

MINUTES OF THE REGULAR MEETING OF THE WEST JORDAN PLANNING AND ZONING COMMISSION HELD DECEMBER 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, Greg Mikolash, Scott Langford, Jennifer Jastremsky, Ray McCandless, Greg Davenport, Rodger Broomé, Robert Thorup, and Julie Davis.

OTHERS: David Neal, Elizabeth Scanlon, Brian Smith, LaMar Coon, Jeremy Harbaugh, Morgen Peck, Bryant Cox, Ramon Beales, Sandra Beales, Brent Orton, Jeri Lay, Gary Higbee, Ruth Hawe, Wayne Harper, Ken Olson, Kevin Orton, Jason Williams, and Von Viccrilli.

The briefing meeting was called to order by Justin Stoker.

There was a discussion regarding Item #1B and the amount of parking that is shown. Clarification was given regarding condition number three. Clarification was given regarding the property ownership for Item #2. Clarification was given regarding the lot layout in Item #3. Further explanation was given for the different requests for modification to design standards on Item #4. Density was discussed, and a correction to the reference regarding approved density was made in the staff report. A brief discussion regarding the construction of 6400 West was held. Staff was concerned with the amount of requirements that have not yet been met on the final submittals, and was recommending a continuation. It was originally staff's hope that the plans would reflect the changes before it came before the commission and the city council. LaMar Coon wished to talk on the item. Justin Stoker asked him to hold his comments until the public hearing.

The regular meeting was called to order at 6:07 p.m.

1A. Consent Calendar
Approve Minutes from November 18, 2009

1B. America First Credit Union; 5573 West 9000 South; Final Site Plan; P-C Zone; Great Basin Engineering-South/Bryant Cox (applicant) [#SPCO20080009; parcel 26-01-301-001]

Staff recommended that the Planning Commission grant Final Site Plan approval for an America First Credit Union, located on the southeast corner of 5600 West 9000 South in a P-C zoning district with the conditions of approval as listed below. Planning Commission approvals do not include Public Safety, Fire, Building and Safety, or Engineering approval. Approval by these City divisions or departments may be required.

Conditions of Approval:

1. Meet all Preliminary Site Plan conditions of approval.
2. A separate building permit is required for the proposed retaining wall.
3. A separate easement needs to be granted to the City in order to maintain the detector check.
4. The Final Site Plan shall be amended to add the following note: "In the future when the intersection of 5600 West/9000 South is signalized, the City of West Jordan will extend this raised median barrier island and close the ¾ access on 9000 South. At that time it will become a right-in-right-out access".

It was pointed out that Item #1B was part of the amended agenda.

MOTION: Nathan Gedge moved to approve the Consent Calendar Items #1A and #1B. The motion was seconded by John Winn and passed 7-0 in favor.

Justin Stoker asked if there were any to speak against Item #1B. There were none.

2. UTA Gates-AMI Rezone; 7981 South 1300 West; Rezoning for 1.185 acres from A-5 (Agricultural 5-acre lots) to M-1 (Light Manufacturing) and .801 acres from M-1 to A-5; Utah Transit Authority/Ruth Hawe (applicant) [#ZC20090005; parcel 21-35-104-011, 21-35-105-004]

Jennifer Jastremsky gave an overview of the rezone, which will rezone property in order to provide improvements for the UTA light rail corridor that affects the current driveway for AMI Associates. UTA and AMI have been working with the city engineering department to provide a new access point located about 570 feet south of the existing access, which is owned by AMI. She indicated which parcels will be transferred between the two property owners and the areas to be rezoned. She reviewed the required criteria that must be met in order to consider a rezoning. All subject properties are located in the Research Park land use designation. The current use of the properties does not match that designation, but the zoning will be compatible with the current uses. The purpose of the general plan is to provide overall goals and policies for future physical development in the city, and staff felt that Research Park is an appropriate use for the site at such time that Mr. Gates or AMI ceases their current use of the property. In the meantime, staff felt that the property owners should be able to use their property, including the newly acquired land, in their current operations. The transportation element of the general plan calls for city support for the design and construction of light rail within the city, and the construction of the light rail requires that AMI have a new driveway access, and this rezoning helps to facilitate the realignment.

Staff recommended that the Planning Commission forward a positive recommendation to the City Council for the request stated above, based on the findings of fact as mentioned in the staff report.

David McKinney pointed out that although UTA is listed as a party in the application there is no UTA property involved.

Jennifer Jastremsky said that is correct. UTA is the official applicant only.

David McKinney further asked for clarification that AMI already owned the additional property to the south upon which the driveway will be located.

Jennifer Jastremsky said that is correct.

Ruth Hawe, associate corporate counsel with Utah Transit Authority, 669 West 200 South, was in attendance to answer questions.

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

David McKinney felt that overall this was a good solution to a problem, and he was glad that the property owners were in agreement.

MOTION: Nathan Gedge moved based upon the findings of fact that they forward a positive recommendation to the City Council for the UTA Gates-AMI Rezone; approximately 7981 South 1300 West; Utah Transit Authority/Ruth Hawe (applicant) to rezone 1.185 acres from A-5 to M-1 and .801 acres from M-1 to A-5. The motion was seconded by Ellen Smith and passed 7-0 in favor.

3. Paige Meadows Subdivision (6 lots); 7480 South 2540 West; Preliminary Subdivision Plat; R-1-10B Zone; Wayne Harper (applicant) [#SDMA20090006; parcels 21-28-403-026, 027]

Ray McCandless gave an overview of the request for a 6-lot residential subdivision in an R-1-10 zone. He gave a history of the different applications that had taken place since August 2006. He showed the layout of the proposed lots and photos of the undeveloped property. There will be two flag lots in the development. The existing accessory building will need to be modified to meet setback requirements. In August of this year the Board of Adjustment granted a variance to modify the lot width standards for this property, which will reduce one lot from 85 feet to 75.36 feet and another lot to 82.04 feet. In addition, the Board of Adjustment granted a variance to the north side yard of the existing home to accommodate the flag lot driveway on the west. With the history of the project and the issues associated with the property regarding width and depth staff felt that this was a good compromise.

Staff recommended that the Planning Commission grant preliminary subdivision approval for the proposed Paige Meadows Subdivision located at 7480 South 2540 West in an R-1-10B zoning district with the following conditions:

1. That the Planning Commission grant final plat approval authority to staff.
2. The proposed development shall meet all applicable Subdivision and Zoning Ordinance requirements.
3. The final subdivision plat must meet all requirements of the Engineering and Fire Departments.

Ellen Smith asked if there would be parking issues on the street with the lots being so narrow.

Ray McCandless didn't think there would be a problem since each home would have a two-car garage, so it wouldn't be different from any other standard subdivision.

Ellen Smith referred to the photo of an irrigation box on the property and asked if there were any issues relating to irrigation.

Ray McCandless pointed out the existing storm drain that will run along the south property; he wasn't sure where the irrigation line ran.

Wayne Harper, applicant, 6683 Nottingham Drive, said there are no downstream irrigation users on this line, but it is a city 36" storm drain line that was installed in the late 70's or early 80's and had not been dedicated for an easement, but they will do that with the plat. The irrigation box is an inlet box that is a control for the storm drain line. He stated that this subdivision has been designed to conform to the criteria and conditions imposed upon it and the variances granted by the Board of Adjustment. All six lots are substantially larger than those in the surrounding area. This will connect a street that bifurcates two neighborhoods, and the existing home will be able to remain.

Justin Stoker said it appeared that the storm drain easement on Lot 2 may hamper the buildable area.

Wayne Harper said the building footprint will still go beyond the minimum for the R-1-10B zone, because it is nearly 1/3 acre.

Jeri Lay, West Jordan resident, said her backyard is right next to the field. Over the years as this has been discussed for development they had heard that there is no way that sewer lines can be installed, that they may have to dig up her yard to install sewers, or that the lot next to her would have to be built up nine feet in order to install the drainage system, which will put those homes looking down into her backyard. She also heard that they aren't planning to put up a fence, and there is only chain link fencing at this point.

Gary Higbee, West Jordan resident, said if this goes through as proposed he would have roads on three sides of his property, so he also wondered about the possibility of a fence.

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

David Neal, co-applicant/property owner, 6716 Nottingham Drive, said the area that Mr. Higbee identified as a street is actually a driveway, so there is no particular requirement for fencing. There is a possibility for a somewhat shallow sewer on lot #6. The prior approval of the 7-lot subdivision with public streets required that the lots be built up in order for the lot to drain toward the street. However, because there is not a public street in this layout they don't have to build up to create drainage. The depth of the basement in lot #6 could be affected, but there will be no building up of the lot as was the possibility with the public street option. There is no anticipation to go in any other direction to access the sewer except back to the center street through the driveways. The existing house has a sewer connection, and they will draw off of that same system in order to reach the additional lots. Regarding fencing, he knows there is largely chain link fencing around the entire property, and he didn't envision that changing substantially, because it is adequate for the needs of the property. The individual property owners with the existing property owners can choose to upgrade fencing, but he didn't see cause to make any fencing changes.

Chad Nichols said the staff report didn't project any problems with the drainage on 2540 West.

Greg Davenport didn't see any problems with the street drainage, because the street exists and the street is being installed at grade. There may be a sewer problem for lot 6, but that doesn't mean that the applicant cannot find a solution. There is a high point in the middle of the proposed street with storm water going in both directions.

Ellen Smith wanted to confirm that the flag lot driveways behind the existing homes will not create double fronting lots.

Ray McCandless said in order for it to be double fronting there would have to be a public street both in front and behind the lot, but these are driveways.

Justin Stoker felt that this option was one of the best they had seen for the property and felt it would work the best for the surrounding properties and neighborhood.

MOTION: John Winn moved to approve the Preliminary Subdivision Plat for Paige Meadows; 7480 South 2540 West; Wayne Harper (applicant) with the conditions of approval as listed in the planning commission packet. The motion was seconded by Nathan Gedge and passed 7-0 in favor.

- 4. Wilshire Place, Cadyn Meadows Phase 2 and Orton Family Plat; approximately 6450 West New Bingham Highway; WSPA (HFR) and M-1 Zones; Final Site Plan, Final Development Plan, and Recommendation on Deferral Agreement for Wilshire Place; Final Subdivision Plat for Cadyn Meadows Phase 2; Preliminary and Final Subdivision Plat for Orton Family Plat; and Modification to Design Standards per 8-3A-3 and 14-5-5H to allow a half-width road; Wilshire Place, LC and Cadyn LC/Ken Olson (applicant) [#SPCO20090015, SDMA20090004, MISC20090005; parcels 26-03-400-002, 26-02-300-034]**

Scott Langford briefed the commission on the five different applications before them. He reviewed the steps that are required in order to develop the property as proposed. The submitted subdivisions do not meet all the code requirements, so the developers applied for a modification of seven different design standards. The site plan and development plan cannot be approved without the subdivision approvals. All of these approvals are contingent upon the drafting and approval of a proper deferral agreement that provides proper assurances to the city to make sure the project will benefit the community and not financially burden the city. This agreement becomes a

supporting structure for all the other applications. The city attorney's office has been working diligently in trying to draft the deferral agreement. However, the deferral agreement cannot be completed as yet because they are lacking information from the applicant. Therefore, because the subdivision plats and modification to design standards are tied hand-in-hand with one another, the commission is being asked for a recommendation to forward to the city council. Staff is seeking either approval, denial, or a continuance of the site plan and development plan and a recommendation from the planning commission on the deferral agreement acknowledging that the commission does not yet have the agreement in hand, but only a list of bulleted topics for the agreement.

He reviewed the new application for the Orton family plat that will facilitate the future dedication and construction of 6400 West from New Bingham Highway to Wilshire Place. He explained that the applicant is proposing to build a road from curb to curb with a typical collector pavement width of 37', but all other improvements such as sidewalks, street lights, waterlines, and most storm water improvements, park strips, etc., they are requesting to defer or waive the requirement so they are not responsible for it. He didn't know if the deferral agreement addresses this particular area, but the applicant is asking for a waiver to those requirements as well as asking for the elimination of the requirement to build 6400 West from just north of the roundabout south to the edge of the Cadyn Meadows phase 2 subdivision plat. With the modification request it basically proposes to stop the construction of a standard street cross section at this point and place a 25-foot wide driveway to the entrance of the apartment complex.

Mr. Langford noted that there are many deficiencies involved with the submittal. He pointed out that the site plan and development plan still shows the two access points from the development to New Bingham Highway. Staff asked that they submit more detailed designs for the main entrance that shows how the area will be developed (including landscaping, irrigation, etc.) when the driveway is either not constructed in the first place or is removed. UDOT has indicated that upon the construction of 6400 West these driveways will be removed, so they need those detailed plans since this is final site plan approval. Also, because the applicant is requesting to defer all road improvements of 6400 West from north of the roundabout to the south end of the development, which includes sidewalks, the site plan will have many pedestrian walkways that will dead-end into nothing. There are many other deficiencies and redlines. Typically when the final submittals are brought to the planning commission they are at a high enough level to be able to pull building permits, but in this case there are multiple conditions of approvals and pages of redline comments. Because staff had been asked to work through this in an expedited time schedule, the more they get into the submittal and are able to review the plans and conditions, the less able staff is to forward a positive recommendation for approval. Staff would like to see the project move forward, but based on the large volume of redline comments and conditions of approval staff felt it is in the best interest of the city to have the applicant address these concerns and redlines and come back with a cleaner plan, which will give a clearer direction on how these many conditions will be resolved. There are many engineering standards that haven't been mentioned in this meeting that also need to be addressed.

Staff recommended that the Planning Commission continue the five applications for Wilshire Place, Cadyn Meadows Phase 2 and Orton Family Plat to a date uncertain upon which they can bring back a cleaner plan so a more decisive decision can be forwarded to the City Council.

Robert Thorup, Deputy City Attorney, said the application in its current form was submitted to staff on November 17th. Ordinarily the staff has 3 weeks to review the application and make comments and give feedback to the applicant. The applicant then takes the time needed to fix and revise the plans. There is possibly a nine week period that they are really only in the first week of. This application is before the commission at this time at the request of the applicant, but there hasn't been enough time to allow for the kind of response by the staff and the applicant to bring a final set of plans to the commission. The attorney's office has been specifically involved with the assignment to provide a deferral agreement. They need to know what it is that is being deferred in order to produce the agreement. However, they are now faced with the situation where there is no design of what is to be constructed that gets attached to the deferral agreement, so the deferral agreement

cannot be produced. One key of the development is the access to New Bingham Highway provided by the necessary approvals from UDOT. UDOT has not approved those accesses onto New Bingham Highway and has indicated that there are numerous conditions that the applicant must meet before UDOT gives the access. One would expect that at the time of final that the approvals would be obtained. He said that staff understands that HUD is being approached for a guarantee of financing, but not for the provision of financing as may have been suggested previously. It is also the understanding of staff that an application has been made for a HUD guarantee and was received on November 7th by HUD. Those usually take 30-60 days to review, so we are well within that period. The important point is that even if HUD issues the guarantee, the missing piece is the commitment from a financial institution that will provide the actual loan that would be guaranteed by HUD. They haven't seen any type of commitment by a financial institution that would make the project a reality. Third, the attorney's office is concerned with parcel B next to this project. Right now there is a temporary access that runs through parcel B, but it is only a 25-foot temporary driveway. Ordinarily city code would require a 50-foot stub road that would allow the development of the adjacent property and provide access to that property. If there isn't a full 50-foot stub road staff is concerned that whoever develops the property will either be landlocked and not able to develop 10 acres of land or we will have a complaint that they should not be forced to build a long road to 6400 West. The biggest concern with the deferral agreement is with the large amount, almost an entire page, of conditions that staff feels needs to be met in order to provide any kind of approval. The amount is even more than what appears when you consider that some of the conditions incorporate by reference multiple pages of redlines and other issues that need to be resolved, so now there are really about 50 conditions. If this were to be approved, that approval would be illusory, because there would be 50 separate items that staff would have to monitor and hope that after the applicant got approval that they would be implemented. However, once approval is given those conditions become open to further negotiation and problems. Staff did not think it is wise public policy to approve an application that has 50 conditions. An application should really only be approved if it has a reasonably understood and very largely and easily accommodated condition rather than this situation. The attorney's office supports the decision of the planning and engineering staff to recommend a continuance that will enable the applicant to review the redlines and make corrections so it can be resubmitted to staff.

Justin Stoker said it seemed that the request for modification to design standards is a hinge-point at this time and asked if it would be wise to review that item and provide recommendations so the deferral agreement, plats, and site plans can be finalized or if they are suggesting that it all be continued.

Robert Thorup said they suggest that they continue everything, because even though staff was skillful in trying to depict what the requests are for modification of design standards, in conversations the attorney's office had had with the applicant and the applicant's attorney they are not at all certain of all that they are asking to defer. There is some belief that they had been told that the city council allowed for some leeway that staff did not hear the city council give, so it is not a simple matter. In order to get a deferral agreement, they need to know what it is they are deferring, and staff did not feel that the requested design standard changes are clear enough at this time to allow staff to really react to them and make a recommendation one way or the other. A continuance will assist in clarifying the scope of those requests, as well as clarifying and implementing the rest of the application.

David McKinney asked if the Lamar Coon property plat would also come into play at this time since the 6400 West improvements cut across that property.

Scott Langford said because the applicant is asking for the deferral of construction of 6400 West from the northern edge of the intersection of Dannon Way and 6400 West, which is the roundabout, south, it was his understanding that the city attorney's office is working language into the deferral agreement that will address Mr. Coon's property. He agreed that Mr. Coon's property will be affected with the future construction of this road.

David McKinney understood him to say that as long as there is a deferral agreement that defers construction of 6400 West in that area that Mr. Coon's property won't be affected initially and therefore, his plat isn't required at this time.

Scott Langford said it would have to be addressed in the future.

Ken Olson, applicant, 10299 Springcrest Lane, said they have been on the project for a long time to all the different committees and councils, and it was approved with a direct access onto New Bingham Highway, subject to what will happen with 6400 West, which is up in the air. UDOT has said that they are granting this access, and that would have to be done before recording. They will put in the sidewalk along 6400 West and will landscape out to where the curb would be, so there will be connection. The comments from the preliminary approval were very minor with things such as moving the mailboxes, showing the grass that will continue when the access is removed with the construction of 6400 West, and the side orientation. Those comments have been addressed, and they feel the final site plan and final development plan are finished. He said they tried to submit those sooner in October, but the city would not accept them. He stated that without the 6400 West situation the project is fairly simple. The Cady Meadows Phase 2 subdivision plat is only 3 lots. They went to the city council previously, and there has been discussion regarding the motion that was passed by city council and how the city council interpreted the motion to be. He said that he has discussed this with the city council and they asked them to bring back two options for the deferral agreement, which they will bring forward on December 9th. He asked the commission to forward a recommendation, even it is a negative recommendation, rather than delay it with a continuation.

Justin Stoker said it was his understanding that the plans are not clear enough to staff as to what the waivers specifically are.

Ken Olson said they submitted full plans that outline what they are proposing to build if it is necessary. However, there is still the possibility that the city council may go with the direct access and defer the whole thing. That decision needs to be given by city council who asked them to bring forward the two options.

Justin Stoker asked if they have UDOT approval in writing to access New Bingham Highway.

Ken Olson said it is typical of the subdivision process that you don't bond until you are ready to record the plat. The comments have all been answered, and there are just a couple of minor comments. He said it is almost there, they just have to post the bond, but that is never done before final. He said that this road was approved for the Cady residential, which had final without UDOT approval. The city knows that they have letters from UDOT that state that they will grant the access subject to completing a few engineering things, which are basically all done now. But you don't post the bond until they know that they have the project approved. He said that they do have conditional letters of approval from those agencies.

Justin Stoker felt that the next step is to clarify the deferral agreement with city council before the planning commission can address some of the other issues. He said that it is still not clear what the final site plan will look like since there are two different options.

Ken Olson said the options are only on the deferral agreement and 6400 West, and it does not affect the site plan and development plan. They have been working on those applications for nine months, and there were just minor corrections. It is the deferral agreement that is muddying the issue. If they build a direct access on New Bingham that area will continue on with the grass and sidewalk once it is removed with the installation of 6400 West. All the other changes required at preliminary have been accomplished.

Justin Stoker referred to the long list of conditions on page 19 for the final site plan and stated that the commission is used to seeing only 3 to 5 conditions at the final approval. He said that it appeared that there were just too many issues still up in the air to approve a final site plan.

Ken Olson said that the site plan approved at preliminary has a direct access onto New Bingham Highway, and that hasn't changed; that is the application that is before the commission at this time. The question is whether or not city council will decide if some of 6400 West will be built now. Again, he requested that they move it forward even with a negative recommendation.

David McKinney said the big problem with the application at this time is the large number of loose ends, so it is hard to know what they are approving. Also, there are a number of contradictory requests. For example, in order to approve the deferral agreement, they need to know what they are deferring. He told Mr. Olson that he indicated tonight that the sidewalks on the west side of 6400 West will be built, but the application asks for a modification to design standards to eliminate the requirement for sidewalks on both sides of 6400 West.

Ken Olson said that only applies to the Orton property. All sidewalks shown on or connecting to the Wilshire project will be installed. The deferral is talking about the access road if that is even built, but that will be up to the city council. He clarified that the request should be from the roundabout out to New Bingham Highway.

David McKinney thought that there was still some confusion regarding some of these items, which are the kinds of problems that are making it difficult to make a decision.

Mr. Olson requested that they forward the item to the city council even with a negative recommendation.

Justin Stoker said it is not a question of forwarding a negative recommendation, but the commission just doesn't know what to recommend based on the lacking information that is before them. He said the applicant should finalize the deferral agreement by getting clarification from the City Council on December 9th so when the final site plan comes before the commission they will have better information as far as what is and isn't being deferred and what they propose to construct.

Ken Olson said those are the decisions that the mayor and the city council told them they would talk about on December 9th. He said it is the deferral agreement and 6400 West that has stopped the project. They went to the city council on September 22nd where the city staff and attorney's office interpreted the motion differently than the city council members who voted for it. The 3-month delay has been caused by 6400 West and the requirement for the deferral agreement that goes across two neighboring properties that they don't own. In the meantime, the city turned down applications, which has put them up against a wall. It is his position that the deferral agreement was put on them illegally, because they don't own the Orton and Coon properties. However, they have offered to do so much just to get this done, but they can't seem to move on. He is now asking that it move forward to the city council.

Nathan Gedge asked if they were to deny the site plan and development plan if the applicant could appeal to the city council, but that wouldn't be on the 9th, and the application couldn't come back to them for a year.

Robert Thorup said that is correct.

There was a discussion regarding postponement of the public hearing in order to continue the item. It was felt by some of the commission that the public could still be given an opportunity to speak tonight since they might not be able to attend at the next meeting.

Brent Orton, West Jordan property owner, stated that he was upset with the design of the road and the fact that it was designed to split his property into two irregular lots instead of being run down a property line. He said they

are not willing to sign a plat that states they agree to be a part of the improvements on 6400 West, but they will honor the easement. That road had been a problem with all of them.

Kevin Orton, West Jordan property owner, said they want to know what their cost is going to be if the road is built. Will they be responsible to install sidewalks, street lights, and waterlines? They are donating the property to the city for the road, so they don't think they should incur all the extra costs. He can see why property owners want the city to use condemnation so they don't have to pay for improvements. So now they are wondering if they want to go along with this or wait for the city to condemn the property and install the improvements themselves.

Jason Williams, co-applicant, said he got involved in the project at a later time. Up until September 22nd this project was going to have a direct access, and they were encouraged by people on staff and city council to go with the direct access, because of the issues with road access on properties not owned by them. UDOT gave an approval with a direct access and the project is very clean with that layout. After their approvals on September 22nd they were then strongly encouraged by staff to go against the direct access approach and toward the 6400 West option. He didn't know whose influence changed the direction of the recommendation, but he felt that the originally approved application with the direct access is what the council wants to see come to them. He said that it is unsure how and when 6400 West will ever be built because the city originally designed it with errors. They as applicants are trying salvage their life savings by building this project that will create revenue for the city and the public and creates better things in this area. Because they were now strongly recommended to back to the 6400 West option in order to get the project built they are having these problems. If they would have stayed with the original direct access approach and bonding for the half-road to be used whenever that time comes they wouldn't be arguing the points of the deferral agreement. He said that this agreement has been in front of city staff, but they received no comments back stating what would have to be deferred. He said they are being illegally told that they need to do this agreement for their project to succeed or they just let the property go into foreclosure. He asked the planning commission to forward this on even with a negative recommendation so the city council can look at the options and the two deferral agreements that have already been submitted. The council can then decide if they want the direct access approach with bonding for 6400 West should it be built in the future. He said the 50 comments that were spoken of earlier don't apply to the direct access option, so the commission could forward a positive recommendation for that option.

LaMar Coon, West Jordan property owner, stated he had owned property in the area since 1992. He gave a history of the property and the area with regards to the development of the roads. He said he never asked for any kind of a rebate for all the roads he put in. He felt that it made sense to install 6400 West. He would like to see the city and property owners get the benefit of the land, they just need to come to him and work out a connection to Dannon Way. But he isn't going to put the road in. He would like to see the project happen, but Dannon Way needs to be extended.

Brian Williams, applicant/owner, appreciated the hard work from everyone on the project, and said they feel like it is getting close.

Von Vicchilli was in attendance to state his concern regarding the development adjacent to his property in the vicinity of 9000 South and 1000 West.

Justin Stoker pointed out that his property was not on the agenda tonight and that the planning commission could not hear his concern. He recommended that he speak during the public comment portion of a city council meeting.

Ken Olson said that staff had worked very hard on the project, which he appreciated. He said that he worked with LaMar Coon for 2 months, but nothing was signed. They don't own the Orton or Coon property and don't have the rights to build the road, so they went to the mayor and engineering and fire and they all thought that

direct access was good. Then in July staff suddenly changed their recommendation away from the direct access. They met with staff and got on a schedule of meetings that would guarantee building permits by November. Their backs are against the wall because of the deferral agreement, which is an illegal exaction. He doesn't understand how staff can keep changing their recommendations the day before and the day of the meetings. This is messing up people's livelihoods and lives. The city council has requested that this come forward to them and that is what the recommendation was before tonight. He said the recommendations change weekly, and he doesn't know who controls the gate that decides if development occurs or doesn't. He said it isn't the project, because they have many emails and letters that state that the site plan and development plans look great with only a couple of outstanding issues. He wondered if they could understand his frustration after they have spent all this time and money. Engineering and architecture to his point have been \$300,000. They redid the architecture probably four or five times, and this has been going on since last April. They were told the city is changing their ways to be more business and developer friendly. They have worked hard and have been told that things are close. If it were not for the deferral agreement this project would be done. He didn't know why the attorney's office was getting involved in their funding, but they do have their funding. He said something is going on that stops the project, because it has already been approved with a direct access. It is frustrating to be told they will be on the December 9th city council agenda and then have a change in the staff recommendation when that is exactly what happened the last time that cost them three months. He asked that they forward a positive recommendation at least on the final site plan and final development plan.

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

John Winn asked for clarification of what would happen if this were denied.

Tom Burdett said they could appeal. The hearing at the city council is an on-the-record hearing based on the testimony and information presented to the commission. An appeal cannot go on the council agenda by December 9th because of time.

Justin Stoker said it seems that everything is hinging upon the deferral agreement and what is actually going to be constructed. He asked if that is something that the city council can do with or without their recommendation.

Tom Burdett said it is more than just the deferral agreement. There are issues with access, parking, fire department circulation or fire sprinklers, five missing elements from the public improvement plans and five missing elements from the public utilities plans at least.

Justin Stoker asked if these items were brought up after the preliminary approvals.

Tom Burdett said staff has indicated that the preliminary and final site plans are lacking 70 guest parking stalls. Staff tried to condition the items to keep the project going in the timeframe that the applicant asserted on the city, and now there is a turnabout that the applicant is attacking staff for putting it on in this fashion. The staff report for this meeting came out on Wednesday before the Thanksgiving holiday. Several department heads had communicated to him as recently as this morning acknowledging that the staff recommendation didn't seem to fit the staff report since there are a lot of loose ends. Those department heads felt that the plans needed to get fixed and stabilized first and submitted to the city and then work on the deferral agreement and improvements for the site plan.

Justin Stoker said it seemed that the applicant needs to work with staff to address the concerns of the different department heads and city council to clarify what is being deferred before the planning commission can finalize any actions.

David McKinney agreed that there isn't enough clear information here on which they can make a decision tonight. He also said it is unwise for the commission to be rushed into a decision. The applicant is pushing for a decision, but he said they won't decide until they get the questions answered.

Chad Nichols said there had been a lot of effort on the part of both staff and the applicant, which is appreciated. He was originally leaning toward going forward with a negative vote, but there is so much left undone with this application. Most final applications are very straight forward, but with just the size of the material in this project each issue is making it that much more difficult to overcome. His concern with continuing the item was if they were just delaying the inevitable, which he didn't want to see. He hoped that if this were continued that they will come to some kind of conclusion that will allow the commission to send a positive recommendation. As a citizen his concern from the beginning was with the construction of 6400 West. He doesn't want to the city to front the cost of that road, but it is the developer who needs to do it. His fear is that if they don't do this correctly now that may be the end result. He would be in agreement with the continuation.

Justin Stoker said as a point of clarification that the commission has a limited scope, and there are many issues that need to be resolved that the commission cannot address. They don't have the option to make decisions outside of the city code. He asked that they complete the deferral agreement with the city council and work out the unresolved issues with city staff so the project can move forward. He said they understand where the applicant is coming from in their needs, but the commission is somewhat handcuffed at this time.

MOTION: David McKinney moved based on the report of city staff, testimony, and discussion held tonight to continue Item #4 Wilshire Place, Cadyn Meadows Phase 2 and Orton Family Plat to a date uncertain. The motion was seconded by Ellen Smith.

Nathan Gedge said he would vote against the motion, because he felt that on the applications where they can forward a negative recommendation to the council that they should do that tonight.

VOTE: The motion passed 6-1 in favor of continuance with Nathan Gedge casting the negative vote.

MOTION: Nathan Gedge moved to adjourn. There were none opposed.

The meeting adjourned at 8:01 p.m.

Justin Stoker
Chair

ATTEST:

JULIE DAVIS
Executive Assistant
Community Development

Approved this _____ day of _____, 2009