

MINUTES OF THE REGULAR MEETING OF THE WEST JORDAN PLANNING AND ZONING COMMISSION HELD MAY 7, 2008 IN THE WEST JORDAN COUNCIL CHAMBERS

PRESENT: James Dupaix, Nathan Gedge, David McKinney, Justin Stoker, Nathan Hendricks, Ellen Smith, and John Winn.

STAFF: Tom Burdett, Julie Davis, Greg Mikolash, Scott Langford, Jennifer Jastremsky, Nathan Nelson, Ray McCandless, Reed Scharman, Chris Gilbert, Jeremy Olsen, David Hanney, and Nathan Collins.

OTHERS: Edward Seal, Scott Weeks, Scott Robinson, Deni Weeks, Bert Davis, Sylvia Davis, Michelle Thompson, Randy Thompson, Lera Peck, Katie Bills, Lisa Gruendill, Kurt Gruendill, Dan McCleve, Dustin McCleve, Yenn Lei, Randy McCleve, Susan Ord, Mark Davidson, Lee Livingston, Dave Erickson, Mickey Beaver, Rocco Liebsch, and Robin Sevy.

The briefing meeting was called to order by James Dupaix.

James Dupaix asked that the Conditional Use Permits listed on the Consent Calendar be pulled in order to conduct a public hearing. The Consent Calendar was reviewed. Clarification was given on Item #1B. James Dupaix asked that Item #1E be pulled for discussion. Tom Burdett indicated that staff will be bringing forward a proposal to extend the time limit for plat and site plan approvals in the code. A letter from concerned residents was distributed to the Commission for Item #2.

The regular meeting was called to order at 6:00 p.m.

1. Consent Calendar

A. Approve Minutes from April 16, 2008

B. Amberly Condos #5; 4727 West 7000 South; Amended Condominium Plat; R-3-10 Zone; McArthur Homes, Inc./Katie Bills (applicant) [#SDMA20080002; parcels 21-30-105-028 thru 036]

Staff recommended that the Planning Commission grant Amended Condominium Plat, Phase 5 approval for Amberly Condominiums, located at 4727 West 7000 South, with the following conditions:

1. Meet Planning Commission conditions of approval from the Preliminary and Final Condominium Plat Approval dated September 20, 2006 and August 8, 2007.
 - a. Meet the requirements of Title 89, Chapter 6, Part 7 of the Zoning Ordinance regarding landscaping and irrigation.
 - b. Meet the requirements of §89-6-603 of the Zoning Ordinance regarding parking.
 - c. Color renderings and a materials sample board are required with the Final Condominium Plat application.
 - d. All project signage must comply with Title 89, Chapter 6, Part 11 of the Zoning Ordinance.
 - e. Meet all requirements of the Engineering Department as specified in their project review memorandum dated September 12, 2006.
 - f. Trash removal must be privately contracted.
 - g. Provide Home Owner's Association documents with the Final Condominium Plat application.
 - h. Demonstrate the provision for open space maintenance.
 - i. Obtain an avigation easement from the Salt Lake City Airport Authority and provide a copy of this approval with the Final Condominium Plat application.
 - j. The zoning condition be clarified by the City Council.
 - k. An architectural review committee be formed.
2. Amend the Overall Site Plan to show the updated setbacks within Phase 5.

- C. Thrive Fitness of West Jordan; 3245 West 7800 South; Conditional Use Permit for Personal Instruction Services Use; P-C Zone; Thrive Fitness of West Jordan/Allyn or April Robinson (applicant) [#CUP20080004; parcel 21-32-227-020]**

[This item was moved from the Consent Calendar for discussion.]

- D. Direct 2 Net; 6045 West 9860 South; Conditional Use Permit; M-1 Zone; Tom Stuart Construction/Mark Davidson (applicant) [#CUP20080006; parcel 26-11-328-005]**

[This item was moved from the Consent Calendar for discussion.]

- E. Oquirrh Substation Time Extension; 5650 West Old Bingham Highway; Site Plan Time Extension; C-M Zone; Rocky Mountain Power (applicant) [#SPI20080005; parcel 26-11-400-012]**

[This item was moved from the Consent Calendar for discussion.]

- F. Cadyn Meadows Plat Time Extension; 6400 West New Bingham Highway; Final Subdivision Plat Time Extension; R-1-8 & R-1-10 Zones; Cadyn Residential/Ken Olson (applicant) [#SDMA20060022; parcel 26-30-400-002, 005, 006]**

Staff recommended that the Planning Commission approve a one-time 6-month time extension for the Preliminary Plat of Cadyn Meadows Subdivision set to expire June 20, 2008, located at approximately 6400 West New Bingham Highway. If approved, this extension will expire on December 20, 2008.

- G. Bridlewood Villas Development Time Extension; approximately 9200 South 1800 West; Development Time Extension; Dave Erickson/Leisure Villas (applicant) [#SDMA20070001; parcel 27-03-326-017]**

Staff recommended that the Planning Commission approve a one-time 6-month time extension set to expire January 25, 2009, for the approved Preliminary Subdivision and Preliminary Site Plan of the Bridlewood Villas development.

Chairman Dupaix recognized and welcomed Ray McCandless, new Senior Planner.

MOTION: Nathan Gedge moved to approve Consent Calendar Items #1A, 1B, 1F, and 1G and to move Items #1C, 1D, and 1E to the public hearing. The motion was seconded by Ellen Smith and passed 6-0 in favor. Nathan Hendricks was absent for the item.

- 1C. Thrive Fitness of West Jordan; 3245 West 7800 South; Conditional Use Permit; P-C Zone; Thrive Fitness of West Jordan/Allyn Robinson (applicant) [#CUP20080004; parcel 21-32-227-020]**

Jennifer Jastremsky gave a brief overview of the application for a personal training boutique in the P-C Zone. General business hours will be from 8:00 a.m. to 8:00 p.m. Monday through Saturday. Clients will be able to access the facility 24 hours per day, seven days per week with an electronic key card. Parking requirements have been met.

Staff recommended approval of the Conditional Use Permit for Thrive Fitness for "personal instruction service" located at 3245 West 7800 South, based on the findings outlined above with the conditions set forth below.

1. Address and adhere to all Department comments, conditions of approval and all applicable code standards.
2. The Conditional Use Permit is subject to review and/or revocation as per §89-5-404(f).

Allyn Robinson, applicant, 5478 West Island Park Drive, had nothing to add to the staff report.

David McKinney asked if there were any security concerns with the 24-hour customer access and if this same thing had been done in other locations with this same kind of franchise.

Allyn Robinson said other locations do this same thing. There are 24-hour cameras on site, and a necklace with a panic button is available to customers after hours.

Nathan Hendricks arrived at 6:07 p.m.

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

David McKinney asked if there were any code requirements or issues to consider relating to the 24-hour business access.

Jennifer Jastremsky said the code doesn't address 24-hour access to businesses.

Nathan Hendricks stated that he would not vote on the motion, because he was not present for the entire discussion.

MOTION: Nathan Gedge moved to approve the Conditional Use Permit for Thrive Fitness; 3245 West 7800 South; Allyn or April Robinson (applicant) for 'personal instruction service' based upon positive findings of fact with the conditions set forth in the Planning Commission packet. The motion was seconded by John Winn and passed 6-0 in favor.

1D. Direct 2 Net; 6045 West 9860 South; Conditional Use Permit; M-1 Zone; Tom Stuart Construction/Mark Davidson (applicant) [#CUP20080006; parcel 26-11-328-005]

Jennifer Jastremsky gave the overview of the application for retail sales in the M-1 zone. Preliminary site plan approval was granted by staff. Final site plan approval is pending until a conditional use permit is obtained. She reviewed the hours of operation and parking requirements. The outlet use can only use 10% of the gross floor area of the primary structure. As the building is split into individual tenant spaces staff will be able to verify the retail sales area as each building permit is submitted. The site plan meets all code requirements.

Staff recommended approval of the Conditional Use Permit for Direct 2 Net for "retail warehouse outlet" located at 6045 West 9860 South, based on the findings outlined above with the conditions set forth below.

1. Address and adhere to all Department comments, conditions of approval, and all applicable code standards.
2. Obtain Administrative Final Site Plan approval.
3. Adhere to the Preliminary Site Plan approval dated April 14, 2008.
4. Total Retail sales area is limited to a maximum 10% of the total building size, or 990 square feet.
5. The Conditional Use Permit is subject to review and/or revocation as per §89-5-404(f).

David McKinney asked if the 10% limit will apply to the entire building or only to the portion occupied by Direct 2 Net.

Jennifer Jastremsky said staff is interpreting it to include the entire building. That retail space could be divided between different tenants as long as the maximum is not exceeded.

Mark Davidson, applicant, 1032 Manchester Drive, North Salt Lake, had nothing to add to the report.

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

MOTION: John Winn moved to approve the Conditional Use Permit for Direct 2 Net; 6045 West 9860 South; Tom Stuart Construction/Mark Davidson (applicant) for 'retail warehouse outlet' based on the findings from staff and the conditions of approval. The motion was seconded by Nathan Hendricks and passed 7-0 in favor.

E. Oquirrh Substation Time Extension; 5650 West Old Bingham Highway; Site Plan Time Extension; C-M Zone; Rocky Mountain Power (applicant) [#SPI20080005; parcel 26-11-400-012]

Chris Gilbert gave a brief history of the project. He explained that because of staff changes with Rocky Mountain Power and other circumstances submittal of the final approval applications were delayed. Staff expects that these approvals will be completed within the six-month extension.

Staff recommended that the Planning Commission approve a one-time 6-month time extension for both the Preliminary Site Plan and Preliminary Plat set to expire May 2, 2008 for the Rocky Mountain Power Oquirrh Substation project located at approximately 5650 West Old Bingham Highway. If approved, this extension will expire on November 2, 2008.

Mickey Beaver, Rocky Mountain Power, 201 South Main, #2300, said they don't expect it to take as long as six months. They are waiting for a will serve letter for water supply from South Jordan before the Health Department will sign off on the plat. He provided a letter that states if they do receive a temporary water supply from South Jordan it will be switched over to West Jordan as soon as the water is available.

David McKinney asked if the water supply issue also added to the delay of the project.

Mickey Beaver felt that issue was lost in the management transition. They thought all that was left to be done was the final site plan application. South Jordan is working on an easement for a new waterline that will serve as temporary water supply.

James Dupaix asked why Rocky Mountain Power chose this course rather than the course that would circumvent the due process of law that had been utilized before in order to get what they wanted.

Mickey Beaver asked what he meant by another course.

James Dupaix explained that the City denied the building of a substation in another location of the City. Rocky Mountain Power sued the City, who spent a lot of money defending their decision and prevailed in the court of law. However, Rocky Mountain Power found a commission appointed by the Governor to circumvent the due process of law where a judge had given West Jordan the right to deny the substation. So, since Rocky Mountain Power now knows a course whereby they can circumvent the due process of law why have they chosen to follow due process at this time.

Mickey Beaver said this is not a situation where they feel compelled to invoke that kind of a course. The Utilities Review Board is part of the State structure, but they don't feel it is appropriate to go to those lengths unless it is necessary. They want to continue in removing the grating relationship with West Jordan, and felt that some progress had been made. As the Customer and Community Manager responsible for relationships with West Jordan his personal approach will be one of collaboration with real conversations that can resolve many issues with both parties.

James Dupaix said they were happy to have him as the liaison now.

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

MOTION: Justin Stoker moved to approve the one-time 6-month extension for Preliminary Site Plan and Preliminary Plat for Oquirrh Substation; 5660 West Old Bingham Highway; Rocky Mountain Power (applicant) based upon the findings in the report, to expire on November 2, 2008. The motion was seconded by Ellen Smith and passed 7-0 in favor.

2. Gardner Estates Subdivision (7 lots); 1801 West Gardner Lane; Preliminary Subdivision Plat; R-1-10D Zone; Axis Development/Rocco Liebsch (applicant) [#SDMA20080001; parcels 27-03-128-045, 005, 051, 013, 014]

Scott Langford gave the overview of the request for a 7-lot residential subdivision. The existing house will remain on lot 7. Approximately 10 feet of additional right-of-way will be added to Gardner Lane. Staff supported the proposal for the location of the detention pond since the subdivision is small in size. Two options are given to the applicant for the maintenance of the pond. Staff recommended that the wall on Gardner Lane lines up with the front yard setback line, which will match the wall for Cajean Estates and allow for sight visibility. The plat meets the goals of the General Plan, and the zoning and subdivision codes.

Staff recommended that the Planning Commission grant Preliminary Subdivision Plat approval for the Gardner Estates Subdivision, located at 1801 West Gardner Lane (8650 South) in a R-1-10D zoning district, subject to the following conditions:

1. Meet all requirements of Title 87 of the Subdivision Ordinance and Title 89 of the Zoning Ordinance, and the requirements of the R-1-10D zoning district.
2. The Gardner Estates Subdivision project shall conform to the narrative and subdivision plat dated 4/22/08 as part of this application, except as modified by these conditions.
3. The Gardner Estates Final Subdivision plat shall be amended to show a 6-foot high decorative masonry wall along the north side of Lot 1 and 7. Said wall shall match the existing wall built as part of Cajean Estates. The walls shall run from the respective east and west subdivision boundaries along the frontage of Gardner Lane to within approximately 55 feet of the center line of Shulsen Court, which will align with the 30 foot front yard setbacks for Lots 1 and 7.
4. The Developer shall be responsible for all fencing and irrigation/landscaping modifications associated with the extension of Cajean Way. Said modifications shall be completed to the approval of the City prior to the issuance of any building permits within the subdivision.
5. The storm water detention pond shall be constructed by the Applicant / Developer where the following shall apply: 1) a Home Owners Association shall be created for maintenance purposes with the detention area recorded under a perpetual maintenance easement; or, 2) that area allocated for detention purposes shall be created as a sub-tract or parcel, and maintained by an Home Owners Association.
6. All lot line adjustments needed to provide the necessary area for the Gardner Estates subdivision shall be recorded prior to the submittal of the Final Subdivision Plat.
7. The approved Preliminary Plat shall remain valid for one year following the date of approval [Section 87-3-108(a)].
8. The Applicant shall dedicate 10-feet of right-of-way (or an area needed to accommodate 35-feet or right of way south of the center line along Gardner Lane to allow for a full dedication width of Gardner Lane.
9. As part of the Final Subdivision Plat submittal, the Applicant shall submit a recordable copy of the protective covenants associated with the establishment of the required Home Owner's Association (if required as part of detention pond maintenance).
10. Planning Commission approvals do not include Fire, Building and Safety, or Engineering approval. Requirements by those departments must be met and plat changes or additions may be required.

Clarification was given regarding surrounding zoning and home size minimums.

Rocco Liebsch, applicant, 1745 West Gardner Lane, had nothing to add to the report.

David McKinney said the Commission received a letter from residents in the area and asked if he had seen the letter and what his feelings were for instituting some or all of the items.

Rocco Liebsch stated that he told them that he would do those things, and that is why they wrote the letter.

James Dupaix stated for the public record that a letter was received from Susan Ord and Janis and Larry Kelly with 10 listed items, which he read.

Susan Ord, West Jordan resident, said she spoke to the applicant who mentioned that he would do some of the items on the letter, and she wondered how to make sure they are instituted.

James Dupaix stated that she could ask that question to staff, and the Commission will be addressing those issues. He asked about item #4 regarding the sprinkler pipe.

Susan Ord explained that when the sidewalk is extended she would like a sleeve to make the sprinkler whole. She also wanted the fencing to have a finished edge when it is taken down to connect the street. She stated that it is currently very difficult to turn left from Gardner Lane onto Redwood Road, and she wanted to know how the citizens can make their desires for a traffic signal in that area known.

James Dupaix suggested that she call the City Engineer to learn of that process.

Robin Sevy, West Jordan resident, was concerned with the existing traffic that goes 40 mph down her road. She said that she was denied speed bumps, but asked if they could get 'children at play' signs, more stop signs, or have the police monitor the speed, because it will just get worse with the new homes.

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

The applicant didn't wish to rebut.

David McKinney said traffic considerations are always an issue, but with the small size and location of this development he felt the traffic issues had been addressed. He didn't think the likelihood of cut-through traffic would be great. The Traffic Engineer can address any concerns outside of this subdivision.

Justin Stoker felt that this infill development seemed to fit in with the surrounding neighbors better than any other they had seen.

James Dupaix said the existing sprinkler pipe is part of an irrigation system and is addressed by the conditions of approval in the staff report, and the rest of the ten items are already kind of agreed to in the development plan. They can't make a recommendation for speed bumps on Cajean Way, because it is outside of the purview of the Commission. He asked for the opinion of the City Engineer.

Nathan Nelson explained the Traffic Calming Program that is initiated with the Traffic Engineer. The staff evaluates the amount and speed of the traffic in the area to determine if speed humps are warranted. They will also look at the need for stop signs and other cautionary signs. This is an open process where the residents meet, talk, and vote on the recommendations.

James Dupaix said based upon the comments from Mr. Nelson that he didn't feel that the Commission should require any additional traffic mitigation.

MOTION: Nathan Gedge moved to approve the Preliminary Subdivision Plat for Gardner Estates Subdivision; 1801 West Gardner Lane; Axis Development/Rocco Liebsch (applicant) based upon testimony and with the conditions listed in the Commission packet. The motion was seconded by Justin Stoker.

Nathan Hendricks asked for clarification on condition #5 regarding maintenance of the storm water detention pond. He did not like either option given, because they both include the formation of a homeowners'

association. He felt the pond is small enough that an association isn't required and that it could be maintained by the owner of Lot 7.

David McKinney said the applicant is willing to create the homeowners' association.

MOTION: David McKinney moved to reopen the public hearing to allow the applicant to come back up to address the detention pond issue.

The motion was withdrawn in order to vote on the original motion.

AMENDED

MOTION: Justin Stoker moved to include an Option #3 to allow the owner of Lot #7 in a written agreement that he will personally maintain the detention basin without the formation of the homeowners' association. The motion was accepted the motion by Nathan Gedge.

Nathan Hendricks supported the motion that would give an additional option to the applicant.

James Dupaix explained that standards are in place to maintain the quality of the water that is discharged into the storm system. They had found that a homeowners' association spreads the cost of the maintenance. If Option #3 is chosen the maintenance will become the responsibility of the owner of Lot #7.

Justin Stoker said the reason for the additional option is because of the size of the development and the detention basin is relatively small. Maintenance will be mostly limited to cleaning out trash, and he didn't think that it would be a large burden to the homeowner.

James Dupaix asked if the detention pond will require an oil separator, and he asked about the cost to maintain that device.

Nathan Nelson said a base saver separator has been called out, which allows oil and certain debris to be skimmed off before the water goes through. It isn't a high maintenance type of item. He felt that the bulk of the maintenance would be limited to mowing the grass and picking up accumulated trash. He felt it was within the capability of a homeowner to do that. If that is the option chosen it should be noted on the plat with a document filed with the County so the maintenance stays with that lot in perpetuity.

Tom Burdett said recording the information is critical in the event that the owner of Lot 7 tries to modify or adjust the detention pond.

David McKinney said the staff report refers to a perpetual easement over the detention pond area. However, he didn't see mention of that easement in the conditions of approval.

Scott Langford said the plat shows the easement currently.

Nathan Nelson said the easement will also allow for City crews to go on the property to inspect it. They expect the homeowner to maintain the landscaping and oil/water separator, but the piping and things that control the water are generally inspected by the City to make sure they function properly.

AMENDED

MOTION: Justin Stoker moved to add to the motion that a public drainage easement to be privately maintained be placed over Lot 7 in the area of the detention basin and if Option #3 be used that the agreement be recorded with the Salt Lake County Recorder's Office. Nate Gedge accepted the amendment. The motion passed 7-0 in favor.

3. D and D Toys; 3078 West 7800 South; Amended Conditional Use Permit for Outdoor Display and ATV Test Driving; SC-2 Zone; D and D Toys/Dan McCleve (applicant) [#CUP20080007; parcel 21-28-352-019]

Scott Langford gave the history of the approval of the initial conditional use permit. It was approved based upon seven conditions, which the applicant agreed upon at the meeting. Since that time the applicant had been found in violation of test driving and outdoor display. The applicant would like to amend the approval to include nine outdoor display concrete pads along 7800 South and to have the ability to test drive machines in the area on the north side of the building. In order for the Commission to grant the permit, six criteria have to be met, which he reviewed as listed in the staff report. Staff did not find positive findings of the criteria due to concerns with fumes, noise, and safety.

Option #1: - Preferred Recommendation

Staff recommended denial of the requested amendments to the Conditional Use Permit originally approved on March 15, 2006 for D and D Toys located at 3078 West 7800 South based on the findings outlined.

Option #2:

If the Planning Commission decides to grant approval of the request to remove/amend conditions #4 and #7 from the original conditions, all other conditions of approval as stipulated on March 15, 2006 shall remain intact and qualifications shall be applied to conditions #4 and #7 to ensure that the City's Code's will be met and detrimental effects created by the use can be mitigated. The following conditions shall apply if Option #2 is entertained by the Planning Commission:

- 1) Meet all requirements of the Building Official Fire Marshal Business Licensing and Engineering Division.
- 2) No open chemicals including gasoline and motor oil will be stored on the property. Unopened bottles of motor oil may be stored on site for retail purposes.
- 3) Vehicle maintenance will be limited to minor repairs and all repairs will take place indoors.
- 4) Outdoor display of merchandise may take place on the property provided the following:
 - a. The Applicant shall provide a complete parking analysis of the site to determine if excess parking is available to be converted into display areas. After reviewing the provided parking analysis, the City Planner shall determine if the site contains excess parking above that required by the Zoning Ordinance.
 - i. If the parking analysis reveals excess parking on site, only parking spaces directly adjacent to or in front of D&D Toys may be converted for display areas.
 - ii. Appropriate parking spaces, as defined in part i., shall be converted by means of appropriate re-striping so as to clearly define these areas from standard parking spaces.
 - iii. Outdoor display shall only take place during business hours.
 - b. Under no circumstance shall outdoor display occur within the required 20 foot front yard setback.
- 5) All products to be unloaded from the back.
- 6) The business is posted that service and repairs are to take place in the back.
- 7) No test driving outside the building may occur until the following is accomplished:
 - a. A noise analysis shall be submitted to determine the decibel levels created during test drives will not be detrimental nor impact the residential neighborhood located directly to the north of the use.
 - b. Said noise analysis shall be submitted back to the Planning Commission for final review and decision purposes.

Nathan Hendricks asked if the business owners had been displaying vehicles in the front.

Scott Langford said yes. They have been warned multiple times and have been cited as recently as the end of April.

Nathan Hendricks asked if one of the complaints had been for test driving and if they do repairs at the business.

Scott Langford said the driving had been a complaint, and he was not aware of the repairs.

Justin Stoker asked how many citations it requires before revoking a conditional use permit.

Scott Langford said the Planning Commission has the option to go through that process if there is an enforcement issue.

James Dupaix asked what the process is to bring forward a revocation proceeding in a situation such as this.

Tom Burdett said he likes to use that as a last resort rather than the first resort, because they have to create findings and build a court record. We try all methods of enforcement first, but sometimes it does come to revocation.

Scott Langford said two citations had been written, but he didn't know the number of warnings.

Reed Scharman explained that the building is separated with fire walls and is not a sprinkler protected building. That is important to know, because it further heightens the importance of fire department access. The fire access road was designed to circle the entire building and shall not be obstructed in any manner. The notion of having people going up and down the area on non-street worthy vehicles and competing with the fire department access doesn't make sense, and it could be argued as being an obstruction.

Nathan Hendricks asked if the original condition that no open gasoline or chemicals be stored would include the gasoline that is in the vehicles.

Reed Scharman said the discussion at that time related to the idea that the vehicles would be wheeled out and placed on trailers, and he didn't recall that it would be a repair shop.

Dan McCleve, applicant, 3348 Olive Tree Circle, distributed some pictures. He stated that they didn't expect to get 9 display spaces as they requested, but City Councilmember Jim Lems recommended that they ask for more based on the fact that it would probably be limited in number. They would rather not pour concrete, but have decorative rock to place the machine on. He referred to the photos that showed other businesses in the SC-2 zone that have outdoor display and storage. They would like two machines near the sidewalk as shown in the photos. Some of the photos show the driver's perspective as they are coming in and out of the complex, which doesn't impede the vision of drivers in any way. They would like 3 or 4 machines near the building, which would not obstruct the sidewalk. Their main concern is with visibility, because the trees cover their business. He said they are not asking that customers be allowed to test drive, but they would like the mechanics to be able to make sure the machine is operating properly after repairs are made. Addressing the concerns for fumes and noise, he stated that the machines can't be heard next to a lawnmower, and they would limit the speed. He said that people, including the residents in the area, will race motorcycles and other vehicles in the area in back of the store, but their business gets blamed for it. He said if it is his employees he need to know about it, because they are not supposed to do it. He said the displays would be beneficial to the businesses around them, because it draws people in to the other stores. Regarding display in the parking stalls, their section of the building has 34 stalls.

Nathan Hendricks asked what types of repairs are done on premise.

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Dan McCleve stated that it is minor repairs such as tune ups, tires, flat repair, and changing plastic. There are no overhauls done.

Nathan Hendricks asked if it were correct that they assemble the vehicles on site, which requires the need to test drive.

Dan McCleve said they do some assembly of wheels and handle bars, and they need to make sure it is safe to drive.

Nathan Hendricks asked if they store gasoline.

Dan McCleve said they keep a 5-gallon container of gas in the back of one of the partners' vehicles. There may be some gas in the machines, but they don't like to do that until it is ready to be sold.

Nathan Hendricks asked if they had ever displayed any units on the grass.

Dan McCleve said yes. However, the last citation they got was for storing customers' machines, awaiting pick up, on the side of the building in a parking stall.

David McKinney asked who owns the property where the display pads would be located.

Dan McCleve said the Copper Creek Retail Center, Lee Livingston, who approved the proposed changes.

It was clarified that the property owner affidavit is on file.

David McKinney said one of the concerns was the effect the display would have on the overall required landscaping for the site. He asked for the numbers on how the landscaping would be changed.

Dan McCleve said he doesn't have the numbers. They don't want nine pads. They would rather have two pads either on decorative rock or on flat landscaping rock.

James Dupaix said he was on the Commission at the time of the original application. He asked if they are aware that they are in violation of the conditions in the original approval.

Dan McCleve said he is aware they did violate two of the conditions, and they are not violating them at this time.

James Dupaix said the Commission was very adamant about the mitigation measures for this type of business. He asked why they violated the conditions.

Dan McCleve said they were under the assumption that they could have outdoor display. Then they were told by an officer that they couldn't have machines on the grass, but they had to be in a stall. So from that point on they were placed in a parking stall, which upset the neighboring tenant. It wasn't until later that someone came to them to state there couldn't be any display outside. He didn't know why the mechanics were test driving, but they were told by an officer as long as they stayed on the private parking lot they could do it. However, the officers didn't know what the conditional use permit terms were.

Kurt Gruendill, West Jordan resident, said the ATV's are very noisy, and he didn't want to live behind an ATV track. He understood they are running a business, but the residents were there first. This is a private strip mall, but it is a public area with cars accessing the other businesses, and these vehicles don't mix well with cars. The testimony from the owner said that only mechanics would drive the machines, but if he were buying one, he

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would want to drive it first. So he thought that people would be test driving them all the time. The tire store pushes the limits for the residential area, and he wants to keep the area nice. Areas that decline have an 'anything goes' attitude. He felt that this business is just in the wrong area for what they want to do. He has an autistic daughter that is greatly affected by the noise.

David McKinney said the applicant stated that many of the ATV's driving in that back area are not associated with the business. He asked Mr. Gruendill if he could state with reasonable certainty that the vehicles he had heard in that area were associated with this business.

Kurt Gruendill said categorically, no. He is not the police, but he only knows that he hears the noise.

Nathan Hendricks asked how often he hears the ATV's in a given day.

Kurt Gruendill said it is every day, maybe one or two times. In response to a question regarding how long he had lived in this area he stated it was about ten or fifteen years, before the strip mall was built. There weren't ATV's there before this business came.

Michelle Thompson, West Jordan resident, said she was at the original hearing as well. It was well documented that they stated they would push the vehicles in and out. She said the ATV's are a little louder when they are being revved. There is also a dune buggy that has come and gone from the business, which is really loud and extremely annoying. Every day they are open there are five to 10 units parked in back of the building, which would not allow for fire department access. She hears them every day. She has video tape showing the ATV's going straight into the building. As of last weekend there were trailers stacked two to three high in the parking stalls, which is extremely dangerous. That road is used as a thoroughfare by kids going to the gas station and to school. The dance studio students are picked up and dropped off in that area. Little mini bikes are also driven in that area, which would never be seen by someone in a car. She knows of someone who went into the business and asked if he could test drive a machine. The employee told him absolutely. She thought that since they are behaving in this manner with the conditions of the permit, that if they were given permission to do these things they would really be inundated and have no peace.

Deni Weeks, West Jordan resident, pointed out her home and stated that the noise of the vehicles is escalated when it is being revved and as the noise reverberates against the block wall and the building. She said the noise is constant, and especially on the weekend. She said last Saturday it was all day long. It is not just one quick drive, but lap after lap with the same person and vehicle going 20 to 30 laps. Her husband works graveyard shifts, and it is hard for him to sleep during the day. She is a music student and can't concentrate on music. She believes that if the business does let patrons test drive that they tell them not to go through the neighborhood, but once the patrons are in control of the vehicle they go through the neighborhood, in front of the houses, cutting across the lawn, in the driveways, and going fast. She said it is obvious that if the vehicles are being driven that there is gas on site. If something were to happen with a spill or a fire it will affect the entire neighborhood, so this is not only a matter of noise but safety as well.

Dan McCleve said he isn't at the business a lot, but he had been assured that no one leaving the business on one of their machines had left the parking lot. There are other vehicles that go up and down that area such as trucks, motorcycles, and other noisy machines. He said if test driving is allowed he would make sure that it is being followed to the letter. He doesn't know who is racing through the area, but he knows that some of them are people from the neighborhood. Their main concern is to get some kind of outdoor display, and if test driving won't work they won't do it.

Justin Stoker asked if there had been a dune buggy in the shop.

Dan McCleve said a customer brings one in, and it is loud, because there is no muffler.

Nathan Hendricks asked if they had ever allowed a customer to test drive one of their products.

Dan McCleve said yes.

John Winn asked for clarification on the repair of vehicles.

Dan McCleve said sometimes they will get machines in multiple times, because the customer might not want to do all of the repairs at once.

John Winn asked if they were doing boring out.

Dan McCleve said they don't do that. He said some of the machines may have had that done somewhere else.

Lisa Gruendill, West Jordan resident, asked the Commission if they wouldn't test drive a car before they buy one. She said you know that they will be test driven. Last Saturday there were ATV's driving through their neighborhood, although she didn't know who they belonged to. However, they don't belong on the street and this business doesn't belong at this location. Maybe they should move to where they can have enough room to be able to drive. She said although that area is private property it is like a street. She asked who would be liable if someone were to get hurt back there.

Lee Livingston, owner of Copper Creek Retail, wanted to hear all of the views of what is going on before speaking. He is okay with the intent of the amendment, but he didn't know about the request for test driving when he signed the document. He had one complaint from a neighboring business, but he hadn't heard from the residents, so he was interested in how this is impacting everyone. He was concerned with safety. Outside of whatever the Commission decides there are obligations that the tenants have to the landlord, which he will see are enforced. It seems like the greatest concern raised tonight is with the test driving rather than the display. His feelings with the advertising were mixed, but if the tenants don't do well he doesn't do well. He knows there are provisions for tenants to place temporary signage in the parkstrip, and he thought the display of ATV's was similar to that. He didn't like the idea of concrete pads either, but would prefer the display on the grass. He also didn't want the parking in the parking stalls being used for display. He felt the request for display was reasonable.

John Winn asked if there were a way to move some of the trees that were in the way of the building signage.

Lee Livingston said he didn't know that removing trees was an option and suggested that question be directed to staff. Regarding the test driving, he was concerned about safety and with the concerns of the neighborhood. When the tenant moved in they assured him test driving wasn't necessary, but now they are saying it is.

James Dupaix asked what the influence of this business had on the viability of the shopping center.

Lee Livingston said what comment he had received had primarily been positive. The only exception to that was with the neighboring tenant, which he felt was more of a personal issue.

James Dupaix asked if they had seen an increase in the viability of the mall since this tenant came in.

Lee Livingston said yes. He felt that they had brought business to the center.

Scott Langford informed the Commission that one of the enforcement officers was in attendance.

MOTION: Nathan Hendricks moved to allow Officer Collins to come forward to make a brief statement. The motion was seconded by Justin Stoker and passed 7-0 in favor.

Nathan Hendricks asked if he had more information regarding the number and types of warnings.

Officer Nathan Collins, West Jordan Police Department, said they had received warnings for sign violations and outdoor display.

Nathan Hendricks asked if they had any calls from neighbors or warnings given regarding noise complaints.

Officer Collins said he knows there had been noise complaints prior to his assignment to the area. As far as verifying where the vehicles were from he doesn't have that information. The citations were for a sign violation and outside display of merchandise.

Nathan Hendricks asked if the police had responded to the neighborhood complaints regarding noise.

Officer Collins said he didn't know of any. He had been assigned to the area for a little over two years.

Dan McCleve reiterated that if the test driving is absolutely not allowed they will make sure their employees don't do it. If it is not someone associated with their company there is only so much he can do to make them stop. They want the neighbors to be happy, so they will comply with whatever is decided. They would like to get an approval with regards to display.

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

Nathan Hendricks said one of his biggest concerns is that this business may not be a good fit for this area. He appreciated the fact that the applicant wants test driving, but he felt that driving the vehicles in a parking lot is not appropriate. He felt that a shop would need to at least turn the machine on, and the noise is one of the biggest problems. He didn't know what the recourse is. He understood the need for marketing, and didn't have a problem with having one or two machines placed on the grass.

John Winn said the Commission is an advocate of business in West Jordan, but he rides and works on ATV's and they can get loud. He felt that they this type of business needs test driving, and for that reason only this may not be the best place for such a business. If they are allowed to stay in this location the City needs to help them with advertising.

David McKinney is generally in agreement that the test driving is not reasonable. He felt that a modification of the conditional use for the outdoor display could be appropriate, but they need more information to make a decision on that issue. He felt that they needed a more accurate application of what the applicant really wants with regards to number and location of displays.

Justin Stoker agreed, but responded that no matter what is decided here, there will always be difficulties with having an SC-2 zone next to residential development. Responding to the comment that this isn't a good location for this type of business, he said he couldn't think of a better location. Industrial locations won't get the business, and high density retail would price them out of their business. He would like to see an application more tailored to what they want to do with the display.

Nathan Gedge agreed with the feelings regarding test driving and stated that he too is affected by this situation, although not as much as those that live directly behind it. He encouraged the neighbors to seek the proper channels through the City staff to let their grievances be known in the future. His biggest concern with the display is that when this came before them two years ago it was a condition of approval, and there had been a

blatant disregard to those conditions. He appreciated businesses in West Jordan, but felt they needed more research and a stronger commitment from the owners that they will adhere to any conditions.

Scott Langford clarified that the code does not allow any display in that 20-foot area, and that is why a second option was provided in the staff report that requires a parking analysis to see if they could convert some stalls into display area.

Nathan Hendricks asked if the Commission had the ability to have the item come back to them to be reviewed for revocation if a certain number of violations occur.

Tom Burdett said they can modify the conditions as they wish. He clarified that with regards to the number of display pads in the application that he advised them to apply only for what they needed and not for anything more.

James Dupaix said he was opposed to amending the conditional use permit for either request based upon what he remembered of the discussion of the original approval. As they considered it one thing they were concerned with was the viability of the strip mall after losing a major tenant. They looked at this business with close scrutiny and asked what the business practices would be. They asked questions about test driving and they were assured that there was opportunity for customers to purchase without taking a test drive. Now the Commission finds they were somewhat misled knowing that customers have been allowed to do just that. He was concerned that after such a strong recommendation with conditions to mitigate any negative affects that they were violated. Because of the practices of this business it has shown that if the Commission were to allow these things that the negative affects won't be mitigated. The limits have been pushed, and there have been warnings and citations. Although the owner of the business may not have the intent to violate, the practice of the business is to violate. He isn't willing to allow further violation to occur when the granting of the conditional use permit is to mitigate the affects. Further, saying they want nine display areas but really wanting two is against the whole procedure we are involved in. We are not against business or people making a profit. They wanted the center to be more profitable and they were assured there would be no display or storage outside and that there would be only little servicing on the premises. He agreed with the findings of fact from staff and suggested denial.

Ellen Smith asked if the trees have to stay in their current configuration or if there is some way to move them.

Scott Langford said the code required one street tree per linear feet of street frontage, which are allowed to be grouped. The City hates to see the removal of mature trees, which is addressed in the ordinance.

Ellen Smith said her personal feelings go along with that of the rest of the Commission.

MOTION: David McKinney moved to deny the requested amendments to the Conditional Use Permit for D and D Toys; 3078 West 7800 South; D and D Toys/Dan McCleve (applicant) based upon the findings of fact and the analysis in the staff report and based on the public testimony that had been heard this evening. The motion was seconded by Ellen Smith.

Nathan Hendricks said the main reason he is voting for the motion is because he didn't think they put forward an application that was accurate or truly what they wanted. He recommended that they make application that addresses what they want. He stated that he would be making an additional motion after a vote is taken.

Justin Stoker said even though this may be denied tonight, they would be willing to entertain a more reasonable request after the applicant meets with staff to discuss a more viable option for advertising.

The motion passed 7-0 in favor.

MOTION: Nathan Hendricks moved that if another citation is issued to D and D Toys that their Conditional Use Permit be brought back to the Planning Commission to consider a recommendation to City Council that the permit be revoked. The motion was seconded by Nathan Gedge.

Justin Stoker agreed in principal, but thought the number of citations should be increased in the event that the rear alley was being used by someone in the residential neighborhood rather than the business.

David McKinney was in favor of just allowing for the normal enforcement of conditional use permits to run its course.

Nathan Hendricks agreed with Commissioner Stoker, except that the applicant hadn't been given warnings for the driving of the vehicles, because it is probably hard to enforce. His biggest concern was with the numerous sign violation warnings. He felt that the residents deserve an action that tells the owners not to do it anymore.

Ellen Smith agreed with Commissioner Stoker, because there is a great chance of an inadvertent citation that may not be their fault. She felt that leniency is called for, but that a definite limit is set.

John Winn could also see the possibility of an inadvertent citation regarding vehicle use, but we know they have been the ones violating the sign code.

AMENDED

MOTION: Nathan Gedge moved to amend the motion to change the number of citations to three.

The motion died for lack of a second.

Nathan Hendricks said they had been in business for two years. He didn't know how many warnings they had been given, but they have only received two citations in that time and didn't know how long it would take to get three more. He said he could change it to a number of warnings.

Justin Stoker was in favor of more leniency and suggested two citations.

Nathan Gedge asked if warnings are documented in police reports.

Sgt. David Hanney, West Jordan Police Department, stated that issuing a citation is not guilt or an admission of guilt, but it first must be adjudicated before a court. He suggested that in the case of a new citation they wait until after the case is handled before action is taken by the Commission.

James Dupaix said in that case the burden of proof is upon the State to determine if the citation is warranted.

John Winn asked if the officer would have to see the violation personally to issue a citation or if it can be issued from a complaint.

Sgt. Hanney said they use a probable cause standard where it would have to be shown the law is being violated. If they don't see the violation they make a report for the City Attorney to determine if there is a case.

John Winn felt it would be difficult to inadvertently give a citation.

Sgt. Hanney said police can't cite driving on private property, but they can on public roads.

James Dupaix asked if that is why there hadn't been any citations issued for test driving vehicles.

Officer Collins agreed that could be a reason.

Nathan Hendricks asked if they would most likely have to see someone riding the vehicle to know they were in violation in order to issue the citation.

Officer Collins said yes.

James Dupaix asked if warnings are documented.

Officer Collins said it is at the officer's discretion, but he had personally done it both ways.

Commissioner McKinney called to the questions and asked for a roll call vote.

AMENDED

MOTION: Justin Stoker moved to modify the motion to state that rather than the issue of a citation it be the result of the adjudication of the citation and a determination that a violation has occurred for this particular tenant. Nathan Hendricks and Nathan Gedge accepted the amendment.

ROLL CALL VOTE:

**Commissioner Gedge - yes
Commissioner McKinney - no
Commissioner Winn - yes
Commissioner Hendricks - yes
Commissioner Dupaix - yes
Commissioner Stoker - yes
Commissioner Smith - yes**

The motion passed 6-1 in favor.

James Dupaix felt that this is sending the message that the previous practices make the Commission think that it is the intent of the business to violate the conditions of approval that have already been stipulated, and past history has shown that to be the case. The Commission wants to see performance to the conditions that have already been set. Should another application come forward then a way of assuring the Commission that compliance with conditions set by the Commission will be adhered to would be a wise course of action.

4. Ron Wood Recreational Complex Phase II; 6110 West New Bingham Highway [#CIP20070003]

Jeremy Olsen presented information regarding Phase II of the Ron Wood Complex. A change in the plan would eliminate one baseball diamond. The improvements should be in by Fall.

Tom Burdett updated the Commission on recent Council action and formally recognized new Senior Planner Ray McCandless.

MOTION: Nathan Hendricks moved to adjourn.

The meeting adjourned at 8:42 p.m.

James F. Dupaix
Chair

ATTEST:

JULIE DAVIS
Executive Assistant
Community Development

Approved this _____ day of _____, 2008