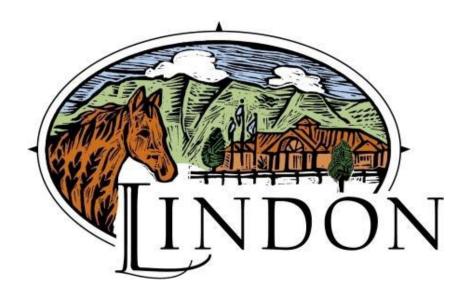
# Lindon City Council Staff Report



Prepared by Lindon City Administration

February 3, 2015

# **Notice of Meeting of the Lindon City Council**



The Lindon City Council will hold a regularly scheduled meeting beginning at 6:00 p.m. on Tuesday, February 3, 2015 in the Lindon City Center council chambers, 100 North State Street, Lindon, Utah. The agenda will consist of the following:

Scan or click here for link to download agenda & staff

report materials:

#### **WORK SESSION – 6:00 P.M.** - Conducting: Mayor Jeff Acerson

#### I. Tour of Lindon City Fire Station facilities

(60 minutes)

The City Council will tour the Lindon City Fire Station facilities at 35 West 60 North and the adjacent firemen house on the corner of 60 North Main Street.

#### **REGULAR SESSION – 7:00 P.M.** - Conducting: Mayor Jeff Acerson

Pledge of Allegiance: By Invitation Invocation: Van Broderick

I. Call to Order / Roll Call

(Review times are estimates only)

(5 minutes)

2. Presentations and Announcements

(5 minutes)

a) Comments / Announcements from Mayor and Council members.

3. Approval of minutes: January 20, 2015 (5 minutes)

4. Consent Agenda – No Items

5. Open Session for Public Comment (For items not on the agenda)

(10 minutes)

#### Public Hearing — Zone Map Amendment, ~53 N. State, Ord.#2015-04-O

(20 minutes)

Brandon Pierce requests approval of a zone map amendment to reclassify Utah County Parcel ID #14:069:0266 from General Commercial (CG) to General Commercial A (CG-A), to allow used automobile sales on the lot. The Planning Commission recommends approval.

7. Public Hearing — Ordinance Amendment, LCC 17.04.090, Ord.#2015-03-O Lindon City requests approval of an amendment to Lindon City Code 17.04.090. The proposed amendment

would define when amendment proceedings are formally initiated. The Planning Commission recommends approval.

#### 8. Discussion Item — Pavement Management & Road Funding

(45 minutes)

Mark Christensen, contract City Engineer, will present an overview of pavement management principles and review findings from an extensive Lindon City pavement condition study with estimated funding needed to maintain the roadways in the future. No motions will be made.

#### 9. Discussion Item — Public Safety Building: Timeline & Funding

(45 minutes)

The City Council will review the timeline for design & construction of the future public safety/fire station building and will discuss building alternatives, public involvement, and possible funding options. No motions will be made.

#### 10. Review & Action — Franchise Agreement with Veracity Networks, LLC

(5 minutes)

The City Council will review and take action on an agreement to permit Veracity Networks, LLC, limited use of the public street right-of-way for the installation of fiber optic communications system.

#### 11. Review & Action — Franchise Agreement with Syringa Networks, LLC

(5 minutes)

The City Council will review and take action on an agreement to permit Syringa Networks, LLC, limited use of the public street right-of-way for the installation of telecommunications system.

#### 12. Council Reports:

(20 minutes)

A) MAG, COG, UIA, Utah Lake, ULCT, Budget Committee

- Jeff Acerson

B) Public Works, Irrigation/water, City Buildings

- Van Broderick - Matt Bean

C) Planning, BD of Adjustments, General Plan, Budget Committee D) Parks & Recreation, Trails, Tree Board, Cemetery

- Carolyn Lundberg

- Randi Powell

E) Administration, Com Center Board, Lindon Days, Chamber of Commerce

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F) Public Safety, Court, Animal Control, Historic Commission, Budget Committee

- Jacob Hoyt

#### 13. Administrator's Report

(20 minutes)

#### **Adjourn**

This meeting may be held electronically to allow a council member to participate by video conference or teleconference.

Staff Reports and application materials for the agenda items above are available for review at the Lindon City Offices, located at 100 N. State Street, Lindon, UT. For specific questions on agenda items our staff may be contacted directly at (801)785-5043. City Codes and ordinances are available on the City web site found at <a href="https://www.lindoncity.org">www.lindoncity.org</a>. The City of Lindon, in compliance with the Americans with Disabilities Act, provides accommodations and auxiliary communicative aids and services for all those citizens in need of assistance. Persons requesting these accommodations for city-sponsored public meetings, services programs or events should call Kathy Moosman at 801-785-5043, giving at least 24 hours notice.

Posted By: Kathy Moosman Date: January 30, 2015

Time: ~1:00 p.m. Place: Lindon City Center, Lindon Police Dept, Lindon Community Center

# WORK SESSION - 6:00 P.M. - Conducting: Mayor Jeff Acerson

#### I. Tour of Lindon City Fire Station facilities

(60 minutes)

The City Council will tour the Lindon City Fire Station facilities at 35 West 60 North and the adjacent firemen house on the corner of 60 North Main Street.

#### **REGULAR SESSION – 7:00 P.M.** - Conducting: Mayor Jeff Acerson

Pledge of Allegiance: By Invitation Invocation: Van Broderick

### Item I - Call to Order / Roll Call

February 3, 2015 Lindon City Council meeting.

Jeff Acerson
Matt Bean
Van Broderick
Jake Hoyt
Carolyn Lundberg
Randi Powell
Staff present:

## **Item 2 - Presentations and Announcements**

a) Comments / Announcements from Mayor and Council members.

# <u>Item 3</u> – Approval of Minutes

• Review and approval of City Council minutes: January 20, 2015

4	Street, Lindon, Utah.	Ž	,	
6	<b>REGULAR SESSION</b> – 7:00 P.M.			
8	Conducting: Pledge of Allegiance:	Jeff Acerson, Mayor Hugh Van Wagenen,	Planning Director	
10	Invocation:	Randi Powell, Counc	_	
12	PRESENT Jeff Acerson, Mayor		ABSENT	
14	Randi Powell, Councilmember Matt Bean, Councilmember			
16	Van Broderick, Councilmember Jacob Hoyt, Councilmember			
18	Carolyn Lundberg, Councilmember Adam Cowie, City Administrator			
20	Hugh Van Wagenen, Planning Director Jordan Cullimore, Associate Planner			
22	Cody Cullimore, Chief of Police Kathy Moosman, City Recorder			
24	<ol> <li>Call to Order/Roll Call – The meeting was called to order at 7:00 p.m.</li> </ol>			
26	2. Presentations/Announcements –			
28			here were no announcements at this time.	
30	3. Approval of	Minutes – The minute	es of the regular meetings of the City Council	
32	of January 6,	2015 were reviewed.		
34	OF THE REGULAR	CITY COUNCIL ME	MOVED TO APPROVE THE MINUTES ETING OF JANUARY 6, 2015 AS	
36	VOTE WAS RECOR	DED AS FOLLOWS:	LL SECONDED THE MOTION. THE	
38	COUNCILMEMBER COUNCILMEMBER	POWELL	AYE AYE	
40	COUNCILMEMBER COUNCILMEMBER	НОҮТ	AYE AYE	
42	COUNCILMEMBER THE MOTION CAR	L LUNDBERG RIED UNANIMOUSL	AYE XY.	
44	4. Consent Age	enda – No items.		
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The Lindon City Council held a regularly scheduled meeting on **Tuesday, January 20, 2015, at 7:00 p.m.** in the Lindon City Center, City Council Chambers, 100 North State

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5. **Open Session for Public Comment** – Mayor Acerson called for any public comment not listed as an agenda item. There were no public comments.

#### **CURRENT BUSINESS**

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6. Public Hearing: Ordinance Amendment, LCC 17.32.320 Flag Lots. Rick Chatwin requests approval of an amendment to LCC 17.32,320 Flag Lots. The proposed amendment would modify flag lot setback requirements to reflect typical setback requirements for standard lots in the R1 Single Family Residential zone (front/rear) -30 feet; side -10 feet).

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COUNCILMEMBER HOYT MOVED TO OPEN THE PUBLIC HEARING. COUNCILMEMBER BRODERICK SECONDED THE MOTION. ALL PRESENT VOTED IN FAVOR. THE MOTION CARRIED.

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Jordan Cullimore, Associate Planner, gave a brief overview of this agenda item stating this is a request by Rick Chatwin (who is in attendance) who is requesting approval of an amendment to Lindon City Code 17.32.320 Flag Lots. He noted this proposed amendment would modify flag lot setback requirements to reflect typical setback requirements for standard lots in the R1 Single Family Residential zone (front/rear) - 30 feet; side - 10 feet).

22 Mr. Cullimore noted the Planning Commission and City Council have authority to 24 approve flag lots when certain criteria, identified in LCC 17.32.320, are satisfied. Mr. Cullimore explained that when the existing flag lot ordinance was passed, the City

- 26 Council and Planning Commission expressed concerns that dwellings on flag lots could invade on the privacy of neighbors because flag lots are typically situated behind
- standard lots. Mr. Cullimore further explained when administering the ordinance, staff 28 has observed that the more restrictive setback requirements do not appear to be necessary
- 30 to preserve a reasonable level of privacy on neighboring lots. He noted that typical setbacks applied to flag lots would provide neighboring lots with the same space between
- dwellings that standard lots have and it would also afford flag lot owners less restrictive 32 buildable areas. He went on to say that since the ordinance was passed staff has identified 34
  - two (2) flag lots that have been created and built on and it hasn't seemed to make too much of a difference to have the more restrictive setbacks.

Mr. Cullimore stated that Mr. Chatwin would like to create a flag lot at approximately 200 South and 400 West, but the more restrictive setbacks will make it difficult for him to situate the house the way he would like to on the lot, so, he is requesting that the setback requirements on flag lots be modified to reflect the setback

requirements on standard lots in the R1 Single Family Residential Zone. Mr. Cullimore 40 stated that staff feels the change would not have an adverse effect on the surrounding

42 properties.

44 Mr. Cullimore then referenced the current flag lot ordinance that has the following setback requirements as follows:

Front: 30 feet 46 Rear: 50 feet

48 Side: 20 feet 2 Mr. Cullimore also referenced the Standard setback requirements in the R1 Single Family Residential Zone as follows:

4 Front: 30 feet Rear: 30 feet 6 Side: 10 feet

- 8 Mr. Cullimore then stated the Planning Commission recommended the following setbacks to the Council:
- 10 Front: 30 feet Rear: 30 feet 12 Side: 20 feet

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14 Mr. Cullimore commented after presenting this information to the Planning Commission their discussion focused mostly on the side yard setback. He noted there was 16 a concern that if the side yard were only the typical 10 feet, then an adjacent property owner with a large, deep lot would potentially not only have a home within 10 feet of the property line in the front, but also have a home within 10 feet of the property line 18 overlooking their backyard also. Mr. Cullimore stated the Commission was not comfortable encroaching that closely on the back yard privacy of a neighbor and thought 20 it was appropriate to keep the side yard setback requirement to 20 feet. Mr. Cullimore noted that modifying the rear yard setback from 50 feet to 30 feet was thought to have 22 minimal effect on the adjacent property owners as a minimum distance of 60 feet between 24 any primary dwellings would still be maintained as rear yards abut one another.

Mr. Cullimore also mentioned at that meeting staff recommended that the Commission and Council consider adjusting the height requirement on flag lots. Mr. Cullimore explained that the previous City Council, at the time the existing ordinance was passed, restricted the height of dwellings on flag lots to 25 feet. Mr. Cullimore further explained that the Commission and Council may consider adjusting this requirement to reflect the height requirement of dwellings (35 feet) on typical residential lots for reasons similar to those previously discussed (it likely will not adversely affect adjacent standard lots, and it will allow flag lot owners greater flexibility). He then showed an example of a two-story home on a flag lot that meets the 25 foot height limit and that shows an unusual roof pitch in order to satisfy the requirement.

Mr. Cullimore commented that the Planning Commission felt that the 25 foot height limit makes for odd looking roofs without substantially protecting the privacy of neighbors. Therefore, the Commission recommended changing the height limit to 35 feet on flag lots. Mr. Cullimore noted that staff feels there are no adverse effects with the proposed change and feels it is an appropriate adjustment. Mr. Cullimore asked if there were any questions at this time.

Councilmember Powell inquired if the parcel is already platted and purchased. Mr. Chatwin stated it is purchased not platted. Mr. Cullimore made note that certain criteria must be met when considering a flag lot. Councilmember Hoyt asked Mr. Chatwin if he feels, in his opinion, if the 20 ft. side setbacks on the side yards will be sufficient to put the house at that location. Mr. Chatwin stated the lot is weird shaped (very north and south) and skinny (east to west) and optimally if he tilts it to face Mount Timpanogos it infringes into the 20 ft. setback, but if it were at 15 ft. it would fit perfectly; then the backyard is deeper and it lays out better. He noted there will be a fence around the total perimeter.

Councilmember Lundberg pointed out that there will more of these types of applications as infill is inevitable in the city. Councilmember Hoyt agreed that with low density and large lots we will be seeing more requests for flag lots. Councilmember Hoyt asked for Councilmember Bean's opinion on the 20 ft. vs. the 10 ft. that the Commission discussed at the meeting. Councilmember Bean commented that he would be comfortable with a specific situation where the Planning Commission and City Council would have the discretion (on a case by case basis) to make an exception. He noted that the current ordinance has a statement about the discretion of the Council and Commission, but because there are so few flag lots in the city (with more in the future), he doesn't have any concerns if the Council chooses to go that direction. Councilmember Bean went on to say that the

12 City Council looked at this issue about seven years ago where they reduced the height from 35 ft. to 25 ft. because there were concerns of privacy. He noted that one way to address this may be to give more discretion to the Council and Commission. Councilmember

this may be to give more discretion to the Council and Commission. Councilmember
 Lundberg commented that we have to be careful not to set one rule that we will constantly
 be making exceptions for and that may appear arbitrary and capricious.

Mr. Cullimore mentioned that the Commission talked about who would have the discretion to modify the setbacks on a case by case basis (City Council, Commission or staff). He noted that there would have to be some straightforward criteria established to produce consistent results which would have to be researched. He explained that after discussion the Commission agreed to stay away from that scenario and felt comfortable with the 20 ft. 20 ft. 30 ft. 30 ft. setbacks and to keep it consistent. Mr. Cullimore stated that staff can certainly look at other options to establish the criteria.

Mr. Van Wagenen commented that Mr. Chatwin has been a considerate applicant and is aware that this change may have an impact throughout the city, so he feels he can make the 20 ft. setback work although a 15 ft. setback would be preferable. Mr. Van Wagenen went on to say the Planning Commission thought the 20 ft. setback may work and they would also not be opening up a "can of worms." Mr. Van Wagenen mentioned that Mr. Cullimore made a good point that if there is some discretion built in, at some level, to base the evaluations on as to not appear arbitrary. He pointed out that there are always risks involved with discretionary calls in any ordinance amendment.

Councilmember Lundberg mentioned that the current side setback is 10 ft. and questioned what will be accomplished by doubling this to 20 ft. on these types of applications. Mr. Van Wagenen stated that the Commissioners agreed it is related to privacy issues and maintaining another 10 ft. of separation helps to preserve more privacy in the backyard. Councilmember Powell pointed out that typically when designing a home a lot of emphasis is not put towards looking out your side windows but emphasis is on the back windows.

At this time Mr. Van Wagenen asked the Council if anyone has an issue with the Planning Commission recommended rear yard change from 50 ft. to 30 ft. or the height limit change to 35 ft. or with the 20 ft. side setbacks remaining as is. Councilmember Powell stated she is comfortable with 15 ft. not the 10 ft. Councilmember Lundberg agreed that 10 ft. is small and noted that she has concerns about getting into situations of needing to make exceptions. Mr. Cullimore then referenced an example of setback comparisons, the Chatwin Preliminary Site Plan and the proposed amendment followed by discussion.

Mayor Acerson stated that anytime you set a structure in place on a case by case basis there will always be potential exceptions; he would suggest to try not to be so firm as

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- to have some leeway. Councilmember Bean re-iterated that in the current ordinance discretion already exists and the decision of putting more than one flag lot in a subdivision
- 4 is an issue. He would suggest the Council determine if the side setbacks are an issue worth bearing discussion. He noted that it is interesting that back when the City Council looked at
- 6 this issue they reduced the height allowance down 10 ft. and now we are changing it again which could possibly reduce the privacy to neighbors. Councilmember Powell commented
- 8 that the height may impede the neighbors view a little because the only thing that is really changing is the pitch of the roof not the height of the window looking down.
- 10 Councilmember Bean stated that he is comfortable with the 15 ft. if we don't go the discretionary route.

At this time, Mr. Cullimore asked what the Council's consensus is on the 30 ft., 30 ft., and 15 ft. 15 ft. setbacks. Councilmember Lundberg would suggest to structuring this

- with the Planning Commission recommendations but to have something that allows the Council to potentially consider them on case by case situations as to not have any issues or
- problems. Councilmember Broderick and Councilmember Hoyt agreed they are comfortable with the 15 ft. setback. Mr. Van Wagenen stated that it would be difficult to
- implement these on a case by case basis because setbacks are created for minimum distances so this may set a precedent. He noted staff's perspective is if the Council is
- comfortable with the 15 ft. and then take out the opportunity for exceptions, because implementation on a case by case basis is difficult. Mr. Cowie stated that from an
   administrative standpoint it would be better to choose a number. Mayor Acerson observed

that the majority of the Council is comfortable with the 15 ft. setback.

Mayor Acerson called for any public comments questions. Hearing none he called for a motion to close the public hearing.

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COUNCILMEMBER HOYT MOVED TO CLOSE THE PUBLIC HEARING. COUNCILMEMBER BRODERICK SECONDED THE MOTION. ALL PRESENT VOTED IN FAVOR. THE MOTION CARRIED.

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Mayor Acerson called for any further comments or questions from the Council. Hearing none he called for a motion.

- 34 COUNCILMEMBER HOYT MOVED TO APPROVE ORDINANCE #2015-1-0 AMENDMENT TO 17.32.320 FLAG LOTS AS PROPOSED BY THE CITY COUNCIL
- 36 WITH THE REAR YARD SETBACKS AT 30 FEET, THE SIDE YARD SETBACKS AT 15 FEET, AND THE HEIGHT LIMIT AT 35 FEET WITH GRAMMATICAL
- 38 CHANGES AS STATED. COUNCILMEMBER POWELL SECONDED THE MOTION. THE VOTE WAS RECORDED AS FOLLOWS:
- 40 COUNCILMEMBER BEAN AYE COUNCILMEMBER POWELL AYE
- 42 COUNCILMEMBER BRODERICK AYE COUNCILMEMBER HOYT AYE
- 44 COUNCILMEMBER LUNDBERG AYE THE MOTION CARRIED UNANIMOUSLY.

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2 7. **Public Hearing** – Ordinance Amendment, Lindon City Standard Land Use *Table.* Lindon City requests approval of an amendment to the Lindon City Standard Land Use table. The proposed amendment would establish legal 4 services as a permitted use in the research and business (R& B) zone. 6 COUNCILMEMBER POWELL MOVED TO OPEN THE PUBLIC HEARING. 8 COUNCILMEMBER LUNDBERG SECONDED THE MOTION. ALL PRESENT VOTED IN FAVOR. THE MOTION CARRIED. 10 Mr. Cullimore gave a brief summary explaining a law firm recently applied for a business license to operate in the Research and Business (R&B) zone, at which time staff 12 discovered that legal services is not a permitted use in the R&B zone. He noted that staff 14 has determined that designating legal services as a non-permitted use in the R&B zone was an unintended oversight, as legal services appears to be a compatible use with other permitted business and professional office uses in the R& B zone which makes sense to 16 allow for those types of uses. Mr. Cullimore noted the Vivint, Aquatherm, and the Canopy buildings are all located in the R&B zone of which is the only area zoned as such 18 in the city. 20 Mr. Cullimore further explained that the stated purpose of the R&B zone is to "provide an aesthetically attractive working environment exclusively for and conducive to the development and protection of offices, research and development institutions, and 22 certain specialized assembling and packaging uses as a secondary use to the primary function of the building." Consequently, staff is recommending that legal services be 24 designated as a permitted use in the R&B zone. He noted the Planning Commission had no concerns with the proposal and recommended approval with no conditions. Mr. 26 Cullimore then referenced the proposed amendment followed by discussion. Mayor Acerson called for any public comments or questions. Hearing none he 28 called for a motion to close the public hearing. 30 COUNCILMEMBER BRODERICK MOVED TO CLOSE THE PUBLIC HEARING, COUNCILMEMBER POWELL SECONDED THE MOTION. ALL 32 PRESENT VOTED IN FAVOR. THE MOTION CARRIED. 34 Mayor Acerson called for any further comments or questions from the Council. 36 Hearing none he called for a motion. COUNCILMEMBER LUNDBERG MOVED TO APPROVE THE PROPOSED

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ORDINANCE AMENDMENT TO THE LINDON CITY STANDARD LAND USE

40 TABLE AS PRESENTED BY STAFF. COUNCILMEMBER POWELL SECONDED THE MOTION. THE VOTE WAS RECORDED AS FOLLOWS:

42 COUNCILMEMBER BEAN AYE COUNCILMEMBER POWELL AYE 44 COUNCILMEMBER BRODERICK AYE

COUNCILMEMBER HOYT AYE

46 COUNCILMEMBER LUNDBERG AYE THE MOTION CARRIED UNANIMOUSLY.

8. Review & Action: Rocky Mountain Power Service Contract & Easement. The City Council will review and take action on a General Service Contract with Rocky Mountain Power to have them install permanent power to the sewer lift station located at approximately 2400 West 200 North for \$24,982.76.

The Council will also review and consider granting an easement for the power to be installed through a portion of the 200 North roadway owned by the City.

Mr. Cowie explained this city initiated General Service Contract with Rocky Mountain Power to have them install permanent power to the sewer lift station located at approximately 2400 West 200 North for \$24,982.76. Mr. Cowie stated the City has budgeted for installation of a permanent power service to the sewer lift station located west of the Animal Shelter. He explained that the lift station currently does not have a permanent power source and is serviced every one to two days by Public Works employees who operate the pumps through an on-site generator.

Mr. Cowie went on to say this service contract will enable Rocky Mountain Power to install the power service to the lift station. He noted that within this agreement is an opportunity for the City to be reimbursed a portion of the funds if other service connections occur from this line within the next 10 years.

Mr. Cowie further explained in addition to the service contract is an easement staff recommends approving along the north 15' of the property owned by the City which will allow the power cable to be installed on a portion of the city property (200 North roadway) which is necessary to connect to the lift station. He noted that the easement will be granted to Rocky Mountains parent company, PacifiCorp. He stated that they are not requesting a charge for the easement since the line is necessary to benefit Lindon City. There was then some general discussion regarding this agenda item.

Mayor Acerson called for any further comments or questions from the Council. Hearing none he called for a motion.

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#### COUNCILMEMBER POWELL MOVED TO APPROVE THE ROCKY

- 32 MOUNTAIN POWER SERVICE CONTRACT AND GRANT THE ASSOCIATED EASEMENT TO ITS PARENT COMPANY, PACIFICORP, WITH NO CONDITIONS.
- 34 COUNCILMEMBER BRODERICK SECONDED THE MOTION. THE VOTE WAS RECORDED AS FOLLOWS:
- 36 COUNCILMEMBER BEAN AYE COUNCILMEMBER POWELL AYE
- 38 COUNCILMEMBER BRODERICK AYE COUNCILMEMBER HOYT AYE
- 40 COUNCILMEMBER LUNDBERG AYE THE MOTION CARRIED UNANIMOUSLY.

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9. **Review & Action:** Amendments to City Administrator Agreement. The City Administrator requests City Council review and action on an amended City Administrator Agreement allowing reduction of the City's 401k contribution obligation to the Administrator in order to be consistent with recent changes to employee compensation policies.

2 Mr. Cowie led the discussion by stating he is requesting City Council review and action on an amended City Administrator Agreement allowing reduction of the City's 401k contribution obligation to the Administrator in order to be consistent with recent changes to employee compensation policies.

Mr. Cowie noted that the City Administrator's current employment contract with Lindon City prohibits the City from reducing the 401k contribution made to the City Administrator below 4.5%. He explained he is requesting an amendment to the contract agreement to allow his 401k contribution to be adjusted and/or reduced just as other employees have experienced through the recent compensation policy changes. He then referenced the attached amendment agreement outlining the specific section of the contract and desired wording changes.

Mayor Acerson commended Mr. Cowie for being forthright in self-initiating this issue and bringing the contract in line with other employees. Councilmember Lundberg also commended Mr. Cowie for doing the honorable thing and for stepping up and brining this change to light. Councilmember Hoyt expressed his appreciation for Mr. Cowie's hard work and diligence in preparing the benefit study and presenting it to the Council.

Mayor Acerson called for any further comments or questions from the Council. Hearing none he called for a motion.

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COUNCILMEMBER HOYT MOVED TO APPROVE THE AMENDMENT TO

AYE

- 22 THE CITY ADMINISTRATOR AGREEMENT BETWEEN LINDON CITY AND ADAM M. COWIE, WITH NO CONDITIONS. COUNCILMEMBER POWELL
- SECONDED THE MOTION. THE VOTE WAS RECORDED AS FOLLOWS: 24

COUNCILMEMBER BEAN

- 26 COUNCILMEMBER POWELL AYE COUNCILMEMBER BRODERICK AYE
- 28 **COUNCILMEMBER HOYT** AYE COUNCILMEMBER LUNDBERG AYE
- 30 THE MOTION CARRIED UNANIMOUSLY.

#### 32 10. COUNCIL REPORTS:

- 34 **Councilmember Powell** – Councilmember Powell reported on the upcoming Community Center Advisory Board free movie night this Friday at 6:30 at the
- Community Center; they will be showing the movie "Enchanted." She also reported that 36 Lindon Days will be held August 3<sup>rd</sup> through the 8<sup>th</sup>. The parade theme this year will be
- based on "Back to the Future." Councilmember Powell reported that the Little Miss 38 Lindon Pageant will be held on March 7<sup>th</sup> at Oak Canyon Jr. High. She encouraged the
- Council to attend as it is a fun evening and great opportunity to support the program. 40 Councilmember Powell mentioned that she had a discussion with Mayor Acerson and it
- 42 was agreed to add the Little Miss Lindon Program to Councilmember Powell's Council Assignments and to move the Character Connection to the Mayor. The Council was in
- 44 agreement to the change in appointments and agreed it will be a beneficial change.
- 46 Councilmember Bean – Councilmember Bean reminded the Council of the vacancy on the Planning Commission. He noted that they would like to see representation from the
- 48 middle or west side of town.

- 2 <u>Chief Cullimore</u> Chief Cullimore had nothing to report at this time.
- 4 <u>Councilmember Hoyt</u> Councilmember Hoyt reported that the Historic Preservation Commission still needs a few more members. He also mentioned the Commission has an
- 6 Eagle Scout project (putting plaques up at historic sites) and if the Council hears of any projects needed to contact him.

8 **Councilmember Broderick** – Councilmember Broderick reported that there was a nice

- article about Lindon written by Sharla Graff, Lindon resident, in the Utah Valley Magazine. Mr. Cowie noted that the article has been posted to the Lindon Facebook page.
- 12 Councilmember Broderick also mentioned that there has been some recent discussion on the gasoline tax increase noting there are some legislators who would like to see it done
- county wide with the consensus coming from there. Councilmember Broderick would suggest that the Council have some discussion to be prepared as to what will happen with
- this issue. Councilmember Broderick also reported that the plans for the cemetery building are in and he would like to have some discussion. He would also like to hear
- from people who may be willing to participate with the building either by trade or by donations. Mr. Cowie stated he will forward the resolution of approved donation gift
- 20 items to Councilmember Broderick.
- 22 <u>Councilmember Lundberg</u> Councilmember Lundberg reported that January is a quiet month for Parks and Recreation but February pick up will be in full swing by March with
- the upcoming pool season with hiring and planning etc. Councilmember Lundberg also mentioned they are wanting to get bids in for a play structure at Fryer Park and they will
- be reaching out again to get the park community together. Councilmember Lundberg mentioned that she agrees with Councilmember Broderick's statements that the gasoline
- 28 tax issue bears more discussion.
- 30 <u>Mayor Acerson</u> Mayor Acerson reported that he attended the "State of the County" today. He noted the County presented a recognition award to Stan Lockhart in honor of
- Becky Lockhart, Speaker of the House, who recently passed which was very touching. He noted that more honors will surely follow. Councilmember Powell expressed that
- 34 Speaker Lockhart's presence will be missed at the legislature. Mayor Acerson noted that Lindon was mentioned in the report as far as business related. He noted that the business
- chosen for business of the year was Xactware, who have done some really great things.
   Mayor Acerson also reported that he and Mr. Cowie attended the ribbon cutting of the
   Burton Lumber solar panel addition.
- Mayor Acerson also reported that the Walmart grant came in for the Thanksgiving
  40 Dinner and noting we can reapply for a grant again next month. Mayor Acerson added
  that Murdock Hyundai has also committed to donating to the Thanksgiving dinner next
- 42 year. Councilmember Powell mentioned that Murdock Hyundai indicated that they would like their employees to participate and be more involved with city events.
- Councilmember Lundberg would suggest that there are a lot of city events like the Arbor Day Foundation "fun run" that they could participate and be involved in. Mayor Acerson
- stated that he will follow up with Paul Murdock on this issue. Mayor Acerson asked Mr. Cowie to compile a list of city events and dates to have on hand when visiting businesses

- in the city. Mayor Acerson mentioned that he will be attending the Utah Lake Commission meeting and the Outreach meeting this week. Mayor Acerson asked Mr.
- 4 Cowie to follow up with Heath Bateman regarding Commissioner Ellertson wife's group and use of the Community Center.

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#### **Administrator's Report:**

8 Mr. Cowie reported on the following items followed by discussion.

## 10 Misc. Updates:

- January City newsletter
- Everbridge Emergency Notification System: sign-up available to the public on January 5<sup>th</sup>. Links will be provided on web site and in newsletter. Please promote sign-ups.
  - Schedule date for Budget Kick-Off meeting. Following discussion the council agreed to hold the Budget Kick-Off meeting on Thursday, February 5<sup>th</sup> at 6:00 p.m.
  - Misc. Item: Mr. Van Wagenen will review Ivory development amenities

#### 20 **Upcoming Meetings & Events:**

- Newsletter Assignment: Councilmember Hoyt March newsletter article. *Due by last week in February*.
- January 19<sup>th</sup> City Offices Closed for Martin Luther King Jr. Day
- February 5<sup>th</sup> at 6:00 p.m. Budget Kick Off Meeting Thursday. There will be a dinner work session meeting in the Council chambers.
- February 10<sup>th</sup> Engineering Coordination Meeting at Noon at Public Works: Mayor Acerson and Councilmember Broderick will attend.
  - February 16<sup>th</sup> City Offices Closed for Presidents Day
  - March 7<sup>th</sup> at 6:00 p.m. Little Miss Lindon Pageant at Oak Canyon Jr. High School
  - April 24<sup>th</sup> through May 1<sup>st</sup> City Wide Clean Up (dumpsters for public use)

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#### **Future items:**

- Employee Policy Manual updates
- At this time Mr. Van Wagenen, Planning Director, sent the Council a survey link regarding the proposed Ivory Development followed by some lengthy discussion.

38

Mayor Acerson called for any further comments or discussion from the Council.

40 Hearing none he called for a motion to adjourn.

#### 42 Adjourn –

- 44 COUNCILMEMBER POWELL MOVED TO ADJOURN THE MEETING AT 8:30 PM. COUNCILMEMBER BRODERICK SECONDED THE MOTION. ALL
- 46 PRESENT VOTED IN FAVOR. THE MOTION CARRIED.

	Approved – February 3, 2015
	Kathryn Moosman, City Recorder
Jeff Acerson, Mayor	

<u>Item 4</u> - Consent Agenda -	- (Consent agenda items are only those which have been dis	cussed
beforehand and do not require further discussion	n)	

• No Items.

<u>Item 5</u> – Open Session for Public Comment	(For items not on the agenda)

**6.** Public Hearing — Zone Map Amendment, ~53 N. State, Ord.#2015-04-O (20 minutes)
Brandon Pierce requests approval of a zone map amendment to reclassify Utah County Parcel ID #14:069:0266 from General Commercial (CG) to General Commercial A (CG-A), to allow used automobile sales on the lot. The Planning Commission recommends approval.

See attached information from Planning Director, Hugh Van Wagenen.

# Public Hearing — Zone Map Amendment, approx. 53 North State Street

Brandon Pierce requests approval of a zone map amendment to reclassify Utah County Parcel ID #14:069:0266 from General Commercial (CG) to General Commercial A (CG-A), to allow used automobile sales on the lot. File 14-054-3

**Applicant**: Brandon Pierce

Presenting Staff: Jordan Cullimore

General Plan: Commercial

**Current Zone**: General Commercial (CG) Requested Zone: General Commercial A

(CG-A)

**Property Owner(s)**: Harold & Elvie Erickson Family Limited Partnership **Address**: ~53 North State Street

Parcel ID: 14:069:0266

Lot Size: 0.64 acres (27,851 sq. ft.)

**Type of Decision**: Legislative **Council Action Required**: Yes

**Planning Commission Recommendation**: 5-0 vote recommending approval

#### **SUMMARY OF KEY ISSUES**

 Whether to approve a request to change the zoning designation of the subject lot from General Commercial (CG) to General Commercial A (CG-A).

#### **MOTION**

I move to (approve, deny, continue)
Ordinance 2015-04-O to change the zoning designation of the lot identified by Utah
County Parcel #14:069:0266 from General
Commercial (CG) to General Commercial A
(CG-A) with the following conditions (if any):

- 1.
- 2.
- 3.

#### **BACKGROUND**

The principle difference between the General Commercial (CG) and General Commercial A (CG-A) zones is that the CG does not allow used car sales, while the CG-A does. The applicant currently operates a used car lot (Performance Motors) at 17 North State Street in Lindon (just to the south of the subject property). Recently, the landlord of the property where Performance Motors currently operates informed the applicant that they would like to redevelop the site and potentially add additional buildings to maximize its use potential. This means that Performance Motors will need to find a new location to operate.

The applicant's business has performed well in Lindon, and he would like to stay in Lindon and continue to contribute positively to the community. The subject property, located directly north of the current location of Performance Motors, would serve the applicant's needs well, but it is not zoned to allow used car sales. Consequently, the applicant is requesting that the lot be rezoned from CG to CG-A to allow him to improve the site, construct a new building, and continue to operate Performance Motors in Lindon.

#### **ANALYSIS**

• Subsection 17.04.090(2) of the Lindon City Code establishes the factors to review when considering a request for a zone change. The subsection states that the "planning commission shall recommend adoption of a proposed amendment only where the following findings are made:

- o The proposed amendment is in accord with the master plan of Lindon City;
- Changed or changing conditions make the proposed amendment reasonably necessary to carry out the purposes of the division."
- The stated purpose of the General Commercial Zone is to "promote commercial and service uses for general community shopping." Further, the "objective in establishing commercial zones is to provide areas within the City where commercial and service uses may be located." Commercial zones include the CG, CG-A, CG-A8, CG-S, PC-1, and PC-2 zones.

#### **PLANNING COMMISSION MEETING**

The Planning Commission took several public comments during their hearing. Many of the comments were considering the building and site layout that would be constructed *if* the zone change were approved. However, the construction of the building would be considered at a later date under a different application.

The most vocal concerns were heard from Els-Marie Johnson, a neighbor to the west of the subject property. She submitted a letter that is attached below. Many of her grievances have to do with the previous operator of Utah Auto Sales, not with the current applicant. She is also not in favor of another used car lot along State Street. Ultimately, the Commission felt that the applicant's proposal would be a less intrusive neighbor to Mrs. Johnson than other potential commercial uses and voted 5-0 in favor of the rezone.

#### **ATTACHMENTS**

- 1. Aerial photo of the proposed area to be re-classified.
- 2. Photographs of the proposed area to be reclassified.
- 3. Photographs of the current Performance Motors site.
- 4. Current zoning of the area.
- 5. Conceptual Site Plan.
- 6. Performance Motors Financial Information from 2012-2014.
- 7. Letter from Els-Marie Johnson concerning the request.
- 8. Ordinance 2015-04-0

#### **ORDINANCE NO. 2015-04-0**

AN ORDINANCE OF THE CITY COUNCIL OF LINDON CITY, UTAH COUNTY, UTAH, AMENDING PORTIONS OF THE LINDON CITY ZONING MAP FROM GENERAL COMMERCIAL (CG) TO GENERAL COMMERCIAL-A (CG-A) AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Municipal Council of Lindon City finds it is necessary to amend portions of the Lindon City Zoning Map, specifically the property generally located at 53 North State Street, otherwise identified by Utah County Parcel #14:069:0266 (See map labeled as Exhibit A) from General Commercial (CG) to General Commercial-A (CG-A), finding that approval of such would benefit the City; and

WHEREAS, the City finds it is necessary to amend the Zoning Map to accommodate a growing industry within the City; and

WHEREAS, the Planning Commission recommended adoption of revised provisions, and the revision of such provisions will assist in carrying out general plan goals related to the promotion of businesses and industry within the City, and said changes are compatible with land use guidelines as found in the General Plan; and

WHEREAS, a public hearing was held on January 27, 2015 to receive public input and comment regarding the proposed amendment; and

WHEREAS, no adverse effects were identified by the Commission during the hearing; and

WHEREAS, the Council held a public hearing on February 3, 2015 to consider the recommendation and no adverse effects were identified; and

WHEREAS, the current Zoning Map should be amended to provide such provisions to the Municipal Code of Lindon City.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Lindon City, Utah County, State of Utah, the Lindon City Zoning Map is hereby amended and will read as follows:

#### **SECTION I:**

See <u>Exhibit A</u> showing parcel changing from General Commercial to General Commercial-A on the Lindon City Zoning Map.



**SECTION II:** The provisions of this ordinance and the provisions adopted or incorporated by reference are severable. If any provision of this ordinance is found to be invalid, unlawful, or unconstitutional by a court of competent jurisdiction, the balance of the ordinance shall nevertheless be unaffected and continue in full force and effect.

**SECTION III:** Provisions of other ordinances in conflict with this ordinance and the provisions adopted or incorporated by reference are hereby repealed or amended as provided herein.

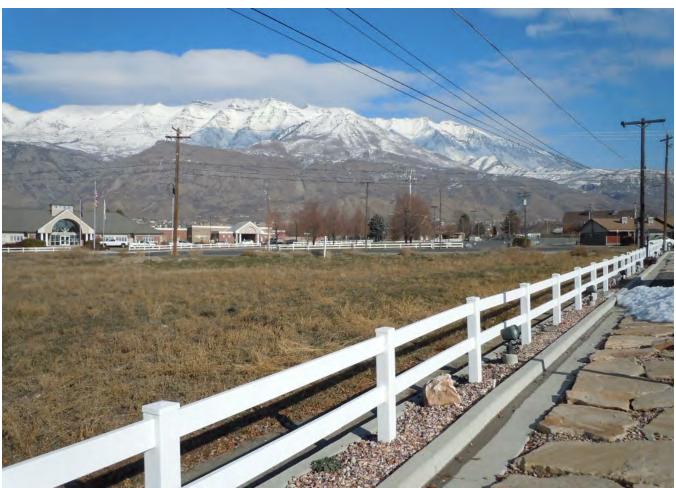
**SECTION IV:** This ordinance shall take effect immediately upon its passage and posting as provide by law.

PASSED and ADO	TED and made EFFECTIVE by the City Council of Lindon Ci
Utah, thisday o	, 2015.
	Jeff Acerson, Mayor
A TOTAL CATA	
ATTEST:	
Kathryn A. Moosman,	
Lindon City Recorder	

### Attachment 1



Attachment 2

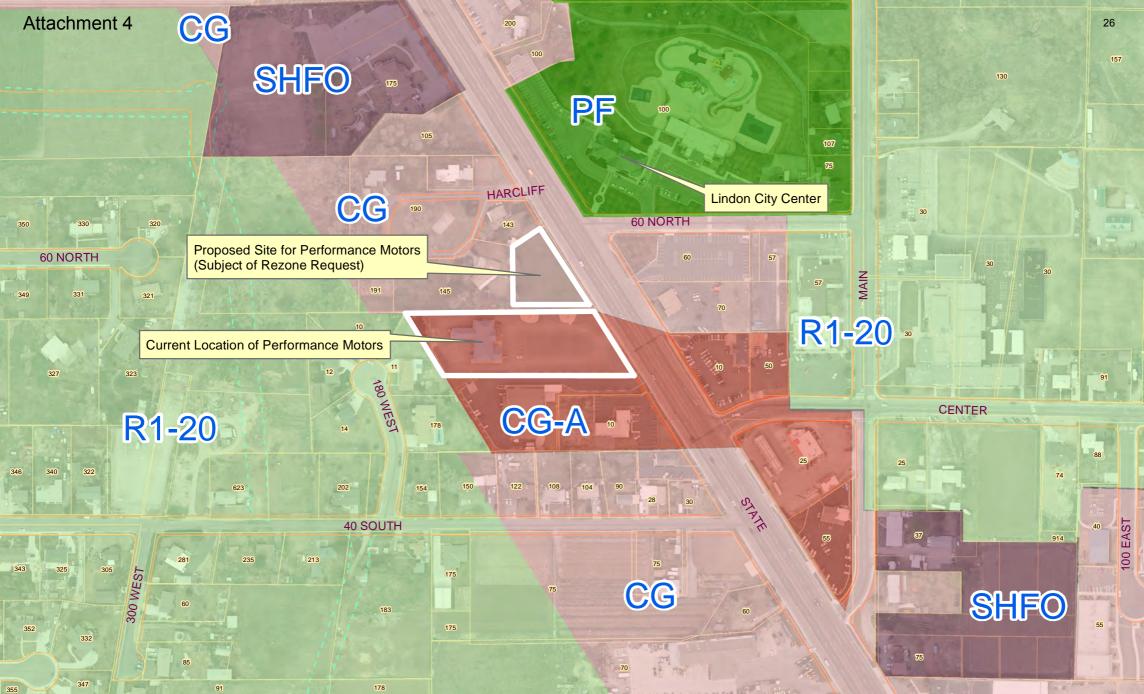




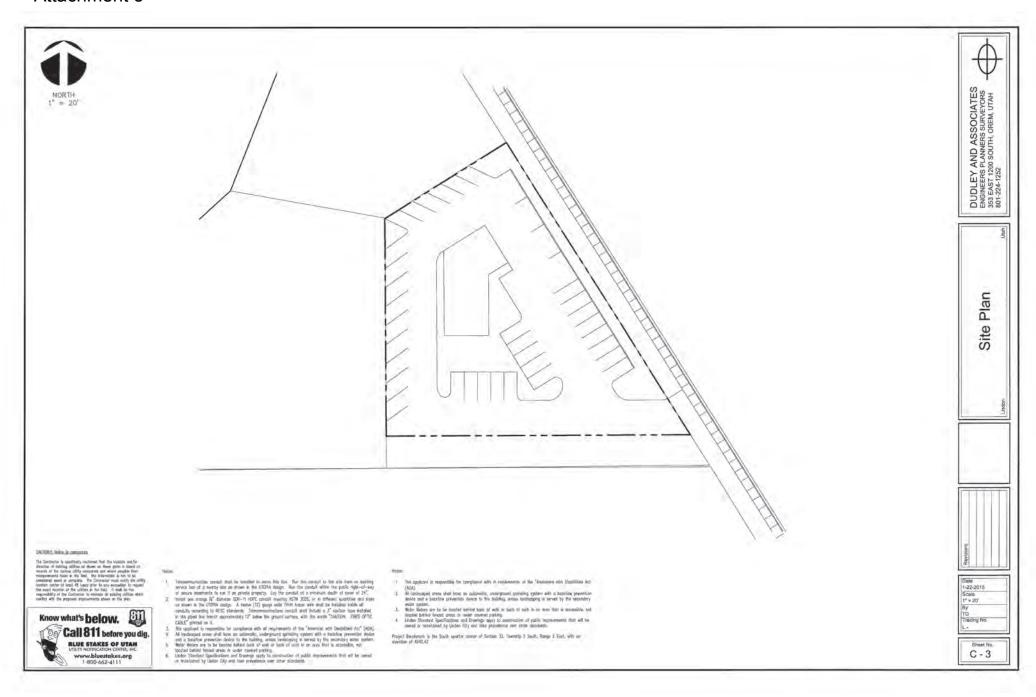
Attachment 3 25







#### Attachment 5





Page 1 of 2

# ADDENDUM NO. Four TO REAL ESTATE PURCHASE CONTRACT



THIS IS AN [X] ADDENDUM [ ] COUNTEROFFER to that REAL ESTATE PURCHASE CONTRACT (the "REPC") with an Offer Reference Date of 24th day of November, 2014 including all prior addenda and counteroffers, between as Buyer, and The Harold and Elvie Erickson Family Limited Partnership as Seller, regarding the Property
ocated at <u>Approximately 53 North State Street Lindon, UT 84042</u> . The following terms are hereby incorporated as part of the REPC:
Sales History- Dec 7, 2012- Nov 22, 2014 (Approx 24 Months At 17 North State Street Lindon, UT 84042
Breakdown:
Gross Sales \$5,971,101.63 (See attachment pages 1-26)
<u>Two Year Breakdown of Total Sales (See attachment pages 27-28)  277 Separate Transactions Showing a</u> <u>Car Sale</u>
every 2.64 days at an average price of \$21,556/Sale
Total Sales Tax Paid Over the Period (Dec 1, 2012-Nov 22, 2014) \$ 286,546.56
Portion Retained by Lindon City over (Dec 1, 2012-Nov 22, 2014) \$ 48,257.76
Average Monthly Sales Tax Retained By Lindon City \$ 2,010.74 From Performance Motors
BUYER AND SELLER AGREE THAT THE CONTRACT DEADLINES REFERENCED IN SECTION 24 OF THE REPC (CHECK APPLICABLE BOX): [ ] REMAIN UNCHANGED [ ] ARE CHANGED AS FOLLOWS:
To the extent the terms of this ADDENDUM modify or conflict with any provisions of the REPC, including all prior addenda and counteroffers, these terms shall control. All other terms of the REPC, including all prior addenda and counteroffers, not modified by this ADDENDUM shall remain the same. [ ] Seller [ ] Buyer shall have until: [ ] AM [ ] PM Mountain Time on Community Development (Date), to accept the terms of this ADDENDUM in accordance with the provisions of Section 23 of the REPC. Unless so accepted, the offer as set forth in this ADDENDUM shall lapse.
DEC 1 2014

Buyer's Initials \_\_\_\_\_\_ Seller's Initials \_\_\_\_\_

Hugh Van Wagenen

January 27, 2014

Lindon City does not need another used car lot on State Street!

In 2003-2004 Mr. Kevin Gallagher only got the permission to have a used car lot because he already owned one across the street at the time.

I am still very upset that the city did not send us a public notice letter at the time, to invite us to the Lindon City planning commission meeting. So we could voice our concerns and give our input.

We were the closest neighbor and would be affected by having this business next door. More than the neighbors to the west and south who were invited to the meeting. They had certain restrictions i.e. they didn't want any windows facing their homes and properties, no loud music or intercom, and lighting.

# All of these concerns would have been ours also if we had been invited to the meeting!

We would have definitely objected to the building being in a straight line with our house and so close. It could have been further east and south.

After I found out about this sale I went to see the seller. He told me the building would be erected above where our backyard was. The area would be beautifully landscaped and there would be a waterfall at the entrance.

All those things the other neighbors were concerned about we have struggled with and put up for many years. Five window where these business people can see into my back yard, every inch of it. Also into my kitchen, family room, bedroom and living room windows. I have been in the building and this is what I saw.

Loud music from the car lot and garage was played day and evenings, Sundays, holidays, sometimes during the night. Even with complaints from the neighbors did not stop this from happening. Police were also called to stop the noise.

The lights shine into the above-mentioned windows: bedroom, kitchen, family room and living room. Mr. Hoglund who came to inspect it more or less said we have to live with it. Not much could be done except put a cover around the whole car lot. And was no worse than a street light by your house. Yes, but these are Bright Spot Lights, and I don't live on a city street!

Mr. Gallagher even had a large pool of water on the west side of the building that leaked into our property.

During construction large heavy trucks drove in on our property along the highway and across on cement covered irrigation ditch and broke the top and sides.

He had many cars 300 on both lots and no parking for customers. The customers parked along the highway and walked across our property to get to his lot. He had more cars than all the 4 other lots put together on the highway (according to city minutes).

My daughter in Seattle was able to get the minutes on the Internet about the Planning Board's meeting held with Mr. Gallagher and neighbors; after the city told me they could not be located.

#### Mr. Gallagher did not comply with what he had agreed to at that meeting.

We don't need another car lot! Lindon already has five, which according to the Standard Land Use Table specifies no more auto dealerships or a limit of five on State Street.

I am extremely unhappy with the business that is next to my property and how the city has responded to my requests. I don't want to have the same experience again with a used car lot.

I want the owner of the building to cover up those 3 windows on the second floor facing my house and yard. I want the spotlights turned into the car lot and to the side so the light won't shine into my house.

A few years ago the City Council decided there should be only nice, clean businesses along the highway in the heart of Lindon. We started that with "Somewhere in Time", now "Osmond Senior Living", the Ashton's "Old Railroad Station Business Park", and the beautiful Lindon City Hall.

Let's continue to encourage businesses like those to be built along State Street in Lindon.

Els-Marie Johnson

145 West Harcliff Circle

I have attached a copy of the minutes from November 12, 2003 and October 27, 2004 with my concerns underlined and a news article featuring Mr. Gallagher.



Home » City Government » Planning Commission » Planning Denne Friendly page ( Commission Schedule 2004 (Agendas & Minutes) » Planning



October 27, 2004 Minutes

Commission Minutes 2004 » October 27, 2004 Minutes

The Lindon City Planning Commission held a regularly scheduled meeting at 7:00 p.m. on Wednesday, October 27.2004 in the Lindon City Council Chambers at 100 North State Street, Lindon, Utah.

Conducting: Dustin Sweeten, Chairman Invocation: Ron Anderson Pledge of Allegiance: Dustin Sweeten

#### PRESENT

Dustin Sweeten, Chairman Ron Anderson, Commissioner Julie Bryner, Commissioner Evan Nixon, Commissioner (arrived at 7:27 p.m.) Marilyn Simister, Commissioner Lindsey Bayless, Councilmember Kevin Smith, Planning Director Venla Gubler, Administrative Clerk Karl Woodard, Planning Intern

#### ABSENT

Gary Godfrey, Commissioner Jim Peters, Commissioner

The Meeting began at 7:11 p.m.

#### 1. APPROVAL OF MINUTES

The Minutes of the Meeting of October 13, 2004 will be reviewed at the meeting of November 10, 2004.

#### 2. PUBLIC COMMENT

Ms. Wendy Shaffer of 108 West 40 South asked about lighting of the car lot being built on State Street across from the intersection of Center Street. Chairman Sweeten replied that the lighting of this lot should be directed into the lot itself according to the Lindon City Code. Planning Director Kevin Smith agreed and explained that the Code addresses light pollution. He suggested that if a problem does occur in the future, to contact either himself or Mr. Kevin Gallagher of Utah Auto Sales. Chairman Sweeten asked if there was any further public comment. There was none.

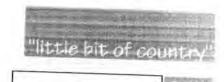
#### 3. NEW BUSINESS (Reports by Commissioners)

Commissioner Anderson reported that a new business had moved into the Consolidated Freightways building. He noted that this building had been vacant for a long time and this new occupant is the result of a bankruptcy sale. He suggested that contact be made of this new business to make them aware of the requirements for landscaping their frontage. Mr. Smith replied that he would investigate this report.

Chairman Sweeten noted that a park and ride business had opened on the property owned

Lindon City :: little bit of country

Lindon City



Home » City Government » Planning Commission » Planning Commission Schedule 2003 (Agendas & Minutes) » Planning Commission Minutes 2003 » November 12, 2003 Minutes

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November 12, 2003 Minutes

The Lindon City Planning Commission held a regularly scheduled meeting on **Wednesday**, **November 12**, **2003** at 7:00 p.m. in the Lindon City Center, Council Chambers, at 100 North State Street, Lindon, Utah.

Conducting: Bruce Carpenter, Chairman Prayer: Jim Peters

#### PRESENT

Bruce Carpenter, Chairman Ron Anderson, Commissioner Jim Peters, Commissioner Marilyn Simister, Commissioner Dustin Sweeten, Commissioner Kevin Smith, Planning Director Venla Gubler, Administrative Clerk Lorenzo Barcellone, Planning Intern

#### ABSENT

Evan Nixon, Commissioner James McMurray, Planning Intern

The Meeting began at 7:07 p.m.

#### 1. PLEDGE OF ALLEGIANCE

Chairman Carpenter invited the Commissioners, staff and audience to join him in the Pledge of Allegiance.

#### 2. APPROVAL OF MINUTES

There were no minutes ready for review and approval.

#### 3. PUBLIC COMMENT

There was no public comment.

# 4. NEW BUSINESS (Reports by Commissioners)

Chairman Carpenter asked if the traffic concerns on 600 North were being addressed. Commissioner Peters replied that the neighborhood and city staff were working on it. The proposals were discussed. Commissioner Sweeten observed that Walmart was under construction. Mr. Smith agreed and noted that the Lexus dealership was also under construction. He noted that Discount Tire called and was inquiring about a parcel adjacent to

replied that the space in this building was needed for assembly. He observed that a paint room may be added later. Commissioner Anderson asked if he planned a separate building for the painting. Mr. Pettard replied yes.

Commissioner Peters asked about a utility easement on the site plan. Mr. Pettard replied that the easement is for phone service lines. Mr. Smith informed the Commissioners that the sewer line service for this lot is on 1800 West Street and not on 2000 West. The power line location was identified.

Chairman Carpenter commented that the changes proposed for the site plan are the paving of the lot and the enclosure for the dumpster. Commissioner Peters asked the width of the driveway. He was informed thirty feet. The Commission discussed the parking requirements of the ordinance with Mr. Pettard. Chairman Carpenter asked if there were other concerns or discussion. There were none.

COMMISSIONER PETERS MOVED TO APPROVE THE REQUEST BY KBR SYSTEMS, INC. FOR APPROVAL OF A CEMENT MIXER MANUFACTURING FACILITY AT 150 SOUTH 1800 WEST IN THE LIGHT INDUSTRIAL ZONE WITH THE FOLLOWING CONDITIONS:

1. THE ELEVATIONS ARE APPROVED AS PRESENTED USING SEAMLESS STUCCO-EMBOSSED PANELS.

2. PAVERS MAY BE USED IN LIEU OF ASPHALT ON THE FRONT PARKING LOT
3. THE DUMPSTER MAY BE MOVABLE WITHIN THE CONFINES OF THE BACK LOT
WITH THE UNDERSTANDING THAT THE FENCING IS SIGHT-OBSCURING.
COMMISSIONER SIMISTER SECONDED THE MOTION. ALL PRESENT VOTED IN
FAVOR. THE MOTION CARRIED.



# 4. PUBLIC HEARING - UTAH AUTO SALES - 10 NORTH STATE STREET - SITE PLAN

This is a request to expand a legal non-conforming use by allowing Utah Auto Sales to expand to the west side of State Street from their existing lot.

Mr. Kevin Gallagher was present. Chairman Carpenter told Mr. Gallagher that the Planning Commission had taken public comment at their last meeting and the neighborhood had raised some issues. Mr. Smith noted that the Planning Commission was familiar with this request to amend a nonconforming use and expand a car lot to the west side of State Street. He presented background information on the application, including an aerial photo of the proposed location. He informed the Commissioners that the Lindon City Code specifies two conditions that must be met by an applicant for the expansion of a nonconforming use. These are: the proposed expansion must be in harmony with the purposes of the zoning ordinance, and the change does not impose any unreasonable burden on lands in the vicinity, nor violate the development policies of the master plan.

Mr. Smith suggested that the Planning Commission should discuss the landscaping requirement, outside storage, and the safety of patrons crossing State Street. He added that issues raised from neighborhood input include how to buffer the neighboring homes, landscaping, fencing, windows on the second floor, the loudspeaker system, and lighting pollution. He noted that staff had not looked at the engineering issues yet and that there may be an issue about installing utilities through the homes to the cul-de-sac in the back. Mr. Gallagher informed that his engineer's preliminary review indicated he may either pump to State Street sewer lines or install a gravity line to the cul-de-sac, 180 West. Mr. Smith also noted that the Planning Commission and Council had recently considered whether this is a new business or an expansion of a nonconforming use.

Commissioner Simister asked if the utilities would have to be installed to flow to the west into the cul-de-sac. Mr. Gallagher replied that he would prefer to raise the buildings and go to State Street. Commissioner Sweeten commented that a higher building would look into the homeowners' back yards even more. He asked about the windows on the back of the building. Mr. Gallagher replied that the building is 200 feet from the back property line, but he was willing to eliminate the second-story windows on the back of the building.

Mr. Gallagher addressed the Commission on the purpose of the zoning ordinance. He observed that the purpose of the change to the Standard Land Use Table was to stem the proliferation of car dealerships on State Street frontage. He pointed out that this parcel only has about 200 feet of frontage on State Street which will allow him about seven or eight cars

to be displayed in the front with enough room left for an entrance driveway. He observed that this is normally not desirable frontage for a car dealership, but would work for him. He asserted that this is an expansion of his dealership and not a new dealership. He suggested that if this is a concern of the Commission, he is willing to accede to a condition of approval that will limit any sale of his dealership as one undividable property, in other words, it cannot be split to make a separate dealership. He pointed out that the property he is presently leasing from the City is not likely to remain part of his dealership in the future, so there will be less frontage on State Street. He commented that the major reason for the expansion is the building which will house twelve car-related businesses currently operating as home businesses. All twelve of these businesses are permitted by the zone.

Mr. Gallagher next addressed the goals of commercial development in the master plan. He reacquainted the Commissioners with the eight goals listed in the master plan and asserted that his business meets the intent of the zone.

Mr. Gallagher addressed the safety of patrons crossing State Street. He informed the Commissioners that customers are usually looking for a specific type of vehicle, so to minimize crossing of the street for this purpose, he will limit the new portion of lot to one type. He also noted that the distance between the buildings, going by the cross walk, is about one-quarter mile. He asserted that the distance will discourage patrons from walking also. He commented that another way he intends to discourage crossing is to have the paperwork for the cars located on this lot kept within the building located here. That way patrons will not be crossing to complete paperwork either. He suggested that there are vehicles entering and crossing State Street now and that any business that locates in this property will have the same problems.

Mr. Gallagher observed that noise and lighting pollution issues are easily solved. He will discontinue the PA system and convert to a walkie talkie system. He plans a concrete wall and poplar trees similar to that bordering his parcel on the east side of State Street adjacent to the LDS Chapel. He will direct his lights within his boundaries. He summarized his solutions to the issues raised by stating that his business and its satellites are the best possible use of the property because they are quiet, will affect the neighborhood little, and bring increased tax base to the City. He stated that his options are either to expand or move, and he would prefer not to move.

Commissioner Sweeten commented that his participation in this discussion might be perceived as a conflict of interest because he owns a rival car dealership. He declared that whether or not the businesses are rivals would not affect his decision in any case. He stated that his biggest concern is that deeming this application an expansion rather than a new business seems to skirt the intent of the City Code. He suggested that, if the purpose of the code is to prevent more dealerships, then this application should be denied. Mr. Gallagher disagreed and suggested that the purpose of the code is to limit the frontage dedicated to car dealerships. He felt that the frontage of this particular lot meets this requirement. He also asked the Commissioners to determine the best use of the property by examining the master plan goals. He observed that this property would not only be used for the dealership, but also for the adjunct businesses that are allowed by the Standard Land Use Table.

Chairman Carpenter asked Mr. Gallagher if he planned to appeal to the Council if the Planning Commission does not approve his application. Mr. Gallagher replied yes and explained that he felt his business met the requirements and was the best possible use of a parcel with only 200 feet of frontage. Chairman Carpenter observed that the neighbors may prefer to have an office complex. Mr. Gallagher pointed out that the neighbors will still have to deal with lights and noise. Chairman Carpenter agreed that there are ways to deal with lights, but the issue that stymies him is the safety of pedestrians on State Street. Mr. Gallagher expressed the opinion that patrons will not walk, but drive across State Street if they wish to cross. He also felt that there will always be some who will walk across, even if another commercial enterprise is constructed here. He commented that patrons of a restaurant built there would also cross the street if they feel the need. Chairman Carpenter agreed that the City cannot limit pedestrian crossings to zero, but they also do not want to invite this propensity. He acknowledged that Mr. Gallagher seemed to have met the concerns of the neighbors with his plans for lighting, discontinuing the PA system and eliminating windows on the back of the building.

Mr. Gallagher asserted that crossing State Street will always be a problem and that people are doing it now. He commented that his business would be a benefit to the City by expanding the tax base. Commissioner Sweeten agreed but noted that the City did not want to encourage people to cross State Street. He also commented that bringing dollars into the

City budget is not the only issue. Mr. Gallagher agreed, and observed that his building would enhance State Street.

and decisions

Chairman Carpenter asked Councilmember Bayless to clarify the City Council's position on the issue of expansion of a nonconforming use rather than an additional business Commissioner Anderson asked if the Standard Land Use Table specifies no more auto dealerships or a limit of five dealerships on State Street, Mr. Smith explained that the SLU Table had been changed to make auto dealerships not-permitted in the General Commercial zone. The idea was that if there is a reduction in the number of dealerships in the future, the Table can be amended to allow more. Commissioner Anderson commented that the intent was obviously to prevent "wall to wall" cars, but auto dealerships are also a good source of income to the City. He recommended that the Standard Land Use Table be changed to allow auto dealerships if the business is not too obtrusive. He felt that a certain number be specified rather than not allow any new ones. Commissioner Sweeten observed that the problem with this approach is legally defending a certain number. Mr. Smith agreed that the City did not wish to be arbitrary, but maybe a certain number could be defined and reviewed by the City Attorney. He suggested, however, that this application be either approved or denied on how well its merits meet the criteria of the City Code.

Commissioner Peters referred the question back to Councilmember Bayless. Councilmember Bayless replied that the Council had expressed the same concerns as the Commission. Mr. Gallagher asked if she had an opinion on the overall feeling of the Council to his application on the night that he had presented his proposal to the Council. Councilmember Bayless replied she could not begin to guess the outcome if a vote had been called that night. Mr. Gallagher commented that his impression had been that the Council was favorable. He reiterated that he did not want to move from his present location in Lindon and that this expansion would allow him to move his auxiliary businesses from being operated in homes to a commercial location.

Commissioner Peters asked the width of the access driveway from State Street. Mr. Gallagher replied forty feet. Commissioner Peters asked about customer parking and commented that this had been a major issue at the present lot. He asked if the maximum number of cars on this lot was being observed. Mr. Smith replied that he had taken a count of the number of cars on the lot today. Mr. Gallagher acknowledged that, on certain days, the lot is more loaded than others. Commissioner Peters commented that he appreciates the business that is generated by Mr. Gallagher, and that the questions and issues he is raising are to prevent problems in the future. Councilmember Bayless agreed that the Council has been concerned that these issues are addressed and are appreciative of Mr. Gallagher's cooperation in the past. She commented that there had been no decisive discussion at Council meeting and she felt it was appropriate for the Planning Commission to discuss the issues and make a recommendation to the Council based on their findings. The customer and employee parking stalls were pointed out on the proposed site plan.

Mr. Gallagher explained his efforts to find a way to expand. He commented that he had approached both the Wok Right In and the LDS Church with no success. Commissioner Simister noted that the neighbors in the back cul-de-sac had been heard from and asked if there was comment from the neighbors in Harcliff Circle to the north. Mr. Gallagher replied that they would like him to purchase the other parcel of commercial property between the proposed parcel and their homes. Chairman Carpenter suggested that the meeting be proposed parcel and their homes. Chairman Carpenter suggested that the meeting be opened for public comment. He is not telling the truth . We would never sell our property to an outo Dealership

COMMISSIONER ANDERSON MOVED TO OPEN THE PUBLIC HEARING COMMISSIONER PETERS SECONDED THE MOTION. ALL PRESENT VOTED IN FAVOR. THE MOTION CARRIED

Mr. Robert Dayley pointed out his home directly behind the proposal. He presented a letter from the neighborhood and noted that the concerns raised are not all shared concerns. He thanked Mr. Gallagher for his efforts to meet and alleviate their concerns. He also stated that the neighborhood is very aware that some kind of commercial enterprise would be constructed on this parcel eventually. The kind of fence that Mr. Gallagher proposed was discussed. Mr. Dayley expressed favor to the proposal. He noted that the PA was the neighborhood's number one concern and expressed thanks to Mr. Gallagher for addressing this issue. The utility issue was raised. Mr. Dayley suggested that the surveyors and construction personnel discuss and get permission before entering his yard. There was a short discussion of sewer and storm drain issues that would be addressed in the engineering phase

At his Lindon-based dealership, Wah auto Sales. In the Utah Velley manazine Kanlingher Soid There are more than 300 cars in Stock 0/28/2008

Chairman Carpenter thanked Mr. Dayley for his input and asked if he felt the neighborhood would be content with the solutions to their issues that had been offered and discussed. Mr. Dayley expressed the opinion that the measures suggested would suffice to satisfy the neighborhood. He referred to his letter.

Commissioner Sweeten observed that the issues left to discuss, now that the neighbors' concerns were alleviated, are the safety of crossing State Street and whether this proposal skirts the intent of the ordinance. Mr. Gallagher asked what the Planning Commission needs to specify as findings. Mr. Smith read the ordinance. Commissioner Anderson observed that condition two (imposing no unreasonable burden and meeting the master plan policies) is met, and that only condition one (being in harmony with the zoning ordinance) is in question. There was a discussion on whether setting a maximum limit on the number of cars would achieve this goal. Ms. Joy Lee asked if a flashing pedestrian crossing could be installed. She was informed that State Street is administered by UDOT and they make those decisions. There was a discussion of optional recommendations to the Council and the possibility of changing the City Code.

Chairman Carpenter commented that the discussion seems to hinge on the interpretation of the City Code dealing with nonconforming uses. Mr. Smith agreed and pointed out that the Code does not address whether the expanding use has to be contiguous. Commissioner Sweeten asked if there was any opposition from the neighborhood. Mr. Dayley replied no. Chairman Carpenter observed that the neighborhood seems to acknowledge that this property is going to be developed commercially. He suggested that the neighborhood may feel better knowing the business and its particular issues than some unknown entity in the

200

Commissioner Simister commented that the word "expansion" needs definition. She asked if the definition should include "across the street expansion" and "down the street expansion." Commissioner Sweeten agreed. He observed that Mr. Gallagher's business entails more cars than all the other dealerships in Lindon put together. He questioned setting a precedent that other dealerships may want to copy. Commissioner Peters commented that condition one is somewhat ambiguous, but that the ambiguities should be interpreted by the Council He observed that condition two deals with the neighboring owners, who seem to be satisfied. Commissioner Sweeten asked if the parcel would be fenced on all sides. Mr. Gallagher replied yes. Commissioner Simister commented that she has no problem with the business itself, just with the definition of "expansion." Mr. Smith suggested that the Commission and Council address this code issue in the near future with a clarification amendment.

COMMISSIONER PETERS MOVED TO CLOSE THE PUBLIC HEARING. COMMISSIONER SIMISTER SECONDED THE MOTION. ALL PRESENT VOTED IN FAVOR. THE MOTION CARRIED.

COMMISSIONER PETERS MOVED TO APPROVE THE REQUEST BY KEVIN GALLAGHER FOR AN EXPANDED LEGAL NONCONFORMING USE BY ALLOWING UTAH AUTO SALES TO EXPAND TO THE WEST SIDE OF STATE STREET FROM THEIR EXISTING LOT AND RECOMMEND APPROVAL TO THE CITY COUNCIL WITH THE

FOLLOWING FINDINGS AND CONDITIONS:

 THAT THE COUNCIL REALIZE THAT THE PLANNING COMMISSION IS RECOMMENDING APPROVAL BASED ON THE FACT THAT FINDING #1 OF THE LINDON CITY CODE DEALING WITH THE ADDITION TO NONCONFORMING USES IS AMBIGUOUS, THAT THE DEFINITION OF EXPANSION IS NOT ADDRESSED. AND THAT IN FEAR OF SETTING A PRECEDENT THE COMMISSION ENCOURAGES A REVIEW OF THE ORDINANCE.

2. THAT MR. GALLAGHER AND THE NEIGHBORS ADJACENT TO THE REAR OF THE PROPOSAL REACH AN AGREEMENT ON THE DESIGN AND MATERIALS OF THE WALL ON THEIR SHARED BOUNDARY AS LONG AS IT MEETS THE MINIMUM REQUIREMENTS OF THE CITY CODE

3. THAT NO PUBLIC ADDRESS SYSTEM IS ALLOWED IN THE OPERATION OF THIS BUSINESS

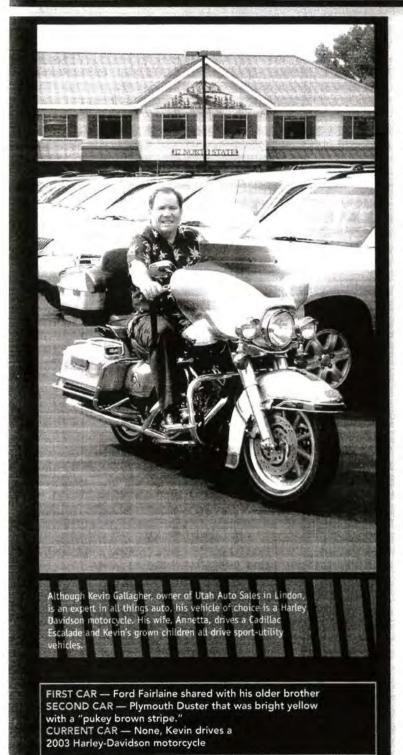
4. THAT THE WINDOWS ON THE BACK SIDE OF THE SECOND FLOOR ARE ELIMINATED FROM THE BUILDING DESIGN.

5. THAT A SAFETY PLAN BE SUBMITTED THAT ADDRESSES MEASURES AND POLICIES TO DISCOURAGE PEDESTRIANS FROM CROSSING STATE STREET. 6. THAT LANDSCAPING BE INSTALLED TO MAXIMIZE THE BUFFERING OF THE

on the West and South sideommissioner anderson seconded the motion. ALL PRESENT VOTED IN FAVOR. THE MOTION CARRIED.

The Johnsons were not invited or included in any of these decisions and our home and yard is closer to the building and ear lot than any of the other neighbors

# **EXPERT:** Kevin Gallagher **EXPERTISE:** Cars



evin Gallagher knows cars.

There are more than 300 cars in stock at his Lindon-based dealership, Utah Auto Sales, and Kevin says he's driven every make and model on the lot.

He's a known expert in used car sales and wrote the "Used Car Buying Guide," a publication that has been adopted by the Independent Automobile Dealers Association.

Before starting his dealership 10 years ago, Kevin was an automobile auctioneer.

The man knows his stuff.

Given that Kevin can drive any car he'd like, what is his transportation of choice?

A 2003 Anniversary Edition Harley-Davidson Dyna Glide motorcycle.

"It's funny, huh," Kevin says. "I can drive any car I want to, and so I don't."

He's been a Harley man as long as he's owned Utah Auto Sales, riding his bike for work and play whenever he gets the chance. If it is raining or snowing, Kevin gets a lift from his wife, Annetta, who drives the family's Cadillac Escalade.

"We only live about five miles from the lot so I have her take me to work and pick up me when I'm done," he says.

Although he's been riding in style for a decade, Kevin has by no means sworn off cars. He drives new models when they come out but always goes back to his motorcycle.

In the early days of the dealership, Kevin would just drive cars off the lot, but he quickly discovered driving his inventory didn't work.

"Every time I used to take a car home they'd call me and say, 'Someone is here to look at it,'" Kevin says. "I want to make sure that all my cars for sale are on the lot, so I try to never take my inventory home."

Best business practices aside, there are several perks to driving a motorcycle, Kevin says.

First?

"I just like the look of it," Kevin says of his silver bike. Second, the music.

"As you rev it up, the music goes up," he explains. Third, parking.

"You always have a place to park and it's right up front
— at the grocery story, at the football game."

Fourth — and most important — the bike has room for two.

"My wife can ride with me and she doesn't have to hold on," Kevin says. "She gives me back massages while I'm riding, so why wouldn't I want to ride?" W 7. Public Hearing — Ordinance Amendment, LCC 17.04.090, Ord.#2015-03-O (5 minutes)
Lindon City requests approval of an amendment to Lindon City Code 17.04.090. The proposed amendment would define when amendment proceedings are formally initiated. The Planning Commission recommends approval.

See attached information from Planning Director, Hugh Van Wagenen.

### Public Hearing — Ordinance Amendment, Lindon City Code 17.04.090

Lindon City requests approval of an amendment to Lindon City Code 17.04.090. The proposed amendment would define when amendment proceedings are formally initiated.

**Applicant**: Lindon City

Presenting Staff: Jordan Cullimore

Type of Decision: Legislative Council Action Required: Yes

#### **Planning Commission Recommendation:**

The Planning Commission, on a 5-0 vote, recommends approval of the proposed ordinance.

#### **SUMMARY OF KEY ISSUES**

1. Whether it is in the public interest to approve the proposed amendment.

#### **MOTION**

I move to (*approve, deny, continue*) Ordinance 2015-03-O to amend section 17.04.090 of the Lindon City Code (*as presented, with changes*).

#### **BACKGROUND**

This ordinance amendment was initiated at the recommendation of Lindon City Attorney, Brian Haws.

Utah State Code 10-9a-509(1)(a)(ii) states the following:

- (1)(a)(ii) Except as provided in Subsection (1)(b), an applicant is entitled to approval of a land use application if the application conforms to the requirements of the municipality's land use maps, zoning map, a municipal specification for public improvements applicable to a subdivision or development, and an applicable land use ordinance in effect when a complete application is submitted and all application fees have been paid, unless:
  - (A) the land use authority, on the record, finds that a compelling, countervailing public interest would be jeopardized by approving the application; or
  - (B) in the manner provided by local ordinance and before the application is submitted, *the municipality has formally initiated proceedings* to amend its ordinances in a manner that would prohibit approval of the application as submitted [emphasis added].

When determining whether existing or proposed requirements apply to a specific application, the local municipality may define when amendment proceedings have been "formally initiated". If the municipality has formally initiated amendment proceedings before an applicant submits an application for approval, the application will be subject to the proposed requirements if the amendment is subsequently approved.

Mr. Haws represents another municipality in Utah County that has not specifically defined when amendment proceedings are formally initiated, and the ambiguity has resulted in litigation. Lindon's Code does not presently define when amendment proceedings are formally initiated. Consequently, Mr. Haws has recommended that we include a definition in the Code to avoid similar issues. The proposed language is included in attachment 1.

#### PLANNING COMMISSION DISCUSSION

Members of the Planning Commission agreed that this was a technical addition recommended by City's Legal Counsel, and that it should be approved because will improve the clarity and predictability of the Code. The Planning Commission, on a 5-0 vote, recommended approval of the proposed amendment.

#### **ATTACHMENTS**

1. Proposed amendment

#### Attachment 1

1 ORDINANCE NO. 2015-03-O 2 3 AN ORDINANCE OF THE CITY COUNCIL OF LINDON CITY, UTAH COUNTY, UTAH, 4 AMENDING SECTION 17.04.090 OF THE LINDON CITY CODE TO DEFINE WHEN 5 AMENDMENT PROCEEDINGS ARE FORMALLY INITIATED AND PROVIDING FOR AN 6 EFFECTIVE DATE. 7 8 WHEREAS, the proposed amendment will provide greater certainty and predictability in the land 9 use application process; and 10 11 WHEREAS, the proposed amendment is consistent with the goal of the General Plan to ensure 12 that new development is of high quality; and 13 14 WHEREAS, the Lindon City Planning Commission has recommended approval of an 15 amendment to section 17.04.090 of the Lindon City Code; and 16 17 WHEREAS, a public hearing was held on January 27, 2015, to receive public input and 18 comment regarding the proposed amendment; and 19 20 WHEREAS, no adverse comments were received during the hearing; and 21 22 WHEREAS, the Council held a public hearing on February 3, 2015 to consider the 23 recommendation and no adverse comments were received. 24 25 NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Lindon, Utah County, 26 State of Utah, as follows: 27 28 **SECTION I**: LCC 17.04.090 of the Lindon City Code is hereby amended to read as follows: 29 30 Section 17.04.090 Amendment procedures. 31 The local City Council may amend this division, including the map, but only in accordance with 32 the following procedures: 33 1. The Pplanning Ceommission may initiate division amendment recommendations to the 34 City Council. Any other person seeking to amend this division or map shall make 35 application for such amendment by filing the following materials with the Pelanning 36 Ceommission: 37 a. A written petition designating the change desired and the reasons therefor; 38 b. A nonreturnable amendment review fee in an amount determined by resolution of 39 the City Council. 40 Lindon City formally initiates proceedings to amend this division when it gives <del>a.</del>2. 41 notice, according to Lindon City Code Section 17.14.40, of the first public hearing in 42 which the proposed amendment will be considered. 43 The Palanning Commission shall review the amendment application and certify 44 its recommendations concerning the proposed amendment to the City Council within 45 forty--five days from receipt of the amendment application in a regularly scheduled 46 meeting. The Pelanning Ceommission shall recommend adoption of a proposed 47 amendment only where the following findings are made: 48 a. The proposed amendment is in accord with the master general plan of Lindon 49 50 b. Changed or changing conditions make the proposed amendment reasonably 51 necessary to carry out the purposes of the division.

- After receipt of the certified favorable recommendations of the Pelanning Peommission, the City Council shall give notice of a public hearing to consider such amendment as provided by law for zoning amendments.
   After the required public hearing on the proposed amendment, the City Council may
- e.5. After the required public hearing on the proposed amendment, the City Council may adopt or reject such amendment.
- d.6. Concurrence by the City Council in-with an unfavorable recommendation of the Pplanning Ceommission shall constitute a denial of the application, and no public hearing shall be held. However, if the City Council determines that the proposed amendment may be desirable despitein spite of the Pplanning Ceommission's recommendation, a public hearing shall be held, with notice as required by law, prior to formal action on the application by the City Council.
- e.7. If the City Council proposes to make any substantive change in the amendment as submitted to it by the Pplanning Ceommission, or as advertised, it shall refer such change back to the Pplanning Ceommission for its recommendation before adoption of such amendment.
- 3.8. Notification of Pending Land Use Ordinances
  - a. When the City Council determines the need to adopt, amend, revise, or change any land-use, the City Council shall pass a resolution notifying the public that the City is considering the adoption, amendment, revision, or change of the current land use ordinances pursuant to Section 17.04.090, and shall identify the specific ordinance(s) and/or zone(s) to be affected.
  - b. Applications for building or use permits filed after the passage of a Resolution pursuant to this section will be subject to any conditions or requirements established or amended as adopted in the pending ordinance.
  - c. Upon receipt of an application for any building or use permit in an area or zone subject to a pending ordinance, the building official receivinge the application shall notify the applicant of the pending ordinance(s).
- 9. Where an application for zoning amendment has been denied, the planning commission and the City Council shall not review the same zoning amendment application within six months of such denial, but may consider the proposal thereafter, but only if there is a substantial change of conditions since the earlier application. A resubmitted application shall be processed in accordance with the procedure outlined above.
- (<u>Ord. 2015-03</u>, <u>amended XX/XX/201X</u>; <u>Ord.inance</u> 2005-17, amended 11/15/<u>20</u>05; Ord. no. 2003-3, <u>aAmended</u>, 03/04/2003; Ord. no. 111 §1(part), 1985; prior code §121 0 1-11.)

**SECTION II**: The provisions of this ordinance and the provisions adopted or incorporated by reference are severable. If any provision of this ordinance is found to be invalid, unlawful, or unconstitutional by a court of competent jurisdiction, the balance of the ordinance shall nevertheless be unaffected and continue in full force and effect.

**SECTION III**: Provisions of other ordinances in conflict with this ordinance and the provisions adopted or incorporated by reference are hereby repealed or amended as provided herein.

**SECTION IV**: This ordinance shall take effect immediately upon its passage and posting as provide by law.

102		EFFECTIVE by the City Council of Lindon City, Utah, this
103	day of	, 2015.
104		
105		
106		
107		
108	Jeff Acerson, Mayor	
109	, ,	
110		
111		
112	ATTEST:	
113	ATTEST.	
114		
115	Kathryn A. Macaman	<del>_</del>
	Kathryn A. Moosman,	
116	Lindon City Recorder	
117		
118		
119	SEAL	

#### 8. Discussion Item — Pavement Management & Road Funding

(45 minutes)

Mark Christensen, contract City Engineer, will present an overview of pavement management principles and review findings from an extensive Lindon City pavement condition study with estimated funding needed to maintain the roadways in the future. No motions will be made.

See attached presentation slides prepared by Mark Christensen. Mark will quickly review the materials and focus most of the presentation on findings and funding needs highlighted in the last few slides. The findings are as anticipated, in that Lindon City is faced with significant funding shortfalls in order to maintain even a small percentage of roadways in reasonable condition. The City has annually invested about \$250,000 to \$300,000 in road reconstruction and road maintenance. A few larger projects have been completed through bonding or large cash outlays.

Based on JUB's findings, if the City invests \$400,000 per year into road maintenance projects, using funds only to keep the best roads in best condition (not reconstruct poor roads), by the year 2022 approximately 75% of roads in Lindon will deteriorate to poor or failed condition. Road investment of approximately \$1.2 Million per year would be required to maintain approximately 70% to 90% of the roadways in good to fair condition.

Deteriorating roadway conditions far exceed the ability of the City to reasonably maintain and/or reconstruct them without significant amounts of additional or expanded funding. The majority of State distributed road funding moneys coming to Lindon (class C road funds) are being used to pay for the 700 North road bond, street lighting, crack sealing, and minor other roadway repairs. As such the City forecasts being able to invest only a minor amount (<\$50,000) into road maintenance projects next fiscal year (2015-16). Without subsidy from the General Fund this funding constraint is anticipated to continue for several years.

Sample Motion: No motion needed for discussion item.



# **Pavement Management**

~ How to make the most of your maintenance dollars ~





## Single Largest Asset of Cities

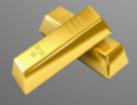
- Roadways are the single larges asset of most cities.
- Lindon owns about 50 miles of paved streets, with an estimated asset value of \$43M

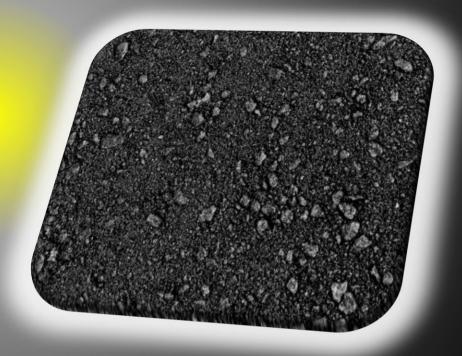


## Pavement Preservation

#### The Basics of Asphalt Preservation

- Asphalt pavement (or Asphalt cement) is made up of primarily two components:
  - Aggregate rock
  - Asphalt Binder by product of refining crude oil





Source: Rocky Mountain West Pavement Preservation Partnership



# Pavement Deterioration-Causes

- The environment
  - Sunshine (ultraviolet rays)
    - Oxidation
  - Water penetration
    - Hydraulic action
  - Temperature and moisture
    - Expansion and contraction (freeze / thaw)



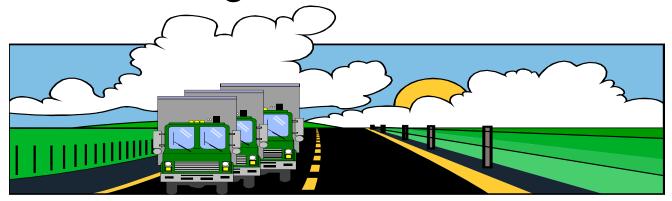


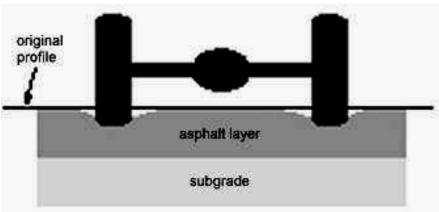


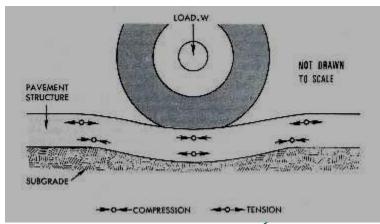


# Pavement Deterioration-Causes

Traffic Loading



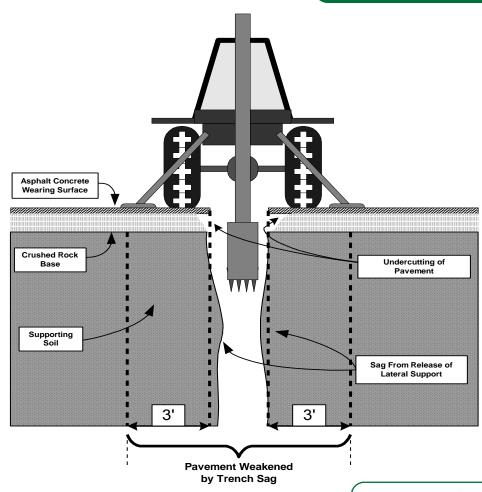






# Pavement Deterioration-Causes

- Utility Cuts/Trenching
  - Pavement Deterioration-Road cuts reduce a 20-year
    pavement by 7 to 10 years





### Pavement Treatment Toolbox

#### **Routine Maintenance**

- Spot Repairs
- Crack Seal

#### Preventative Maintenance

- Minor Patching
- Seal Coats
  - Rejuvenators
  - o Chip Seal
  - Cape Seal
  - Slurry Seals
  - High Density Mineral Bond (e.g. HA5)
  - Microsurface

#### Rehabilitation

- Major Patching
- Overlay
- Mill & Overlay

#### Reconstruciton

 Pulverize Asphalt and Repave (replacing yielding subbase as needed)

#### Full Reconstruction

 Replace Asphalt and Base (and yielding subbase as needed)



## **History of Pavement Management**

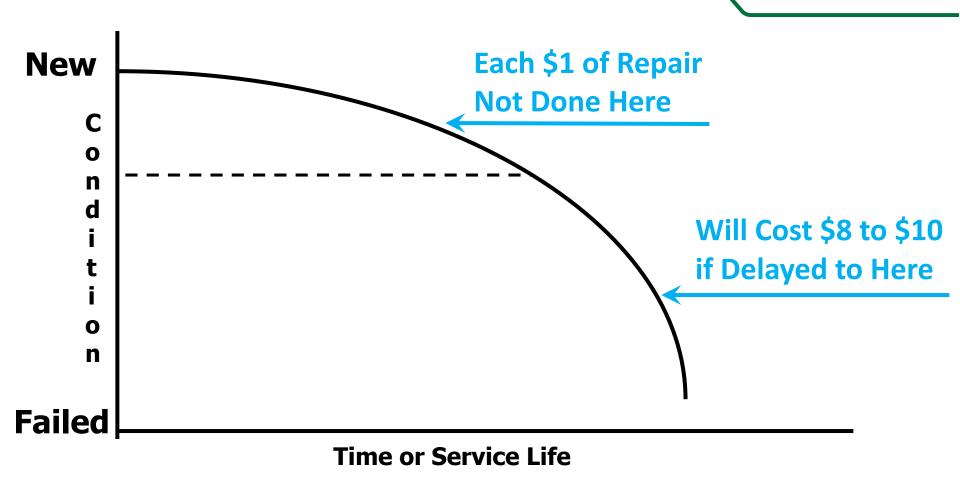
 Historically only two criteria existed when deciding which roads received maintenance or rehabilitation.







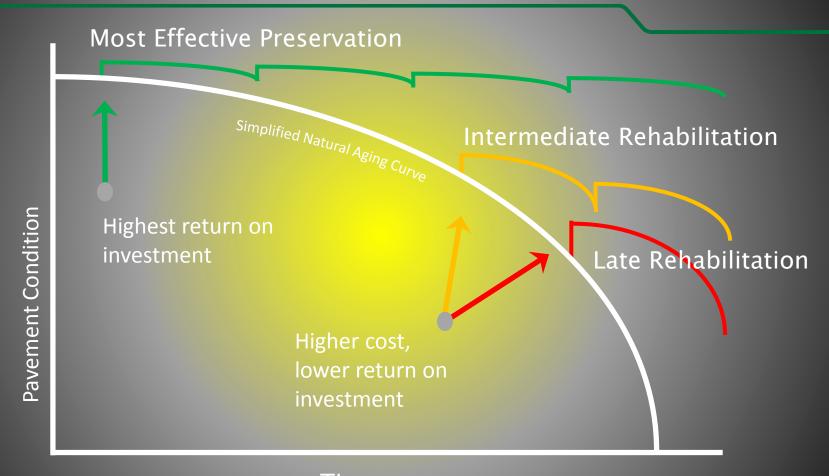
### The Cost of Pavement Deterioration



Source: Adapted from Local Technical Assistance Program, Utah State University slide



## Pavement Life Curve



Time

Source: Rocky Mountain West Pavement Preservation Partnership



## Cost of Delaying Maintenance



Timing Belt Replacement: \$400



Engine Replacement: \$2,500

Source: Rocky Mountain West Pavement Preservation Partnership



### **KEEP THE GOOD ROADS GOOD**

#### DO THESE **FIRST**



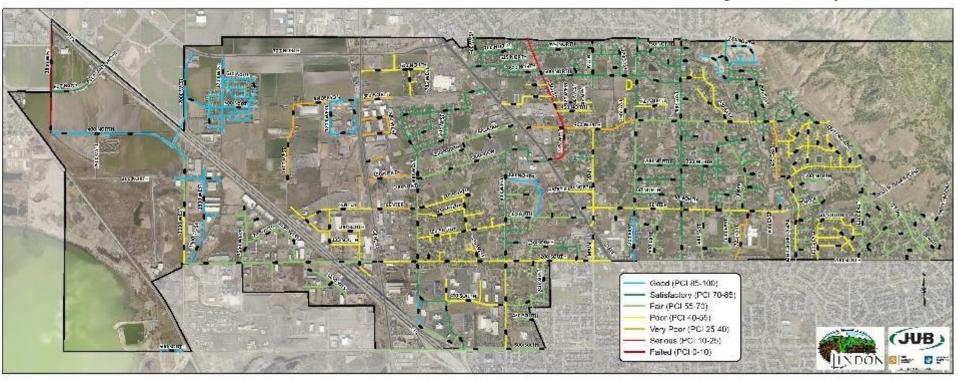
#### DO THESE **LAST**





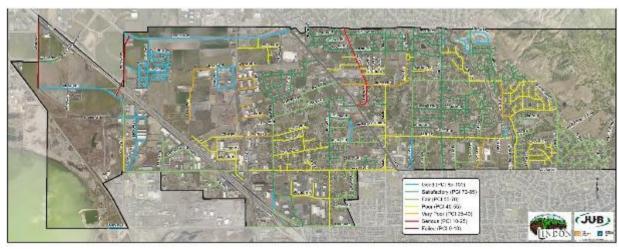
## **Pavement Condition Maps**

= 775 Inspection Locations
Throughout the City



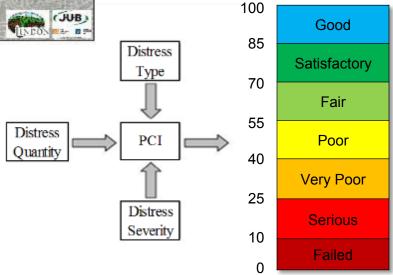


## Roadway PCI Value



#### Pavement Condition Index (PCI):

A numerical rating of the pavement condition that ranges from 0 – 100 with 0 being the worst possible condition and 100 being the best possible condition.



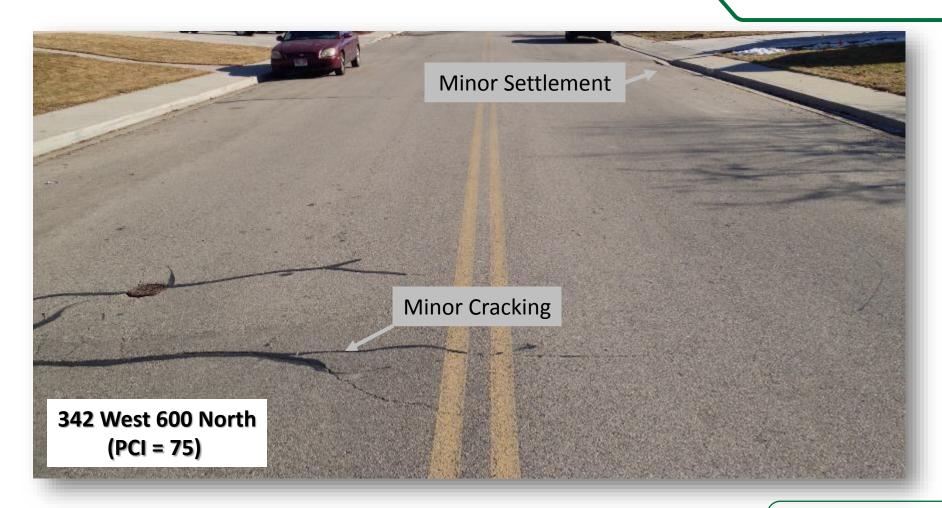


## **Example of a Good Road**



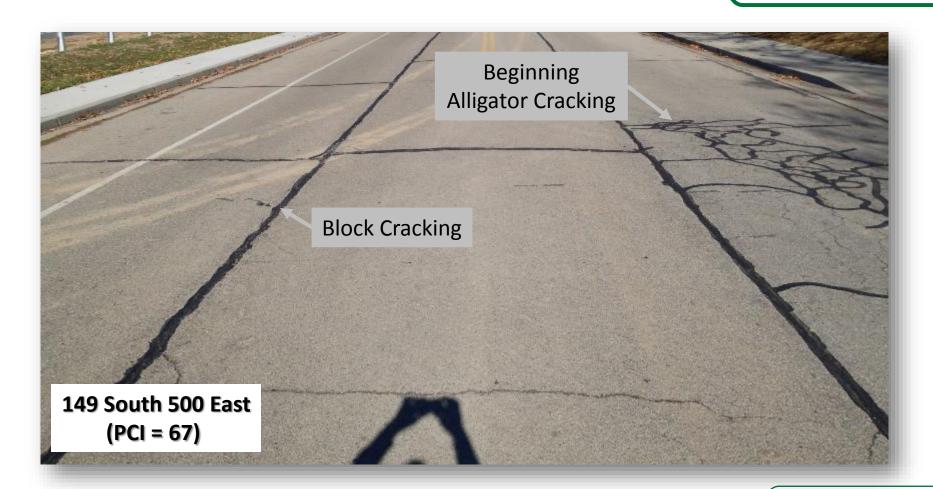


## **Example of a Satisfactory Road**



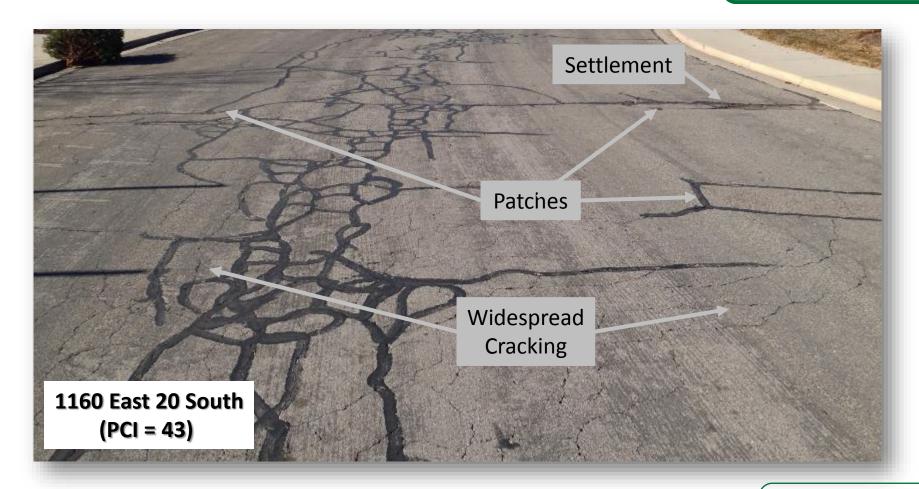


# **Example of a Fair Road**



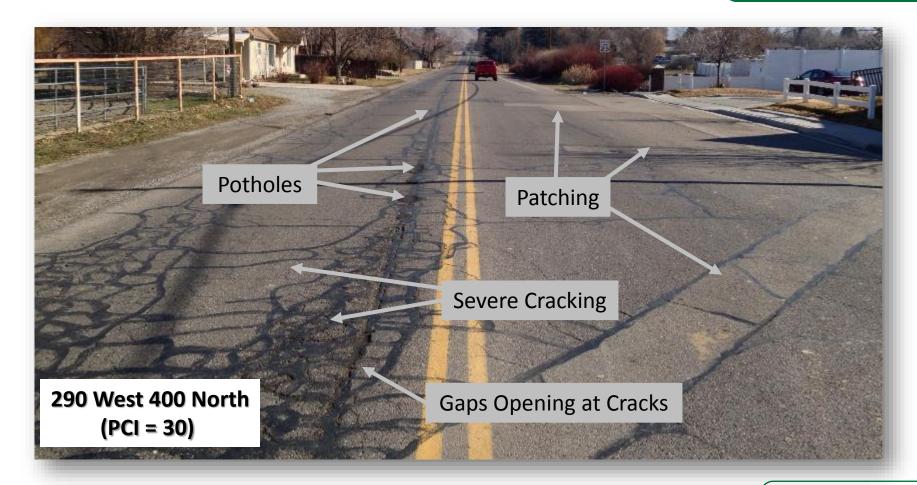


## **Example of a Poor Road**





## **Example of a Very Poor Road**





## **Example of a Serious Road**





## **Example of a Failed Road**





### **Current Road Conditions**



<sup>\* 2007 &</sup>amp; 2014 ratings based on inspections.



## **Types of Treatment**

Туре	Description	Cost per Mile
Major Reconstruction	Rebuild, replace Yielding Subbase	\$1,335,000 (\$6.50 / SF)
<b>Minor Reconstruction</b>	Pulverize and Repave, Replace Yielding Subbase	\$915,000 (\$4.40 / SF)
Major Rehabilitation	Mill and Overlay	\$625,000 (\$3.00 / SF)
Minor Rehabilitation	Overlay, Major Patching	\$460,000 (\$2.20 / SF)
<b>Preventative Maintenance</b>	Seal Coat, Crack Seal, Major Patching	\$94,000 (\$0.45 / SF)
<b>Preventative Maintenance</b>	Seal Coat, Crack Seal, Minor Patching	\$73,000 (\$0.35 / SF)
<b>Preventative Maintenance</b>	Seal Coat	\$42,000 (\$0.20 / SF)
<b>Routine Maintenance</b>	Crack Seal & Spot Repairs	\$32,000 (\$0.15 / SF)
<b>Routine Maintenance</b>	Crack Seal	\$21,000 (\$0.10 / SF)

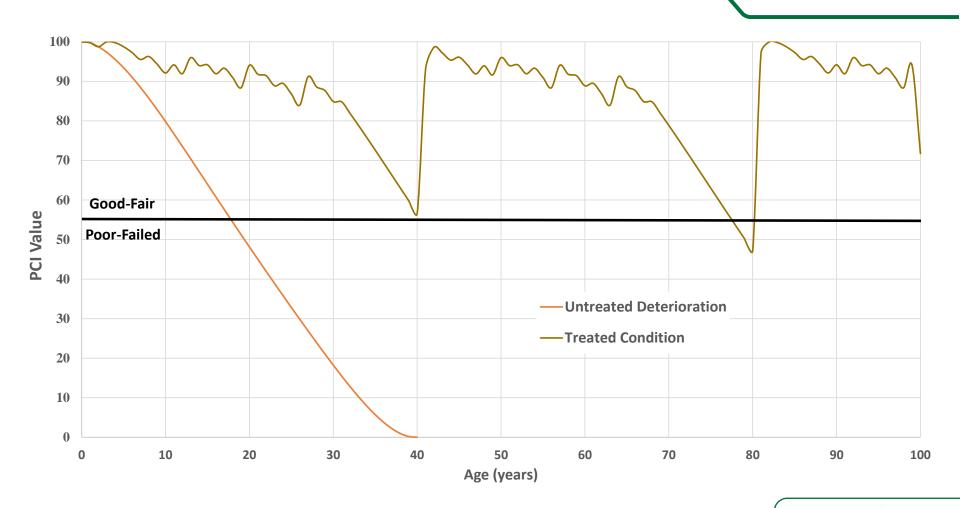






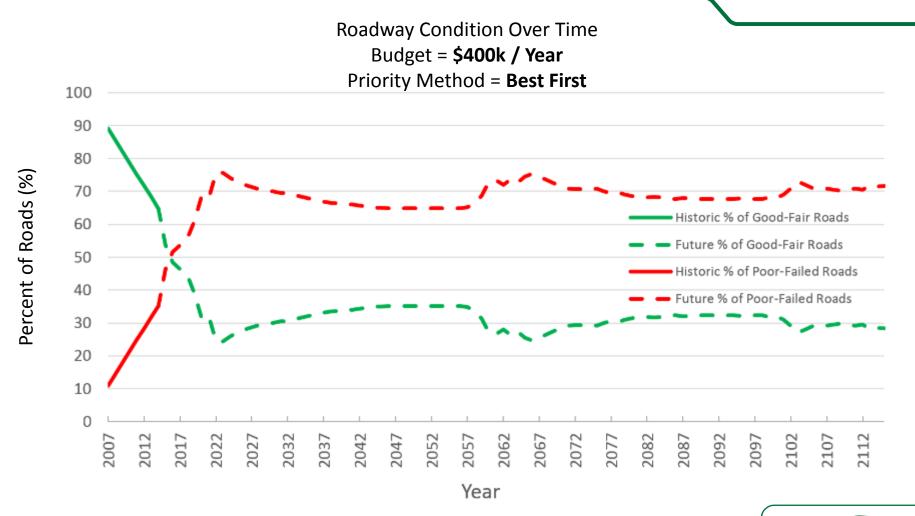


## **Preservation Based Management**



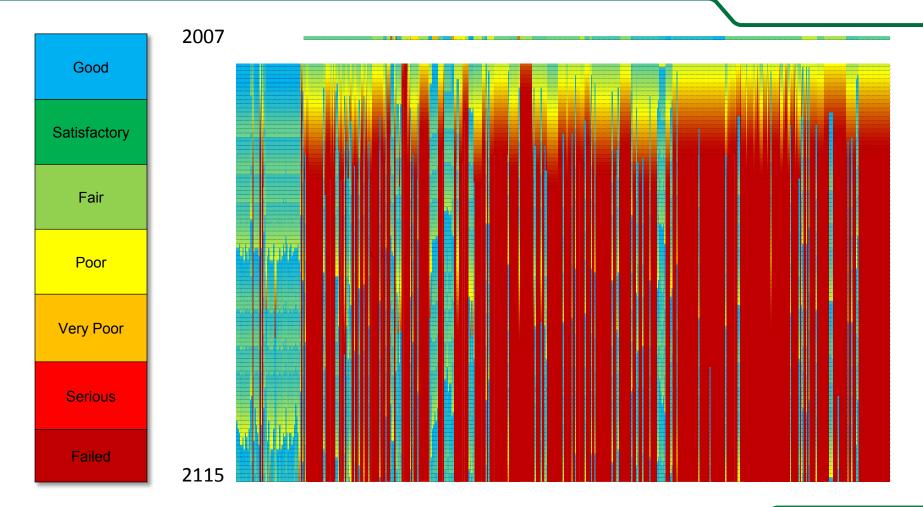


### \$400k & Best First Treatment Scenario



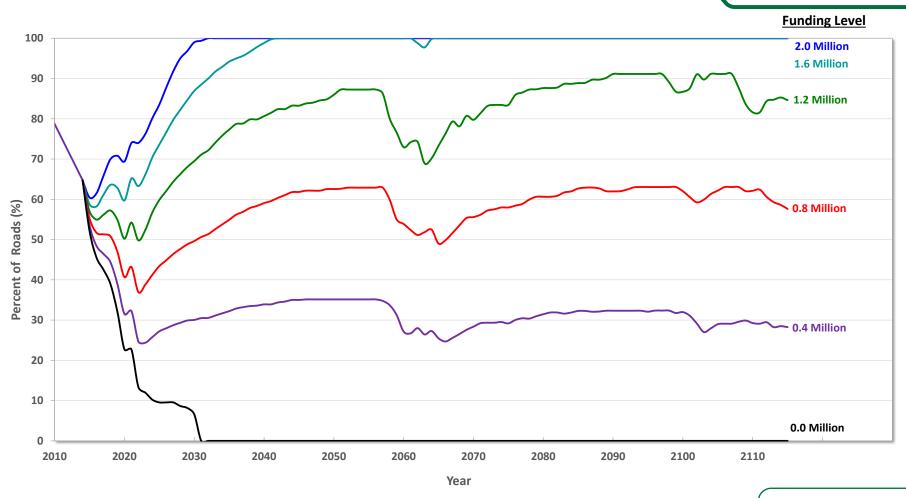


# \$400k / Year & Best First Treatment Scenario





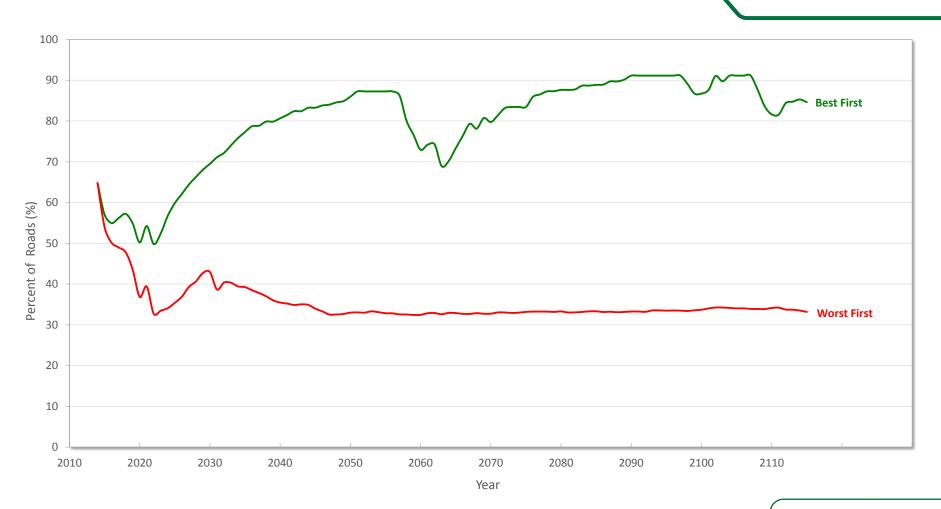
# Percent of All Roads in Good to Fair Condition





#### **Best First vs. Worst First**

(at \$1.2 Million per Year)





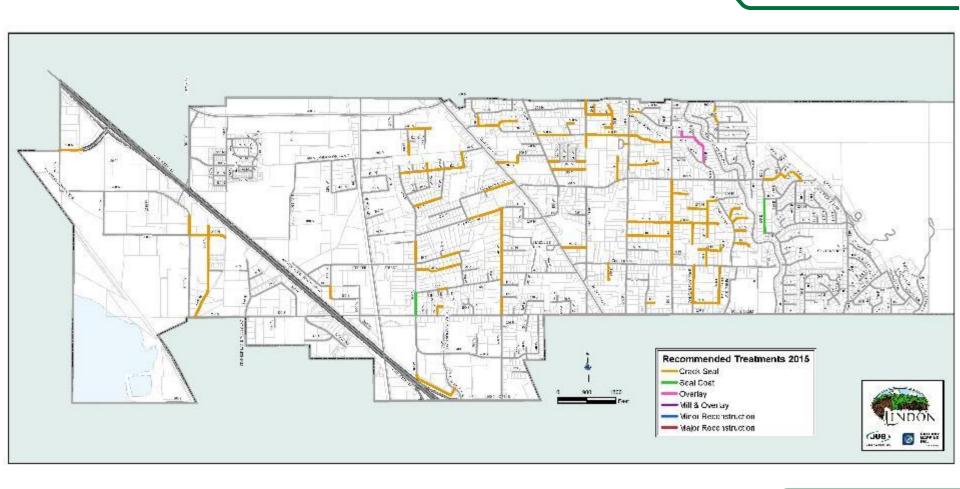
# **Possible Funding Sources**

- Class C Road Funds (Gas Tax)
- General Funds (City)
- Property Tax (City)
- Transportation Utility (City)
- Gas Tax (State)
- Car Registration Fee (State)
- Mileage Tax (State)
- Sales Tax (State)





## **2015 Treatments**



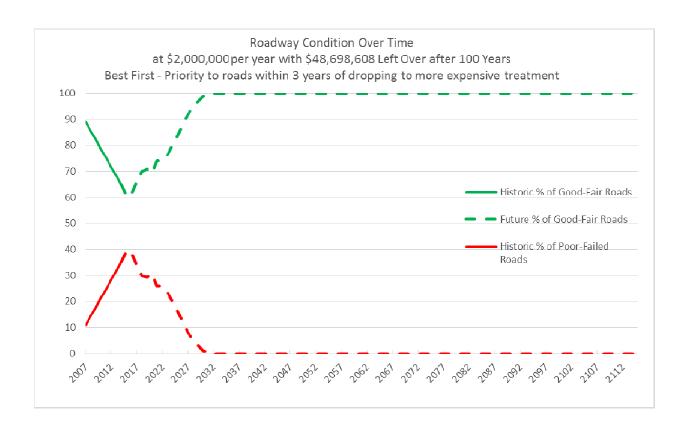


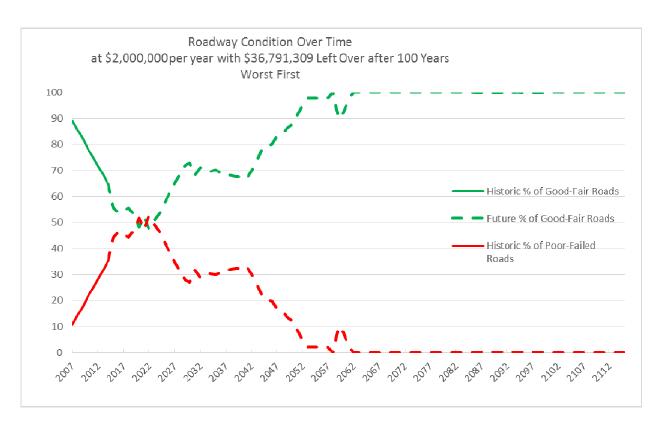
## Recommendations

- Use philosophy of "best first"
- Procure funding to maintain all the roads in fair to good condition
- Follow the plan
- Educate public about current situation and how to make the most of available funding
- Maintain detailed records of treatments
- ❖ Re-inventory and update model in 2019









#### 9. Discussion Item — Public Safety Building: Timeline & Funding

(45 minutes)

The City Council will review the timeline for design & construction of the future public safety/fire station building and will discuss building alternatives, public involvement, and possible funding options. No motions will be made.

Lindon City's current fire department facilities are temporary facilities contemplated for use only until a permanent fire station was able to be constructed. Lindon's contract for fire and EMS services provided by the City of Orem required that a new fire station facility be ready for operation by July I, 2013. Due to the financial constraints on the City during the recession, a time extension was granted by the City of Orem for an additional 5-year period so the facility would not need to be finished until July I, 2018.

Police Department facilities within the current City Center are also inadequate for long-term use with evidence storage space, office facilities, and safety deficiencies that need to be addressed. Therefore, a combined Fire/Police Public Safety Building has been contemplated. The City has explored a standalone fire station in addition to a significant remodel of the existing City Center in order to accommodate Police Department needs and also resolve other needs at the City Center building.

The City realizes that the current facilities for both fire and police are inadequate long-term solutions that will need to be upgraded to accommodate current and future growth in the City. In the summer of 2013 the City hired JRCA Architects to prepare a Public Safety Facilities Master Plan and assess the space needs of Lindon's fire and police departments. Various building locations and options for development of public safety facilities were evaluated and presented to the City Council in October 2013. This study has provided a basis for estimated costs of various options for future public safety facilities needed by the City. No final building or development decisions have been made.

A DRAFT timeline for construction and potential capital expenditures for the two most cost-efficient options revealed by the Public Safety Facilities Master Plan study is attached. Many decisions are yet to be made on this issue. Staff desires feedback regarding options for development, funding, time lines for construction, and level of public involvement desired by the Mayor and Council as this process moves forward.

No motions or final decisions will be made. As this is a discussion item only, no public comment will be taken unless permitted by the Mayor and Council.

Sample Motion: No motion needed for discussion item.

#### **Public Safety Building**

#### Most preferred options w/estimated cost:

A. Combined Fire/Police Public Safety Building Total: \$7,002,000

B. Separate Fire/Police buildings

a. Standalone Fire Station \$4,250,000
 b. Remodel - Expand Police Dept / City Center \$2,547,000
 Total: \$6,797,000

#### **Available Funding:**

• ~\$360,000. Reserve retired Hogan bond (Flow Rider) amounts for future Public Safety Building. (Approx \$180,000/yr)

• ~\$1.5 Million. State Street RDA (restricted funds for non-building costs) (FY2017)

Estimated 20-yr bond amount needed to cover remaining costs = \$5.5 Million. (approx \$390,000 / year) Possible funding sources: property taxes, sales taxes, Public Safety Impact Fee, other fees/taxes.

#### **DRAFT Timeline:**

Public involvement: inform / gather feedback	6 Months	(Winter 2015 to Spring 2016)
Architect Selection	1 ½ Months	(May 2016)
Additional Public involvement  • Inform / educate on final decisions	1 Month	(July 2016)
Design & Securing of Finances (bond)	5 Months	(August 2016)
Possible Property Acquisition / Council action	4 Months	(January 2017)
Contractor Selection & Bid Award	1 ½ Months	(April 2017)
Construction	10 Months	(June 2017)
Contingency & Move-in	2 Months	(May 2018)
<b>Total Estimated Development Schedule</b>	31 Months	(July 2018)

## Lindon Public Safety Building Site Evaluation

Site: #2 - 40 West 25 North

Evaluation Criteria	Possible Points	Site Site Specific Comments Score
Minimum Property Size Requirements   1 Level 2 Fire   2 Level   1 Level 2 Fire   14275 S.F.   14275 S.F.	15	15 The available 2.7 Acres will accommodate an optimum building configuration. The required Site area may also be reduce by approximately 6,000 S.F. due to proximity to existing Municipal Center parking. The existing Fire Station building may also be used in lieu of constructing a net Ancillary Building at this site.
2 Property Ownership / Availability/ Cost Is the proposed property owned by the City O'will it require Purchase - Is it Located in the RDA funding Area Allowing Use of those Funds?	15	10 The main parcel is owned by the City with adjacent required parcels privately owned. Current Property Owner has not responded favorably to previous sale inquiries. Site is within the RDA Funding Area
3 Emergency Access To/From Site Do the road widths, control of nearby intersections, existing traffic patterns, and nearby uses allow for safe emergency access to and from the facility	20	18 Center Street does provide good access to the Service Area - Possible future traffic sign at State Street will also improve State Street access
Public Exposure/Image/Access to Property     Does the proposed parcel provide exposure and visibility to allow for the design to conway an image that will reinforce the community policing goals of the Department?     Does the site allow for convenient and safe public access?	5	5 There is good visibility from both State Street and 25 North
5 Impact of Proposed Facility on Adjacent Properties Will the proposed facility and anticipated activities add to or detract from adjacent property uses and values. Can parking be accommodated?	5	5 Surrounding uses to the North and East are Municipal - To the South is Commercial
6 Will a Public Safety Use at this Location Support the City's Master Planning Goals Is the location compatible with the City's long term Planning Goals for this location and the goal of creating a Government Campus?	10	10 Site is immediately adjacent to the City Hall and will help to create the desired Government Campus
7 Topography/Soil Conditions/Geological Features/ Flood Plan/Significant "Untouchable" Existing Conditions  Will the site topography, ground water, soil condition, flood plan, or "untouchable features significantly limit design or add to construction costs	10	Demolition of an existing commercial building and some site improvements will be required
8 Current Property Zoning/Ability to Obtain Proper Zoning Does the Current Zoning allow for this use? If not, will the proposed zoning be easily obtained? What is the required time frame to obtain the required zoning?	5	Existing Property is Zoned General Commercial and may require rezoning - Ti is not anticipated to be an issue at this location
9 Existing Infrastructure and Frontage Improvements Will utilities be Required to be Extended From Beyond the Site? Will Existing Utilities Require Relocation? Are Existing Street Improvement Usable or Will They Require Replacement?	10	Both State Street and 40 North street improvements are existing Required Utilities appear to be available in the adjacent streets
0 Convenient Access to Existing City Hall Does the Site provide convenient pedestrian access to the existing City Hall?	5	5 The site is immediately South of the existing City Hall and is within convenient walking distance
Total Points	100	88

## 1<sup>st</sup> Ranked Site

40 West 25 North





## **Public Safety Facilities Master Plan**

Lindon, Utah



### **Project Budget Estimate**

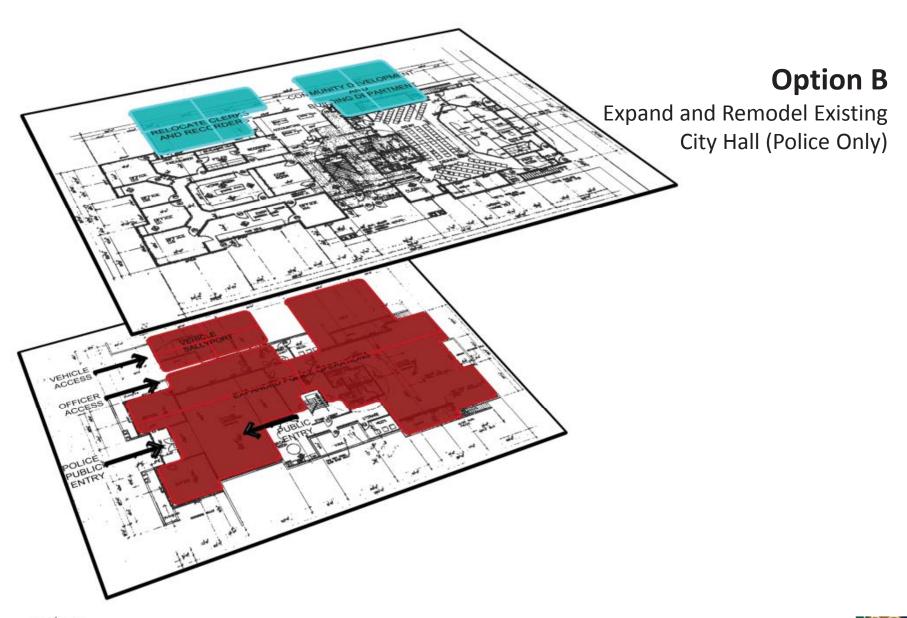
#### 40 West 25 North

		Area	Unit Cost		Comment
	Public Safety Building	22,134 S.F.	\$190.00 /S.F.	\$4,205,460	
Construction Costs	Ancillary Building	0 S.F.	\$120.00 /S.F.	\$0	Utilize Existing Fire Station
	Site Improvement	59,500 S.F.	\$6.00 /S.F.	\$357,000	167
ruction	Estimated Construction Cost			\$4,562,460	2013 Dollars
nstr	Contingency	1 1	10%	\$456,246	
S	Inflation to Start of Construction	2 Yrs.	4%	\$401,496.48	1
	Adjusted Construction Cost			\$5,420,202	2015 Dollars
	Allowance A/E Fees		6.50%	\$352,313	
	Furnishings and Equipment	22,134 S.F.	\$12.00 /S.F.	\$265,608	
	Allowance FF&E Design Fees	22,22 . 2	8.00%	\$21,249	
	Itemized Building Systems				
	Audio/Visual System	22,134 S.F.	\$1.00 /S.F.	\$22,134	Training/Briefing/Community Rooms
	Phone Systems	22,134 S.F.	\$1.25 /S.F.	\$27,668	E 150 US
osts	Data Cabling	22,134 S.F.	\$2.00 /S.F.	\$44,268	
Project Soft Costs	Other Project Costs				
t S	Site Suvey	1 1		\$6,000	Allowance
olec	Geotechnical Study	1 1		\$6,000	Allowance
P	Phase 1 Environmntal Assessment	1 1		\$4,500	Allowance
	Thermal Conductivity System	1 1		\$18,000	If Considering Geoechange HVAC System
	System Commissioning		0.25%	\$13,551	If Persuing USGBC LEED Designation
	Owner Provided Construction Phase Testing		0.25%	\$13,551	
	Land Acquisition Costs	52,500 S.F	\$15.00 /S.F.	\$787,500	Assumed Cost/S.F.
	Bond/Finance Charges			\$0	
	Legal Fees			\$0	
	Moving Costs			\$0	
_	Total Estimated Project Costs	+		\$7,002,543	











**Public Safety Facilities Master Plan** 



### **Project Budget Estimate**

#### **Expand and Rennovate Existing City Hall**

		Area	Unit Cost		Comment
	Police Remodel Existing City Hall	5,200 S.F.	\$80.00 /S.F.	\$416,000	
	Expand Existing City Hall	6,000 S.F.	\$225.00 /S.F.	\$1,350,000	Expand on 2 Floors
S	Other City Hall Improvements - Allowance	1,200 S.F.	\$80.00 /S.F.	\$96,000	100
ost	Ancillary Building	0 S.F.	\$120.00 /S.F.	\$0	Utilize Existing Fire Station
onc	Site Improvement	15,000 S.F.	\$6.00 /S.F.	\$90,000	Allowance
Construction Costs	Estimated Construction Cost			\$1,952,000	2013 Dollars
S	Contingency		10%	\$195,200	
	Inflation to Start of Construction	1 Yrs.	4%	\$85,888.00	
	Adjusted Construction Cost			\$2,233,088	2014 Dollars
	Allowance A/E Fees		6.50%	\$145,151	
	Furnishings and Equipment	8,200 S.F.	\$12.00 /S.F.	\$98,400	Allowance
	Allowance FF&E Design Fees		8.00%	\$7,872	
	Itemized Building Systems	1 1			
	Audio/Visual System	11,200 S.F.	\$1.00 /S.F.	\$11,200	Training/Briefing/Community Rooms
ts	Phone Systems	11,200 S.F.	\$1.25 /S.F.	\$14,000	
Cos	Data Cabling	11,200 S.F.	\$2.00 /S.F.	\$22,400	1
Project Soft Costs	Other Project Costs				
ject	Site Suvey	1 1		\$5,000	Allowance
Pro	Geotechnical Study	1 1			Allowance
	Phase 1 Environmntal Assessment	1 1			Allowance
	Owner Provided Construction Phase Testing		0.25%	\$5,583	100 x 200 100 200 100 100 100 100 100 100 100
	Land Acquisition Costs	0 S.F	\$10.00 /S.F.	\$0	Assumed Cost/S.F.
	Bond/Finance Charges			\$0	
	Legal Fees			\$0	
	Moving Costs			\$0	
	Total Estimated Project Costs			\$2,547,693	

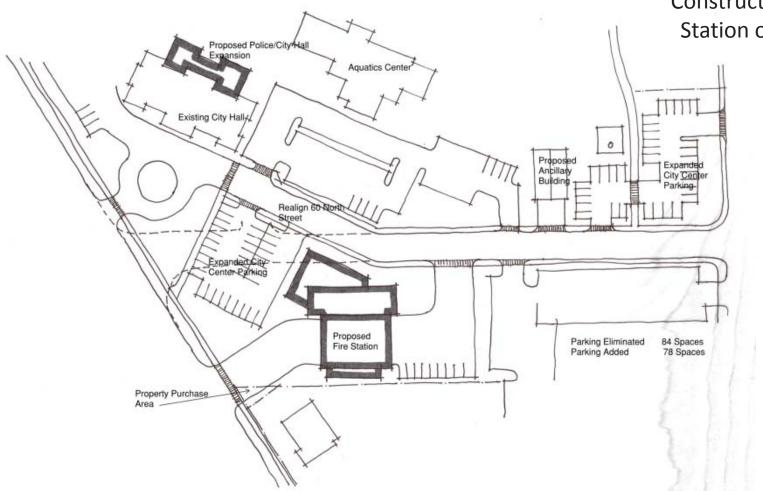


## **Public Safety Facilities Master Plan**



## **Option B**

Construct Separate Fire
Station on City Owned
Property





## **Public Safety Facilities Master Plan**



## Lindon Public Safety Building Site Evaluation

Site: Expand and Remodel Existing City Hall - Construct Separate Fire Station

Evaluation Criterial	Possible Points	Site	Site Specific Comments
Minimum Property Size Requirements   1 Level 2 Fire   2 Level	15	15	
2 Property Ownership / Avalibility/ Cost Is the proposed properly owned by the City Or will it require Purchase - Is it Located in the RDA funding Area Allowing Use of those Funds?	15	15	
Emergency Access To/From Site     Do the road widths, control of nearby     intersections, existing traffic patterns, and     nearby uses allow for safe emergency access     to and from the facility	20	15	
4 Public Exposure/Image/Access to Property Does the proposed parcel provide exposure and visibility to allow for the design to convey an image that will reinforce the community policing goals of the Department? Does the site allow for convenient and safe public access?	5	5	
5 Impact of Proposed Facility on Adjacent Properties Will the proposed facility and anticipated activities add to or detract from adjacent property uses and values. Can parking be accomodated?	5	3	Will impact the location of parking serving the Aquatic Center
6 Will a Public Safety Use at this Location Support the City's Master Planning Goals Is the location compatible with the City's long term Planning Goals for this location and the goal of creating a Government Campus?	10	10	
7 Topography/Soil Conditions/Geological Features/ Flood Plan/Significant "Untouchable" Existing Conditions Will the site topography, ground water, soil condition, flood plan, or "untouchable featuressignificantly limit design or add to construction costs	10	10	
8 Current Property Zoning/Ability to Obtain Proper Zoning Does the Current Zoning allow for this use? If not, will the proposed zoning be easily obtained? What is the required time frame to obtain the required zoning?	5	5	
Existing Infrastructure and Frontage Improvements     Will utilities be Required to be Extended From Beyond the     Site? Will Existing Utilities Require Relocation? Are Existing     Street Improvement Usable or Will They Require Reptacement?	10	7	Will Require Patial Relocation of 25 North Street
Convenient Access to Existing City Hall     Does the Site provide convenient pedestrian access to the existing City Hall?	5	5	
Total Points	100	90	



**Public Safety Facilities Master Plan** Lindon, Utah



### **Project Budget Estimate**

#### **Construct Stand Alone 3 Bay Fire Station**

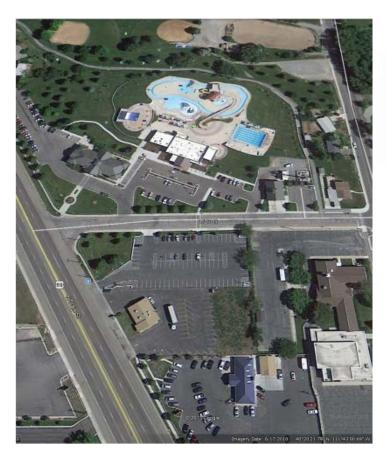
		Area	Unit Cost		Comment
	Separate Fire Station	13,718 S.F.	\$190.00 /S.F.	\$2,606,420	
sts	Fire Station Site Work	55,000 S.F.	\$6.00 /S.F.	\$330,000	
Costs	Estimated Construction Cost	3631	101 1020	\$2,936,420	2013 Dollars
rction	Additional Site Development	45,000 S.F.	\$6.00 /S.F.		Includes Realignment of 25 North
Construction	Contingency		10%	\$293,642	
	Inflation to Start of Construction	2 Yrs.	4%	\$258,405	I .
_	Adjusted Construction Cost			\$3,758,467	2015 Dollars
	Allowance A/E Fees		6.50%	\$244,300	
	Furnishings and Equipment	13,718 S.F.	\$12.00 /S.F.	\$164,616	
	Allowance FF&E Design Fees		8.00%	\$13,169	I .
	Itemized Building Systems				
	Phone Systems/Call Down System	13,718 S.F.	\$1.25 /S.F.	\$17,148	Allowance
	Data/IT Cabling	13,718 S.F.	\$1.00 /S.F.	\$13,718	Allowance
Costs	Other Project Costs	1 1			
2011	Site Suvey			\$5,000	Allowance
2	Geotechnical Study				Allowance
)ec	Phase 1 Environmntal Assessment	1 1		\$2,500	Allowance
Project	System Commissioning	1 1	0.25%	\$9,396	If Persuing USGBC LEED Designation
	Owner Provided Construction Phase Testing	1 1	0.25%	\$9,396	
	Land Acquisition Costs	750 S.F	\$10.00 /S.F.	\$7,500	Assumed Cost/S.F.
	Bond/Finance Charges	10.000.000	5.00.00.00.00.00.00.00	\$0	
	Legal Fees			\$0	
	Moving Costs			\$0	
	Total Estimated Project Costs	+	<del></del>	\$4,250,210	

Conbined Project Costs \$6,797,903



## **Public Safety Facilities Master Plan**

JRCA ARCHITECTS



#### **Final Ranking of Possible Development Options**

Final Ranking	Proposed Site	Site Evaluation Score	Project Budget Estimate	Comments
1	Expand and Remodel Existing City Hall For Police - Construct Separate Fire Station	90	\$6,797,903	
2	400 West 25 North	88	\$7,002,543	
3	400 North State Street	76	\$7,834,929	
4	250 North State Street	73	\$7,576,525	





**10. Review & Action — Franchise Agreement with Veracity Networks, LLC** (5 minutes) The City Council will review and take action on an agreement to permit Veracity Networks, LLC, limited use of the public street right-of-way for the installation of fiber optic communications system.

See attached agreement which has been reviewed by Staff and the City Attorney. Staff recommends approval of the agreement as presented.

**Sample Motion:** I move to (approved, continued, deny) the Franchise Agreement with Veracity Networks, LLC, with the following conditions:

#### FRANCHISE AGREEMENT LINDON CITY – VERACITY NETWORKS, LLC

A Franchise Agreement to permit Veracity Networks, LLC, limited use of the public right-of-way for the installation of fiber optic communications system.

Section 1. <u>Definitions</u>.

For the purposes of this Agreement, and where used herein, the following terms shall be deemed to have the following meanings:

- a. <u>City</u> means the City of Lindon, Utah, a municipal corporation organized under the laws of the State of Utah.
  - b. <u>Company</u> means Veracity Networks, LLC, authorized to do business in the State of Utah.
- c. <u>Facilities</u> means a system of providing telephonic and other telecommunications services, which system includes all wires, cables, conduits, vaults and other necessary fixtures and equipment for the transmission of sound and signals.
- d. <u>Sidewalk</u> means that portion of a street, other than the roadway, set apart by curbs, barriers, marking or other delineation for pedestrian travel, including parkways not on private property.
- e. <u>Street</u> means the entire width between the boundary lines of every way dedicated to the public use, and publicly maintained for the purposes of vehicular travel, including alleys and shall also include those areas used or maintained for use by the Public such as shoulder areas, pullouts, and turn-arounds, and shall also include those areas planned as roadways and streets in the Lindon City Street Master Plan.

#### Section 1-A. Franchise Agreement and Ordinance

- a. Agreement. Upon execution by the parties, this Agreement shall be deemed to constitute a contract by and between Lindon City, Utah (hereinafter "city"), a municipal corporation and political subdivision of the State of Utah, with principal offices at 100 North State Street, Lindon, Utah, 84042 and Veracity Networks, LLC, a Utah limited liability company (hereinafter "company") with its principal offices at 170 Election Road, Suite 200, Draper, Utah, 84020.
- b. Ordinance. The City has adopted the Telecommunications Rights-of-Way Ordinance found in Lindon City Code Title 5, Chapter 6 and the Telecommunications License Tax ordinance found in Lindon City Code Title 3, Chapter 12 which City ordinances (hereinafter "ordinances") are both incorporated into this Agreement herein by reference. The Company acknowledges that it has had an opportunity to read and become familiar with the ordinances. The parties agree that the provisions and requirements of the ordinances are material terms of this Agreement, and that each party hereby agrees to be contractually bound to comply with the terms of the ordinances. The definitions in the ordinances shall apply herein unless a different meaning is indicated in this Agreement. Nothing in this Section shall be deemed to require the Company to comply with any provision of the ordinances which is determined by a court of competent jurisdiction to be unlawful or beyond the City's authority.
- c. Ordinance Amendments. The City reserves the right to amend the ordinances at any time. The City shall give the Company notice as required by law and Company shall have an

opportunity to be heard concerning any proposed amendment. If there is any inconsistency in the substantive provision between the Company's rights and obligations under the Telecommunications Rights-of-Way Ordinance as amended and this Agreement, the provisions of this Agreement shall govern during its term. Otherwise, the Company agrees to comply with any such amendments.

#### Section 2. Permission Granted.

- a. The City hereby grants to the Company limited permission to install, operate, maintain and repair fiber optic communications systems within the public right-of-way in Lindon, Utah.
- b. The grant contained herein shall not be interpreted as providing the Company any permission on or over private property or in any easement owned by the City located on private property.
- c. This permission for use is granted for a period not to exceed ten (10) years commencing upon execution of this Agreement.

#### Section 3. Use of Streets.

The Company's facilities shall be located, constructed and maintained so that none of its facilities shall endanger the lives or property of the City or its citizens, or interfere with any improvements the City may deem proper to make now or in the future, or hinder or obstruct the free use of streets by the public. Whenever it shall be necessary in the location, construction or maintenance of the facilities to dig, or in any manner disturb or interfere with any of the streets, the Company shall, at its own cost and expense, immediately thereafter, and in a manner approved by the City, replace and restore such streets in as good a condition as before said work was commenced and in accordance with standards for such work set by City Code, the City Engineer, or Public Works Director. In the event any street shall become uneven, unsettled or otherwise require repairing because of the disturbance by the Company, then the Company shall promptly upon receipt of notice from the City to do so, cause said street to be repaired or restored to a good condition, and in compliance with the ordinances and standards of the City.

In the event that at any time during the period of this Agreement the City shall lawfully elect to make public improvements or repairs in or upon any street to alter or change the grade of any street or City-owned land, the Company, upon reasonable notice by the City, shall promptly remove or relocate as necessary its facilities at its own expense, and all streets disturbed by the Company shall be restored by it to as good a condition as before said disturbance and in compliance with the standards required by the City. The Company shall not place fixtures where the same will interfere with any other of the various, previously-installed or planned utilities serving the residents or businesses of the City. The Company agrees that the City Engineer may, in his discretion, limit the time period during which the Company may construct, locate, repair or maintain its facilities in streets in order to prevent traffic hazards; provided, however, that nothing herein stated shall prevent the Company from performing necessary repairs in the event of an emergency. Notice of street closure shall be given to the Public Works Director and to the City Engineer as soon as reasonably possible.

The Company is required to inform and advise the City Engineer of substantial repairs or replacement of existing facilities within or under existing, improved, or unimproved, streets or future City streets. In addition, the Company shall be required, at its expense, to provide the City with a plan for significant, non-emergency repairs or replacement of existing facilities within or under existing improved, or unimproved, streets or future City streets at least thirty (30) days prior to commencement of actual work. Facilities being installed under improved streets shall be pushed or bored under such streets in such manner that the existing improved street is not disturbed unless open cutting has been previously approved by the City Engineer's Office.

Whenever the Company is working in any street, proper and adequate warning signs shall be used, and shall comply with the current edition of the Manual on Uniform Traffic Control Devices, as required by and to the reasonable satisfaction of the City Engineer's Office and any applicable City Code or State Statute. In the event that traffic must be diverted around construction or repair work or a road must be closed due to such work, the Company shall develop and submit a traffic plan showing traffic flows and how such diversions or detours will be managed. In the event a street is left unrepaired at the end of a normal working day, the Company shall perform all necessary cleanup work and erect and monitor such signs as are adequate to provide notice to the public of the street conditions, said cleanup and signage shall be subject to approval by the City Engineer's Office. All traffic plans required by this section shall be approved by the City Engineer before the commencement of work on affected roadways.

Any street opening made for installation or repair of facilities shall be closed and permanently repaired and resurfaced to City standards within 15 working days of making the opening. The City Engineer or Public Works Director shall have the authority to modify the time period allowed in this paragraph for any given work location based upon the specifications of the work required for each location. In any event, said street opening shall be subject to permit approval by the City Engineer's Office in accordance with any ordinance regulating the same during the term of this Agreement. In the event the Company shall fail to close any street opening within the maximum period specified herein, upon notice to the Company and an opportunity to cure not to exceed 24 hours, the City shall be, and hereby is, authorized by the Company to repair and resurface the street opening; and the Company agrees to pay all reasonable and documented costs incurred by the City in doing the same upon demand of the City within thirty (30) days after Company's receipt of the City's invoice. In the reasonable discretion of the City, and prior to opening a street, the Company shall deposit cash or post bond in lieu thereof with the City, in an amount that the Public Works Director or City Engineer reasonably believes will be required to restore and repair the streets that will be disturbed, to be used in the event Company fails to close said street within a reasonable time to a condition satisfactory to the City Engineer's Office within the time specified. Upon the failure of the Company to close a street opening in the time specified, for failure to make such cash deposit or post bond when notified by the City Engineer's Office to do so, or both, the City may, in its reasonable discretion, refuse any permit or permits thereafter required to be issued or obtained for the opening of any streets in the City.

#### Section 4. Legal Construction.

While this Agreement shall not be construed as a comprehensive franchise agreement, the parties acknowledge and agree that the services provided by the Company constitute telecommunications services that are subject to the telecommunication license tax as contained in Title Three of the Lindon City Code.

#### Section 5. Construction Standards.

All buildings and facilities erected by Company for the purposes of conducting its business shall comply with the City Code and Construction Standards in effect at the time of the commencement of construction of said buildings and facilities.

#### Section 6. Fees.

Company agrees to be responsible to pay the actual, reasonable costs of the City in reviewing and approving any and all plans and work required by this agreement, including the City's actual, reasonable cost of supervising and inspecting the construction and/or repairs contemplated by this Agreement.

#### Section 7. Assignment.

The Company may assign or transfer this Agreement and all rights and obligations hereunder only with the express written permission of the City. Said assignment or transfer shall not be unreasonably withheld by the City upon the Company providing reasonable evidence of the assignee's commercial viability and ability to satisfy the obligations created under this agreement. Upon assignment or transfer, the transferee or assignee shall become entitled to all the rights and privileges herein granted and shall assume all of the obligations and liabilities as provided herein. Said assignment or transfer shall not relieve the Company from its obligations and liabilities as provided herein unless specifically provided by the City. Notwithstanding anything to the contrary within the terms of this Use Agreement, Company shall have the right to assign its rights and interest under the agreement to its subsidiaries, affiliates or successor legal entities or to the subsidiaries or affiliates of Company, without notice or consent.

#### Section 8. Powers.

The Company acknowledges that its rights hereunder are subject to the police power of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public; and it agrees to comply with all applicable general laws and ordinances enacted by the City pursuant to such power.

Any conflict between the provisions of this Agreement and any other present or future lawful exercise of the City's police power shall be resolved in favor of the latter, except that any such exercise that is not of a general application in the jurisdiction, or applies exclusively to the Company or to telephone and telegraph suppliers within the City, which contain provisions inconsistent with this Agreement, shall prevail only if upon such exercise, the City finds a situation exists constituting a danger to health, safety, property or general welfare, or such exercise is mandated by law.

#### Section 9. Indemnification.

The Company will compensate the City for the full actual loss, damage or destruction of the City's property that in any way arises from or is related to this Agreement or activities undertaken pursuant to this Agreement (including, without limitation, the installation, construction, operation or maintenance of Company's Communications Facilities), except to the extent caused by the negligence or willful misconduct on the part of the City or its agents, officers or employees.

The Company will further indemnify, defend and hold harmless the City and its agents, officers and employees, from any and all losses, damages, costs, expenses (including reasonable attorney's fees), statutory fines or penalties, actions or claims for personal injury (including death), damage to property, or other damage or financial loss of whatever nature (except special or consequential damages other than personal injury and property damage) in any way arising out of or in connection with this Agreement or activities undertaken pursuant to this Agreement (including, without limitation, the installation, construction, operation or maintenance of Company's Communications Facilities), except to the extent caused by the negligence or willful misconduct on the part of the City or its agents, officers or employees. The Company specifically assumes the liability for actions brought against the City and its agents, officers and employees, by the Company's agents, officers or employees, and the Company specifically waives any immunity from the enforcement of this indemnification provision that might otherwise be provided by workers' compensation law.

Section 10. Insurance.

The company shall procure and maintain the following types of insurance for the duration of this Agreement. Any contractor hired by Tenant to perform work at the leased property shall procure and maintain insurance.

- a. Commercial General Liability ("CGL") with a coverage limit of at least \$2,300,000.00 combined single limit per occurrence for bodily injury, personal injury and property damage. If the policy contains a general aggregate limit, the general aggregate limit must apply separately to this Agreement or the general aggregate limit shall be \$2,300,000.00.
- b. Business Auto with coverage that is at least \$2,300,000.00 combined single limit per accident for bodily injury and property damage.
  - c. Workers' Compensation and Employer's Liability as required by the State of Utah.

Section 11. Waiver.

The waiver of any breach of any of the terms or conditions of this Agreement shall be limited to the act or acts constituting such breach, and shall never be construed as being a continuing or permanent waiver of any such terms or conditions, all of which shall be and remain in full force and effect as to future acts or happenings notwithstanding any such individual waiver of any breach thereof.

#### Section 12. Default and Termination.

In the event the Company shall make material default in the observance or performance of any one or more of the agreements, duties or obligations imposed upon it by this Agreement, and if any such default or defaults shall continue for a period of thirty (30) days after written notice thereof to the Company from the City stating the alleged default on the part of the Company, and the Company fails to take reasonable action necessary to cure said default, then and in each and every case, the City, in addition to all other rights and remedies allowed by law, shall be entitled to terminate this Agreement, and all rights and privileges of the Company under this Agreement shall thereupon be at an end. Provided, however, that the Company shall not be considered to be in default and be excused from performance at all times during which the Company may be delayed or interfered with by acts of God, action of or under governmental authority having jurisdiction over the Company, labor strikes or other conditions not controlled by, or brought about by, the actions of the Company; provided, however, that excuse from performance shall not relieve Company from any payment, as provided herein, to the City.

#### Section 13. Renewal.

This Agreement may be renewed by the Company upon terms that are mutually agreeable to the Company and the City. Renewal of this Agreement will not be effective unless it is approved by the governing body of the City of Lindon. The Company can begin negotiating renewal of this Agreement six (6) months prior to the expiration date.

#### Section 14. Abandonment.

The Company may terminate this Agreement thirty (30) days after giving the City notice of

abandonment of the facilities.

In the event that the Company abandons the facilities, the City shall have the option of requiring the Company to remove the facilities if the City determines, in its sole discretion, that such facilities would interfere with or impair the City's ability to maintain, repair or expand its public improvements. The City shall give notice of the requirement to remove the facilities within 60 days of notice of abandonment from the Company. If the City requires the removal of the facilities the Company shall, at its own cost and expense, remove the facilities, and in a manner approved by the City, replace and restore such streets that may be affected in as good a condition as before said work was commenced and in accordance with standards for such work set by City Code or by the City Engineer.

#### Section 15. Notice.

Whenever any notice is to be given pursuant to this Agreement, it shall be effective on the date it is sent in writing by registered or certified mail, addressed as follows:

City: City of Lindon

100 North State Street Lindon, Utah 84042

Company: Veracity Networks, LLC

170 Election Road Suite 200

Draper, Utah 84020

#### Section 19. Amendment.

This Agreement contains the entire agreement of the City and the Company and may only be amended or modified in writing signed by both parties.

Dated this	day of _	, 2015.
		CITY OF Lindon, Utah BY:
(SEAL) ATTEST:		Jeff Acerson Mayor
Kathryn A. Moosman City Recorder		
		VERACITY NETWORKS, LLC
		BY:

Title:\_\_

WITN	ESS:			
Title:		 	 	

# **11. Review & Action — Franchise Agreement with Syringa Networks, LLC** (5 minutes) The City Council will review and take action on an agreement to permit Syringa Networks, LLC, limited use of the public street right-of-way for the installation of telecommunications system.

See attached agreement which has been reviewed by Staff and the City Attorney. Staff recommends approval of the agreement as presented.

**Sample Motion:** I move to (approved, continued, deny) the Franchise Agreement with Syringa Networks, LLC, with the following conditions:

#### FRANCHISE AGREEMENT LINDON CITY – SYRINGA NETWORKS, LLC

THIS FRANCHISE AGREEMENT (hereinafter "Agreement") is entered into by and between Lindon City, Utah (hereinafter "CITY"), a municipal corporation and political subdivision of the State of Utah, with principal offices at 100 North State Street, Lindon, Utah, 84042 and Syringa Networks, LLC, an Idaho limited liability company (hereinafter "PROVIDER") with its principal offices at 12301 W. Explorer Drive, Boise, Idaho 83713.

#### WITNESSETH:

WHEREAS, the PROVIDER desires to provide voice, data or video transmission services within the CITY and in connection therewith to establish a telecommunications network in, under, along, over and across present and future rights-of-way of the CITY; and

WHEREAS, the CITY has enacted Title 5, Chapter 6 of the Lindon City Municipal Code (hereinafter the "Telecommunication Rights-of-Way Ordinance") which governs the application and review process for Telecommunication Franchises in the CITY; and

WHEREAS, the CITY, in exercise of its management of public Rights-of-Way, believes that it is in the best interest of the public to provide the PROVIDER a nonexclusive franchise to operate a telecommunications network in the CITY.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, and for other good and valuable consideration, the CITY and the PROVIDER agree as follows:

#### ARTICLE 1. FRANCHISE AGREEMENT AND ORDINANCE.

- 1.1 Agreement. Upon execution by the parties, this Agreement shall be deemed to constitute a contract by and between CITY and PROVIDER.
- Ordinance. The CITY has adopted the Telecommunications Rights-of-Way Ordinance which is attached to this Agreement as Exhibit "A" and incorporated herein by reference. The PROVIDER acknowledges that it has had an opportunity to read and become familiar with the Telecommunications Rights-of-Way Ordinance. The parties agree that the provisions and requirements of the Telecommunications Rights-of-Way Ordinance are material terms of this Agreement, and that each party hereby agrees to be contractually bound to comply with the terms of the Telecommunications Rights-of-Way Ordinance. The definitions in the Telecommunications Rights-of-Way Ordinance and different meaning is indicated. Nothing in this Section shall be deemed to require the PROVIDER to comply with any provision of the Telecommunications Rights-of-Way Ordinance which is determined by a court of competent jurisdiction to be unlawful or beyond the CITY's authority.

- 1.3 Ordinance Amendments. The CITY reserves the right to amend the Telecommunications Rights-of-Way Ordinance at any time. The CITY shall give the PROVIDER notice as required by law and PROVIDER shall have an opportunity to be heard concerning any proposed amendment. If there is any inconsistency in the substantive provision between the PROVIDER's rights and obligations under the Telecommunications Rights-of-Way Ordinance as amended and this Agreement, the provisions of this Agreement shall govern during its term. Otherwise, the PROVIDER agrees to comply with any such amendments.
- 1.4 Franchise Description. The Telecommunications Franchise provided hereby shall confer upon the PROVIDER the nonexclusive right, privilege, and franchise to construct and maintain a telecommunications network in, under, above and across the present and future public Rights-of-Way in the City. The franchise does not grant to the PROVIDER the right, privilege or authority to engage in community antenna (or cable) television business; although, nothing contained herein shall preclude the PROVIDER from: (1) permitting those with a cable franchise who are lawfully engaged in such business to utilize the PROVIDER's System within the CITY for such purposes; or (2) from providing such service in the future if an appropriate franchise is obtained and all other legal requirements have been satisfied.
- 1.5 Licenses. The PROVIDER acknowledges that it has obtained the necessary approvals, licenses or permits required by federal and state law to provide telecommunication services consistent with the provisions of this Agreement and with the Telecommunications Rights-of-Way Ordinance.
- 1.6 Relationship. Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties and neither party is authorized to, nor shall either party act toward third persons or the public in any manner that would indicate any such relationship with each other.

#### ARTICLE 2. FRANCHISE FEE.

2.1 Franchise Fee. For the Franchise granted herein, the PROVIDER shall pay to the CITY a tax in accordance with the Municipal Telecommunication License Tax Act (Utah Code Ann. 10-1-401 to10-1-410 and adopted and/or modified by CITY in Title 3 Chapter 12 of the Lindon City Code), in addition to any business license fee enacted by the CITY. All payments shall be made to the Utah State Tax Commission, and sent as follows:

Utah State Tax Commission 210 North 1950 West Salt Lake City, Utah 84134

2.2 Equal Treatment. CITY agrees that if any service forming part of the base for calculating the franchise fee under this Agreement is, or becomes, subject to competition from a third party, the CITY will either impose and collect from such third party a fee or tax on Gross Revenues from such competing service in the same percentage specified herein, plus the percentage specified as a utility revenue tax or license fee in the then current ordinances of the CITY, or waive collection of the fees provided for herein that are subject to such competition.

#### ARTICLE 3. TERM AND RENEWAL.

- 3.1 Term and Renewal. The franchise granted to PROVIDER shall be for a period of ten (10) years commencing on the first day of the month following this Agreement, unless this Franchise be sooner terminated as herein provided. At the end of the initial ten (10) year term of this Agreement, the franchise granted herein may be renewed by the PROVIDER upon the same terms and conditions as contained in this Agreement for an additional five (5) year term, by providing to the CITY's representative designated herein written notice of the PROVIDER's intent to renew not less than ninety (90) calendar days before the expiration of the initial franchise term.
- 3.2 Rights of PROVIDER Upon Expiration or Revocation. Upon expiration of the franchise granted herein, whether by lapse or time, by agreement between the PROVIDER and the CITY, or by revocation or forfeiture, the PROVIDER shall have the right to remove from the Rights-of-Way any and all of its System, but in such event, it shall be the duty of the PROVIDER, immediately upon such removal, to restore the Rights-of-Way from which such System is removed to as good condition as the same was before the removal was effected.

#### ARTICLE 4. PUBLIC USE RIGHTS.

- 4.1 City Uses of Poles and Overhead Structures. The CITY shall have the right, without cost, to use all poles owned by the PROVIDER within the CITY for fire alarms, police signal systems, or any lawful public use; provided, however, any said uses by the CITY shall be for activities owned, operated or used by the CITY for any public purposes and shall not include the provision of telecommunications service to third parties.
- 4.2 Limitations on Use Rights. Nothing in this Agreement shall be construed to require the Provider to increase pole capacity, alter the manner in which the PROVIDER attached equipment to the poles, or alter the manner in which the PROVIDER operates and maintains its equipment. Such CITY attachments shall be installed and maintained in accordance with the reasonable requirements of the PROVIDER and the current National Electrical Safety Code. CITY attachments shall be attached or installed only after written approval by the PROVIDER, which approval will be processed in a timely manner and will not be unreasonably withheld.
- 4.3 Maintenance of CITY Facilities. The CITY's use rights shall also be subject to the parties reaching an agreement regarding the CITY's maintenance of the CITY attachments.

#### ARTICLE 5. POLICE POWERS.

The CITY expressly reserves, and the PROVIDER expressly recognizes, the CITY's right and duty to adopt, from time to time, in addition to provisions herein contained, such ordinances and rules and regulations as the CITY may deem necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties.

#### ARTICLE 6. CHANGING CONDITIONS AND SEVERABILITY.

- 6.1 Meet to Confer. The PROVIDER and the CITY recognize that many aspects of the telecommunication business are currently the subject of discussion, examination and inquiry by different segments of the industry and affected regulatory authorities and that these activities may ultimately result in fundamental changes in the way the PROVIDER conducts its business and the way the CITY regulates the business. In recognition of the present state of uncertainty respecting these matters, the PROVIDER and the CITY each agree, upon request of the other during the term of this Agreement, to meet with the other and discuss in good faith whether it would be appropriate, in view of developments of the kind referred to above during the term of this Agreement, to amend this Agreement or enter into separate, mutually satisfactory arrangements to effect a proper accommodation of any such developments.
- 6.2 Severability. If any section, sentence, paragraph, term or provision of this Agreement or the Telecommunications Rights-of-Way Ordinance is for any reason determined to be or rendered illegal, invalid, or superseded by other lawful authority, including any state or federal, legislative, regulatory or administrative authority having jurisdiction thereof, or is determined to be unconstitutional, illegal or invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision, all of which shall remain in full force and effect for the term of this Agreement or any renewal or renewals thereof. Provided that if the invalidated portion is considered a material consideration for entering into this Agreement, the parties will negotiate, in good faith, an amendment to this Agreement. As used herein, "material consideration" for the CITY is its ability to collect the Franchise Fee during the term of this Agreement and its ability to manage the Rights-of-Way in a manner similar to that provided in this Agreement, the Telecommunications Rights-of-Way Ordinance, and the City's Excavation Permit Ordinance. For the PROVIDER, "material consideration" is its ability to use the Rights-of-Way for telecommunication purposes in a manner similar to that provided in this Agreement, the Telecommunications Rights-of-Way Ordinance, and the CITY's Excavation Permit Ordinance.

## ARTICLE 7. EARLY TERMINATION, REVOCATION OF FRANCHISE AND OTHER REMEDIES.

7.1 Grounds for Termination. The CITY may terminate or revoke this Agreement and all rights and privileges herein provided for any of the following reasons:

- (a) The PROVIDER fails to make timely payments of the franchise fee as required under Article 2 of this Agreement and does not correct such failure within sixty (60) calendar days after written notice by the CITY of such failure;
- (b) The PROVIDER, by act or omission, materially violates a material duty herein set forth in any particular within the PROVIDER's control, and with respect to which redress is not otherwise herein provided. In such event, the CITY, acting by or through its CITY Council, may determine, after hearing, that such failure is of a material nature, and thereupon, after written notice giving the PROVIDER notice of such determination, the PROVIDER, within sixty (60) calendar days of such notice, shall commence efforts to remedy the conditions identified in the notice and shall have ninety (90) calendar days from the date it receives notice to remedy the conditions. After the expiration of such 90-day period and failure to correct such conditions, the CITY may declare the franchise forfeited and this Agreement terminated, and thereupon, the PROVIDER shall have no further rights or authority hereunder; provided, however, that any such declaration of forfeiture and termination shall be subject to judicial review as provided by law, and provided further, that in the event such failure is of such nature that it cannot be reasonably corrected within the 90-day time period provided above, the CITY shall provide additional time for the reasonable correction of such alleged failure if the reason for the noncompliance was not the intentional or negligent act or omission of the PROVIDER; or
- (c) The PROVIDER becomes insolvent, unable or unwilling to pay its debts, is adjudged bankrupt, or all or part of its facilities should be sold under an instrument to secure a debt and is not redeemed by the PROVIDER within sixty (60) days.
- 7.2 Reserved Rights. Nothing contained herein shall be deemed to preclude the either party from pursuing any legal or equitable rights or remedies it may have to challenge the action of the other party.
- 7.3 Remedies at Law. In the event the PROVIDER or the CITY fails to fulfill any of its respective obligations under this Agreement, the CITY or the PROVIDER, whichever the case may be, shall have a breach of contract claim and remedy against the other, in addition to any other remedy provided herein or by law; provided, however, that no remedy that would have the effect of amending the specific provisions of this agreement shall become effective without such action that would be necessary to formally amend the Agreement.
- 7.4 Third Party Beneficiaries. The benefits and protection provided by this Agreement shall inure solely to the benefit of the CITY and the PROVIDER. This Agreement shall not be deemed to create any right in any person who is not a party and shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party (other than the permitted successors and assigns of a party hereto).

#### ARTICLE 8. PARTIES' DESIGNEES.

8.1 CITY designee and Address. The City Manager or his or her designee(s) shall serve as the CITY's representative regarding administration of this Agreement. Unless otherwise specified herein or in the Telecommunications Rights-of-Way Ordinance, all notices

from the PROVIDER to the CITY pursuant to or concerning this Agreement, shall be delivered to the CITY's representative at 100 North Lindon, Utah 84042, or such other officer and address as the CITY may designate by written notice to the PROVIDER.

- 8.2 PROVIDER Designee and Address. The PROVIDER's Chief Executive Officer or his or her designee(s) shall serve as the PROVIDER's representative regarding administration of this Agreement. Unless otherwise specified herein or in the Telecommunications Rights-of-Way Ordinance, all notices from the CITY to the PROVIDER pursuant to or concerning this Agreement, shall be delivered to PROVIDER's headquarter offices at 12301 W. Explorer Drive, Boise, Idaho 83713, and such other office as the PROVIDER may designate by written notice to the CITY.
- 8.3 Failure of Designee. The failure or omission of the CITY's or PROVIDER's representative to act shall not constitute any waiver or estoppels by the CITY or PROVIDER.

#### ARTICLE 9. INSURANCE AND INDEMNIFICATION

- 9.1 Insurance. Prior to commencing operations in the CITY pursuant to this Agreement, the PROVIDER shall furnish to the CITY evidence that it has adequate general liability and property damage insurance. The evidence may consist of a statement that the PROVIDER is effectively self-insured if the PROVIDER has substantial financial resources, as evidenced by its current certified financial statements and established credit rating, or substantial assets located in the State of Utah. Any and all insurance, whether purchased by the PROVIDER from a commercial carrier, whether provided through a self-insured program, or whether provided in some other form or other program, shall be in a form, in an amount and of a scope of coverage acceptable to the CITY.
- 9.2 Indemnification. The PROVIDER agrees to indemnify, defend and hold the CITY harmless from and against any and all claims, demands, liens, and all liability or damage of whatsoever kind on account of or arising from the PROVIDER's acts or omissions pursuant to or related to this Agreement, and to pay any and all costs, including reasonable attorneys' fees, incurred by the CITY in defense of such claims. The CITY shall promptly give written notice to the PROVIDER of any claim, demand, lien, liability, or damage, with respect to which the CITY seeks indemnification and, unless in the CITY's judgment a conflict of interest may exist between the parties with respect to the claim, demand, lien, liability, or damage, the CITY shall permit the PROVIDER to assume the defense of such with counsel of the PROVIDER's choosing, unless the CITY reasonably objects to such counsel. Notwithstanding any provision of this Section to the contrary, the PROVIDER shall not be obligated to indemnify, defend or hold the CITY harmless to the extent any claim, demand, lien, damage, or liability arises out of or in connection with negligent acts or omissions of the CITY.

#### ARTICLE 10. INSTALLATION

- 10.1 Coordinated Installation. In order to prevent and/or minimize the number of cuts to and excavations within the CITY Rights-of-Way, PROVIDER shall coordinate with the CITY and other providers or users of the CITY Rights-of-Way, when such cuts and excavations will be made. Unless otherwise permitted, installation, repairs, or maintenance of lines and facilities within the CITY Rights-of-Way shall be made in the same trench and at the time other installations, repairs or maintenance of facilities are conducted within the CITY Rights-of-Way.
- 10.2 Underground Installation. Unless otherwise provided, all of PROVIDER's facilities within the CITY shall be constructed underground. Notwithstanding the provisions of Article 1.3 of this Agreement, PROVIDER expressly agrees to install and maintain all of its facilities in accordance with CITY and/or State Ordinances regarding the undergrounding of utility lines, in effect at the time this Agreement is entered into and as subsequently amended during the term of this Agreement. Nothing herein shall require PROVIDER to convert existing overhead facilities to underground facilities until and unless other similarly situated providers in the same location are required to do so.

#### ARTICLE 11. GENERAL PROVISIONS

- 11.1 Binding Agreement. The parties represent that: (a) when executed by their respective parties, this Agreement shall constitute legal and binding obligations of the parties; and (b) each party has complied with all relevant statutes, ordinances, resolutions, by-laws and other legal requirements applicable to their operation in entering into this Agreement.
  - 11.2 Utah Law. This Agreement shall be interpreted pursuant to Utah law.
  - 11.3 Time of Essence. Time shall be of the essence of this Agreement.
- 11.4 Interpretation of Agreement. The invalidity of any portion of this Agreement shall not prevent the remainder from being carried into effect. Whenever the context of any provision shall require it, the singular number shall be held in include the plural number and vice versa, and the use of any gender shall include any other and all genders. The paragraphs and section headings in this Agreement are for convenience only and do not constitute a part of the provisions hereof.
- 11.5 No Presumption. All parties have participated in preparing this Agreement. Therefore, the parties stipulate that any court interpreting or construing the Agreement shall not apply the rule of construction that the Agreement should be more strictly construed against the drafting party.
- 11.6 Amendments. This Agreement may be modified or amended by written agreement only. No oral modifications or amendments shall be effective.
- 11.7 Binding Agreement. This Agreement shall be binding upon the heirs, successors, administrators and assigns of each of the parties.

SIGNED AND ENTERED INTO this	_ day of	
		"CITY" CITY OF LINDON
		By:
ATTEST:		
Kathryn A. Moosman, City Recorder		
APPROVED AS TO FORM:		
Brian K. Haws City Attorney		
		"PROVIDER"
		Syringa Networks, LLC, an Idaho limited liability company
		By:Greg Lowe, Chief Executive Officer
		Greg Lowe, Chief Executive Officer

### CORPORATE ACKNOWLEDGMENT

STATE OF	)
	:SS.
COUNTY OF	)
before me Greg Lowe, who bein Officer of Syringa Networks, LI	of
	Notary Dublia
	Notary Public
	Residing at:
	My Commission Expires:

## EXHIBIT "A" Telecommunications Rights-of-Way Ordinance

### 12. Council Reports:

(20 minutes)

A) MAG, COG, UIA, Utah Lake, ULCT, Budget Committee

B) Public Works, Irrigation/water, City Buildings

C) Planning, BD of Adjustments, General Plan, Budget Committee

D) Parks & Recreation, Trails, Tree Board, Cemetery

E) Administration, Com Center Board, Lindon Days, Chamber of Commerce

F) Public Safety, Court, Animal Control, Historic Commission, Budget Committee

- Jeff Acerson

- Van Broderick

- Matt Bean

- Carolyn Lundberg

- Randi Powell

- Jacob Hoyt

### 13. Administrator's Report:

(20 minutes)

#### Misc Updates:

- January City newsletter: http://siterepository.s3.amazonaws.com/442/january15final.pdf
- Everbridge Emergency Notification System: sign-up available to the public on January 5th. Links will be provided on web site and in newsletter. Please promote sign-ups!!! Sign up here: <a href="https://member.everbridge.net/index/892807736722443#/login">https://member.everbridge.net/index/892807736722443#/login</a>
- Joint CC/PC work session w/ Ivory Homes, Tuesday, Feb. 10<sup>th</sup> at 6:00pm.
- ULCT Legislative Policy Committee meetings Each Monday during leg. Session
- Customer Satisfaction response cards being formatted and implemented soon
- Misc. Items:

#### **Upcoming Meetings & Events:**

- Newsletter Assignment: Jake Hoyt March newsletter article. Due by last week in February.
- Feb 4<sup>th</sup> 8-10am Utah Valley Visitors Bureau partnership meeting: Mayor
- Feb 5<sup>th</sup> @ 6pm Budget Kick Off Meeting
- Feb 10<sup>th</sup> Engineering Coordination Mtg @ Noon at Public Works: Mayor, Van, ???
- Feb 10<sup>th</sup> @ 6pm Joint CC/PC works session w/Ivory Homes
- Feb 16<sup>th</sup> City Offices Closed for Presidents Day
- March 7<sup>th</sup> @ 6:00pm Little Miss Lindon Pageant @ Oak Canyon Jr High
- April 24<sup>th</sup> through May 1<sup>st</sup> City Wide Clean Up (dumpsters for public use)

#### **Future items:**

• Employee Policy Manual updates

## **Adjourn**

As of January 29, 2015

## PROJECT TRACKING LIST

APPLICATION NAME  Ordinance changes: LCC 17.38 'Bonds for Completion of Improvements to Real Property College (1974) and the province of the College (1974) and		APPLICATION		PLANNING COMM.	CITY COUNCIL			
Improvements to Real Property  City initiated ordinance changes needed to bring code into compliance with current practices and State laws.  Zone Change: Old Town Square  Feb. 1, 2012  Scott Larsen  Feb. 1, 2012  No. 2012  I (Light industrial).  N/A  N/A  Request for approval of a zone change for two parcels located at 873 West Center Street from R1-20 (Residential Low) to LI (Light industrial).  Property Line Adjustment: LBA Remtals  Mar 12, 2012  City Initiated ordinance changes are propered.  Ordinance changes: LCC 17-32, 17-58, 17-56.020  Nov. 2012  City Initiated ordinance changes needed to bring code into compliance with numeric practices and State laws.  Site Plan: Lindon Senior Apartments  Sept. 2013  Matt Gnelling  TBD  TBD  TBD  TBD  Request for site plan approval for a forth amchine cover in the L1 zone located at 310 North Geneva Road.  Property Line Adjustment  Oct. 2014  Steven Merrill  N/A  N/A  N/A  N/A  N/A  N/A  N/A  N	APPLICATION NAME	DATE	APPLICANT INFORMATION	DATE	DATE			
Zone Change: Old Town Square Request for approval of a zone change for two parcels located at 873 West Center Street from R1-20 (Resignation Low) to U. (Light Industrial).  Property Line Adjustment: LBA Rentals Mar 12, 2012 Lois Bown-Atheliag N/A N/A N/A N/A N/A Request for approval of a property line adjustment to clean up existing parcels lines for five parcels in the CG2 cone at 162 & 140 South Main Street. This project is in conjunction with the Castle Pair project.  Ordinance changes: LCC 17-32, 17-58, 17-66-020 Nov. 2012 City Initiated Nov. 13, Dec. 11, Jan. BD Stabilization Continuance changes needed to bring code into compliance with current practices and State laws.  Site Plant: Lindon Senior Apartments Sept. 2013 Matt Gnelling TBD TBD Request for site plan approval for a senior housing apartments on State & Main Amended Site Plan: Wasatch Ornamental Iron June 2014 Melvin Radmall N/A N/A N/A N/A Request for site plan approval of a 16x16 machine cover in the L1 zone located at 310 North Geneva Road.  Property Line Adjustment Oct. 2014 Steven Merrill N/A		f January 2014	City Initiated	Mar. 11	TBD			
Request for approval of a zone change for two parcels located at 673 West Center Street from Rt-20 (Residential Low) to Lf (Light Industrial).  Proporty Line Adjustment: LBA Rentals  Mar 12, 2012 Lois Bown-Atheling  NA  N/A  Request for approval of a properly line adjustment to clean up existing parcels lines for five parcels in the CC zone at 162 & 140 South Main Street. This project is in conjunction with the Castle Park project.  Ordinance changes: LCC 17.32, 17.58, 17.68.020  Nov. 2012 City Initiated Nov. 13, Dec. 11, Jan.  8, Jan. 22  TBD  Cuty Initiated ordinance changes needed to bring code into compliance with current practices and State laws.  Site Plan: Lindon Senior Apartments  Sept. 2013 Matt Gneiting  TBD  TBD  TBD  TBD  TBD  Request for site plan approval of a rosinor housing apartments on State & Main  Amended Site Plan: Wasatch Omamental fron  June 2014 Melvin Radmall  N/A  N/A  N/A  N/A  Request for site plan approval of a 16x16 machine cover in the Li zone located at 310 North Geneva Road.  Property Line Adjustment  Oct. 2014 Steven Mertil  N/A  N/A  N/A  N/A  N/A  Request for a property line adjustment at 455 E 500 N. Staff approved.  Zone Map Amendment  Request to razone parcel 14:069:0266 at approximately 53 North Stafe Street from CG to CG-A.  Site Plan: Scott's Provo GM  Jan. 2015 Mandy Ogaz  Feb. 10  N/A  N/A  N/A  Request to add a small office building to the Scott's Miracle Gro site located at 347 South 1250 West in the Li zone.  PC / CC Approved Projects - Working through final staff & engineering reviews (site plans have not been finalized - or plat has not recorded yet):  Am Bank - Site Plan  Joyner Business Park, It I  Add Bank - Site Plan  Joyner Business Park, It I  Add Bank - Site Plan  Joyner Business Park, It I  Add Bank - Site Plan  Joyner Business Park, It I  Add Bank - Site Plan  Joyner Business Park, It I  Advised Business Park It I  A	City initiated ordinance changes needed to bring code into c	ompliance with curr	ent practices and State laws.					
Property Line Adjustment: LBA Rentals Mar 12, 2012 Lois Bown-Atheling NA NA NA Request for approval of a property line adjustment to clean up existing parcels lines for five parcels in the CG zone at 162 & 140 South Main Street. This project is in conjunction with the Castile Park project.  Ordinance changes: LCC 17.32, 17.56, 17.66.020 Nov. 2012 City Initiated Nov. 13, Dec. 11, Jan. BB (Subdivisions) Nov. 13, Dec. 11, Jan. B, Jan. 22.  City initiated ordinance changes needed to bring code into compliance with current practices and State lews.  SteP Pain: Lindon Senior Apartments Sept. 2013 Mat Gneiting TBD TBD TBD Request for site plan approval for senior housing apartments on State & Main Amended Site Plan: Wasatch Ornamental Iron June 2014 Melvin Redmail N/A N/A N/A Request for site plan approval for senior housing apartments on State & Main Amended Site Plan: Wasatch Ornamental Iron June 2014 Melvin Redmail N/A N/A N/A N/A Request for site approval in adjustment at 455 E 500 N. Staff approved.  Zone Map Amendment Dec. 2014 Steven Mertill N/A N/A N/A Request for property line adjustment at 455 E 500 N. Staff approved.  Zone Map Amendment Dec. 2014 Brandon Pierce Jan. 27 Feb. 3 North State Street from CG to CG-A. Stell Pain State Street from CG	Zone Change: Old Town Square	Feb 1, 2012	Scott Larsen	Feb. 14, continued	Pending			
Request for approval of a property line adjustment to clean up existing parcels lines for five percels in the CG zone at 162 & 140 South Main Street. This project is in conjunction with the Castle Park project.  Ordinance changes: LCC 17.32, 17.58, 17.66.020  Nov. 2012  City Initiated  Nov. 13, Dec. 11, Jan.  8, Jan. 22  City Initiated ordinance changes needed to bring code into compliance with current practices and State laws.  Site Plan: Lindon Senior Apartments  Sept. 2013  Matt Gneiting  TBD  TBD  TBD  TBD  TBD  TBD  TBD  TB	Request for approval of a zone change for two parcels locate	ed at 873 West Cei	nter Street from R1-20 (Reside	ential Low) to LI (Light Ind	ustrial).			
is in conjunction with the Castle Park project.  Ordinance changes: LCC 17.32, 17.58, 17.66.020 Subdivisions'  City initiated ordinance changes needed to bring code into compliance with current practices and State laws.  Stet Plan: Lindon Senior Apartments  Sept. 2013 Matt Genting TBD TBD Request for site plan approval for senior housing apartments on State & Main  Amended Site Plan: Wastert Ornamental Iron June 2014 Melvin Radmall N/A N/A  Request for staff approval of a 16x18 machine cover in the L1 zone located at 310 North Geneva Road.  Property Line Adjustment Oct. 2014 Steven Mertil N/A N/A  Request for spropry line adjustment at 455 £ 500 N. Staff approved.  Zone Map Amendement Dec. 2014 Brandon Pierce Jan. 27 Feb. 3  Request for reporty in adjustment at 455 £ 500 N. Staff approved.  Zone Map Amendment Dec. 2014 Brandon Pierce Jan. 27 Feb. 3  Request for recome parcel 14:080:0286 at approximately 53 North State Street from CG to CG-A.  Site Plan: Scott's Provo GM Jan. 2015 Mandy Ogaz Feb. 10 N/A  Request to add a small office building to the Scott's Miracle Gro site located at 347 South 1250 West in the L1 zone.  PC/CC Approved Projects - Working through final staff & engineering reviews (site plans have not been finalized - or plat has not recorded yet!:  Stableridge Plat D Joyne Businsss Park   L01 Site Plan Lindon Stateway II Freya Business Park   L01 Site Plan Lindon Harbor Industrial Park II Leden Building Site Plan Joyne Businsss Park II Leden Business Park Plat A Green Valley Subdivision Planel Power Toys CUP Lindon Springs Garden Minor Subdivision Planel Power Toys CUP Lindon Springs Garden Minor Subdivision College Talmon Houstrial Park Budivision College Talmon Houstrial Park Budivision College Talmon Houstrial Park Budivision College Total College Talmon Houstrial Park Budivision College Total College Talmon Houstrial Park Budivision College Total College Talmondment Park Minor Subdivision Clindon Tech Center Sibe Plan Unidon Tech Center Sibe Plan West Medical Park Minor Subdivision Clindon Te	Property Line Adjustment: LBA Rentals	Mar 12, 2012	Lois Bown-Atheling	N/A	N/A			
Subdivisions'  City initiated ordinance changes needed to bring code into compliance with current practices and State laws.  Site Plan: Lindon Senior Apartments  Sept. 2013  Matt Gneiting  TBD  TBD  TBD  TBD  TBD  TBD  TBD  TB								
Site Plan: Lindon Senior Apartments  Sept. 2013 Matt Gneiting TBD TBD  Request for site plan approval for senior housing apartments on State & Main  Amended Site Plan: Wasatch Ornamental Iron  June 2014 Melvin Radmall N/A N/A  Request for staff approval of a 16x18 machine cover in the LI zone located at 310 North Geneva Road.  Property Line Adjustment  Oct. 2014 Steven Merrill N/A N/A  Request for adjustment at 455 E 500 N. Staff approved.  Zone Map Amendment  Dec. 2014 Brandon Pierce  Jan. 27 Feb. 3  Request to rezone parcel 14-069:0266 at approximately 53 North State Street from CG to CG-A.  Stite Plan: Scott's Provo GM  Jan. 2015 Mandy Ogaz Feb. 10 N/A  Request to add a small office building to the Scott's Miracle Gro site located at 347 South 1250 West in the LI zone.  NOTE: This Project Tracking List is for reference purposes only. All application review dates are subject to change.  PC/CC Approved Projects - Working through final staff & engineering reviews (site plans have not been finalized - or plat has not recorded velt);  Stableridge Plat D  Tim Clyde - R2 Project  Joyner Business Park, Lot 9 Site Plan  Lindon Harbor Industrial Park II  Lindon Stafe Staff Plan Noah's Elections Recover Center  Noah's Life Subdivision  Planet Power Toys CUP  Lindon Springs Garden Minor Subdivision  Reflections Recover Conter  Noah's Life Subdivision  Planet Power Toys CUP  Lindon Torbot Tindustrial Park Subdivision  Lindon Tedustrial Park Subdivision Plat B  Levindon Todou Subdivision  Discindon Harbor Office Buildings Site Plan  West Noah's Elevin Minor Subdivision  Lindon Tedustrial Park Subdivision Plat B  Levindon Todou Subdivision  Lindon Tedustrial Park Subdivision Plat B		Nov. 2012	City Initiated		. TBD			
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	Mix Right Site Plan	Ruf Subdivision						

Board of Adjustment				
Applicant	Application Date	Meeting Date		

Annual Reviews					
	APPLICATION		PLANNING COMM.	CITY COUNCIL	
APPLICATION NAME	DATE	APPLICANT INFORMATION	DATE	DATE	
Annual review - Lindon Care Center 680 North State Street (File # 05.0383.8) administrator@lindoncare.com	Existing use.	Lindon Care Center Manager: Christine Christensen 801-372-1970.	March 2015 Last Reviewed: 3/14	N/A	
Annual review of care center to ensure conformance with City Code. Care center is a pre-existing use in the CG zone.					
Annual review of CUP - Housing Authority of Utah County - Group home. 365 E. 400 N. (File # 03.0213.1)  smith@housinguc.org	Existing CUP	Housing Auth. Of Utah County Director: Lynell Smith 801-373-8333.	March 2015 Last Reviewed: 3/14	N/A	
Annual review of CUP to ensure conformance with City Code. Group home at entrance to Hollow Park was permitted for up to 3 disabled persons.					
Heritage Youth Services - Timpview Residential Treatment Center. 200 N. Anderson Ln. (File # 05.0345) info@heritageyouth.com info@birdseyertc.com	Existing CUP	HYS: Corbin Linde, Lynn Loftin 801-798-8949 or 798-9077	March 2015 Last Reviewed: 3/14	N/A	

Grant Applications				
Pending	Awarded			
Bikes Belong - Trail construction grant. Requested amount: \$10,000  Status: NOT SELECTED FOR 2010. WILL RE-APPLY IN 2015.	MAG Bicycle Master Plan Study Awarded funds to hire consultant to develop bicycle master plan to increase safety and ridership throughout the city.			
Land and Water – Trail construction grant. Requested amount: \$200,000  o Status: NOT SELECTED. RE-APPLY IN 2015.	<b>EDCUtah 2014</b> — Awarded matching grant to attend ICSC Intermountain States Idea Exchange 2014.			
	CDBG 2014 Grant – Senior Center Computer Lab (\$19,000)			
Hazard Mitigation Grant / MAG Disaster Relief Funds- (pipe main ditch)				
FEMA Hazard Mitigation Grant – (pipe Main Ditch)				

Planning Dept - Projects and Committees					
On-going activities (2014 yearly totals)	Misc. projects	UDOT / MAG projects	Committees		
Building permits Issued: 228 New residential units: 53	2010-15 General Plan implementation (zoning, Ag land inventory, etc.)	700 North CDA	Utah Lake Commission Technical Committee: Bi-Monthly		
New business licenses:74	Lindon Hollow Creek-Corps of Eng., ditch relocation	Lindon Bicycle Master Plan	MAG Technical Advisory Committee: Monthly		
Land Use Applications: 64 Drug-free zone maps: 27	Lindon Heritage Trail Phase 3		Lindon Historic Preservation Commission: Bimonthly		