

Minutes of the Planning Commission meeting held on Thursday, July 7, 2011, at 6:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Karen Daniels, Vice-Chair
Sheri Van Bibber
Jim Harland
Jeff Evans
Kurtis Aoki
Tim Tingey, Community & Economic Development Director
Chad Wilkinson, Community Development Planner
G.L. Critchfield, Deputy City Attorney
Citizens

Excused: Tim Taylor, Chair
Ray Black

The Staff Review meeting was held from 6:00 to 6:30 p.m. The Planning Commission members briefly reviewed the applications on the agenda. An audio recording of this is available at the Murray City Community and Economic Development Department.

Ms. Daniels opened the meeting and welcomed those present.

APPROVAL OF MINUTES

Sheri Van Bibber made a motion to approve the minutes of June 16, 2011 as written. Seconded by Jim Harland.

A voice vote was made. Motion passed, 5-0.

CONFLICT OF INTEREST

There were no conflicts of interest for this agenda.

APPROVAL OF FINDINGS OF FACT

Jim Harland made a motion to approve the Findings of Fact for Conditional Use Permits for Joshua and Susan Carson and Richard Hall from the June 16, 2011 meeting. Seconded by Sheri Van Bibber.

A voice vote was made. Motion passed, 5-0.

COSTCO – 5201 South Intermountain Drive – Project #11-59

Angelo Bologna was present to represent this request. Chad Wilkinson reviewed the location and request for a Conditional Use Permit amendment to relocate a fuel station additives tank. He said that this is the third amendment to the original Conditional Use Permit, and the new plan calls for the fuel additive tank to be placed underground and to dispense the additive through a pressurized system directly into the existing fuel tanks. He stated that the new system will eliminate the need for an attendant to dispense the fuel additive manually into the tank as originally proposed. Mr. Wilkinson said that staff is recommending approval of the application. He said

that because this property is in the Smelter Site Overlay District (SSOD) an amended development permit will need to be issued.

Mr. Harland asked what will be involved in digging into the cap in the SSOD. Mr. Wilkinson replied that the section of the code that outlines this requirement is administered by the Building Department, but that there are some requirements related to dust control, making sure that no contaminants leave the site and testing of what is underneath the cap currently. He said that the current cap is asphalt. He said that the requirements relate to environmental concerns.

Angelo Bologna, 18215 72nd Avenue South, Kent, Washington, stated that they will be working with a geotechnical engineer who will perform soil testing to ensure that all issues are addressed.

There were no comments from the public related to this item.

Sheri Van Bibber asked what the timeline is for installation. Mr. Bologna responded that once the plans are approved a contractor will be selected, if one has not already been chosen. He said that the installation should be complete within one month after building plan approval.

Jeff Evans made a motion to approve a Conditional Use Permit amendment to relocate a previously approved fuel additive tank for the property addressed 5201 South Intermountain Drive, and clarified that the new tank will be automated and located underground, subject to conditions:

1. The project shall meet all applicable building code standards.
2. The project shall meet all current fire codes.
3. Provide revised stamped and sealed plans for review and approval (Revision to permit #10-581).
4. Prior to issuance of the building permit, apply for and complete all applicable requirements of the Smelter Site Overlay District Development Permit application. The proposal will require a revised submittal.
5. The project shall meet the requirements of the Murray City Engineer for drainage and the SWPPP plan.
6. Meet all Murray Power Department requirements.

Seconded by Kurtis Aoki.

Call vote recorded by Chad Wilkinson.

 A _____ Jim Harland
 A _____ Karen Daniels
 A _____ Sheri Van Bibber
 A _____ Kurtis Aoki

A _____ Jeff Evans

Motion passed, 5-0.

BIRKHILL PHASE 2 – 4242 South Birkhill Blvd. – Project #11-57

Michael Brodsky was the applicant present to represent this request. Chad Wilkinson reviewed the location and request for preliminary and final subdivision approval for a four lot subdivision on the property addressed 4242 S Birkhill Boulevard. He said that the plat was required to show right-of-ways, and that the applicant submitted a revised plat containing this information. Municipal Code Ordinance 16.04.050 requires the subdivision of property to be approved by Murray City Officials with recommendation from the Planning Commission. The Murray Planning Commission is required by State Code (10-9a-207) to conduct a public hearing and review all subdivisions of property within the City. The Planning Commission's role is to ensure that a proposed subdivision is consistent with established ordinances, policies and planning practices of the City. The Planning Commission acts as an advisory body to the Mayor and shall make investigations, reports and recommendation on proposed subdivisions as to their conformance to the general plan, zoning code and other pertinent documents as it deems necessary. Following the Commission's review and recommendation of a subdivision application, it will be forwarded to the Mayor for final approval. The plat is then forwarded to the Salt Lake County Recorder's office for review and recording. Based on the information presented in this report, application materials submitted and the site review, staff recommends approval subject to conditions.

Michael Brodsky, 308 East 4500 South, stated that he originally planned to develop the entire property but is now selling it off. He said that there is a contract for a potential critical care hospital facility to be located there. He stated that he hopes to see that project come before the Planning Commission in the next 30 to 60 days. He said that there is also a potential contract for some townhouse lots in Phase 2, so the property is being sold in pieces instead of being developed by Hamlet Homes all at once. Mr. Brodsky said that the commercial properties that he has struggled with over the past 3 years have all either leased or sold. He said that one of his larger tenants is the Veteran's Administration, and that he will continue to own and operate that particular property. He stated that he is working very hard to live up to the original vision for this community. Karen Daniels asked if Mr. Brodsky has reviewed the conditions recommended by staff. He confirmed that he has.

There were no comments from the public related to this item.

Jeff Evans made a motion to send a positive recommendation to the Mayor for preliminary and final subdivision approval for a 4 lot subdivision at the property addressed 4242 South Birkhill Boulevard, subject to conditions:

1. Meet the requirements of the Murray City Engineer for the recording of the plat at the Salt Lake County Recorders Office.
2. Show utility easements on all of the lots to meet the subdivision ordinance regulations.

3. Meet all the requirements of Murray City Power Department and Murray City Water and Sewer Division.
4. The project shall meet all applicable building code standards.
5. The project shall meet all current fire codes.
6. Approximate locations of streets identified in the Fireclay Transportation Master Plan shall be shown on the plat with a note designating that exact locations and widths will be determined at the time of development.
7. Future development of the property will require construction of streets shown in the Transportation Master Plan.

Seconded by Sheri Van Bibber.

Call vote recorded by Chad Wilkinson.

- A Jim Harland
- A Karen Daniels
- A Sheri Van Bibber
- A Kurtis Aoki
- A Jeff Evans

Motion passed, 5-0.

LAND USE ORDINANCE TEXT AMENDMENT – Sign Code Amendment for Electronic Message Signs in the G-O zone – Project #11-55

Deanne Leatherman was the applicant present to represent this request. Tim Tingey reviewed the request for text amendments to the Murray Municipal Land Use Code Chapter 17.48.160, 17.48.200, and 17.48.120 to allow on premise electronic message signs in the General Office zone adjacent to I-15 and I-215. The applicant is also requesting sign code amendments to allow the same size and height as signs allowed in the C-D-C (commercial) and M-G-C (manufacturing) zones. The General Office zone purpose, as defined in City Code, is for a buffer or transition area separating commercial uses from residential areas. Increased emphasis is given to buffering commercial uses from residential uses, neighborhood compatibility and reduction of size and height of signs in the General Office zone due to proximity and impact on the adjoining residential properties. The General Office zone limits building and sign height to be compatible with residential zoned properties in the area. The existing sign code regulation limits signs in the General Office zone to 15-foot maximum height from the sidewalk grade to the top of the sign and .5 sq. ft. of sign per lineal ft. of street frontage with a maximum area of 50 square feet, whereas the applicant is proposing a height of 35 ft. above the freeway grade and 1.5 sq. ft. of sign per lineal ft. of street frontage up to 300 maximum linear square feet of total sign area. The electronic message center signs do not contribute to compatibility with residential areas with the proposed increased light, changing text and color displays as well as

the proposed height and larger area of the signs. Some of the residential properties are directly bordering the General Office zones adjacent to I-15 and I-215 which will be impacted with the sign height with 35 ft. above the freeway grade with a potential for a visibility impact from the residential properties in the area and the larger size of the sign up to 300 square feet. The sign code allows adequate size for attached signage with 2 sq. ft. of sign area for each lineal foot of building frontage as well as a detached pole or monument sign in the G-O zone. The look and effect of signage in the General Office zone must be different than commercial and manufacturing zones because the G-O zone purpose is to be a buffer and transition zone from the residential zoned areas. Based on the above information and findings, staff recommends that the Planning Commission forward a recommendation for denial of the proposed text amendments to the Murray City Council for Municipal Code Chapter 17.48.160, 17.48.200, and 17.48.120.

Jim Harland stated that because this zone is intended to be a transition area, that it may be a better option to rezone this particular property instead of an ordinance amendment that would affect all General Office zones throughout the city. He asked if the zoning could change to commercial. Mr. Tingey responded that rezoning is an option, although one of the challenges would be that the area used to be agricultural and was changed to General Office, and the general plan indicates that the future land use should maintain the G-O zoning. He said that rezoning the property would also mean an amendment to the general plan.

Deanne Leatherman, 2082 East 5290 South, Holladay, stated that she works for Young Electric Sign Company who is acting as the agent for Stevens Henager College. She said that staff has indicated that there is adequate signage in the G-O zone. She said that this is true in G-O areas such as 5900 South in front of TOSH, but for freeway locations these signs are often too small or too short to be seen or properly read at freeway speeds. Ms. Leatherman provided examples of signs adjacent to freeways, and cited the example of Harmony Home Health placing a 15-foot pole sign in accordance with required setbacks that it would be below the freeway, which is 18.5 feet high at that point. She said that staff also mentioned the importance of a buffer zone between commercial and residential zones, and that in reviewing the zoning map she identified 15 properties along the freeway and city streets that are zoned C-D-C and would be allowed 35-foot tall signs. She said that these 15 properties either abut residential zones or are directly across the street from them. Ms. Leatherman stated that the proposed sign would be the only sign that Stevens Henager would have because the G-O zone only allows for one sign. She said that staff also had concerns pertaining to the increased light and changing text on electronic message centers being disruptive to residents. She said that if an electronic message center is located within 500 feet of a residence it must be turned off between 10:00 pm and 6:00 am, which minimizes impacts on nearby residences. She stated that signs are very important to businesses and studies have been completed to show that high-rise and increased area signs create increases in sales. Ms. Leatherman said that signs also contribute to the community, and that Stevens Henager provides services that many people are unaware of and could be communicated to the public through the use of an electronic message center.

Ms. Daniels thanked Ms. Leatherman for her presentation. She reminded those present that the issue being considered at this meeting is a text amendment and not a specific property.

Vicky Dewsnup, 812 South Eagle Way, Fruit Heights, stated that she has been with Stevens Henager for 25 years and is the President and Regional Director of northern Utah. She said that the intent is to do a better job with signage for the benefit of Murray City. She stated that the college has a GED program that is a free service to the community that they would like to advertise. She said that a health fair was done in January with free screenings in partnership with the University of Utah, and that Stevens Henager has a large medical program. She said that they also held a fair for single mothers to offer assistance in a number of areas. She stated that the college would like to let the people of Murray City know exactly what they do, and that many people think they are still a business school although they have been in business for more than 120 years and have expanded their services substantially. Ms. Dewsnup said that an electronic message center is very important to the school.

Karen Daniels asked if rezoning the property has been discussed with staff. Ms. Dewsnup responded that they are trying to have a sign that doesn't look like a billboard so that it can be updated and kept current and also be large enough to be seen. Ms. Leatherman stated that when she spoke with city staff she was advised that it would be better to try a text amendment.

Jim Harland asked about putting a larger sign on the building itself. Tim Tingey responded that there is an allowance for a sign on the building, however there are square footage requirements and in the G-O zone it is .5 per linear foot, which is smaller than those signs allowed in the C-D-C. Mr. Harland asked if there is a restriction about how high a sign can be placed on a building. Mr. Tingey responded that the only restriction would be the height of the building itself, and that an electronic message center is not allowed in the zone.

There were no comments from the public related to this item.

Jeff Evans stated that he understands the frustration of obtaining sign approval for this property when it appears that they've been approved in a number of other areas. He said that this section is the largest G-O area along I-15, and he knows that Murray appreciates the education facilities located here and the contributions to the community from Stevens Henager College. He said that the issue should be considered further and other options identified, such as allowing signs only along the I-15 corridor. Mr. Evans said that there should be some way to make this work to address this specific situation without having an impact on the entire city. Mr. Harland stated that he agrees that this change would be city wide, and asked Mr. Tingey if it would be possible to have different criteria within a zoning designation, such as allowing signage along I-15 but not in other locations. Mr. Tingey responded that it is possible to designate allowing signs specifically along the freeway corridor, but said that there has been a number of challenging public hearings recently related to modifications in the size of signs in the G-O zone. He said that even if the change is restricted to the I-15 corridor there are still buffering concerns and the intent of the G-O zone is to minimize impact on residential areas. Ms. Daniels asked if a variance

could be obtained in this situation. She said that it seems this is a large enough parcel of property that there should be room to keep the sign near the freeway and not have it affect the residential area. Mr. Tingey responded that there could be a variance for the sign height standard, but not for an electronic message sign.

Jim Harland made a motion to forward a recommendation of denial for the proposed text amendment to the Murray City Council, for Murray Municipal Code Chapter 17.48.160, 17.48.200 and 17.48.120. Seconded by Kurtis Aoki.

Call vote recorded by Chad Wilkinson.

A _____ Jim Harland

A _____ Karen Daniels

A _____ Sheri Van Bibber

A _____ Kurtis Aoki

N _____ Jeff Evans

Motion passed, 4-1.

LAND USE ORDINANCE TEXT AMENDMENT – Tobacco Retailer Regulations –
Project #11-60

Tim Tingey reviewed the request for a text amendment to Murray Municipal Code Title 17 related to the regulations governing tobacco retailers. The ordinance will require a separation of a tobacco retailer from the boundary of a residential zone, residential use, schools, playground, youth center, recreation facility, arcade, park, and library by 1,000 sq. ft. in a straight line from parcel boundary to parcel boundary. One tobacco retailer shall be allowed for every 10,000 citizens living in Murray City. Also, no tobacco retailer shall be located within 500 feet of a site occupied by another tobacco retailer, as measured in a straight line from parcel boundary to parcel boundary. The purpose of the Land Use Ordinance text amendment for tobacco retailers relates to problems and complaints to the Murray Police Department and to adopt an ordinance to mitigate some of the issues with tobacco sales businesses. The police officers have been dispatched to smoke shop businesses and commented that surrounding businesses feel that they are being negatively impacted and are losing customers because of the presence of the neighboring smoke shops. The owners of businesses near smoke shops reported a high dissatisfaction with the smoke shops for issues for which a call to the police would have been futile. Examples are under age youth badgering their customers to buy tobacco for them, loitering around their entrances, and a general feeling of being unsafe or intimidated by customers and the employees of the surrounding businesses. A draft of the proposed ordinance text amendment has been prepared for review by the Murray Planning Commission and to make recommendation to the Murray City Council for adoption. Based on the above information and finding, staff recommends that the Planning Commission forward a recommendation of approval to the Murray City Council for the proposed amendment to Municipal Code Title 17.

There were no public comments related to this agenda item.

Kurtis Aoki made a motion to send a positive recommendation to the City Council for a land use text amendment to Murray Municipal Code Title 17 related to regulating tobacco retailers. Seconded by Sheri Van Bibber.

Call vote recorded by Chad Wilkinson.

A _____ Jim Harland
A _____ Karen Daniels
A _____ Sheri Van Bibber
A _____ Kurtis Aoki
A _____ Jeff Evans

Motion passed, 5-0.

SUBDIVISION ORDINANCE TEXT AMENDMENT – Amendment Regarding the Requirement for Single Family and Two-Family Lots Abutting a Public Street – Project #11-56

James Nielsen and Randy Nielsen were the applicants present to represent this request. Chad Wilkinson reviewed the request for a citizen initiated text amendment to Section 16.16.090 of the subdivision ordinance related to private streets. The proposed ordinance would allow for the development of residential subdivisions using private streets or lanes in certain limited circumstances. Mr. Wilkinson said that state law requires any change to the subdivision ordinance to come before the Planning Commission by way of a public hearing format for a recommendation prior to consideration by the City Council. He said that in this situation the Planning Commission is a recommendation body and the City Council will make the final decision on the ordinance amendment. He stated that the applicant is not proposing a change to Section 16.16.090 paragraph A, but that paragraph B is proposed to read:

“Existing private lanes may be improved to provide access for lots or parcels created by subdivision, residential infill developments and planned unit developments for properties less than 1.5 acres in size that:

1. Have limited access to a public road;
2. Have an existing private lane that has provided or does provide access to at least one residential unit that existed before the current requirement in 16.16.090;
3. Have existing structures in place, previously approved by the city that established right of way to the rest of the property.”

Mr. Wilkinson said that the remainder of the proposed ordinance describes the improvements that would be required for a private lane, such as compliance with the International Fire Code, maintenance of road and utilities, water and sewer line specifications, paved surface, additional description of the private lane as an easement, and meeting the requirements of an infill subdivision. He stated that these items are contained in the staff report in greater detail.

Mr. Wilkinson said that the main issue of concern from staff perspective is the public vs. private road. He said that this is a policy decision, and that consideration should be made as to how this change would affect the city as a whole and not just a particular development. He said that staff has reviewed the proposal from a perspective of identifying potential impacts to the city.

By way of background, Mr. Wilkinson explained that the current street requirement was adopted in 2007 and stemmed from recommendations from staff and a citizen task force created by the Council in 2006 to address concerns with private streets associated with Planned Unit Developments (PUD). The task force consisted of 14 members and was made up predominantly of Murray citizens with some members of the development community. The task force met several times to deliberate on recommendations for the City Council related to potential changes to the PUD requirements, and made a specific recommendation pertaining to public vs. private streets. He said that the task force determined that public streets are appropriate for single family residential subdivisions, including PUD's, residential infill and standard subdivisions. Mr. Wilkinson stated that some of the concerns expressed by staff and the committee at the time included issues of potential inappropriate use of private streets to increase density without a proper zone change, issues of long term maintenance, and issues of equity for residents paying city taxes but not receiving full city services such as snow plowing, trash removal and maintenance of streets. He said that staff agrees with the street requirement that was adopted in 2007 and addressed the concerns that existed.

Mr. Wilkinson said that as staff has analyzed the issue of public vs. private streets, they have identified a number of properties that may potentially be impacted by this proposal. Staff has identified 39 properties that are potentially eligible as they are: (1) served by a private drive/lane; (2) less than 1.5 acres but greater than twice the minimum lot size; and (3) constrained by existing development. He stated that this analysis is only preliminary and that topography has not been reviewed nor has each site been reviewed in more detail. He stated that staff has identified 39 properties that meet the proposed criteria, but that this number could be lower or higher if a more detailed evaluation was completed. Mr. Wilkinson said that the purpose of the evaluation was not to determine a precise number of properties, but to simply determine if there are other properties that would be impacted by this ordinance change and where those properties are located. He said that while evaluating the impact of the proposed ordinance on these properties, staff identified ways to develop some of these infill properties in such a way that would not require a change to the code or public policy. He stated that the code allows flexibility of public street width on infill properties that are less than 2 acres. He said that park strips and sidewalks may also be eliminated based on a recommendation by the City Engineer if there are constraints or circumstances that justify the elimination. He stated that the turnaround portion of the street could also be modified with a recommendation from the City Engineer and the Planning Commission. Mr. Wilkinson said that code also allows for variances to measurable standards when an applicant can show that there are unique circumstances that result in a hardship. He stated that recently another residential infill subdivision was developed nearby using an alternative street width, and also obtained variances for lot widths and setbacks. He said that another option for this

site would be a flag lot, although there would only be one additional lot allowed in the rear.

Mr. Wilkinson stated the task force and City Council reviewed the issue of public verses private streets in great length prior to adoption of the existing ordinance and feels the ordinance change adopted in 2007 is appropriate and those concerns voiced at that time were legitimate concerns. Mr. Wilkinson stated that page 3 of the staff report outlines the purposes of the subdivision ordinance. He stated in any policy decisions made by the city council they need to consider what the impact on the adjoining properties will be. One of the purposes of the subdivision ordinance is considering the rights and interests of adjoining property owners in the city. He stated that recently the city has had requests to take over the streets in some of the PUD's that were approved in the past with private streets. This poses a significant problem for the city because the city cannot maintain streets that don't meet the standards. There is concern with regard to how the streets were installed and what is underneath the street. Mr. Wilkinson stated that findings and conclusions are outlined in the staff report, and summarized:

- The City Council in 2007 determined that private streets were not appropriate for development of single family residential subdivisions and required that all future created lots abut a public street.
- The Code already provides alternate standards for development of small residential infill subdivisions that do not require a 50-foot right-of-way.
- The Code provides for variances for measurable standards such as street width, setback, and lot width when a unique circumstance exists such as lot shape, topography, slope, etc. subject to approval by the Board of Adjustment.
- Public streets provide equity in provision of public services to all Murray citizens.
- Public streets ensure that development is orderly and appropriate to the surrounding neighborhood.
- Public streets constructed to public standards are necessary to avoid the future expenditure of public funds to correct problems arising from private street development.

Mr. Wilkinson stated that a letter was sent in response to the staff report, a copy of which was forwarded via e-mail to the planning commission members. He said that staff is recommending that the planning commission forward a recommendation of denial to the city council for the requested amendment to subdivision ordinance related to private streets.

Mr. Harland asked how narrow a city street is allowed to be. Mr. Wilkinson responded that excluding a variance, which may result in an additional width reduction, that a standard city street requires 2½ feet on each side for curb and gutter to equal 5 feet, and a 25-foot wide paved section. The total width with curb, gutter and pavement is to be 30 feet, and if this requirement was met the road could be completed with City Engineer and Planning Commission approval. Mr. Harland asked if the concern with this item relates to the cost of building a public street or if the applicant would just

prefer a private street. Mr. Wilkinson deferred to the applicant to answer this question.

Karen Daniels stated that the letter submitted in response to the staff report will be made part of the public record.

Jimmy Nielsen, 41 Paula Circle, Sandy, stated that he is present to represent his family on this matter. He introduced family members Randy and Eileen Nielsen, Andrew and Marta Nielsen, Rob Nahoopii and Ali Lyddall. He provided a presentation including photographs of the property and a detailed description of his request.

Jimmy Nielsen said that staff has stated that the commission should not consider individual properties but to think of the city as a whole. He stated that his family is present regarding an individual property, and if the proposed amendment is denied his family will not be able to use this property. Mr. Nielsen said that he thinks the planning commission should consider the individual property and the constraints, some of which have involved Murray City. He stated that the property is located at 421 East 5300 South and is an L-shaped parcel adjacent to the Murray Amphitheater. He said that there is a neighboring residence on one side and an undeveloped section of Murray Park is to the north. He stated that there is a private lane on the property, which was intended to access a home that was built by his aunt and uncle in the 1940's. Mr. Nielsen said that this dwelling was demolished following the death of his aunt and uncle, although there is a garage that still exists on the site. He said that his father's home was constructed on the property in 1975 and is east facing, overlooking the amphitheater parking lot. He stated that the private lane exists on the east side of his father's home, and that an agreement was made between his father and Murray City in 1975 regarding access to the rest of the property. He said that at the time, his aunt still owned the 1 acre lot with the total area of the property being 1 ½ acres. Mr. Nielsen stated that the city knew when entering into the agreement that there was room at the back of the property for 4 lots, and lots at that time were 10,000 square foot minimum. He said that the city told his father to leave a 15-foot easement along the east edge of the property, and that he left an extra 5 feet to total 20 feet. He said that from the retaining wall to the edge of the landscaping is 20 feet. Mr. Nielsen stated that in addition to constraints pertaining to width, that there are also topographical concerns as there is sloping on both sides of the lane. He said that widening the lane would be difficult. He stated that his father has a garden on the property, which is in an area proposed to be one of the future lots. Mr. Nielsen said that the subdivision is intended to create 4 new lots for family members and that there is not any intention to sell any of the land or maximize profit. He stated that he is a licensed architect in the State of Utah and that it is his dream to be able to design and build his home. He reviewed the photographs of the site, pointing out that the nearest neighbor is up a steep slope and that the property is landlocked by the park and topography. He stated that the family would like to reduce the amount of paving necessary and retain as much native vegetation as possible.

Jimmy Nielsen stated that the issue to be discussed is the request for a private lane. He stated that the first reason is that the family was told by the Community and Economic Development office that if in fact there is 20 feet available for a road, then the only way to get a road approved is to have it as a private lane. He said that

meetings were held with city staff over the past year to try and work within the existing ordinance, but that he was told that a public standard could not be reached with a 20-foot road without curb and gutter and sidewalk. He said that the family was told that one sidewalk and one park strip could be eliminated, but that there must be curb and gutter. Mr. Nielsen said that a 30-foot road would put the edge of the road at his father's porch and eliminate the setback in front of his house. He stated that because the city approved the access originally to his aunt's house and the rest of the property, that the parties should abide by this approval. He said that he is proposing to improve the original city approval by making the lane 20 feet wide, which meets current fire code standards. He stated that staff advised him that the only option he had was to propose for this text amendment. Mr. Nielsen said that he has e-mails and a meeting transcript to back up this statement. He said that the options given were to not develop the property further, to tear down his father's home to provide adequate width access, to create a single flag lot, or to apply for a text amendment to allow for a 20-foot private lane. He stated that the 30-foot road width is not required by fire code but only by Murray City, and that if a single flag lot was created the value of the property will be reduced to a quarter of what it could potentially be. Mr. Nielsen said that he was told that he would have the best chance of getting the ordinance text amendment approved if he wrote it as specifically to the property as possible. He stated that this conflicts with staff's recent statement to consider the impact on the entire city and not this individual property.

Mr. Nielsen summarized the development of the property, stating that Violet Stevensen's house existed first. He said that in the 1970's, the property was divided, but prior to building his home his father met with the city and a 15-foot easement was approved along the east edge to access the entire piece of property in addition to the existing house. He said that his father proceeded with building his home, and oriented it in such a way as to leave a 20-foot width.

Mr. Nielsen stated that the second issue related to the public street requirement is privacy. He said that the property is adjacent to a main park entrance, the amphitheater parking lot, and undeveloped park land. He stated that traffic congestion occurs regularly during summer events, and traffic and parking on a public street so near the park would endanger property and life safety and restrict emergency access. He said that a posted private lane would prevent such congestion. Additionally, Mr. Nielsen said that another concern relates to unsavory activity in the park. He said that the parking lot and undeveloped area of the park have long been a prime location for illegal activity, and that drug and sexual paraphernalia has been found on their property and in the park. He said that the windows in the Stevensen's original garage have been shot out from the park side of the fence with pellet guns. He said that more recently, the undeveloped area of the park has been used as a paint ball arena. Mr. Nielsen quoted from the letter that his father submitted, "The idea of providing public access through our backyard for fence jumpers, automobile romance, fireworks parking, drug use and general mayhem is truly frightening." He stated that the last time the police were called three men were arrested that had been drinking and swearing for hours just across the fence. He said that all three men had bench warrants and spent the night in jail. Mr. Nielsen stated that the family respects and supports park management, and that they realize that these activities are not a result of any action of theirs but just come with the territory.

He stated that due to all of these reasons, the family feels that a private lane is critical for this property. Mr. Nielsen briefly discussed the slides showing parking and traffic congestion on the 4th of July holiday and explained that there are a number of events each year that result in this type of congestion.

Mr. Nielsen stated that he would like to clear up a misunderstanding pertaining to the current ordinance. He said that the ordinance states "have existing structures in place previously approved by the city that established a right of way to the rest of the property." He said that the ordinance was summarized in the staff report to read "the property is constrained by an existing building that limits the size or width of the street." He said that he believes the wording of the amendment has been overly simplified and that an understanding of the wording will reduce the number of properties affected. Mr. Nielsen said that only properties where the city actually approved a structure which established access to an existing residence and property should be considered. He stated that sites where access into the property was established and a flag lot was subsequently created should not be considered because space was not originally allowed for the required width. He said that the intent of the wording is to apply to properties where the city has previously specified a certain width to access the property. He said that additionally, the property would have to be larger than double the size of the underlying zoning because there must be room for a private lane. He said that they are suggesting, and the ordinance states, that setbacks be taken from the edge of the private lane and not from the center as has been a concern previously. He stated that he is not proposing that a private lane be included as part of the setback.

Mr. Nielsen reiterated that his family is proposing a private lane that meets current fire code standards, and lots that are larger than the underlying zoning in order to accommodate that private lane. He said that the development will meet the building density of the underlying zone. He stated that he has provided a diagram showing how the largest fire truck owned by the city would navigate the lane and that a 50-foot fire truck or other city equipment could access the property. He said that they are not asking for city services, such as garbage pick-up or snow removal, on the property and they are willing to incorporate this clarification into the text amendment. He addressed the "concerns of the Citizen Task Force" which are 1- Potential inappropriate use of private streets to increase density without a proper zone change. The amendment states that "setbacks will be measured from the edge of the private lane. The setbacks will meet the infill subdivision requirements. The allowed building footprint will meet underlying zoning." 2- Issues of longer maintenance. The amendment specifies that "the city has no responsibility for maintenance. The amendment specifies "utilities and paving will meet city standards and can be inspected by the city. 3- A private lane of such scale. He stated that the traffic load will be minimal therefore maintenance will be minimal and maintenance costs will not be excessive for property owners because the lane is so small. 4- Issues for the equity for residents paying city taxes but not receiving full city services. He stated that they are "willing to establish a legal agreement to exempt the city from providing services as long as the road is private."

Mr. Nielsen stated they researched ordinances of other neighboring cities. Cottonwood Heights has a clause which states "whenever a subdivision is approved

with private streets the final subdivision plat shall include a statement that no city maintenance is provided on the private street.” He stated he would be willing to include something similar to this for this ordinance amendment that exempt the city from any maintenance.

Mr. Nielsen stated that the development of neighboring property on approximately 347 East 5300 South has fundamental differences. The neighboring property owner in that case wanted a public street and had room for it. The lots in that development will be for sale to the general public and therefore they wanted to provide services for those people. He stated that he was informed by the Community Development office that a variance was not an option, because in order to get the road width they need for the property that the property can accommodate, a variance could not be granted to allow a private lane. And that’s the only route they have to go with.

Mr. Nielsen stated the issues of sustainability come into play and with elimination of excess and pervious surface, you in essence reduce the storm water load which seems to be an advantage with the current state of Little Cottonwood Creek, and you reduce the urban heat island affect, and retain native vegetation. He stated that the city is implementing sustainable principles for new downtown developments and the city ought to look at the city more comprehensively.

Mr. Nielsen stated if you compare neighboring municipalities, Sandy City allows for 20 foot lanes for multiple lots and a conditional use permit process for lots that do not have access to public streets. Midvale City allows 20 feet width as permitted by fire code. Cottonwood Heights has a statement of no city maintenance to private streets and net density calculations exclude the area designated to private streets. South Salt Lake City has a clause that can “waive the requirement for lots to abut a public street if an unobstructed recorded easement of right-of-way of ingress and egress exists across the property.” He stated the amendment is not fixed and there is still a chance to work on it with the city in order to ensure that it works property.

Mr. Nielsen summarized they are not attempting to “undo” the public road requirement; however, they do not agree with the one size fits all nature of the ordinance. He stated they are proposing a small change that would allow a small unique piece of property with access previously established by the city to be developed in a way better suited to it. The proposed lane will be about the same length as a football field and will serve two houses. It has no potential to become a thru street; it is essentially a long driveway and should be considered as such. The vision for this development is to retain as much of the natural beauty of the land as possible and to create a peaceful place in which to live.

Karen Daniels asked Jimmy Nielsen for clarification because the proposal indicates four lots and the site plan shows two lots. Mr. Nielsen responded there is space for four lots, but they are currently proposing two houses. He stated that he and his brother would like to build houses in the near future on the property. There is space for two more lots that will be given to his two sisters, but they have no immediate plans to build a home at this time and in their case the vacant land will not be sold and will be retained.

Kurtis Aoki clarified that this proposal does have potential to have four lots developed. Jimmy Nielsen responded in the affirmative. Mr. Aoki stated that at the time the width of the existing street was established, the thought of having four new lots in the future may not have even been contemplated and was merely established for the home at the rear of the lot. Mr. Nielsen responded that could have been the intention at that time, but clearly there was an acre of property at that time and the driveway was clearly going to be the only established access to the property.

Mr. Aoki asked if the intent of the Nielsen's is to have four lots or two lots on their property. Jimmy Nielsen responded that the way the proposed amendment is written, it would allow any property that meets this requirement be able to be developed to the maximum number of lots that meet the underlying zoning district. In this case the property is zoned R-1-8 and there is enough for four 8,000 square foot lots, plus the space of the private lane.

Karen Daniels opened the meeting for public comments as it is a public hearing. She stated the letter received by the planning commission was from Randy Nielsen.

Randy Nielsen, 421 East 5300 South, stated he is the owner of the property being discussed. He stated that this issue could have been solved over a year ago in one hour's time with the modifications to the section of the code and the Mayor has the power to do this. The planning department has consistently suggested the modifications cannot possibly apply to a private lane. He stated that they haven't found anyone that agrees with the city's position. He stated they have discussed these same items for a year with Mr. Tingey and Mr. Wilkinson and it's as if they have never heard it, and they are on their best behavior this evening, and they have never showed any good faith on this and never any attempt to come to a compromise. He stated Mr. Tingey and Mr. Wilkinson's solution is to tear down his house and put a big road into the back yard. He stated they have done everything they could and have been turned down on every possible avenue and it was a year ago that the city attorney stated this was the only possibility to do this. He stated there is only one property in the whole city that this ordinance would apply to and that the planning staff has misrepresented their proposal. He stated that he can't think of anything that Mr. Wilkinson has said that was actually true and that's what they have been facing for the past year. He asked that the planning commission help them with this because they have no where else to go.

Sheri Van Bibber asked Randy Nielsen if he was working on this prior to this last year. Mr. Nielsen responded that when Allie and Dave moved back from Spokane, the attempt was to try and get permission to do something and since there was only one child at that time they basically didn't have the funds required and so they gave up. He stated they weren't consulted with the private road amendment and nobody seemed to care that there were people that might be affected directly by it. He stated they took the city in good faith when they said to leave the easement to the back property and it will be adequate. He stated that obviously things have changed since that time and they have done everything they can to meet the current code. He stated a 20 foot road meets the international fire code for four lots. He stated that they hope someday their daughters will want to build there. He stated this has been an extremely difficult task. He stated that they were supposed to have met the city

attorney to establish the language and when they asked to meet with the city attorney, they got a “snarky email back blowing them off”. He stated that he talked to Councilman Jim Brass, who has been their only support, and who suggested that they write the amendment themselves and so they did. He stated there are no guarantees that the city attorney will accept this. He stated that the city has been touting that the Chad Woolley development on approximately 347 East 5300 South, has been used as a good example of the planning process and yet took two years waiting for the city to fix their code so that he could develop his property.

Karen Daniels closed the public comment portion for this agenda item. She asked the planning staff to respond to Mr. Nielsen’s comments.

Chad Wilkinson stated there is an obvious difference of opinion of the planning staff and the Nielsen’s. He stated that the city recognizes that this is a personal issue when discussing someone’s property. He stated that the city has rules and laws that need to be followed and that city tries to work with people and help them develop their properties, and routinely is accomplished. Once in a while there are properties wherein difficulties arise and it does take time. He stated that he comes from a development family and his father is a developer and he understands the process on both sides of the spectrum.

Jeff Evans asked Mr. Wilkinson, based on his background, experience and knowledge, what he would do in this situation if he was trying to achieve the same goal as the Nielsen family. Mr. Wilkinson responded that there are other options available, including the residential infill or a variance application. Kurtis Aoki asked if a variance could be obtained for the width of a street. Mr. Wilkinson stated that the existing access was established in 1975 for a single residence located at the rear of the property. He said that at that time there was no application for a subdivision. He stated that standards do change over time as the city continues to grow and that those changes take place through a public process and decision by the City Council. He said that staff evaluated the effect that the proposed change would have on other properties, and there may be some properties that don’t precisely fit. Mr. Wilkinson said that in relation to the staff report, a recommendation has been made and that this is a policy decision.

Sheri Van Bibber asked if it’s possible to develop a flag lot off of another flag lot. Mr. Wilkinson responded that this is not allowed, although this particular property is shaped similarly to a flag lot with the easement extending through the narrow portion of the lot and accesses the public street.

Jim Harland stated that the planning commission has reviewed a number of subdivisions over the past few years, and he recalls a few of those were 4 lots. He said that all of the subdivisions required public streets, including curb and gutter, although in a few cases the Commission made a recommendation to narrow the street size a little bit. He asked if a variance process could potentially decrease the width of the street to an acceptable size to fit the property. Mr. Harland stated that he understands that a variance will not address the public versus private street issue. Mr. Wilkinson said that there has not been an application for a variance, but that process is an option. He stated that the applicant would need to apply, and that there

needs to be an unusual circumstance that justifies the variance. He stated that because a street is a measurable standard, there is an ability to vary the width.

Mr. Wilkinson stated that in response to the issue mentioned by Mr. Nielsen regarding modifications, staff has discussed the ordinance with the City Attorney who agrees with staff's interpretation. He said that the modifications referred to in the ordinance are those that are allowed through the variance process or the residential infill process. He stated that outside legal counsel also reviewed the ordinance and agreed with this interpretation. Mr. Harland stated that the only way to address the private versus public street is through an ordinance change. Mr. Wilkinson concurred.

Tim Tingey stated that variances do not eliminate the requirement for a public street. He said that staff directed the Nielsen's to propose a text amendment because the public street issue cannot be addressed any other way, and that the previous statement that the Mayor has authority to make this decision is incorrect. He stated that the City Council approved this requirement, and that neither staff nor the Mayor can waive the requirement. He said that the only issue that a variance will address is the width of the public road, and that the city has to be comfortable with the width of the road and that curb and gutter must be included. Mr. Tingey said that this is the reason that staff directed the Nielsen's to take this route in order to address the public versus private street issue because the Nielsen's want the road to be private. Mr. Harland stated that staff has completed an analysis and are not recommending that the ordinance be changed. Mr. Tingey responded in the affirmative. He said that this has been communicated to the Nielsen family in several meetings and there was communication regarding the need to differentiate their proposal in some manner. He said that staff has always clearly indicated that they would not recommend approval of the ordinance change.

Sheri Van Bibber stated that there is a public easement between a neighborhood and Grant Park, near the Heritage Center. She said that there is a gate there to control the traffic flow into the neighborhood, and asked if this could be an option for the Nielsen's when there is an amphitheater event. Mr. Tingey responded that access is important for public roads, although he has seen instances when a crash gate was installed. He stated that this might be an option but would have to be considered further.

Jim Harland asked if this property meets the requirements for a single flag lot. Mr. Tingey stated that it probably would. Mr. Harland asked the Nielsen's if they would consider building only one house on the lot. There was no audible response.

Karen Daniels reminded the citizens present that the public hearing portion has been closed. She invited Mr. Nielsen to speak as the applicant, and stated that any questions from those present should be presented by Mr. Nielsen.

Jimmy Nielsen stated that the variance option has been mentioned a number of times. He said that they have not pursued the variance option because in the numerous meetings with city staff nobody ever was willing to give approval for a road width variance. Mr. Nielsen stated that they started recording the meetings in order to go back and reference things, and he quoted Mr. Tingey as saying: "Right now, Jimmy,

you've looked at this. Our requirement is 50 feet. We can reduce that, there is some flexibility to reduce that down and not require a sidewalk on one side. But you still have to have a curb and gutter and a minimum paved width, which is 25 feet, and that makes it very difficult in this area here and I don't think you have that distance." Mr. Nielsen stated that he understands Mr. Tingey is not the one making decisions on road width, but in discussion with the City Engineer he concurred that there is not enough width to approve this as a public road. He said that he was told a variance would not be granted to reach this width, and that the only option is to pursue this as a private lane because a public standard is not going to be established to meet the existing width. Mr. Nielsen said that the property literally has 20 feet to work with, which is based on a previous city decision. He stated that Mr. Wilkinson indicated that he assumes that decision was made based on the assumption of access to one house, which was the existing Stevenson house. Mr. Nielsen said that he disagrees, and that the decision was probably made based on fire code requirements at the time which were likely 15 feet. He stated that obviously these requirements have changed as fire equipment has gotten larger, but that it cannot be stated with certainty that in 1975 access was only approved for the one existing house. He said that clearly there was a lot of property in the back and it was decided that a 15-foot width was adequate. Mr. Nielsen stated that it was also mentioned that other properties in the city will be affected. He said that if other properties meet these same requirements, if they had a house in the back first, and then built a house in the front and asked the city what was needed for access to that house, then the city should honor that agreement. He said that he does not think there are 39 properties in the city that meet these criteria. Mr. Nielsen commented that a public road, even if it could be reduced to 20 feet, that the city was not comfortable with a 20 foot road and wouldn't establish it as public. He stated that if a 20 foot road were established, it would not allow for parking on either side of the road as fire code dictates. He stated that the 20 foot wide road is essentially a long driveway and should be considered in that fashion. Mr. Nielsen stated that they feel they are asking for a very limited number of properties in the city that will be affected and they feel this is their only option because a 20 foot wide road cannot be established as public.

Jimmy Nielsen asked the width of the roads for the Fireclay Development. Jimmy Nielsen stated that their opinion is that the Mayor has authority, based on recommendation from the planning commission and the city engineer, to approve modifications to the subdivision ordinance without amending the code and changing it permanently and would work well for this proposal. He commented that Mr. Wilkinson never addressed the previous question of what he would do if this were his property.

Karen Daniels commented that there has been much additional information submitted at this meeting and the commission hasn't had time to review all the new materials given. She expressed concern that the discussion is being directed more towards the specific site proposal for the Nielsen's property and that the item before the commission is a text ordinance amendment, and not the Nielsen's specific site proposal. She asked Mr. Wilkinson if he wished to respond to the Nielsen's question regarding what he would do if it were his property. Chad Wilkinson commented that he represents Murray City on this request and what he would do with the property, if it were his own property, is not pertinent. He stated that the city staff attempts to review the codes and applications objectively based on decisions made by the city council

and the recommendation for this application was made based on the factors listed in the staff report.

Karen Daniels commented that when considering an ordinance amendment, the planning commission must view the requests based on a city wide basis and not for a specific location and this request must be viewed as to how it would affect other properties throughout the city.

Kurtis Aoki commented that the Nielsen's cannot change what has been adopted by the city council but that the Nielsen's can present their proposal to the city council to attempt to change the existing ordinance. Mr. Wilkinson clarified that this request will go to the city council, regardless of the planning commission's recommendation, for a final decision.

Sheri Van Bibber stated that the Nielsen's property is in her neighborhood and proposal reminds her of the situation with the owners of the Flower Patch property wherein there were gray areas in the ordinance, and this is one instance where the square peg doesn't fit in a round hole scenario. She stated that there needs to be a way to work around this type of a proposal. Karen Daniels commented that when an ordinance text amendment is being made, it affects the entire city and not just one particular situation. She stated that the recommendation made by the planning commission would be forwarded to the city council for final decision.

Chad Wilkinson commented that thus far, the discussions regarding variances have been discussions with staff and what staff feels comfortable in recommending approval of, but there hasn't been a variance application filed. He stated the Board of Adjustment is the body who decides on variances, with staff input, but that it is not the decision of the planning staff. He stated there are options for the Nielsen's and requesting a variance is one of those options.

Karen Daniels stated the planning commission could make a positive recommendation and the city council could deny that; or the commission could make a negative recommendation and the city council could approve it. She called for a motion for this ordinance text amendment.

Jim Harland made a motion that the planning commission forward a recommendation of denial to the city council for the requested text amendment change for Section 16.16.090 of the subdivision ordinance that relates to private streets. This motion died for lack of a second.

Kurtis Aoki asked if the applicants could proceed to the city council without a recommendation from the planning commission. Karen Daniels stated the planning commission is the recommending board to the city council. Tim Tingey concurred. Mr. Tingey explained the options at this point which are send a recommendation of approval, send a recommendation of denial, or continue this item to another meeting for further review.

Sheri Van Bibber made a motion to table this item for further discussion. Seconded by Jeff Evans. Jim Harland questioned what would be the tools for further discussion.

Planning Commission Meeting

July 7, 2011

Page 20

Kurtis Aoki commented that there are two members of the commission absent this evening which may be at the next meeting to assist in further discussion and decision making on this item. Mr. Tingey commented that he is not advocating that this item be tabled, or not, but that there has been additional information submitted this evening by the applicants which the planning commission has not had sufficient time to thoroughly review and may warrant a continuance to another meeting.

Jeff Evans commented that the applicants' information is very thorough and detailed and may warrant further review and discussion by the planning commission.

Tim Tingey suggested if this item is tabled, that the commission indicate a date wherein it would be reviewed. He stated this item could be continued to the July 21st meeting date.

Sheri Van Bibber modified her motion to continue this ordinance text amendment to the July 21, 2011 Planning Commission meeting. Seconded by Jeff Evans.

Call vote recorded by Chad Wilkinson.

A _____ Ms. Van Bibber

A _____ Mr. Evans

A _____ Mr. Aoki

A _____ Mr. Harland

A _____ Ms. Daniels

Motion passed, 5-0.

Karen Daniels commented that this subdivision ordinance text amendment has been continued to the July 21, 2011 planning commission meeting giving the commission members an opportunity to review the information presented.

Meeting adjourned.

Tim Tingey, Director
Community and Economic Development