

**MINUTES OF THE REGULAR MEETING OF THE WEST JORDAN PLANNING AND ZONING COMMISSION HELD SEPTEMBER 2, 2009 IN THE WEST JORDAN COUNCIL CHAMBERS**

**PRESENT:** Justin Stoker, Chad Nichols, Nathan Gedge, David McKinney, Ellen Smith, John Winn, and Jesse Valenzuela.

**STAFF:** Tom Burdett, Robert Thorup, Julie Davis, Greg Mikolash, Scott Langford, Nathan Nelson, and Rodger Broomé.

**OTHERS:** Ken Olson, LaMar Coon, Mike Jones, Brent Orton, Eric Tuttle, Joe Parrin, Dave Reddish, and Kevin Orton.

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The briefing meeting was called to order by Justin Stoker.

Scott Langford said staff met with the applicant of Item #2 yesterday regarding what they needed to do to get a more favorable recommendation from staff. Staff indicated that they needed to apply for a deferral agreement on the road rather than obtaining a waiver on the requirement to build it. Staff distributed alternative recommendations to the Commission that consider the deferral agreement being approved by the City Council. He explained the recommendations. Nate Nelson gave further clarification regarding the requirement to construct 6400 West. General information was given regarding deferral agreements and trigger mechanisms for construction of the road.

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The regular meeting was called to order at 6:01 p.m.

**1. Consent Calendar  
Approve Minutes from August 19, 2009**

**MOTION:** Nathan Gedge moved to approve the Consent Calendar Item #1 minutes from the August 19, 2009 meeting. The motion was seconded by Chad Nichols and passed 7-0 in favor.

David McKinney explained that the Commissioners are dressed in celebration of the 50<sup>th</sup> anniversary of Hawaii's statehood.

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**2. The Wilshire Place; 6450 West New Bingham Highway; WSPA (HFR) Zone; Preliminary Site Plan, Preliminary Subdivision Plat, Preliminary Development Plan, and Request for Modification of Design Standards per Section 8-3A-3 of the West Jordan Municipal Code to Defer the Requirement of Section 14-5-5G to construct 6400 West adjacent to the proposed subdivision boundary; Wilshire Place, LC/Ken Olson (applicant) [#SPCO20090015, SDMA20090004, DP20090001, APP20090003; parcel 26-03-400-002]**

Scott Langford gave a presentation of the various applications. The proposed 278-unit apartment complex is on 16.94 acres.

The preliminary subdivision plat was displayed. The Planning Commission has to make four findings of fact with regard to the subdivision as required by code. The subdivision consists of two parcels, 1 lot, and a portion of right-of-way that would be dedicated for the future 6400 West. Appropriate access to the site continues to be one of the most important issues that are affecting the development of the property. He referred to page 49 of the General Plan that states, "Streets and highways provide for two distinct and very different functions; mobility, and land access." One of the goals of the transportation element is to provide safe and efficient movement of traffic on streets, which is accomplished by maintaining a street hierarchy where larger roads are designed to move traffic by means of controlled access with higher speeds, and smaller roads are designed for property access with less control and lower speeds. Lot 1 will occupy The Wilshire Place. New Bingham Highway and 6400 West are classified as major collector roads that will border the site. The proposed plat and site plan indicate that the sole access to the future development will come from a temporary driveway off of New

Bingham Highway. A temporary gated access to the west will facilitate emergency vehicles in case the primary entrance is blocked. Staff highly questioned the safety and efficiency of direct access from this development to New Bingham Highway. He said while there are a number of developments throughout West Jordan and Salt Lake valley that are accessed from high-speed and high-volume roads, it is always better to provide ingress and egress points from developments to roadways with less traffic and lower speeds in order to maintain the street hierarchy for safety and efficiency. Earlier renditions of the site that that were exhibited to the Planning Commission and City Council showed the access from the development going to 6400 West. Staff found that the proposed subdivision plat did not conform to the adopted goals and policies of the general plan, because the access points from the proposed development do not support or maintain the established street hierarchy adopted in the master transportation plan. He noted that New Bingham Highway is controlled by UDOT, which gave permission for a temporary access from New Bingham Highway based on 17 conditions/corrections. The most significant condition is that when 6400 West is built they will require that the temporary points of access to New Bingham Highway be removed. However, staff felt that regardless of UDOT's conditional approval they still highly questioned the safety and efficiency of providing access from the site to New Bingham Highway due to the nature of the road. The residents in the development will be the single largest source of traffic generated in the area. The findings that the primary connection to the subdivision and future development of the area will be from 6400 West and the findings that required that 6400 West be constructed with the first phase of the previous Cady Meadows subdivision were sound. The burden of construction of the roadway system is required by ordinance of the developer where the city may reimburse for oversizing. The city cannot afford to construct a roadway system of this type at this time, and it should be understood that the benefit received from the higher densities with this project is compensation for building this master planned road. The city should not and cannot waive the requirement to install 6400 West. However, the applicant can enter into a deferral agreement with the city to determine when, where, and how the future required 6400 West will be constructed. The proposed temporary access to the site is a single point of access, and an accident at the main entrance could effectively shut down access into and out of the project. Mr. Langford discussed the potential conflict of developing the road with adjacent property owners; the Orton family and LaMar Coon. The deferral agreement could also incorporate a pioneering agreement where appropriate guidelines and standards are set forth that indicate who pays for which portions of the road. Staff would have liked more time to work out the details of a deferral agreement prior to the commission meeting.

The request for modification to design standards relates directly to the subdivision plat and the access. The city Engineer substantiated the findings that staff made on the criteria that the applicant should construct his portion of 6400 West, and he also indicated his concerns of traffic safety. Mr. Langford read Section 8-3B-3 of the Municipal Code that partially reads, "As a condition of development approval, a developer shall be required to install public improvements, which are reasonably necessary to serve the proposed development at adopted level of service standards. Where required by the city engineer to connect to existing public improvements with adequate capacity, accommodate future development or accommodate the CFP, the developer will also be required to install off site or oversized public improvements reasonably necessary to extend, expand, or improve the city infrastructure beyond that which is necessary to serve or benefit a particular development." The city will reimburse for oversizing of roads and utilities.

He said that the preliminary development plan was reviewed by the Design Review Committee and staff at length. The HFR zone has a base density of 9.01 units per acre. The applicant wants just over 16 units per acre, and the West Side Plan allows for up to 22% in density bonuses by providing added features than are typically better than what is found in developments. He reviewed the recommended percentages for density bonuses as noted in the report. The Design Review Committee gave a recommendation of 93% rating for 17.38 du/ac. Staff's recommendation is for 88.4% for 16.97 du/ac. Based on 278 units the applicant would need a density of 16.41 du/ac.

The preliminary site plan is tied closely to the development plan. The main concern is that the site is currently geared toward the access on New Bingham Highway instead of 6400 West. The applicant submitted a revision

that moves the access from 6400 West north to the alignment of Dannon Way, which mirrors more closely the concept plan that was previously shown to the Commission and the City Council earlier this year. This gives a stronger focal point on the amenities. The mail pickup area was previously located at the entrance from New Bingham Highway, and they may be spread to different pickup places throughout the project, but staff can work with the applicant on that issue.

Scott Langford said that the approval and staff recommendation hinge on the access and the development of 6400 West. Staff met with the applicant yesterday and spoke at length about possibly forwarding an alternative recommendation to the Commission, but this is essentially a recommendation of conditional approval based on some specific requirements or conditions. He stated that these alternative recommendations are not staff's preferred recommendations. If staff had more time to work through a deferral agreement with City Council a lot of the lingering questions could be answered. He read the alternative recommendations.

#### Preliminary Subdivision Plat

Staff recommended that the Planning Commission deny the Preliminary Subdivision plat for the Cadyn Meadows Phase 2 Subdivision Plat located at 6450 West New Bingham Highway in a High Density, Multi-family Residential (HFR) and Single-family Residential (R-1-10E) zoning district, based on the findings in this report.

#### Modification of Design Standards

Staff recommended that the Planning Commission forward a recommendation of denial to the City Council for the requested Modification of Design Standards to Section 14-5-5G of the Municipal Code for the Cadyn Meadows Phase 2 Subdivision Plat located at 6450 West New Bingham Highway in a High Density, Multi-family Residential (HFR) and Single-family Residential (R-1-10E) zoning district, based on the findings in this report.

#### Alternate Recommendation for Preliminary Subdivision Plat and Modification of Design Standards

Staff recommended that the Planning Commission forward a negative recommendation to the City Council for the requested Modification of Design Standards to Section 14-5-5G of the Municipal Code and approval of the Preliminary Subdivision plat for the Cadyn Meadows Phase 2 Subdivision Plat located at 6450 West New Bingham Highway in a High Density, Multi-family Residential (HFR) and Single-family Residential (R-1-10E) zoning district, subject to the following conditions of approval.

Conditions:

1. A deferral agreement for the construction 6400 West from New Bingham Highway to the southern boundary of the Wilshire Place development shall be recorded between the Applicant and the City, prior to or contemporaneous with recording a subdivision plat.
2. The Final Subdivision Plat shall reflect all conditions of the deferral agreement mentioned in condition #1, including but not limited to, all potential on and off-site improvements.

#### Preliminary Development Plan

Staff recommended that the Planning Commission forward a recommendation of denial to the City Council for the Preliminary Development Plan for the Wilshire Place Apartment development located at 6450 West New Bingham Highway in a High Density, Multi-family Residential (HFR) zoning district, based on the findings in this report.

#### Alternate Recommendation for Preliminary Development Plan

Staff recommended that the Planning Commission forward a positive recommendation to the City Council for the Preliminary Development Plan for the Wilshire Place Apartment development located at 6450 West New Bingham Highway in a High Density, Multi-family Residential (HFR) zoning district, based on the following conditions.

Conditions:

1. A deferral agreement for the construction 6400 West from New Bingham Highway to the southern boundary of the Wilshire Place development shall be recorded between the Applicant and the City, prior to or contemporaneous with recording a subdivision plat.
2. All access points from the site to New Bingham Highway shall be removed upon the construction of 6400 West as indicated in the deferral agreement stated in condition #1.
3. The Final Development Plan shall be amended to provide stronger site orientation to 6400 West, which includes but is not limited to:
  - a. Providing a main site access from 6400 West along the approximate alignment of Dannon Way and the onsite clubhouse;
  - b. Relocation of the mail pickup area to another area(s) of the site which anticipates traffic coming from 6400 West;
  - c. Provide a phased site plan that shows what will be done with the temporary New Bingham Highway driveway areas when said drives are removed (i.e. landscaping, pedestrian/vehicular circulation pavement, monument signage, etc.);
  - d. Provide a bond agreement or other approved financial assurance, as part of the deferral agreement, which covers the costs (100%) of site revisions (i.e., removal and re-landscaping of the temporary driveway) as approved by staff in condition 3c.

Preliminary Site Plan

Staff recommended that the Planning Commission deny the Preliminary Site Plan for the Wilshire Place Apartment development located at 6450 West New Bingham Highway in a High Density, Multi-family Residential (HFR) zoning district, based on the findings in this report.

Alternate Recommendation for Preliminary Site Plan

Staff recommended that the Planning Commission approve the Preliminary Site Plan for the Wilshire Place Apartment development located at 6450 West New Bingham Highway in a High Density, Multi-family Residential (HFR) zoning district, based on the following conditions of approval.

Conditions:

1. A deferral agreement for the construction 6400 West from New Bingham Highway to the southern boundary of the Wilshire Place development shall be recorded between the Applicant and the City, prior to or contemporaneous with recording a subdivision plat.
2. The Preliminary Site Plan shall remain valid for one year flowing the date of approval per Section 13-7B-5 of the Municipal Code.
3. The Final Site Plan shall reflect all conditions required by the Preliminary Development Plan and Preliminary Subdivision Plat.

Jesse Valenzuela asked how wide the emergency access road is and who would maintain it in the winter.

Scott Langford said the emergency access is 24 feet and the main entrance is 26 feet wide. The applicant or management company would have to maintain that access.

David McKinney referred to the alternative recommendations and asked for clarification as to what changes are reflected in the plan that allowed for the alternate recommendation.

Scott Langford said everything hinges on the deferral agreement. The applicant has not even submitted for that, so based on the questions that have yet to be answered staff gave the original recommendation for denial on all four applications. However, they are taking a leap of faith that the attorneys and city staff can create a deferral agreement that won't place the burden of this development on the citizens of West Jordan. The slight change to the site plan also allowed for the alternate recommendation.

David McKinney understood that the deferral agreement would not come before the Planning Commission, so if one were approved then this project would just go forward from this point on as if it were approved tonight.

Scott Langford said that is correct.

Nathan Gedge asked if they were to deny all four requests, how long it could be before the applicant could reapply.

Scott Langford was not aware of any clause that would limit that. A request for a rezoning would have to wait a year, but not these types of applications.

Eric Tuttle, Tuttle and Associates, 1648 East 3300 South, representing the applicant, said they have been working hard for almost a year on the project and doesn't want to give the impression that they are just rushing the project through. They are pleased with their product. They have been working with the planning staff for months revising site plans, elevations, and landscape plans. The current submittal is a far more expensive product than their original submittal, but it is a better project at this point. They have substantial landscape buffers. He pointed out some other features such as the arrangement of the buildings so they have two-story townhomes along the future single-family so there is a height transition. They also have pedestrian-oriented paths through the property, and they feel that the whole design of the building elements encourage pedestrian traffic. They feel that the garages have been minimized. He noted the amenities of the pool, splash pad, play fields, tot lots, and an architectural theme that has an expensive look. They feel they have done more than is required and that they have more points that would allow them to go even denser, but they aren't asking for that. Mr. Tuttle addressed the site access. He said a few months ago it became evident that they couldn't make an agreement with the neighboring properties, so they talked to the City and UDOT and they determined that they could have access from New Bingham Highway, but it took awhile to get the approval from UDOT. They have addressed all the conditions from UDOT, so they can have the access directly onto New Bingham Highway. They were surprised with the negative comments in the staff report regarding the access. They understand staff's opinion, but their hands were tied and now they have direct access, which is their only option. They designed a new option for the site plan this morning, and they feel that they have bent over backwards over and over again to please staff, to their credit. The access has been altered to align with Dannon Way, which required one building to be moved. He spoke of the HUD process and said that the only funding possible for a project like this and almost any major project right now is HUD. It is not a low income project, but the money is guaranteed through a HUD loan. When they submitted to HUD in December another project submitted just previous to that, but they won the HUD invitation because of the quality of the project. He said there is now a market watch in the south Salt Lake area, so this is the last project that has been approved or will be for at least a few years, through HUD. There is a timeframe and the deadline is coming up. If this is rejected then the project is over, because they don't have another two months to change things around. If there are minor concerns they would like to work them out with staff and get this through the HUD process. He introduced their traffic engineer to speak on the access to New Bingham Highway.

Joe Parrin, A-Trans Engineering, 420 East South Temple, said the long-term plan is to come off of 6400 West, but this is a timing issue. From a safety issue, until there is a signal at 6400 West it is still accessing the highway from a non-signalized intersection, so there is no inherent additional safety from a city street versus an access point when they are non-signalized. Long-term it is where they want to send the traffic, but there won't be a signal until 6400 West is built and when it is built the other access will be removed anyway.

Justin Stoker asked how many units could be built in the project before the entrance is overwhelmed.

Joe Parrin said the access works fine, because there isn't a lot of traffic on the road. With the planned improvements of the auxiliary turn lanes it will accommodate the traffic. The traffic will function at acceptable levels of service, even during rush hour, with only one access point. He explained that having the access point at

this location actually distributes the traffic, because there is a north approach at 6400 West that is already developed for the Copperfield subdivision. This access will function better here rather than if it were at 6400 West so the traffic doesn't have to vie for position with the Copperfield subdivision.

Justin Stoker asked for the peak hourly numbers.

Joe Parrin said they are at both A's and B's at 2010 and 2015 with the growth that has been happening on the road, assuming what is in the pipeline and what has been occurring. Obviously, if another large commercial development comes in west of this it will be different. He explained the rating for A's and B's. The highest delay they had was 10.9 seconds at an average. A level is 0-10 seconds and B is 10-20. The City requires a level service of D or better in the peak hours.

David McKinney asked if the traffic volumes were taken themselves or if they used numbers compiled by someone else.

Joe Parrin said the State has ADT numbers, but they counted the intersections themselves. Then they grow those counts based on the growth in the area.

Nathan Gedge asked the applicant about their willingness to enter into a deferral agreement with the City regarding 6400 West.

Eric Tuttle said they need to look at whatever they need to do. If for some reason a single access onto New Bingham Highway is a concern, they can discuss it more. He said they haven't been trying to sneak anything by the City. When they discovered they couldn't get access through the neighboring properties, they talked to other cities for ideas, and the professional opinions they got asked how a city can require them to build a road on someone else's property. If they have direct access onto a highway, then why can't they use that access, and how can a city legally make them build on someone else's property. They looked at this as their only option, and they got approval from UDOT.

David McKinney asked if both property owners are unwilling to work with them.

Eric Tuttle said both property owners are in attendance tonight. He said they know that they both want the road built. One specifically hasn't been willing to sign anything ever, and the other may be more flexible.

Brent Orton, West Jordan property owner, stated that he is part of the Orton Family Holdings property. He said that there was an agreement in good faith with Cadyn Meadows that they would have an easement on their property and that Cadyn Meadows would put the road in. The way that one property owner can build a road on another's property is based on the Orton's agreeing with the development and that there is an easement through the property for the road. He found it interesting that 6400 West as shown next to the subject property starts nowhere and ends at Dannon Way, which will make it a place for RV storage until the road it connected to New Bingham Highway. He said that if West Jordan is setting a precedent that you can have a road that starts and ends nowhere, we would like to do the same thing and stop before it reaches the intersection, because the intersection will be costly.

Greg Mikolash said the applicant indicated that they only wanted to put in the portion next to their property, which is part of the request for modification to design standards, but that is not the case. All along staff has said yes, that portion needs to be installed. There is an easement on the property, and had New Bingham Highway not been at a 45 degree angle it would have been a straight road and their property would directly abut 6400 West.

Brent Orton said it is his understanding that the intersection of 6400 West and New Bingham Highway will be a main intersection in the City.

Justin Stoker asked if he were in favor of the development.

Brent Orton said yes. They gave an easement for the road, and since the beginning this has been all in good faith. They welcome the development.

Justin Stoker explained that with the city code, Cadyn Meadows would be required to build the half-street improvements that would have been adjacent to their property should the road have connected through. He asked Mr. Orton if it were his understanding that the Orton Family Holdings would be responsible for the east side of the road.

Brent Orton said yes as it sits now.

David McKinney pointed out the portion of 6400 West that goes from the south end of the development to New Bingham Highway, including the portion that crosses the Orton property. He asked if Mr. Orton had any opposition to the road being built across the easement as it is laid out on their property, and the agreement that the developer would have to build the western side of the road and that the Orton Family would be responsible to pay for the development of the eastern portion of the road when development occurs.

Brent Orton said he is opposed to that, because when this all began they wanted to have the easement in writing, because the developer was going to put in the full road and that is how it was presented. At first they disagreed to it, because they didn't want a road through the property. But they were told there was an easement and they agreed and have not been opposed. When they started the development they spoke in favor of the road through their property.

Justin Stoker asked if they had anything in writing.

Brent Orton said they have the easement for the road through the property.

Justin Stoker asked if they had anything in writing that the developer would build the whole width of the road.

Brent Orton said the agreement was that the Orton's would donate the land and the developer would build the whole width of the road.

Scott Langford said staff has a copy of the easement agreement, which is for the full width. However, without being able to read the details he didn't know if it spoke of who was responsible for the construction of the road.

LaMar Coon, West Jordan property owner, owner of 21<sup>st</sup> Century Business Park, said he was opposed to the removal of 6400 West. He gave some history regarding the sale of property to Wayne Harper and Jay Bowcutt, and said he gave them \$100,000 off the price to extend Dannon Way out to this property, but they never did, and he never got the money back. He showed a plat from two years ago that had all the signatures, but he never had it signed and recorded, because Ken Olson never brought in a deposit for the road. He would like to see the project go through. He said he spent \$34,000 getting the plat ready to record, and he didn't get any money. He showed the plat to the Commission. He felt that the responsibility to put in the road belonged to whoever purchased and developed the property.

Justin Stoker asked if he felt that Cadyn Meadows was responsible to extend Dannon Way.

LaMar Coon said yes, because it was signed in the contract.

David McKinney asked what the concerns are regarding development of 6400 West that crosses his property.

LaMar Coon said this will be a major intersection. He said the extension of the road is necessary, but he didn't think that the roundabout made sense with the number of big trucks in that area.

Kevin Orton, West Jordan property owner and part of Orton Family Holdings, said they are not opposed to the development, but they think it is a wonderful idea. He said the right-of-way was before they even got the property, because the agreement was between the Bates' and Cadyn Meadows. They honored the agreement, but it was always their understanding that the developer would put in the road. They donated the property for the road but they are not paying for it. If it is up to them to do it they will let the property sit. They signed no agreements stating that they would pay for the road, but they agreed to the right-of-way through the property.

Justin Stoker asked if there was anything in writing that Cadyn Meadows would pay for the full width of the road.

Kevin Orton said they have a paper that Gayle Evans and Bates had signed that said in lieu of. He said in all of the meetings he had attended they were told that the others would put in the road. He doesn't care which developer puts in the road, but the Orton Family is not paying for it, because they donated the property.

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

Ken Olson, 10299 Springcrest Lane, applicant and property owner, said they could not come to an agreement with Mr. Coon. LaMar has agreements with the Bates' and the Orton's said they have agreements with the Bates' but the Bates' have been out of the project for years. The agreements made were with different groups that were well before he came along. He said that LaMar Coon has insisted that they put in all improvements down to Prosperity, and they haven't been able to come to an agreement with him. The Orton's don't want to pay for any of their share of the road. Mr. Orton is now saying they would donate the land, but previously he was trying to sell it to them. They tried to buy the property so they could use part of it with the multi-family and said that they would put in the road. He said these are good people, and he hopes to be able to work with them both, but they don't have anything signed with either party saying that they will pay for the whole road. The Bates' have seven industrial lots in this area and were under contract to install the entire road, so no one is getting what they were told. In this market and these difficult times everyone has to share and give a little. He said they haven't gotten any help from Mr. Coon, so they had to find a different way to make things work.

Justin Stoker asked what kind of cooperation they need from Mr. Coon.

Ken Olson stated that they would need the 6400 West right-of-way dedicated to the City and for everyone to pay their fair share. He said they have been working on the site plan a lot. He said they meet the safety on New Bingham Highway, and he noted that there are even larger projects in the valley that have up to 700 units with only one access and no fire access. UDOT has given permission and all their questions have been answered. He said he is agreeable to a deferral agreement if everyone pays for their fair share. They are contributing a half-mile of a big sewer line up New Bingham Highway, so he thinks everyone needs to work together. This is a \$30 million that will bring revenue and jobs to the area.

Nathan Gedge thought that if they can move toward a deferral agreement and let the applicant plead their case to the City Council it will give the applicant a chance to move the project. It is all dependent upon the deferral agreement in any case.

Jesse Valenzuela asked what the city ordinance is for access to a development of this size.

Rodger Broomé said they typically require two accesses, and the emergency access will facilitate the second one. The concern is with the density of the units on just one main access. It depends on how the fire access is maintained. When they do tactical operations they are looking for the obvious access, and that could shut down access to the project if there were an emergency situation. He uses Appendix D in the Fire Code, which is not adopted into Utah Law, but he uses it as a standard. It says you can have one access if you sprinkler all the buildings. The applicant said only some of the buildings will be sprinklered. The emergency access helps considerably and is a compromise.

Jesse Valenzuela asked if there is a city ordinance that limits the number of units per access point.

Nathan Nelson said there isn't a code that gives a specific cut off point. The appendix in the fire code allows for one access with the sprinklered buildings.

Ellen Smith asked if it were possible to construct the road without the roundabout and what affect that would have on LaMar Coon's property.

Nathan Nelson said the roundabout is not an absolute must, but it helps to deal with the geometry of the roads and the skewed intersection. If they receive an adequate design for a T intersection they would consider it, but they do have standards that restrict the amount of the skew in the road.

Ellen Smith said Dannon Way doesn't connect to 6400 West at this time. If 6400 West were constructed without the roundabout at this time, would it be feasible to add the roundabout when Dannon Way is installed.

Nathan Nelson said they have done that in the past where they will contemplate a future roundabout by making larger turning radius and easements so they can eventually put it in. They could look at that.

LaMar Coon said he could just use a stop sign.

Chad Nichols said the whole idea of the deferral is to be able to move forward with the connection onto New Bingham Highway. If there is nothing developed to the south they could end up without 6400 West until years down the road when something is developed. He asked if the deferral agreement would then require the improvements to be installed.

Scott Langford said the details of the agreement would have to be fleshed out. Development to the south could be a trigger to the road construction, or it could be a certain build out percentage of Wilshire Place.

Chad Nichols said they could potentially be stuck with this access for years, and he would not be in favor of that. He said this is the time to construct 6400 West, or they can't plan on it. If there were a date for construction such as 24 months, he would be in favor. However, he didn't like the idea of it being put off any longer. There are other developments in the area that also might move forward as the result of the road going in.

David McKinney understood that the deferral agreement is very likely to be tied to some proportion of completion of this development, so they couldn't develop the entire project without the improvements. He felt the question is at what point of completion would construction of the road be triggered. He was inclined to agree with the alternative recommendations that would allow the project as long as a deferral agreement can be worked out.

Ellen Smith asked if the Planning Commission could have input or give direction into the conditions of the deferral agreement, such as the trigger point.

Justin Stoker said they can make recommendations to the City Council.

Scott Langford agreed that they could add to the conditions that provide direction.

Ellen Smith said she would like to consider possibly not requiring the roundabout to be completed now, but if Dannon Way is ever completed to 6400 West, it would be installed at that point. She thought that gives more flexibility for construction of 6400 West.

David McKinney asked if the Commission went with the alternative recommendations would that preclude a revision to the site plan to create, at least temporarily, a T intersection instead of a roundabout.

Greg Mikolash agreed that nothing they did tonight would preclude that option, because they are still at a preliminary approval.

David McKinney said they could add in the conditions of approval that the deferral agreement be conditioned upon some portion of completion of the project, such as a cap on the percentage, which would give a general level to work toward without working out all the details.

Justin Stoker said the details of the agreement are not within their purview, but they can make a recommendation. He felt that this project has a lot potential, and he hoped that there would be compromise between all the neighbors in order to work this out.

**MOTION: Nathan Gedge moved forward a negative recommendation to the City Council for the requested Modification of Design Standards to Section 14-5-5G of the Municipal Code for the Cadyn Meadows Phase 2 subdivision plat; 6450 West New Bingham Highway; Wilshire Place, LC/Ken Olson (applicant) based upon the discussion and testimony given. The motion was seconded by David McKinney and passed 7-0 in favor.**

MOTION: Nathan Gedge moved based upon the testimony and discussion to forward a positive recommendation to the City Council for the Preliminary Subdivision Plat for the Cadyn Meadows Phase 2 subdivision plat; 6450 West New Bingham Highway; Wilshire Place, LC/Ken Olson (applicant) with the two conditions of approval as listed in the staff alternative recommendations.

AMENDED

MOTION: David McKinney offered an amendment to the motion to modify condition #1 to include in addition to the existing language regarding the deferral agreement that they add an additional sentence that the deferral agreement shall be contingent upon a proportional completion of the development.

Justin Stoker said it was his understanding that they couldn't make conditions of the deferral agreement, but that they can only make recommendations.

Greg Mikolash said they could tie it to the deferral agreement.

David McKinney said this is a condition of their recommendation for the subdivision.

Tom Burdett said the deferral agreement is tied to both the subdivision and the site plan.

The friendly amendment was accepted by Nathan Gedge, and the motion was seconded by Chad Nichols.

There was a brief discussion regarding potential completion percentages.

AMENDED

MOTION: Justin Stoker proposed that they also amend the motion to include an appropriate finite time for construction of the road.

David McKinney didn't think they needed that, because the completion listed in the deferral agreement would trigger construction of the road. He said there are other incentives that are pushing them to complete the project. He wouldn't recommend it.

John Winn said he would like to include a time frame for the ultimate completion of 6400 West.

David McKinney and Nathan Gedge did not agree to the amendment.

VOTE ON THE ORIGINAL AMENDED MOTION:

Commissioner Stoker – no  
Commissioner Nichols – yes  
Commissioner Gedge – yes  
Commissioner Winn – no  
Commissioner Valenzuela – no  
Commissioner Smith – no  
Commissioner McKinney – yes

The motion failed 3-4.

There was further discussion regarding the need for requiring a specific time limit. Commissioner Stoker stated that he had seen similar situations where a subdivision needed to be completed to a certain point before other conditions were triggered, so they would build right up to that point and stop. He didn't want to have that happen in this case.

**MOTION: John Winn moved to bring the applicant back to the podium to talk specifically about their agreement and time limits with HUD. The motion was seconded by Ellen Smith and passed 5-2 with Commissioners Gedge and McKinney casting the negative votes.**

Ken Olson said when a HUD project is funded all the building permits are paid for at once and it is a guarantee that the project will be built at 100%. They have to pay all the fees for each unit. He asked that they leave the details of the deferral agreement to the City Council with regards to the time limits. He said that the traffic study indicated that the access doesn't become a safety issue until the intersection at 6400 West and New Bingham Highway becomes a 4-way.

Justin Stoker stated that the Commission's concern is that if they don't complete the project then 6400 West will not get built, and that it will eventually fall upon the taxpayers of West Jordan to finish it.

Ken Olson understood that the deferral agreement will have them bond or put up money for their portion of the roadway so it doesn't fall on the taxpayers.

Justin Stoker asked Mr. Olson if he were agreeable to the percentage of completion and a finite time limit in the agreement.

Ken Olson said if they give the money to the city or in a bond, the person who owns the property that includes 6400 West will install it. The city will have the money from them for that portion of roadway. Regarding the

safety condition, the traffic study showed that the access from 6400 West onto New Bingham or going down a little bit onto New Bingham is the same, so the trigger as far as closing the access from New Bingham Highway is when 6400 West goes south of New Bingham Highway.

Eric Tuttle said they understand that part of the concern is that they won't finish the project so 6400 West will never be built. With the HUD process there is a means to finishing the project whether it is with the architecture or construction. This project will be built if they get through the next step from HUD. If they are talking about a date, construction will begin within 90 days of their final submittal to HUD, and it will complete after 18 months.

Justin Stoker asked, hypothetically, if the City Council requires them to bond for street improvement and if they are required to complete the street improvements for 6400 West before they close on the 200<sup>th</sup> home, effectively they could pull the bond and do the street improvements themselves.

Eric Tuttle said their only concern is working things out with the neighbors. He asked the city attorney if it is legal for them to be required to build a road on someone else's property when they have access somewhere else.

David McKinney understood Mr. Tuttle to say that HUD requires them to complete the project within 18 months.

Eric Tuttle said if they don't complete it, HUD will.

Justin Stoker asked if the project includes 6400 West.

Ken Olson said it includes bonding for 6400 West with the deferral agreement to make sure that the city has the money to put in all of their section and then their portion across the neighbor's property. The trigger for when the access on New Bingham Highway would be gone for sure is when 6400 West connects to New Bingham Highway.

Justin Stoker asked Robert Thorup what the responsibility, according to the city code, of this developer will be regarding 6400 West.

Robert Thorup said the code provision that states the City Engineer can require the construction of facilities even if they are termed to be off site if it is required in order for the public good and welfare.

David McKinney still didn't see the reason for imposing an arbitrary time limit, because the applicant has enough of those already in place that will encourage them to complete the project.

**MOTION:** David McKinney moved to reconsider the amended motion that was made earlier. The motion was seconded by Nathan Gedge.

Robert Thorup said that motion was defeated, so there would have to be a vote on the motion to reconsider before they can vote on the motion.

Justin Stoker said someone from the prevailing side must make the motion to reconsider.

David McKinney said he would make a new motion.

**MOTION:** David McKinney moved to forward a positive recommendation for the Preliminary Subdivision Plat for Cadyn Meadows Phase 2; 6450 West New Bingham Highway; Wilshire Place, LC/Ken Olson (applicant) subject to the conditions of approval 1 and 2 in the staff alternative

recommendations amending condition #1 adding, “The deferral agreement shall be conditioned upon a proportional completion of the project.” The motion was seconded by Nathan Gedge.

John Winn asked what provision in the motion guarantees that 6400 West will be built.

David McKinney said the deferral agreement guarantees that it will be built and the concept of proportional completion indicates that the city and the applicant will negotiate a level of completion of the project at which 6400 West will be built.

Justin Stoker asked what happens if they never reach that level, but they stop construction.

David McKinney said HUD will require it to be completed within 18 months. He thought it was unlikely that it wouldn't be completed. Plus the city, in negotiating the percent completion trigger, can deal with that issue.

Ellen Smith said it is her understanding that HUD requires completion of the project at 100% and the bonding is for their half of the road. She didn't see the whole funding being bonded for through HUD, because there has to be an agreement with the Ortons and Mr. Coon.

David McKinney felt those were separate issues.

Ellen Smith said yes and no. If the money isn't there to build the whole road, then the road will only be half built. They might want to also require a pioneering agreement along with the deferral agreement.

Greg Mikolash said staff had done plenty of deferral agreements in the past, and there is always a trigger. Through the negotiations, the city can figure out what the trigger will be with the abutting property owners and the applicant and what will best suit the needs of the city. There isn't even an application for the deferral agreement at this point. The Planning Commission is only forwarding a recommendation to City Council and this is a legal agreement that is prepared with the engineers, planners, and the attorneys. He recommended that the Planning Commission see the final site plan rather than a staff review so they can see the final document.

David McKinney asked Mr. Mikolash if he was suggesting that the condition of the proportional completion to trigger the road is not necessary.

Greg Mikolash said it is necessary, but he wouldn't put it as part of a recommendation so they can move forward. Staff knows there needs to be a trigger, but they don't know what it is at this time.

Ellen Smith said as long as they know there is a direction she is okay, but it just seemed so vague. Justin Stoker agreed that staff has experience with this type of situation.

David McKinney withdrew his motion.

**MOTION: Nathan Gedge moved based upon the discussion to [grant] Preliminary Subdivision Plat for Cadyn Meadows Phase 2 subdivision plat; 6450 West New Bingham Highway; Wilshire Place, LC/Ken Olson (applicant) with the two conditions of approval as stated in the staff alternative recommendations. The motion was seconded by David McKinney and passed 6-1 in favor with Jesse Valenzuela casting the negative vote.**

[The motion forwarded a positive recommendation to the City Council; however, subdivision plat approvals stop at the Planning Commission level. The language in the motion was based on a typographical error in the staff report that indicated a recommendation was needed.]

Justin Stoker stated his confidence in city staff to create a deferral agreement that will be in the city's best interest.

**MOTION:** Nathan Gedge moved based upon the discussion and testimony to forward a positive recommendation to the City Council for Preliminary Development Plan for the Wilshire Place apartment development; 6450 West New Bingham Highway; Wilshire Place, LC/Ken Olson (applicant) with conditions 1, 2, 3a, 3b, 3c, and 3d as listed in the staff alternative recommendations. The motion was seconded by David McKinney.

Ellen Smith wanted to make sure that the voting includes the amendments to the plans that were included tonight. Staff indicated that is correct.

**VOTE:** The motion passed 6-1 in favor with Jesse Valenzuela casting the negative vote.

Scott Langford said because this is in the WSPA and because the development plan is tied directly to the density cap, the Planning Commission should forward to City Council a specific number for density. He reviewed the recommendations from staff and the Design Review Committee.

Ellen Smith said she would like to go with the percentage that gets the density of 16.41 units per acre.

David McKinney said he like to go with the staff recommendation of 88.4%.

Greg Mikolash said going by density would be arbitrary, because there are required densities that the applicant had met. The Commission shouldn't be relating the WSPA criteria based on percentage to density.

Justin Stoker said he agreed with staff's recommendation of 88.4%.

Tom Burdett suggested that they derive a density from the applicant's site plan without specifying a number; whatever percentage applies based on the applicant's site plan.

Ellen Smith said she would be in favor of the staff's recommendation if it weren't too far from the applicant's proposal.

Justin Stoker said it is only off by about .5 of a dwelling unit, which gives a small buffer to work with in finalizing their site plan.

**MOTION:** Nathan Gedge moved to forward a positive recommendation to the City Council to add an additional condition of approval to the Preliminary Development Plan for The Wilshire Place development; 6450 West New Bingham Highway; Wilshire Place, LC/Ken Olson (applicant) adding:  
4. A bonus density score based on 88.4% based upon staff's recommendation. The motion was seconded by John Winn and passed 6-1 in favor with Jesse Valenzuela casting the negative vote.

**MOTION:** Nathan Gedge moved based upon the discussion and testimony that the Planning Commission approve the Preliminary Site Plan for The Wilshire Place apartment development; 6450 West New Bingham Highway; Wilshire Place, LC/Ken Olson (applicant) with the 3 conditions of approval as listed in the alternate staff recommendations, adding:

- 4. The final site plan be brought back to the Planning and Zoning Commission for final approval.  
The motion was seconded by David McKinney and passed 6-1 in favor with Jesse Valenzuela casting the negative vote.**

Justin Stoker asked Commissioner Valenzuela if he would like to explain his dissenting opinion. Commissioner Valenzuela did not wish to.

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Tom Burdett gave an update on the status of the general plan committee.

The meeting schedule for the City Council will change to the second and fourth Wednesday beginning in October and the Planning Commission will moved to the first and third Tuesday starting in January.

**MOTION: Nathan Gedge moved to adjourn. The motion passed 7-0 in favor.**

The meeting adjourned at 8:16 p.m.

Justin Stoker  
Chair

ATTEST:

JULIE DAVIS  
Executive Assistant  
Community Development

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2009