

Minutes of the Planning Commission meeting held on Thursday, July 21, 2011, at 6:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Tim Taylor, Chair
Karen Daniels, Vice-Chair
Jim Harland
Ray Black
Tim Tingey, Community & Economic Development Director
Chad Wilkinson, Community Development Planner
G.L. Critchfield, Deputy City Attorney
Citizens

Excused: Jeff Evans
Sheri Van Bibber
Kurtis Aoki

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.

Mr. Taylor opened the meeting and welcomed those present.

APPROVAL OF MINUTES

Karen Daniels made a motion to approve the minutes of July 7, 2011 as written. Seconded by Jim Harland.

A voice vote was made. Motion passed, 4-0.

CONFLICT OF INTEREST

There were no conflicts of interest for this agenda.

APPROVAL OF FINDINGS OF FACT

Karen Daniels made a motion to approve the Findings of Fact for a Conditional Use Permit for Costco from the July 7, 2011 meeting. Seconded by Jim Harland.

A voice vote was made. Motion passed, 4-0.

BIRKHILL PHASE 1 UNIT 107 – 12 West Fireclay Avenue – Project #11-63

Kate Bradshaw was the applicant present to represent this request on behalf of the Utah Food Industry Association. Chad Wilkinson reviewed the location and request for a Condominium Plat Amendment. He said that the property is on the corner of Main Street and Fireclay Avenue and is in the Transit Oriented Development (TOD) District. He stated that the applicant has purchased units 107 and 108 of the condominium plat and that an easement currently exists across the north portion of unit 107. He said that the easement is no longer needed as both units have the same owner. Mr. Wilkinson stated that Municipal Code Ordinance 16.04.050 requires the subdivision of property to be approved by Murray City Officials with recommendation

from the Planning Commission. He said that staff is recommending approval with conditions.

Kate Bradshaw, 1220 Harrison Avenue, stated that her company has sold their office building in Salt Lake City and they look forward to moving to Murray City. She said that they are requesting this amendment because there is no need for common space between the units since the company has purchased both of them. Ms. Bradshaw thanked the Planning Commission for accommodating her schedule by reviewing this item first so that she can attend another board meeting.

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

Ray Black made a motion to approve an amendment to Unit 107 of the Birkhill Phase 1 Condominium plat for the property addressed 12 West Fireclay Avenue, 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. The project shall meet all applicable building code standards.
3. The project shall meet all current fire codes.

Seconded by Karen Daniels.

Call vote recorded by Chad Wilkinson.

A _____ Ray Black

A _____ Karen Daniels

A _____ Jim Harland

A _____ Tim Taylor

Motion passed, 4-0.

HAPPY AUTO SALES – 5555 South State Street – Project #11-61

Jim Allred was the applicant present to represent this request. Chad Wilkinson reviewed the location and request for Conditional Use Permit approval for auto sales for the property addressed 5555 S. State Street. Municipal Code Ordinance 17.160.030 allows motor vehicle sales use within the C-D-C zoning district subject to Conditional Use Permit approval. The applicant proposes an automobile dealership on the property. The property has an existing 1,000 square foot building proposed as a sales office. The applicant proposes a total of six parking spaces. The Code requires a total of four spaces per 1,000 square feet office space so the proposed six spaces meet the minimum requirements of the parking ordinance. A disabled person parking space meeting the minimum standards of the Code will also be required to be provided. The existing building meets the required minimum 20-foot setback. The parking area abutting the east property line will need to be modified to allow for the required 5-foot wide landscape area, and where the parking space at the front of the

property abuts the property line five feet of landscaping will also be required. Based on the information presented in this report, application materials submitted and the site review, staff recommends approval.

Jim Allred, 5522 South Fair Oaks Drive, stated that there is some existing landscaping where the parking abuts the property lines but he will ensure that there is the correct amount.

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

Karen Daniels made a motion to approve a Conditional Use Permit for auto sales at the property addressed 5555 South State Street, subject to the following conditions:

1. The project shall meet all applicable building code standards.
2. The project shall meet all current fire codes.
3. A formal landscaping plan meeting the requirements of Chapter 17.68 of the Murray Municipal Code shall be submitted and approved by the Murray City Forester and installed as approved prior to occupancy of the new use. The plan shall show the required 5 foot landscape area in locations where parking abuts the property line in compliance with the requirements of the Code and/or previous approvals for the property.
4. Parking spaces shall be revised to indicate the location of the required disabled person parking space and submitted to Community and Economic Development Staff for approval. Parking lot striping in accordance with the approved plan shall be installed prior to occupancy of the new use.
5. Any proposed trash container shall be screened as required by Section 17.76.170.

Seconded by Jim Harland.

Call vote recorded by Chad Wilkinson.

A _____ Jim Harland
A _____ Karen Daniels
A _____ Ray Black
A _____ Tim Taylor

Motion passed, 4-0.

BIG DOG PAWN AND JEWELRY – 5805 South State Street – Project #11-62

Monte McKee was the applicant present to represent this request. Tim Tingey reviewed the location and request for Conditional Use Permit approval for a pawn shop. He said that there are other buildings and businesses at this site. Municipal

Code Ordinance 17.160.030 allows pawnbrokers within the C-D-C zoning district subject to Conditional Use Permit approval. This property was previously used by Huetter Mill for wood products sales and manufacturing. There is a vacant warehouse building to the back of the property and another building to the north that was previously used by a motorcycle sales business but is currently vacant. There is another business on site, called Eden Interiors, which is currently using the south portion of the building adjoining the proposed pawn shop. In a meeting for Conditional Use Permit approval on June 21, 2007, the Planning Commission required the property owner, David Truong, to combine the properties with recording at Salt Lake County Recorders' office, so that the property boundaries would not go through buildings. Compliance for this requirement has not been made, so before a business license is issued the properties will need to be combined and recorded with the Salt Lake County Recorder's office so that the boundary lines do not extend through buildings. Additionally, there are site improvement changes with the landscaping and parking lot striping that will need to be completed prior to licensing. The site has a shared parking lot usage with businesses in the existing buildings. The proposed pawn shop use and existing Eden Interiors will require 22 parking stalls. The site plan will need to be modified to address specific code standards and with changes will provide about 32 parking stalls, which is adequate for the proposed pawn shop and existing business on site. There are other vacant buildings on site which can be leased out and will need to meet zoning regulations for parking. Parking is available for the proposed pawn shop use, but there will be limitations on future business uses regarding the amount of retail, office and warehouse space allowed within the buildings in order to meet the parking regulations. There will need to be changes to the site plan to meet the Conditional Use Permit requirements for parking and to meet landscaping requirements. Two of the parking stalls adjoining State Street will need to be removed to provide the required 10-foot depth of frontage landscaping. Also, the parking area behind the buildings will need to be re-striped and may need to be changed to parallel parking and to meet a 5-foot depth of landscaping adjoining the property boundary. The two rows of 60 degree diagonal parking behind the building will need to be changed to one row of parallel parking as shown on the previous plan to meet the 20-foot aisle width required behind 60 degree parking stalls. A variance was granted by the Board of Adjustment on October 8, 2007 for the front setback of the buildings on State Street. The plans show the south building is setback 10.5 feet and the north building is setback 18.5 feet. The landscaping in front of portions of the buildings has not been maintained and watered and will need to be installed to meet Municipal Code Section 17.68 and a new site plan and landscaping plan will need to be submitted. Based on the information presented in this report, applications materials submitted and the site review, staff recommends approval.

Jim Harland asked if the prior business at this location obtained a business license. Mr. Tingey responded that there are some businesses that do not have to go through the Conditional Use Permit process in order to obtain a business license and he believes that this was the case previously at this site. Mr. Harland asked who was responsible to fix the parking, landscaping and boundary lines previously. Mr. Tingey stated that these requirements relate to the current application.

Monte McKee, 13932 South Emmeline Drive, stated that he has reviewed the

conditions recommended by staff and will meet them. He said that in relation to the fire code, there are sprinklers throughout the whole unit and the parking has already been moved back 10 feet. He said that the parking stalls at the back of the building can be changed to parallel. He said that he is the only business at this site and that the tile company has moved out so there is adequate parking. Mr. Taylor stated that as new businesses locate at this site then the property owner will have to work on parking requirements at that time.

Mr. Taylor opened the meeting for public comments.

Mike Shegrud stated that he is the architect working on this project. He said that this site has existed for a number of years and that there are hardships in relation to meeting current requirements. He said that one reason the landscaping has fallen into disrepair is that there were no tenants at the property to maintain it. He said that he understands that as new tenants locate in this building that requirements will have to be met. Mr. Shegrud stated that in relation to the conditions, there is a 5-foot landscape buffer adjacent to the beauty college that was not part of the original site approval nor addressed when the motorcycle shop located at this site. He said that it will be difficult to maintain landscaping in that area because it is isolated and he would like staff to reconsider that condition. He stated that the parking stalls have been moved back 10 feet in order to accommodate additional landscaping in front of the building, which was not a requirement. Mr. Shegrud stated that the site landscaping was approved in 2007 and should still fall under that approval.

Mr. Taylor explained that multi-tenant buildings are challenging in that each time a new tenant moves in the city must review and apply current standards. Mr. Shegrud stated that the standards apply when a building is vacant for 180 days and that this building has not been vacant. He said that there is a fire hydrant and access to a utility tunnel in the area where landscape is proposed. He stated that staff indicates that the proposed pawn shop use and existing Eden Interiors require 22 parking stalls. He said that in 2007, 13 stalls were required for building number 4 and that nothing else has changed on the site that should require more parking stalls. Mr. Taylor stated that parking is based on the type of use, and that the issues Mr. Shegrud is talking about don't necessarily apply to this application. Mr. Shegrud disagreed and said that the parking requirements for this use will have an impact on the entire property and that he is still seeking tenants for this location. He asked if there is an inference that buildings are across boundary lines, because he has records from Ensign Engineering show that the lines have been eliminated. Mr. Shegrud said that the conditions related to striping and angled parking also need clarification because they were originally approved to be oriented for ease of access.

Tim Taylor stated that some of the issues brought forward by Mr. Shegrud should likely be addressed outside of this meeting. He asked Mr. Tingey to respond to the issues that are directly related to this application. Mr. Tingey said that the landscaping, setbacks and parking requirements are code standards, which is the basis for staff's conditions. He stated that when a Conditional Use Permit application is received, staff will review the site and ensure that it is brought up to standards. He said that if a new use does not require a Conditional Use Permit, then staff will not evaluate the site or require the site to be brought up to current standards. He stated

that in the past some uses at this location have not required a Conditional Use Permit and so have not been scrutinized by staff. Mr. Tingey said that a Conditional Use Permit changes the site review process. He stated that the information on file related to the property line shows that it runs through an existing building and requested that evidence showing this has been corrected be submitted to city staff. In relation to parking, the code requires 5 feet of landscaping adjacent to the parking area which was originally proposed on the site plan but was never installed. He said that this requirement cannot be modified by the Planning Commission because it is a standard of the code, however an application could be filed for review by the Board of Adjustment to determine if a variance would be appropriate. Mr. Tingey said that 60 degree angled parking requires a 20-foot aisle distance. He stated that the original plan does not show two sets of 60 degree parking and that the plan should be modified to show both areas of angled parking. He said that with the existing businesses at the site, and with the addition of this proposed use, there is adequate parking at the site.

Mike Shegrud, 3688 Monarch Drive, Bountiful, stated that the 22 spaces are not specifically related to building 4. Mr. Tingey replied that they are for the entire site. He said that he does not think the 5-foot landscape buffer was actually submitted with the original site plan as it is handwritten and looks like it was added at a later time. He stated that the landscape will be difficult to accommodate.

Mr. Taylor closed the public comment portion of this agenda item.

Ray Black asked staff if it is possible to have 32 parking stalls at this site as indicated previously. Mr. Shegrud said that there are 40 stalls for the entire property.

Ray Black made a motion to approve a Conditional Use Permit for a pawn shop to be located at the property addressed 5805 South State Street, subject to conditions:

1. The Murray Building Official requires the structure to comply with building and fire codes. The owner must consolidate the property so that buildings do not cross boundaries and provide recording evidence from the Salt Lake County Recorder.
2. The project shall meet all current fire codes as required by the Fire Department.
3. A formal landscaping plan meeting the requirements of Chapter 17.68 of the Murray Municipal Code shall be submitted for approval by the Murray City Forester and be installed as approved prior to licensing. The landscaping in front of portions of the building has not been maintained, watered, and additional landscaping will need to be installed to meet Municipal Code Section 17.68. The new site plan and landscaping plan must include the required depth of 10 ft. of frontage landscaping and the 5 ft. depth of landscaping adjoining parking stalls at the property boundary to the east.

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4. All exterior trash containers shall be screened as required by Section 17.76.170.
5. Meet all Water, Sewer and Power Department requirements for the use.
6. Provide adequate paved and striped parking stalls based on the business uses and compliance to parking ordinance regulations including disabled person parking stalls to meet ADA regulations with signs posted. A revised parking plan is required and new parking lot striping is required to meet code prior to licensing.
7. The applicant will need to repair any damaged curb, gutter, sidewalk and trip hazards to meet the approval of the City Engineer.

Seconded by Karen Daniels.

Call vote recorded by Chad Wilkinson.

A _____ Jim Harland
A _____ Karen Daniels
A _____ Ray Black
A _____ Tim Taylor

Motion passed, 4-0.

EXPRESSIVE DESIGN ACADEMY – 5858 South 900 East – Project #11-66

Sheila Jacobs was the applicant present to represent this request. Tim Tingey reviewed the location and request for an amendment to a Conditional Use Permit for a cosmetology and beauty academy. He said that the property is located at 5858 South 900 East in the C-D-C zone. He stated that there was discussion during the previous Conditional Use Permit review related to parking for this site and that a shared parking agreement was submitted. Mr. Tingey stated that the compact parking stalls have been included in the parking calculation but is not a provision in the code and therefore cannot be considered in the total parking at the site. He stated that the proposal relates to a change to the business by adding a new retail service beauty salon in addition to the education component. He said that at the time of original Conditional Use Permit approval the applicant proposed a shuttle service for students parking at the church facility. He said that the shuttle service is still part of this condition, and additionally the education use and retail component have staggered hours so as not to overlap. Mr. Tingey stated that the parking standards have been met and staff is recommending approval. He said that clarification should be made on condition 6 to state that retail services beauty salon will only be open on non-school days or times per the proposed request.

Mr. Taylor asked if the applicant has been advised of this change. Mr. Tingey responded that they have.

Sheila Jacobs, 4700 South 700 East, stated that she has nothing additional to add to the staff presentation. She confirmed that she has reviewed the conditions and will comply.

Karen Daniels asked if the shuttle has been needed for parking. Ms. Jacobs responded that it has not. Mr. Black asked how many students are attending the school. Ms. Jacobs responded that they have 16 students enrolled, with 4 more scheduled to begin in August.

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

Jim Harland made a motion to approve a Conditional Use Permit Amendment for a cosmetology and beauty academy at the property addressed 5858 South 900 East, subject to conditions:

1. The project shall meet all applicable building code standards. The building official will require the applicant to provide stamped and sealed plans from the appropriate design professionals to include a code analysis.
2. The project shall meet all current fire codes and Murray Water and Sewer Dept. requirements.
3. Adequate parking is provided and striped to meet parking regulations for the business uses and additional parking must be provided for the school use with agreements with adjoining properties, a shuttle service must also be available at all times for use of the Discovery Christian Community parking lot as approved by the Planning Commission and staff.
4. Use of a trash container shall be screened as required by Section 17.76.170.
5. The second story of the building shall not be used or leased without meeting city code requirements and additional parking requirements.
6. The cosmetology school must operate from Wednesday through Saturday and cannot be extended to additional days. Additionally, the retail services beauty salon will only be open on non-school days or times per the proposed request.

Seconded by Karen Daniels.

Call vote recorded by Chad Wilkinson.

 A _____ Jim Harland

 A _____ Karen Daniels

 A _____ Ray Black

 A _____ Tim Taylor

Motion passed, 4-0.

Mr. Taylor allowed a 5 minute break at this point. The meeting reconvened at 7:17 p.m.

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

Mr. Taylor stated that this agenda item is a continuation from the previous Planning Commission meeting on 7/7/2011. He said that staff will present a report on items contained in the staff report as well as addressing other documents that have been submitted recently. He said that the applicant will then be invited to make some comments and then the meeting will be open for public comments.

Tim Tingey stated that at the prior meeting it was clarified that this issue is a legislative matter that the City Council considered a few years ago, and that modifications to the ordinance were adopted per Council approval. He said that the City Council organized a citizen task force in response to a number of concerns and issues brought forth by citizens and others related to public vs. private roads in residential subdivisions. He stated that the task force included citizens representing various parts of the city and professionals from a number of fields including architects and developers. Mr. Tingey stated that the issue being considered is the change that the City Council made to the city code. He said that staff is seeking a recommendation from the Planning Commission to the City Council. He said that there were opportunities to interpret the code and not require public roads for specific sites. He said that the interpretation has now been made and is not the issue to be discussed at this meeting. He said that the primary issue is public vs. private roads. He said that the City Council is the body that will make the final decision on this item. Mr. Tingey stated that he has met with the applicants on a number of occasions and the feasibility of putting a public road on this site has been discussed.

Chad Wilkinson, Community Development Planner, noted a typographical error on the staff report which should be 1.5 acre rather than 1 acre as referenced. Mr. Wilkinson stated the issue is whether private streets are appropriate, and what is the appropriate way for subdivision development to go forward. He stated there were a number of items raised by staff at the last planning commission meeting. He emphasized those issues were raised in the original review and were concerns of the city council and of the planning commission in 2007. He stated when staff reviewed this request of the Nielsen's, the areas of concern in 2007 are still areas of concern now and are good points raised by the citizen task force, by the planning commission and by the city council. He stated this request is not to be considered on a specific lot and it a text amendment and is policy issue. He stated when staff was reviewing this request, it was reviewed with the idea of how many other properties in the city would or could be affected. He stated that analysis was not meant to indicate there is a certain number that is acceptable or is not acceptable for private streets, but was simply to see what was out there and how many lots could potentially be affected by this proposal. Mr. Wilkinson stated the applicants have proposed revised language from their previous

proposal which was reviewed by staff. He stated the private streets approved in the past also required private maintenance. He stated those developments are now coming forward requesting the city to take over maintenance of those developments. He stated in the past those private street developments were intended to be maintained through home owners associations or conditions, covenants and restrictions (CC&R's) and are required for private maintenance. He stated the revised language presented by the applicant may be applicable only to their property. This is a delicate balance for these types of requests. Staffs' recommendation is that it is not good policy to create a law that applies just to one property. As an example of that situation, there could potentially be a property owner in a single family residential neighborhood request a building height that was 55 feet wherein the zoning limits the height to 35 feet. In approving a code that allows for just that specific situation, staff must look at issues of equity of fairness and the ability of someone in the future to modify the code to be consistent. The decision that was made in 2007 was a broad policy decision that simply did not allow private streets any longer and required that streets be public streets in the future and was a way to address the issue of equity. There were other standards that were adopted during that same time, some of which took longer to be analyzed. One of those standards was the Residential Infill ordinance that was put in place to try to address some of these smaller properties and allows for flexibility in the standards of the code to address such issues that arise.

Mr. Wilkinson stated that based on the issues that were identified in 2007 by the planning commission and city council, staff feels it is still an appropriate policy and is recommending denial of the proposed text amendment.

Tim Taylor stated that he and Ray Black have read through the staff report, minutes and listened to the recording of the planning commission meeting on July 7, 2011 since they were both absent from that meeting. Mr. Taylor stated at the last meeting the applicant had been directed to differentiate their request. Tim Tingey clarified that in his meetings with the applicants he communicated to them the challenges that he felt the applicants would have as they moved through a process for an ordinance change to completely reverse the original proposal reviewed by the planning commission, citizen task force and city council. He indicated at that time to the applicants that he and his staff would not recommend approval of this proposal. He suggested that they look at differentiating their proposal in some way from the original proposal and that differentiation could be a variety of things including lot size. Mr. Tingey stated he is still not comfortable with this proposed change because he feels the policy adopted is sound, has been well thought through, and that it mitigates a lot of the problems that occurred previously that the city council had been hearing about by citizens and others.

Jimmy Nielsen, 41 Paula Circle, Sandy, stated he is representing this application. Mr. Nielsen clarified Mr. Tingey's previous statement indicating that they are attempting to completely reverse the ordinance. He stated that they are not attempting to reverse the current ordinance, and are trying to leave as much of the current ordinance intact as possible. He stated they are wishing to utilize their odd shaped, family owned property since 1940, in a reasonable manner. He stated they have followed the directions of the Community Development office and have narrowed the ordinance down to this proposal. He stated that this does not seem to be the best way to do this

and they ought to be able to work something out that is good for both sides. He stated they started this process a year ago and have put forth all they can. Mr. Nielsen stated the property they are wishing to develop is located at 421 East 5300 South.

Tim Taylor asked Mr. Nielsen to present new information only since this item has been continued from the last meeting held on July 7th. He also stated that he and Ray Black were absent from the July 7th meeting but both of them have listened to the recording of that meeting and have reviewed the materials submitted for the meeting. He asked Mr. Nielsen not to duplicate information that was given on the July 7th meeting.

Jimmy Nielsen had a PowerPoint presentation showing the location of the property, existing vegetation, and proximity to the Murray park. Mr. Nielsen stated an issue that was raised since the last meeting, was a discrepancy about the easement specified for the property. Mr. Nielsen stated the recorded easement is 16 feet. Staff provided minutes' indicating the easement was 25 feet (referring to the planning commission meeting minutes of April 16, 1974). He stated they believe it was ultimately approved at 16 feet and that his father was in compliance when he recorded that. He stated there are two documents which are a plot plan (blue print copy) which was submitted to the city for distribution to all city departments for approval. Tim Taylor asked Mr. Nielsen if he has submitted this document to the city staff. Mr. Nielsen responded he has not submitted this document to the city staff.

Mr. Nielsen stated this "blue print copy" shows a 16 foot right-of-way easement along the east edge of the property. The second document he presented is a Building Inspection Plan Review Record and Worksheet" from the office of Charles D. Clay, City Engineer and Lloyd Dalton, Chief Building Inspector dated August 22, 1974. He said that there is a specific item #4 that lists: "Submit fully dimension plot plan with current and proposed land use" with a check mark to the side of this comment and there are no remarks. Mr. Nielsen stated this was the plot plan his father would have submitted to the city and the check list given to his father. His father was ultimately issued a building permit, the residence was constructed, it was inspected, he has receipts from the inspectors and the home was occupied. He stated that Murray City was fully aware of his father's intentions and the city allowed him to build the house and live in it, indicating that it was in full compliance with the city at that time.

Jimmy Nielsen stated that he called Dennis Hamblin, who was the current planning commission secretary who took those minutes from 1974. Mr. Hamblin indicated to the Nielsen's that 15 feet could have been possible and was not out of the question. He stated that he submitted a Grama request for the records in 1974 time period and that the city has responded to him that there is no documentation associated with the building permit number they have. He stated they also inquired at the Salt Lake County Records office regarding records from 1974, but the county also indicated that the documents are so old they are difficult to come across.

Jimmy Nielsen stated he wished to list some comparables. He said that The Willows Apartments were approved in the 1970's and has a 700-foot long access which varies in width from 16 feet to 18 feet wide. The Nielsen's home was approved

contemporary to this property. A newer development on Gillen Lane was approved in 1994 and was a 25 foot easement but only 20 feet of it was required to be paved. He received this information from Charles Clay. This development on Gillen Lane serves at least 5 houses and a small apartment building and the remaining 5 feet of the easement are inaccessible to vehicles because it is overgrown and there is an existing fence. Another more contemporary development, Forest Creek, has a width entry including the gutter to the edge of the curb that varies from 20-22 feet in width. This development serves over 20 houses and building lots are sold and building continues today. Mr. Nielsen estimates that the Forest Creek development was approved before 2007. He stated that a nearby neighbor, Chad Woolley, recently had a subdivision approved and indicated that Community and Economic Development staff had allowed two non-conforming lots in his subdivision based on existing conditions and without a variance. Mr. Nielsen provided a written letter from Mr. Woolley to the Planning Commission stating this and also urging them to consider the limitations of the Nielsen property. He said that he is requesting that the Planning Commission give his family the same consideration given to Mr. Woolley.

Mr. Nielsen said that he understands the city's commitment to their interpretation of the code, but his intent was to try and find another way for the city to make this approval without modifying the code. He stated that this property was developed starting from the back, which is where his great-aunt built her home for privacy. He said that when his father built his house the city specified an easement along the east edge of the property for access to that house and the rest of the property. He stated that the original home built by his great-aunt has been torn down but the garage remains along with the private lane. Mr. Nielsen reiterated that they are requesting a private lane for access. He said that he has been advised that he must obtain either a code amendment or a variance and that in meeting with the City Engineer there has been no indication that a variance will go anywhere. He said that they have issues with this being a public street due to its location near the park. Mr. Nielsen said that they are suggesting a 20-foot lane that is fire code approved and has all of the necessary elements. He stated that a few items have been added to the proposed amendment to make it more specific, namely that a property have limited access to a public road, have an existing private lane, and have a home built at the rear of the lot first with an additional home built at the front of the lot later that required the city to establish access to the back. He said that because of privacy issues, it could also be stated that a property would have to be adjacent to a public park or gathering space. Mr. Nielsen said that there was a question in the staff report regarding whether or not the existing lane qualifies as a private lane. He stated that he believes it does meet the definition of being a private road based on Murray City Code, which defines a private road as a right of way of easement, in private ownership, not dedicated or accepted as a public street which affords the principal means of access to two or more sites. He stated that his father's driveway does not connect directly with 5300 South, but rather connects to the private lane which in turn connects to 5300 South. He said that the private lane also served as access to his great-aunt's house. Mr. Nielsen said that according to Mr. Clay, there was no requirement to establish a private lane at that time. He stated that criteria for a private lane must meet the requirements of the International Fire Code for a lane between 150 and 500 feet in length, a width of 20 feet is required and the lane must be posted and kept clear at all times. He stated that Murray City would have no obligation to maintain or service the

road or utilities and that the city would be granted access to read meters or any other purpose they require. He said that it would be the responsibility of the residents to bring the lane up to public standards if they choose to seek city services. He stated that Mr. Wilkinson indicated previously that this has been part of the ordinance so he doesn't understand why there is a problem if the city has exempted itself. Mr. Nielsen said that he asked Mr. Clay if there were problems with private lanes established while he was the City Engineer and he said that he didn't because the residents were held responsible since the road belonged to them. Tim Taylor stated that there are still a number of phone calls to city staff related to this issue. Mr. Nielsen said that this shouldn't overrule sensitive development of a property. He stated that water and sewer lines on the property must be designed and inspected to city specifications. Ms. Daniels stated that this information is the same as presented from the earlier meeting.

Jimmy Nielsen said that a proposed change would read that the area of the lane shall not be included in the overall area of the lot. He stated that there were concerns previously that developers were using part of the lane as the lot area and that he proposes to subtract the area of the lot so that the site is not overbuilt. He said that the development of the property shall meet the requirements for a single family residential infill subdivision, so they are not proposing any new zoning for this site. He stated that staff has indicated that a private road is not in the public interest. He said that the public should not be interested in paying to maintain a 350-foot long dead-end road with no parking and no park access that is surrounded entirely by private property. He stated that a public road in this situation does not make sense. Mr. Nielsen said that his family proposes to use the property that they own in a responsible and sensitive manner, and the proposed lane meets all safety and access requirements and is sensitive to the existing environment. He presented a diagram outlining fire truck access. Mr. Taylor said that this information was presented previously. Mr. Nielsen stated that they are working within current zoning, and that privacy and safety are real concerns with the park next door and trespassing and traffic congestion will endanger property and life safety. He said that less impervious surface reduces storm water runoff and urban heat load and is ultimately better for all. He stated that additionally they will pay taxes. He said that his family is the public, and that this property has been owned by his family for 70 years, which pre-dates the current ordinance. He stated that the shape of the lot hasn't changed. Mr. Nielsen said that his parents are third generation Murray residents, and that properties like this were overlooked when the public road requirement was passed. He said that he understands there was good intent behind the ordinance, but that there are always unintended consequences. He said that he has been told that staff will not recommend approval of an ordinance amendment or a variance, so they are left with the options to do nothing, tear down his father's home for an unnecessarily short and wide road, or to buy a neighbor's house and tear that down instead, or to develop one flag lot which would still be difficult to get approved because it would require 28-foot access.

Mr. Nielsen referred to the Forest Creek P.U.D. and the existing 20 foot width access for the subdivision wherein the entrance varies between 20-22 feet. He stated his family owns an acre of property that the access can be developed in an identical way. He stated he is an architect by profession and he studies space on a daily basis. A

variety of scales and spaces are key to a vibrant community and private lanes have their place. People seek out communities with intimate and established characters and private lanes allow for that. He stated as a property owner, a parent, a lifelong resident of Murray, he wishes desperately for his children to be able to live on this land and to be able to design and build his own home as an architect. He wants to be able to help his parents maintain this large lot. He asked the planning commission support this request in recommending to the city council.

Tim Taylor asked Jimmy Nielsen if he has several people he wished to have comment on this request. Mr. Nielsen responded in the affirmative. He stated that his family is here to express their love for the property they have lived on for many years and their love for the community in Murray. He stated that he would like Don Patton, resident, to speak since he was at the meeting held in 1974 regarding their property. Mr. Taylor asked that there not be duplication of comments made and that facts or supportive material be given in regards to the text amendment and not site specific information. Mr. Taylor stated that there is no doubt in his mind that the Nielsen family has a great love for their property and he is respectful of that, but the issue at hand is a text ordinance amendment.

Don Patton, resident, stated he was Public Service Director in 1974 when this property was approved and that Charles Clay and Lloyd Dalton worked for him. He stated he is aware of the situation as it was at that time. Mr. Patton stated the Nielsen family is a great family. He stated when he was the Director, the city allowed private roadways and there were problems and Alpine & Avalon Streets are good examples of those problems, but there were good developments that resulted as well. He stated the length of the lots through this particular area are deep and was a mistake and the lots shouldn't have been as deep. Mr. Patton stated that he didn't realize that the city had changed its policy regarding private drives and overall he concurs with this policy. This particular situation where property is boxed in by the park and a parking lot, and single family homes to the west where if something isn't done its going to lay dormant and be empty and ultimately will result in a weedy, tree filled patch. He stated that property should be utilized. He stated that the city ought to be sympathetic to the association of grandparents, children and grandchildren being able to live close together and this proposal would be a family plot. He stated the city ought to take care of its citizens. He stated that Jimmy Nielsen is an architect and would design a home and development that would be excellent and the city would be proud of.

Marta Nielsen, 5495 South Walden Meadows Drive, stated she is an urban planner for the city of North Salt Lake and a former youth mayor of Murray City. She stated that she has been frustrated and disappointed with the way they have been treated in the process they have been put through to get to this point. She stated that the city has shown fear and concern about potential unintended consequences and made a great effort to find ways to shut them down. She stated staff has refused to work with them towards a solution and refused to recommend approval of the proposed text amendment. The city code is a living document, meant to grow and adapt to meet the changing needs of citizens and should offer rules and guidelines to shape and promote quality development while respecting private property rights. Changes in the code will inevitably have unintended consequences. This is especially true when the

changes offer extreme solutions such as outlawing all new private streets. Instead of just modifying the code to resolve problems like those on Lincoln Street, the city has chosen an extreme approach that has eliminated the possibility of upscale private neighborhoods that attract established educated people. This consequence could not have been intended. She stated that they are approaching the commission as victims of an unintended consequence and ask the commission to recommend this text amendment. Ms. Nielsen stated they understand that a text amendment is not to be taken lightly and they are not attempting to undo everything that was done in 2007, but they are hoping to resolve one of the problems it created. Ms. Nielsen read a statement written from Randy Nielsen: "Institutions and bureaucracies ultimately prove their worth not by blindly and rigorously enforcing rules, but by judiciously allowing worthwhile exceptions."

Amy Nielsen, 41 Paula Circle, Sandy, stated it is important to note that this is an emotional issue. She stated that she is not originally from Murray, but those in attendance are from Murray and they did not ask people to attend this meeting. She stated those present are concerned citizens about their own property and about the way they would be treated if they were to go through this same process. She stated it is important the proposed ordinance text amendment and is a legislative process and will ultimately be up to the city council, but any support is incredibly valuable. She stated she works in the media profession and many times people approach them because they feel powerless and they feel victimized by a system. She stated that they feel victimized and powerless and the commission has the ability to look at this very real situation for very real people who are just trying to accomplish a dream that they have had for decades.

Tim Taylor stated that comments should reflect new information and not repetitive information.

Judy Nielsen, 5495 South Walden Meadows Drive, stated she is Marta's mother. Ms. Nielsen stated she works with the at risk students in Murray School District. She stated a building lot in Murray City has a huge price tag and any parent would want to be able to give that to their children. She stated that the Nielsen's have been model citizens and a real asset to their neighborhood and community and their children emulate their parents.

Tim Taylor commented that the strength of the Nielsen family is not in question here, the Nielsen family is fantastic, and staff is wonderful and do an amazing job. The task at hand is a difficult task dealing with text in a book that has been put together as a city involving everyone's best efforts. This is an important issue at hand and the ordinance proposal is not a reflection on the Nielsen's character and their ability to develop their property.

Annie Nahoopii, 13162 Cherry Crest Drive, Draper, stated she is the second oldest child of Randy Nielsen. She stated the constant request for facts to be presented at this meeting is somewhat unnerving. She stated this is not a purely objective issue and is very much subjective. Tim Taylor stated that the commission is here to help enforce that the city code is followed and the commission makes recommendations on whether applicants are or are not following the code. The city council is the body

that makes the decision based on other objective things and the planning commission does not have that same ability. For this reason the commission must review facts as they relate to the application being considered, i.e. private streets.

Ms. Nahoopii stated that her facts are less than factual, but are factual to her. She stated that there is confusion that this is a static issue and if the commission denies this proposal that nothing changes and her parents can't keep up their property and eventually the property would be sold to the highest bidder and big road would be constructed down the middle of their property and the most financially advantageous houses will line the road and any green space that could have been retained will be reduced to a minimum as has been seen in current building policies. She stated to her family this property is relative to their past, the present and future.

Dale Fuelling, 480 East 5300 South, stated a couple years ago the Murray Church of Christ wished to build next to his property and he was not opposed to the church proposal but he wasn't very excited about tearing out the landscaping in order to accommodate a parking lot. He stated there was concern regarding the access into the church property where there would be a off-lane where vehicles could get off 5300 South so as not to impede traffic and there was an exception made. The other exception made was regarding the requirement for fire access being within 75 feet; whereas the church was 165 feet from the road and the Murray Fire Department made the decision that they could turn around in the parking lot and therefore only required just one ingress and not an egress access. Mr. Fuelling stated he spoke with the Murray Mayor who indicated that "the city gives special consideration to churches". Mr. Fuelling stated that exceptions have been made in the past and an exception should be made in this case regarding the Nielsen's text ordinance amendment.

Tim Taylor stated that the planning commission cannot make exceptions. He stated that a site plan approval process is reviewed by staff and is different, and in a conditional use permit process the commission does have some flexibility. He clarified that this proposal is different because it is a text ordinance amendment and the commission does not have the ability to make exceptions to ordinances. He stated the commission makes recommendations to the city council, the legislative body, in regards to text ordinance amendments.

Karen Daniels stated that comments from the audience need to be made at the podium and when recognized by the chairman, and that outbursts from the audience are not allowed.

Jimmy Nielsen stated this is an amendment request and they are attempting to provide the commission with all the possible reasons to approve their request. He stated that in his opinion, everything that has been said is applicable.

Jim Harland stated that at the last meeting it was indicated that there is still a way for the Nielsen's to develop their property and it is not a do or die situation. The Nielsen's can still develop their property and have a subdivision with a public street and go to the Board of Adjustment to apply for a variance on the street width. Mr. Nielsen responded that this process does not deter them from applying for a variance but they

have met with the planning staff and the city engineer who have given every indication that they don't feel a road built to the width that his father built will meet any public road standard, and the likelihood of that being approved is very slim. Aside from that there are issues living next to the park and a private lane would take care of those associated issues. Mr. Nielsen asked why the city would want a public road because a private road does not allow parking along the road, and they are willing to plow their snow and bring the garage cans up to 5300 South for collection. Mr. Nielsen stated that they are willing to agree to have their road snow plowed within a time period such as 12 hours so as not to infringe on fire safety access. He asked what sense it makes for the city and the citizens of the city to have the road be public and pay for the road and associated costs where the road would only serve their individual family lots.

Ray Black stated he has owned property for 64 years in another city here in the valley and that he has been in numerous planning commission meetings. He stated that based upon his experience, if the code states specific standards that is the way it is. He stated city took 333 feet of his property and he was not compensated in anyway and at that time the property was going to \$1,000/sq.ft. and there wasn't a whole lot he could do about it because the code regulated it. He stated that he understands the frustration of the Nielsen's and has lived that life. He stated that he has been involved in other pieces of property wherein he has had similar problems. He stated that what he has to do is be smart enough or have enough ingenuity to do the best he can with what he has and he doesn't get his way very often in those cases and he knows how the Nielsen's must feel. Mr. Black stated the commission members do not get paid for dedicating their time on behalf of Murray City and its citizens and they serve at the pleasure of the Mayor. He stated that the planning commission cannot approve the private street, the engineering department can't approve it, nor can the Mayor. It is a policy issue and has to go through this process which ultimately will be decided by the city council. Mr. Black stated that the commission feels at times that they are between a rock and a hard spot. He stated that comments have been made tonight that the commission is not fair and other derogatory comments, but for what they are getting paid, this is not a party and the commission tries to sincerely do the best they can. Jimmy Nielsen responded that the reason they are fighting so hard is that they feel the commission's recommendation is so important, but this is an amendment and goes outside the existing code. He stated that they are proposing a new code. He stated if Mr. Black has had difficult experiences in the past, that he ought to be more inclined to allow for this property to be used in a reasonable manner. Mr. Black responded that he does not agree with that statement because he can see the wisdom in some of the things the city did to his property and he has lived with private streets in Murray City and has been on the commission for 7 years. He stated he was one of the members who wished to get rid of private streets because there were so many problems associated with private street developments and something needed to be done. And, rather than the commission just make a recommendation in that regard, there was a task force committee that studied and worked on the issues and made a recommendation to the commission.

Jimmy Nielsen stated that he is an accredited LEED professional and this project is an example of LEED criteria, and the city is pursuing LEED criteria for its downtown district recently established. He stated that reducing pavement is key to LEED and that is what they are trying to do and are doing so in a way that will be safe or that

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would cause the city problems in the future. He stated that since this property has been around for so long, it predates the code and can be developed in a sensitive manner and is a special piece of property and deserves special consideration.

Jim Harland made a motion that the planning commission send a recommendation of denial for the proposed ordinance text amendment, project #11-56, to the city council. Seconded by Karen Daniels.

Call vote recorded by Chad Wilkinson.

A _____ Mr. Harland

A _____ Ms. Daniels

A _____ Mr. Black

A _____ Mr. Taylor

Motion passed, 4-0.

Mr. Taylor commented that this process has been going on for a year and is a very complex and difficult issue and he knows that the city staff has worked really hard and that the residents have put a significant amount of time and effort into this and the commission appreciates that effort.

Meeting adjourned.

Tim Tingey, Director
Community and Economic Development