE; CITY-WIDE; CITY OF WEST JORDAN (APPLICANT)**

Staff recommended that this item be continued until the May 2, 2007, Planning Commission meeting. This will allow adequate time for interdepartmental review of the proposed amendment.

**MOTION: James Dupaix moved to continue Item #1D to May 2, 2007. The motion was seconded by Nate Hendricks and passed 6-0 in favor. Justin Stoker was absent.**

**MOTION: James Dupaix moved to accept the Consent Calendar as amended. The motion was seconded by Ellen Smith and passed 6-0 in favor. Justin Stoker was absent.**

It was noted that there were none in attendance to speak on the items.

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**ITEM #2: 20-24-101-021 OQUIRRH SHADOWS CARWASH; 5587 WEST 6200 SOUTH; PRELIMINARY AND FINAL SUBDIVISION PLAT AND PRELIMINARY AND FINAL SITE PLAN; C-G ZONE; NEW DEVELOPMENT/DEAN ERICSON (APPLICANT) [#SDMI20070001 & #SPCO20070004]**

Scott Langford gave the staff overview for the item. The applicant had been working on the project for about 2 years. The application is for preliminary and final subdivision plat and preliminary and final site plan. The Engineering Department found that there was no need for additional right-of-way dedication at this location. Access from the site is from 6200 South with traffic circulation moving in a clockwise motion around the site. He reviewed the parking requirements, which they are able to meet. The landscape plan had been reviewed in detail and approved by the City consultant. He stated that the architecture and materials are of high quality. It was recommended by staff that an additional condition #7 state that a final plat must be recorded as a condition of the site plan being approved.

Staff recommended that the Planning Commission grant Preliminary and Final Subdivision Plat approval for the Oquirrh Shadows Subdivision, located at 5587 West 6200 South in the C-G zoning district, subject to the following conditions:

1. Meet standards and regulations of all other applicable codes, ordinances and specifications.
2. A land disturbance permit will not be issued until the final plat has been recorded.
3. No building permits shall be reviewed or issued until the Mylar plat has been recorded.
4. Meet all requirements of Title 87 of the Subdivision Ordinance.
5. The approved, unrecorded final subdivision plat shall remain valid for one year. One six-month time extension may be granted by the Planning Commission if the Applicant provides adequate justification for such an extension and provided the Planning Commission may impose additional requirements on the subdivision relating to the public health, safety, and welfare [87-3-108(b)].

Staff recommended approval of the Preliminary and Final Site Plan for Oquirrh Shadows Carwash, located at 5587 West 6200 South in the C-G zoning district, subject to the following conditions listed below:

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1. Meet the requirements of §89-6-603 of the Zoning Ordinance regarding parking.
2. Meet all Engineering and Fire department conditions.
3. Obtain a business license to operate in West Jordan.
4. All project signage must comply with Title 89, Chapter 6, Part 11 of the Zoning Ordinance.
5. Planning approvals do not include Fire, Building and Safety, or Engineering approval. Requirements by those departments must be met and site changes or additions may be required. Building permits will not be issued until all departments' requirements have been satisfied.
6. Meet all the conditions of approval as established for site plan approval.

The different widths of driveways and drive aisles were discussed. There will be one-way traffic in the area and the widths shown are sufficient and meet the code.

Commissioner Hendricks was concerned with the traffic movement. He said there would be no way out for someone who decided not to stay, there may be a potential for traffic going into the street if it is very busy, and those people using the vacuum bays might also be trapped in because other people will be coming through the wash bay.

It was indicated that the landscaping meets the minimum requirement. An explanation was given of the two different curbing designations on the site plan. Regarding Fire Department access with only a single entrance, Fire Marshal Scharman stated that the overall site is not very large, so the Fire Department will access the building from 6200 South, which is why they don't want fencing along that portion.

Dean Ericson, applicant, 13752 South 4170 West, noted that the car in the bay is part of the stacking number of six. With a stacking of six it would be over a 40 minute wait, and he said that they have a zero capture wait past 30 minutes and won't ever have that many people waiting. The ordinance for stacking had been met. He stated that the parking area in the vacuum bays would be larger than you would find at a grocery store. They are above the minimum requirement of landscaping. They could make the drive lane wider by removing some landscaping, but they are using it to control traffic flow. He thanked staff for all their help in the very long process.

There was a discussion regarding signage on the site that will direct traffic. They will add a one-way traffic sign as well if it is desired by the Commission.

Nate Hendricks again stated his concern with the volume of traffic that he felt would be at the site given the popularity of another carwash in the vicinity and that the traffic would overflow into the street.

Scott Langford stated that the backing distance from the vacuum bays is 34 feet, which is 10 feet more than normal two-way drive aisle.

Mr. Ericson reviewed the lot striping plan that would include entrance and exit arrows in every bay. He stated that he had designed over 60 carwash facilities in the valley, and the studies and national averages show they won't ever have this kind of stacking.

Further public comment was closed at this point for this item.

James Dupaix pointed out that there is an ordinance set that will consider the traffic matters, and the duty of the Commission is to apply the ordinances. This site may have a greater use than national standard, but this business should alleviate stacking at the other carwash in the area. The applicant had addressed the issues and applied the ordinance. He didn't see any factors that would require conditions greater than what the ordinance requires.

Nate Hendricks asked for an interpretation that the wash bay counts as a stacking space.

Greg Mikolash said the bay stall is considered a stacking place, which is similar to a drive-through.

Nate Hendricks still felt that the traffic would be a problem and didn't believe this will run as smoothly as the applicant believes, but he had complied with the code.

David McKinney agreed with the conclusions of Commissioner Dupaix with regard to the plan.

**MOTION: David McKinney moved to grant Preliminary and Final Subdivision Plat approval for Oquirrh Shadows Carwash Subdivision; 5587 West 6200 South; New Development/Dean Ericson (applicant) subject to the conditions outlined in the staff report. The motion was seconded by James Dupaix and passed 6-0 in favor. Justin Stoker was absent.**

**MOTION: David McKinney moved to approve the Preliminary and Final Site Plan for Oquirrh Shadows Carwash; 5587 West 6200 South; New Development/Dean Ericson (applicant) subject to the conditions outlined in the staff report, adding:  
7. The final plat must be recorded as a condition of the site plan being approved. The motion was seconded by Ellen Smith and passed 6-0 in favor. Justin Stoker was absent.**

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**ITEM #3: 21-30-176-003 MOBILIGHT OUTDOOR STORAGE; 7272 AIRPORT ROAD; CONDITIONAL USE PERMIT; M-1 ZONE; ROSS JOHNSON (APPLICANT) [#CUP20070005]**

Scott Langford stated that although this use is allowed to be reviewed administratively there is the option for Planning Commission review in cases where there are special circumstances. The applicant had been operating a business without a business license, and there is substantial unscreened outdoor storage on the property. A cease and desist order had been issued to the applicant last week. This business was previously in operation on Nike Drive. The subject site plan had been reviewed and approved at the staff level. There was fencing shown on the north, south, and west property lines of the site plan. He showed where a solid steel gate would be required to access the rear property. He showed some photographs of outdoor storage that had been on the property, the majority of which had been cleaned up. The most grievous violation was along the frontage of Airport Road where lights were stored in required parking spaces. In no case can storage take place in front of the building, but it has to be behind or to the side and totally enclosed with screening. This requirement is listed in Section 89-3-705(2). The six criteria will be met as soon as the fencing is installed.

Staff recommended approval of the Conditional Use Permit for outdoor storage for Mobilight, located at 7272 South Airport Road in an M-1 zoning district based on the findings noted in the staff report and the conditions of approval set forth below.

1. The Conditional Use Permit is subject to review and/or revocation according to §89-5-404(f)(1) of the Municipal Code.
2. The only approved surfacing for the outdoor storage is asphalt or concrete per §89-6-606(c)(1).
3. Materials within 20' of the fence may not be stored higher than fence per §89-6-803(a)(4).
4. Storage of hazardous or toxic materials to be a nuisance is prohibited per §89-3-705(d)(4).
5. The business must obtain a business licenses per §22-2-102(a) of the Municipal Code.
6. The outdoor storage area shall be solidly screened from the street and neighboring properties per §89-3-705(d)(3), and no materials may be stored in the front yard area or outside of the required screening walls/fence.
7. A masonry wall or solid metal fencing and solid metal gates shall be used at appropriate locations along the east side of the outdoor storage area, to ensure adequate screening from the street right-of-way per §89-6-803(b)(1).

8. The north, west, and south property lines adjacent to the open storage areas shall be screened with a chain link fence with privacy slats per §89-6-803(b)(2).

There was a discussion regarding the ability to locate storage in the side yard without fencing. However, all outdoor storage is required to be screened. The code was reviewed as to the height of storage, which cannot be higher than the fence unless it is set back at least 20 feet.

Ross Johnson, 7272 Airport Road, apologized for the storage in front of the building and stated that it was intended as a short-term promotional display. He gave a description of his business operations including the new addition of the snow cats. He showed an aerial photo of the back line and asked for a waiver of the requirement for slats in the rear fence because the height of the railroad line blocks the entire yard from the properties to the west. He asked if they could have some pads for display of equipment for rent along the side property and two in the front in order to advertise. They are currently working on installation of the fence. He asked what the minimum number of parking spaces would be.

Greg Mikolash said those ratios are determined by the square footage and use of the building.

James Dupaix said that the applicant is now operating without a business license, and he wondered if the institutions that he stated he was being recognized by know that he is operating outside of the law.

Ross Johnson said he received the order on Friday and by Saturday he had moved the storage. He thought that his previous business license was transferable from their Nike Drive location. He gave an explanation of their operations regarding the addition of the snow machines.

James Dupaix asked staff if the rear property required slats since it is obstructed by the rail line.

Greg Mikolash referred to the UDOT Facility that was in the same situation, and the slats weren't required.

There was a discussion regarding the request for outside display of equipment for rent. It was indicated by staff that they would need an additional conditional use permit for vehicle sales. Since this property wasn't noticed for that use it would have to be submitted under a separate application. That use would also have to be disclosed on the business license application.

There was a discussion regarding the requested area for display on the side of the building. Staff stated that the side area is for drive purposes only. There is a potential for display in the front for a couple of vehicles. Greg Mikolash pointed out that the structure is for two units, and the parking calculation needs to be considered for the other use when it comes in. The applicant stated that he uses the entire building. Reed Scharman stated that the south side access is required to have 24 feet of unobstructed width. Mr. Johnson indicated that 30 feet is provided, which would allow for five pads off the curb to be between the plants in the landscape island. Greg Mikolash indicated that this issue should be discussed at a pre-application meeting prior to submitting for an additional use permit.

Further public comment was closed at this point for this item.

There was an additional discussion regarding the requirement for slats in the rear property line fence. Even if it were slatted for the benefit of the riders of Trax should this line be used for light rail, the rail line is elevated so much that they wouldn't even see the fence, but would be looking into the yard anyway.

There was a discussion regarding the difference between storage and display items that might be in the front yard. An additional conditional use permit would outline what could be on display and in which areas. The sign

code was reviewed in the section that allows for display items, but it was pointed out that the vehicle sales use would need an additional conditional use permit.

James Dupaix suggested that in the future they review that subsection of the sign code as it complies with definition of sign, because the definition of sign does not include that type of display.

**MOTION:** James Dupaix moved to approve the Conditional Use Permit for Outdoor Storage for Mobilight; 7272 South Airport Road; Ross Johnson (applicant) based on the findings noted in the staff report with the conditions as set forth in the staff report, changing condition #6 by adding ‘as per §89-3-705(d)(2)’, and condition #8 eliminating ‘west’ so that the screening slats are only on the north and south. The motion was seconded by David McKinney and passed 6-0 in favor. Justin Stoker was absent.

[At the end of the meeting the City Attorney pointed out that the motion had inadvertently eliminated the condition for any fencing at all for the west side, and the following motions were made.]

**MOTION:** James Dupaix moved to reopen the Mobilight motion and re-motion it. The motion was seconded by Nate Hendricks and passed 6-0 in favor. Justin Stoker was absent.

**MOTION:** James Dupaix moved that instead of just eliminating the word ‘west’ that they add the words ‘west side fence needs no slats’. The motion was seconded by Nate Hendricks.

**AMENDED**

**MOTION:** David McKinney moved to amend the motion to amend Item #8 in the recommendations to read, “The north, west, and south property lines adjacent to the open storage areas shall be screened with a chain link fence, which shall have privacy slats in the north and south portions per §89-6-803(b)(2).” The motion was accepted by James Dupaix and Nate Hendricks and passed 6-0 in favor. Justin Stoker was absent.

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**ITEM #4:** 20-36-203-004, 005 STONE CREEK DEVELOPMENT AMENDMENT; APPROXIMATELY 5001 WEST 7800 SOUTH; AMEND ITEM #36 WITHIN ORDINANCE 99-29 TO REZONE 15-ACRES WITHIN STONE CREEK DEVELOPMENT FROM P-C (7.07 DU/AC) TO P-C (3.22 DU/AC); CITY OF WEST JORDAN (APPLICANT) [#TA20070002]

Peter Simmons gave an overview of the action initiated by the City of West Jordan to rezone 15 acres of property to P-C (3.22 du/ac). When originally approved this property was part of a town center master development area/single family residential. The overall density of the property at that time was 7.07 dwelling units per acre. However, as time went by and development of the area had occurred there has been increased traffic circulation along 7800 South and with the impact to the schools the density of 7.07 was questioned as to the viability for that area. Based on the overall density of the entire 300 acres that averaged at about 3.22 dwelling units per acre, the City is proposing the rezoning of the property to that overall density. The change would reword Item #36 of Ordinance 99-29 that would allow for one density. Based on the discussion of the City Council staff looked at six options with three main layouts. Options 1, 3, and 5 consider the property as part of the overall Stone Creek development where the open space requirement of 10% would be in what had already been planned and provided. Options 2, 4, and 6 would have the open space within the 15 acres. He reviewed the guidelines that the City Council gave of 3.22 units per acre, minimum 10,000 square foot lots, and ‘E’ sized homes. He explained the difficulty of combining both density and minimum lot sizes, because it limits the design options for the lots. They would like to ultimately look for what was set for the West Side Planning Area that would allow for creative home design by keeping the requirement to density only.

Based on the findings of fact, Staff recommended that the Planning Commission forward a positive recommendation to the City Council for the request to amend item #36 within Ordinance 99-29 to rezone 15-acres within Stone Creek Development from P-C (7.07 du/ac) to P-C (3.22 du/ac) located at 5001 West 7800 South and recommend Concept Plan Option 3 to be adopted by the City Council. Other concept plans may be allowed with up to 3.22 du/ac upon approval by the Planning Commission.

Kevin Anderson, representing Ivory Development, said that Ivory's position is that this proposal should not be given a positive recommendation. They think the request is legally improper and premature, because this issue is currently in litigation. At the time of purchase the property was zoned 7.07 dwelling units per acre. Ivory filed an application to develop consistent with that zoning, but with the removal of this provision it limited the zoning to Peterson Development, which is a clear constitutional violation and a violation of State Statute and City ordinances. The City Council rejected the application without a public hearing. Ivory has appealed that decision, and it has been removed to Federal Court where the matter is pending. Additionally, they were in Federal Court today and the City's outside attorney acknowledged to the court that if the court rules in favor of Ivory, any subsequent zoning of the property pursuant to this action tonight would be invalid and unenforceable. It makes sense to wait until they get the court's ruling. He felt that it would probably be resolved within about 90 days. The second reason Ivory is against the proposal is that it is not good planning. The Planning Commission is charged with responsibility to advise the City Council on good planning practices. The proposal is flawed because this is a town center development of over 300 acres and has been zoned town center 7.07 units per acre for nearly 10 years. Much of the property has already been developed, and now to drop in 15 acres of 3.22 units per acre or less in the middle of a town center that was originally designed for multi-use, multi-unit development didn't make sense. In addition to that it is on a busy street, in addition to that it would impair the traffic flow and designs that were anticipated for a town center design. He also stated that staff had indicated it was a difficult issue and developed 6 different plans to see how it could work. He suggested that the Commission should continue the item and during that time the Commission could evaluate these plans as well as others that could be presented by others as well as Ivory.

Nate Hendricks asked for clarification on the comment that lower density zoning is not good for a high traffic area.

Kevin Anderson said the comment was that this is a town center and the development should be consistent, and fifteen acres of quarter-acre lots in the middle of it doesn't make sense. He said his comment was that it was located on a busy street.

Nate Hendricks pointed out that properties south of this are on bigger lots, so he didn't know why this proposal wouldn't fit in the area.

Kevin Anderson said that may be true in the vicinity. However, this is in the 300-acre Stone Creek master planned area, which was entirely zoned 7.07 units per acre multi-use and multi-family density permitted.

Peter Simmons pointed out the area of the analysis. There were several densities within the entire 300 acres, and the density of this particular area would have been 7.07 units. However, the entire Stone Creek Development density has an average of 3.22 units per acre. He pointed out the quarter-acre lot subdivisions to the south, which are included in the Stone Creek development. On the north there is a mixture of single-family, multi-family, and townhomes, with a mixture of dwelling unit types throughout Stone Creek.

Nate Hendricks agreed that this proposal is complicated, and he understood the request to postpone, but he felt that it would be in the best interest of the developer to move forward tonight so they could proceed more quickly once the court ruling is made.

Kevin Anderson said Ivory's preference is to wait, and a continuance wouldn't cause a delay.

Jeff Robinson explained that the Commission should keep proper land use planning principles in mind when considering their recommendation and to let those govern their decision.

James Dupaix understood that Ivory's litigation is based upon the desire to change Item #36 in the development plan to enable the new owner of the property to have the same privilege that the original owner had.

Kevin Anderson said the original 20 acres was owned by the Jensen family. That was the only parcel in the 300 acres that had the zoning restriction. He understood that all property in the development was zoned at 7.07 units per acre, but only this 20-acre parcel had a restriction that said it could have that density only if it were developed by Peterson Development. They felt that was illegal and unconstitutional. He said that in 1999 the Jensens were represented by the City and developer that their property would be zoned the same as all the other property in the area, and they didn't learn of the restriction until after the zoning had passed. The Jensens went to Kevin Watkins, City Attorney, and the mayor who told them that the provision wasn't legal and wouldn't be enforced, so the Jensens went ahead with it. Later when the City bought 5 acres of the property for a water tank the Jensens again approached the mayor in office at that time and Kevin Watkins who told them again that the condition wouldn't be enforced by the City.

Ellen Smith said the Commission has to weigh the issues against criteria. One criteria is that public facilities and services intended to serve the subject property including but not limited to roadways, parks, recreational facilities, police and fire protection, schools, storm water drainage systems, etc. are adequate for the density zoning requested. She stated that the schools in this area are clearly not adequate at this point in time. She asked what Ivory is planning to do to make these services available and adequate.

Kevin Anderson said Ivory Homes will participate in the same way as any other developer or property owner by paying the required impact fees based on the number of lots and density.

Ellen Smith said it was her understanding that the school district does not collect impact fees. She is concerned that the people who would move into the homes don't realize that the schools are not adequate. She thought that it would benefit Ivory Homes in the sale of their homes to know that the school system is adequate, and lower density would help that issue. She asked if he didn't think that properties needed to be reevaluated as these issues arise.

Kevin Anderson said that isn't an appropriate consideration for lowering the density on this particular property when all of the other property within the master plan is zoned the way it is and is not being changed. He felt a more appropriate way to evaluate the issue would be for some fair allocation, some assessment, or some bond to develop additional schools, which the district will have to do anywhere. The solution is not to impose the burden only on the owner of this property.

Nate Hendricks said that schools are a criteria that they look at when making the decision, and the burden that would be put on that facility is a problem with the higher density. Other criteria are roadways, and Grizzly Way is a problem.

John Slippey, West Jordan resident, stated that he is directly south of the subject property and applauded the City for trying to reduce the number of units. He has 1/3 acre and felt this proposal would improve the value of the entire area. He agreed with the traffic assessment from Commissioner Hendricks. He would like to reduce the density so the impact to the parkway and trails would be at a minimum. He agreed that the impact to the school system is great, and it needs to be addressed as additional development occurs.

Lynae Sorensen, West Jordan resident, asked if Ivory Homes would have to abide by the same rules as in the original development agreement. She agreed with the proposed change in zoning.

Staff indicated that they would.

Robert Kesler, West Jordan resident within Stone Creek development, agreed with the proposal in order to blend with the entire development. He recommended that if the lower density is passed that they don't develop the open space in the fifteen acres, but that they take the value of those lots and use it to improve the existing open space, which doesn't meet the expectation of what they were told when they bought their home. He said they like good neighbors, and Ivory should consider that by looking at the traffic and by thinking of the good of the children walking in the area. He indicated that the high density developments in the area always have cars parked on the road, which increases the danger. He felt that Ivory does a good job with their developments.

Jeff Prosser, West Jordan resident, stated his concerns with the safety of his children and other children as they go to school, because both 7800 South and Grizzly Way are freeways, and it is a disaster when trying to pick up children from school. He agreed that Ivory Homes builds excellent communities, but he felt most of the community would rather have a lower density development. The homeowners in the area have to deal with the traffic, and they are tired of it. He stated that Copper Hills High School is also overcrowded.

Greg Fabiano, West Jordan resident, also had these same concerns with school overcrowding and traffic problems. Nevertheless, although he is no fan of Ivory Homes he, as a property owner, didn't think it was justified in making the action to downgrade the zone without due process. The lower density will benefit him, and he wished it would have been done like that in the first place. However, he didn't want his property rights infringed upon, and he didn't think that the property rights of Ivory should be either, even if it would benefit him.

Further public comment was closed at this point for this item.

James Dupaix was concerned knowing that there was pending litigation and that any action taken tonight could be meaningless. He would prefer to hold off on the decision until the ruling is made, because that perspective would help them to make a better decision at that time. In the 10 years since the original zoning was approved the City had done other planning measures for the build-out of the City, and those things impact the planning that took place 10 years ago. Now hindsight shows that this plan had problems. Regarding traffic, they know that 7800 South has a failing intersection not far from here, and increased density would make that even more hazardous. Also, this development had an agreement that called for a town center. However, with the buildup of Jordan Landing and other commercial areas in the area it showed the plan for this area was bad planning, and as a result this piece of land as well as the commercial land has not been developed. The City has the opportunity, based upon the decision of a judge, to revisit the development plan, which would be best after the litigation is decided.

Nate Hendricks agreed with Commissioner Dupaix that this might not be the appropriate time to make the decision. He hoped that they would get to revisit the property and recommend a lower density to match the surrounding area. He believed that this should be a lower density property because of school and infrastructure issues.

Nola Duncan asked if the Commission could rule on something that is in litigation.

Jeff Robinson said the Planning Commission should consider the proper land use and planning principles. The outcome of the litigation doesn't matter at this point. If the judge rules in Ivory's favor it could change the outcome of the recommendation, but in order for the development to go forward they should apply the best zoning or density that they think should be there.

Tom Burdett said from the planning perspective staff would like to resolve the issue. The job of the Planning Commission is to make a legislative recommendation to the City Council with regards to land use and zoning. The Commission should make the current zoning clearer by making a decision centered on unit type and density from 2.7 to 7 units per acre. Seven units per acre would allow about 106 units, 2.7 is about 41 units, 3.2 is about 48 units, and 5 is around 75 units. They should decide if the dwellings should be a mixture of multi-family, detached single family, etc. He stated that he didn't know of any planning principal that suggests that detached single family cannot be part of a town center. He said that detached single family at 5 units per acre can still be achieved with 6,000 square foot lots, which they already know works for Ivory.

David McKinney felt that there was no reason to wait on the recommendation. If they wait pending the outcome they are spinning their wheels and speculating as to what might happen. If the litigation is resolved in favor of the City then their decision tonight will have its affect. If it is not in favor of the City they would be back reconsidering the issue anyway. The density of 3.22 units per acre is reasonable in view of the average density in the development as a whole, many of the surrounding subdivisions have a similar zoning, and it properly addresses issues of traffic congestion, pedestrian issues, etc. even though it varies slightly from the original master plan of the area.

David Beecher asked if the litigation would invalidate the master plan or only Item #36 in the development plan.

Jeff Robinson said he hadn't been involved in the litigation, but he understood that they are asking the court to void the decision by the City Council last December, which was that they wouldn't allow the density of 7.07 on that property.

David Beecher asked at what point in the process it is not legal for the City to downzone.

Jeff Robinson said if the property owner submits an application that conforms with all of the zoning requirements they might have some type of vested interest, but that did not occur in this case. Ivory bypassed the Planning Commission by seeking the zoning text amendment and went directly to City Council. According to our zoning text amendment ordinance they must come to the Planning Commission first, so they don't have an application that conforms and no vested right. Regarding the argument that they have a constitutional right it is the City's position that they do not. He said that the Commission is getting away from the purpose of the public hearing by trying to determine the outcome of existing litigation. The Commission should be trying to determine what the proper density is for this land based on proper land use planning. He stated that the Commission should also keep in mind that they are forwarding a recommendation. The City Council will be left with the final decision.

Nate Hendricks said he is very conflicted on the issue, but they have to really keep the purpose of the application in mind. He would like to see this as lower density, and if this came back to them after the litigation it would still be his recommendation. He said the Attorney had made it very clear that the pending litigation does not directly impact their recommendation tonight.

James Dupaix said they are dealing with a land use that had already been decided, and it was determined that the City's desire for the property was for 2.7 units per acre, and that is what Item #36 said except that they were giving preferential treatment to one particular developer. The lower density land use that was recommended by the Commission was 2.7. Now they are changing their recommendation to City Council to make it higher at 3.22. It was his understanding that if things were to remain the same the density the property would be developed under is 2.7 units per acre. To change that, he asked if they would have to change the development agreement.

Tom Burdett said no. Peterson Development had never owned the property. The Jensens never negotiated the ordinance, and there is no record that they ever took a position one way or the other. It is an unfortunate piece

of language that shouldn't have been created, and they are trying to rectify it now. They have the opportunity now at least from a planning context to make a recommendation that fits the plan.

**MOTION:** James Dupaix moved to forward a positive recommendation to City Council for the request to amend Item #36 within Ordinance 99-29 for Stone Creek Development; approximately 5001 West 7800 South; City of West Jordan (applicant) to rezone 15 acres within Stone Creek Development from P-C (7.07 du/ac) to P-C (3.22 du/ac) and recommend Conceptual Plan Option 3 to be adopted by the City Council based on these findings:

1. The proposed rezone is consistent with the Purposes, Goals, Objectives and Policies of the City's General Plan specifically pertaining to traffic flow and safety of the residents within the area, as well as the adequate infrastructure for supporting this type of a development particularly, as noted, the schools.
2. The proposed amendment will be harmonious with the overall character of existing development in the immediate vicinity through the implementation of the specific site design criteria. With that they can enable the harmonious look and feel and quiet enjoyment of the citizens within the area of that particular area.
3. The proposed amendment will not adversely affect adjacent properties due to the down-zone of the property. In fact it will have the exact opposite effect.
4. The proposed amendment will be consistent with the Airport Overlay Zone.
5. Public facilities and services intended to serve this subject property are available within reasonable distances and are adequate.

The motion was seconded by David McKinney.

**AMENDED**

**MOTION:** Nola Duncan moved to require a minimum 'E' sized home as recommended in the staff report. The motion was accepted by James Dupaix and David McKinney.

Nate Hendricks appreciated the specific comment regarding traffic and schools and agreed with the motion.

Ellen Smith said she didn't think it was fair to put the burden of lack of schools onto one developer. However, something has to be done if they are to consider schools as part of the infrastructure when considering densities.

**VOTE:** The motion passed 6-0 in favor. Justin Stoker was absent.

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Tom Burdett said there is a tour of the KraftMaid facility scheduled for the Planning Commission on May 9<sup>th</sup> at 6 p.m.

Staff thanked Peter Simmons for his five years of service with West Jordan. During that time he did a considerable amount of work on the sign code, trails, and elements of the General Plan.

Greg Mikolash gave an update on City Council action. Freeway oriented signs were approved. Accessory Living Quarters text amendment was approved for lots with 40,000 square feet minimum.

Jeff Robinson pointed out that the motion made by Commissioner Dupaix for the Mobilight item actually eliminated the entire fence on the west property line.

[At this time motions were made to correct the intent of the original motion. These motions are recorded under Item #3 of the minutes.]

There was a brief discussion regarding the ability of the members of the Commission to meet together at a gathering in groups of more than three if there is no discussion of Planning Commission business. Jeff Robinson was going to research the issue further.

There will be a joint meeting of the Planning Commission and City Council on the April 24, 2007, at 6:00 p.m. The Commissioners should forward any topics of discussion to staff, and they will be placed on the agenda.

**MOTION: Nate Hendricks moved to adjourn. The motion passed 6-0 in favor. Justin Stoker was absent.**

The meeting adjourned at 8:46 p.m.

David L. Beecher  
Chair

ATTEST:

JULIE DAVIS  
Executive Assistant  
Community Development

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2007