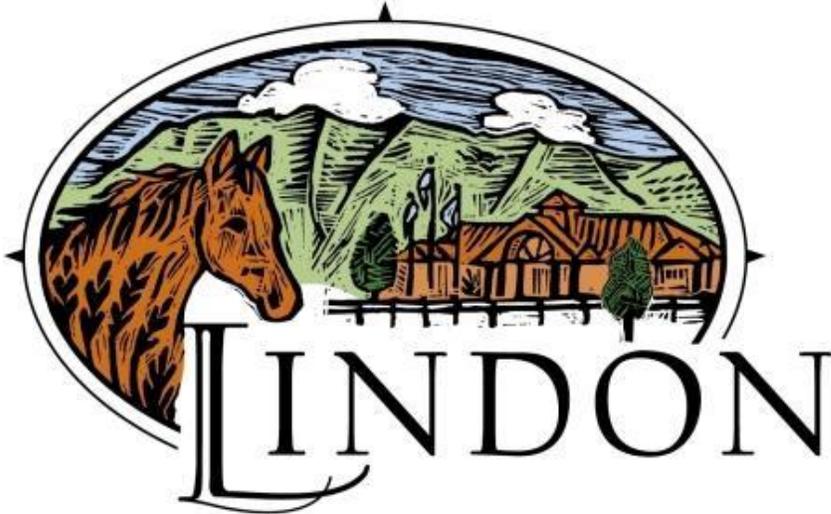


Lindon City Council Staff Report



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

1. 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

(Review times are estimates only)

1. Call to Order / Roll Call

(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)

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.

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.

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

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

- Jeff Acerson
- Van Broderick
- Matt Bean
- Carolyn Lundberg
- Randi Powell

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

- Jacob Hoyt

I3. 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 www.lindoncity.org. 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 1 – 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.

Item 3 – Approval of Minutes

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

2 The Lindon City Council held a regularly scheduled meeting on **Tuesday, January 20,**
4 **2015, at 7:00 p.m.** in the Lindon City Center, City Council Chambers, 100 North State
Street, Lindon, Utah.

6 **REGULAR SESSION** – 7:00 P.M.

8 Conducting: Jeff Acerson, Mayor
Pledge of Allegiance: Hugh Van Wagenen, Planning Director
10 Invocation: Randi Powell, Councilmember

12 **PRESENT**

ABSENT

12 Jeff Acerson, Mayor
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 1. **Call to Order/Roll Call** – The meeting was called to order at 7:00 p.m.
- 26 2. **Presentations/Announcements** –
- 28 a) **Mayor/Council Comments** – There were no announcements at this time.
- 30 3. **Approval of Minutes** – The minutes of the regular meetings of the City Council
- 32 of January 6, 2015 were reviewed.

34 COUNCILMEMBER BRODERICK MOVED TO APPROVE THE MINUTES
OF THE REGULAR CITY COUNCIL MEETING OF JANUARY 6, 2015 AS
36 AMENDED. COUNCILMEMBER POWELL SECONDED THE MOTION. THE
VOTE WAS RECORDED AS FOLLOWS:

38 COUNCILMEMBER BEAN	AYE
COUNCILMEMBER POWELL	AYE
40 COUNCILMEMBER BRODERICK	AYE
COUNCILMEMBER HOYT	AYE
42 COUNCILMEMBER LUNDBERG	AYE

THE MOTION CARRIED UNANIMOUSLY.

- 44 4. **Consent Agenda** – No items.
- 46

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

6 **CURRENT BUSINESS**

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

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

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

36 Mr. Cullimore noted the Planning Commission and City Council have authority to
38 approve flag lots when certain criteria, identified in LCC 17.32.320, are satisfied. Mr.
40 Cullimore explained that when the existing flag lot ordinance was passed, the City
42 Council and Planning Commission expressed concerns that dwellings on flag lots could
44 invade on the privacy of neighbors because flag lots are typically situated behind
46 standard lots. Mr. Cullimore further explained when administering the ordinance, staff
48 has observed that the more restrictive setback requirements do not appear to be necessary
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
buildable areas. He went on to say that since the ordinance was passed staff has identified
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
stated that staff feels the change would not have an adverse effect on the surrounding
properties.

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

- Front: 30 feet
- Rear: 50 feet
- 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

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 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 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 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 minimal effect on the adjacent property owners as a minimum distance of 60 feet between any primary dwellings would still be maintained as rear yards abut one another.

24 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.

34 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.

40 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.

2 Councilmember Lundberg pointed out that there will more of these types of
 4 applications as infill is inevitable in the city. Councilmember Hoyt agreed that with low
 6 density and large lots we will be seeing more requests for flag lots. Councilmember Hoyt
 8 asked for Councilmember Bean's opinion on the 20 ft. vs. the 10 ft. that the Commission
 10 discussed at the meeting. Councilmember Bean commented that he would be comfortable
 12 with a specific situation where the Planning Commission and City Council would have the
 14 discretion (on a case by case basis) to make an exception. He noted that the current
 16 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
 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
 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.

18 Mr. Cullimore mentioned that the Commission talked about who would have the
 20 discretion to modify the setbacks on a case by case basis (City Council, Commission or
 22 staff). He noted that there would have to be some straightforward criteria established to
 24 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.

26 Mr. Van Wagenen commented that Mr. Chatwin has been a considerate applicant
 28 and is aware that this change may have an impact throughout the city, so he feels he can
 30 make the 20 ft. setback work although a 15 ft. setback would be preferable. Mr. Van
 32 Wagenen went on to say the Planning Commission thought the 20 ft. setback may work
 34 and they would also not be opening up a "can of worms." Mr. Van Wagenen mentioned
 36 that Mr. Cullimore made a good point that if there is some discretion built in, at some level,
 38 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.

32 Councilmember Lundberg mentioned that the current side setback is 10 ft. and
 34 questioned what will be accomplished by doubling this to 20 ft. on these types of
 36 applications. Mr. Van Wagenen stated that the Commissioners agreed it is related to
 38 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.

40 At this time Mr. Van Wagenen asked the Council if anyone has an issue with the
 42 Planning Commission recommended rear yard change from 50 ft. to 30 ft. or the height
 44 limit change to 35 ft. or with the 20 ft. side setbacks remaining as is. Councilmember
 46 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

2 to have some leeway. Councilmember Bean re-iterated that in the current ordinance
 4 discretion already exists and the decision of putting more than one flag lot in a subdivision
 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.

12 At this time, Mr. Cullimore asked what the Council's consensus is on the 30 ft., 30
 ft., and 15 ft. setbacks. Councilmember Lundberg would suggest to structuring this
 14 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
 16 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
 18 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
 20 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
 22 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.

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

26
 28 **COUNCILMEMBER HOYT MOVED TO CLOSE THE PUBLIC HEARING.
 COUNCILMEMBER BRODERICK SECONDED THE MOTION. ALL PRESENT
 VOTED IN FAVOR. THE MOTION CARRIED.**

30
 32 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
 36 AMENDMENT TO 17.32.320 FLAG LOTS AS PROPOSED BY THE CITY COUNCIL
 WITH THE REAR YARD SETBACKS AT 30 FEET, THE SIDE YARD SETBACKS
 38 AT 15 FEET, AND THE HEIGHT LIMIT AT 35 FEET WITH GRAMMATICAL
 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.

46

2 7. **Public Hearing** – *Ordinance Amendment, Lindon City Standard Land Use*
4 *Table*. Lindon City requests approval of an amendment to the Lindon City
6 Standard Land Use table. The proposed amendment would establish legal
services as a permitted use in the research and business (R& B) zone.

8 COUNCILMEMBER POWELL MOVED TO OPEN THE PUBLIC HEARING.
10 COUNCILMEMBER LUNDBERG SECONDED THE MOTION. ALL PRESENT
12 VOTED IN FAVOR. THE MOTION CARRIED.

14 Mr. Cullimore gave a brief summary explaining a law firm recently applied for a
16 business license to operate in the Research and Business (R&B) zone, at which time staff
18 discovered that legal services is not a permitted use in the R&B zone. He noted that staff
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
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
in the city.

20 Mr. Cullimore further explained that the stated purpose of the R&B zone is to
22 “provide an aesthetically attractive working environment exclusively for and conducive
to the development and protection of offices, research and development institutions, and
certain specialized assembling and packaging uses as a secondary use to the primary
24 function of the building.” Consequently, staff is recommending that legal services be
designated as a permitted use in the R&B zone. He noted the Planning Commission had
26 no concerns with the proposal and recommended approval with no conditions. Mr.
Cullimore then referenced the proposed amendment followed by discussion.

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

30 COUNCILMEMBER BRODERICK MOVED TO CLOSE THE PUBLIC
32 HEARING. COUNCILMEMBER POWELL SECONDED THE MOTION. ALL
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.

38 COUNCILMEMBER LUNDBERG MOVED TO APPROVE THE PROPOSED
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.

2 8. **Review & Action:** *Rocky Mountain Power Service Contract & Easement.* The
 4 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
 6 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
 8 power to be installed through a portion of the 200 North roadway owned by
 the City.

10 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
 12 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
 14 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
 16 employees who operate the pumps through an on-site generator.

18 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
 20 connections occur from this line within the next 10 years.

22 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
 24 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
 26 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.

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

30 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.

42 9. **Review & Action:** *Amendments to City Administrator Agreement.* The City
 44 Administrator requests City Council review and action on an amended City
 Administrator Agreement allowing reduction of the City’s 401k contribution
 46 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
4 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.

6 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
8 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
10 employees have experienced through the recent compensation policy changes. He then
referenced the attached amendment agreement outlining the specific section of the
12 contract and desired wording changes.

14 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 bring
16 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.

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

20
22 COUNCILMEMBER HOYT MOVED TO APPROVE THE AMENDMENT TO
THE CITY ADMINISTRATOR AGREEMENT BETWEEN LINDON CITY AND
ADAM M. COWIE, WITH NO CONDITIONS. COUNCILMEMBER POWELL
24 SECONDED THE MOTION. THE VOTE WAS RECORDED AS FOLLOWS:

COUNCILMEMBER BEAN AYE
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
36 Community Center; they will be showing the movie “Enchanted.” She also reported that
Lindon Days will be held August 3rd through the 8th. The parade theme this year will be
38 based on “Back to the Future.” Councilmember Powell reported that the Little Miss
Lindon Pageant will be held on March 7th at Oak Canyon Jr. High. She encouraged the
40 Council to attend as it is a fun evening and great opportunity to support the program.
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 **Chief Cullimore** – Chief Cullimore had nothing to report at this time.

4 **Councilmember Hoyt** – 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

10 **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
14 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
16 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
18 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 **Councilmember Lundberg** – 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
24 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
26 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 **Mayor Acerson** – 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
32 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
36 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
38 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.
44 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
46 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

2 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.

6
Administrator's Report:

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

10 **Misc. Updates:**

- 12 • January City newsletter
- 14 • 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.
- 16 • Schedule date for Budget Kick-Off meeting. Following discussion the council
 agreed to hold the Budget Kick-Off meeting on Thursday, February 5th at 6:00
 p.m.
- 18 • Misc. Item: Mr. Van Wagenen will review Ivory development amenities

20 **Upcoming Meetings & Events:**

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

36 **Future items:**

- 38 • Employee Policy Manual updates

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

42 Mayor Acerson called for any further comments or discussion from the Council.
 Hearing none he called for a motion to adjourn.

44 **Adjourn –**

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

2

Approved – February 3, 2015

4

6

Kathryn Moosman, City Recorder

8

10 _____
Jeff Acerson, Mayor

DRAFT

Item 4 – Consent Agenda – *(Consent agenda items are only those which have been discussed beforehand and do not require further discussion)*

- No Items.

Item 5 – 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

<p>Applicant: Brandon Pierce Presenting Staff: Jordan Cullimore</p> <p>General Plan: Commercial Current Zone: General Commercial (CG) Requested Zone: General Commercial A (CG-A)</p> <p>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.)</p> <p>Type of Decision: Legislative Council Action Required: Yes Planning Commission Recommendation: 5-0 vote recommending approval</p>	<p><u>SUMMARY OF KEY ISSUES</u></p> <ol style="list-style-type: none"> Whether to approve a request to change the zoning designation of the subject lot from General Commercial (CG) to General Commercial A (CG-A). <p><u>MOTION</u></p> <p>I move to (<i>approve, deny, continue</i>) 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):</p> <ol style="list-style-type: none">
--	---

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:

- 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-O

ORDINANCE NO. 2015-04-O

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 Exhibit A 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 ADOPTED and made EFFECTIVE by the City Council of Lindon City, Utah, this _____ day of _____, 2015.

 Jeff Acerson, Mayor

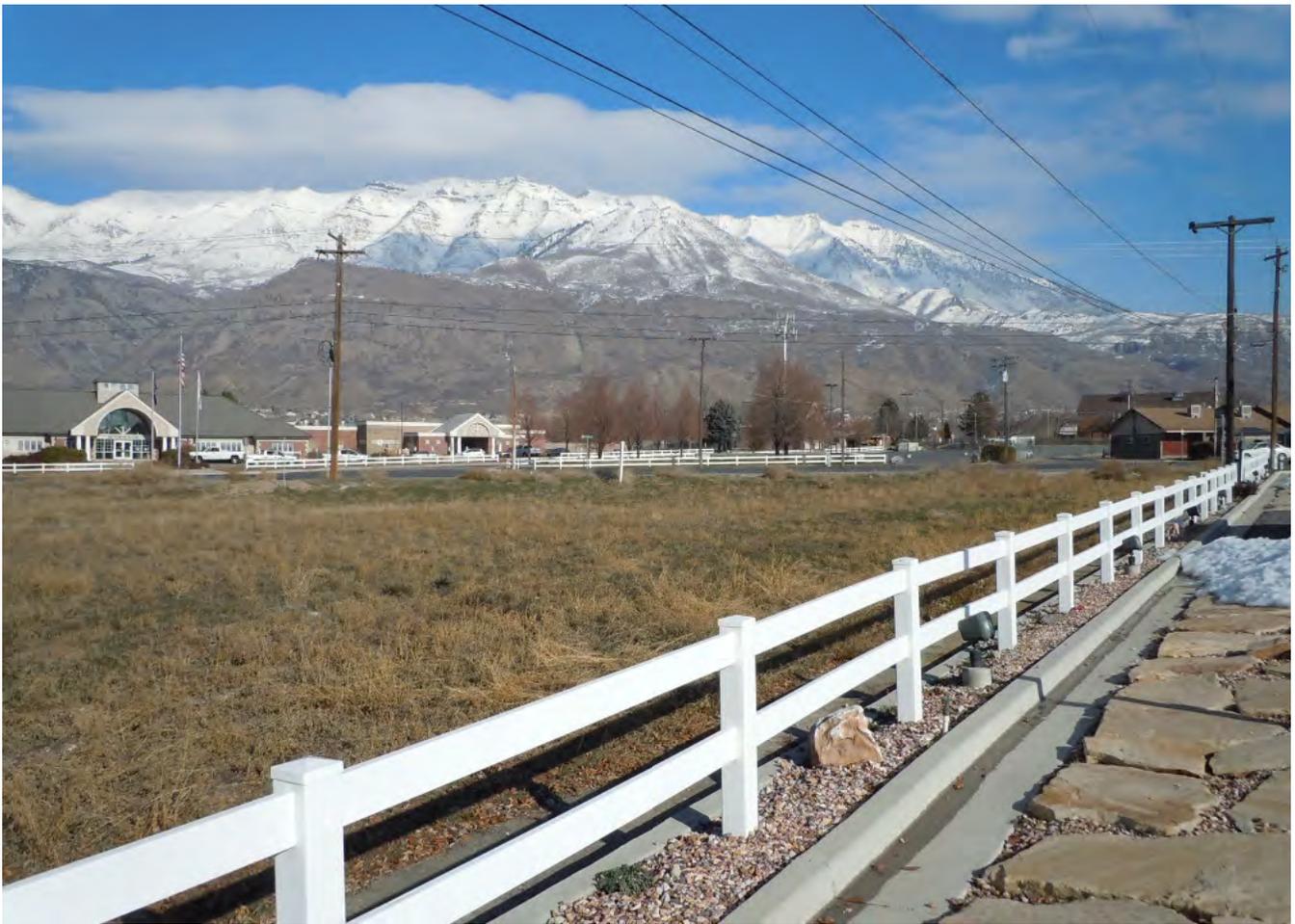
ATTEST:

 Kathryn A. Moosman,
 Lindon City Recorder

SEAL

Attachment 1







CG

SHFO

PF

CG

HARCLIFF

60 NORTH

Lindon City Center

Proposed Site for Performance Motors
(Subject of Rezone Request)

60 NORTH

Current Location of Performance Motors

R1-20

R1-20

CG-A

CENTER

40 SOUTH

STATE

CG

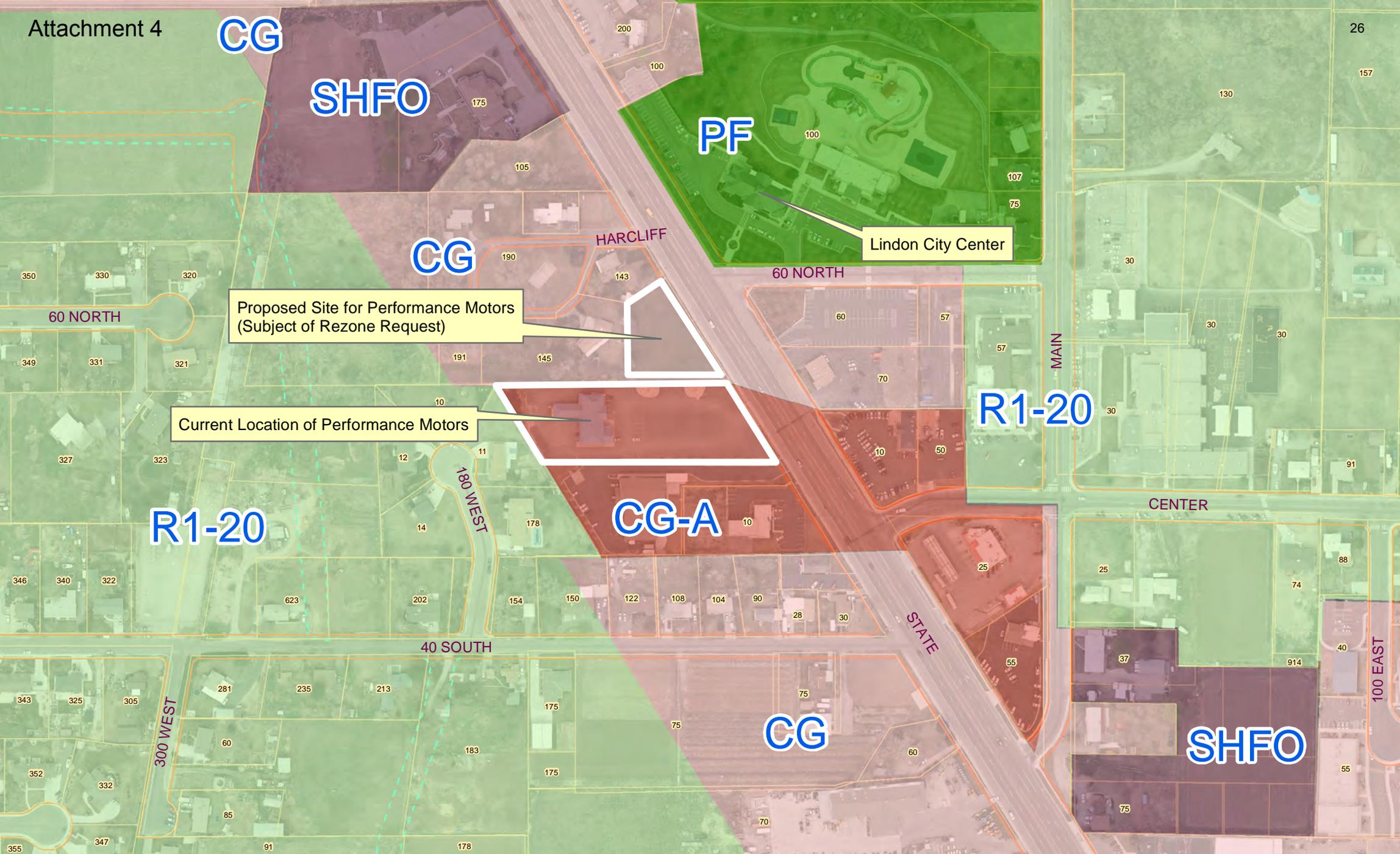
SHFO

300 WEST

180 WEST

100 EAST

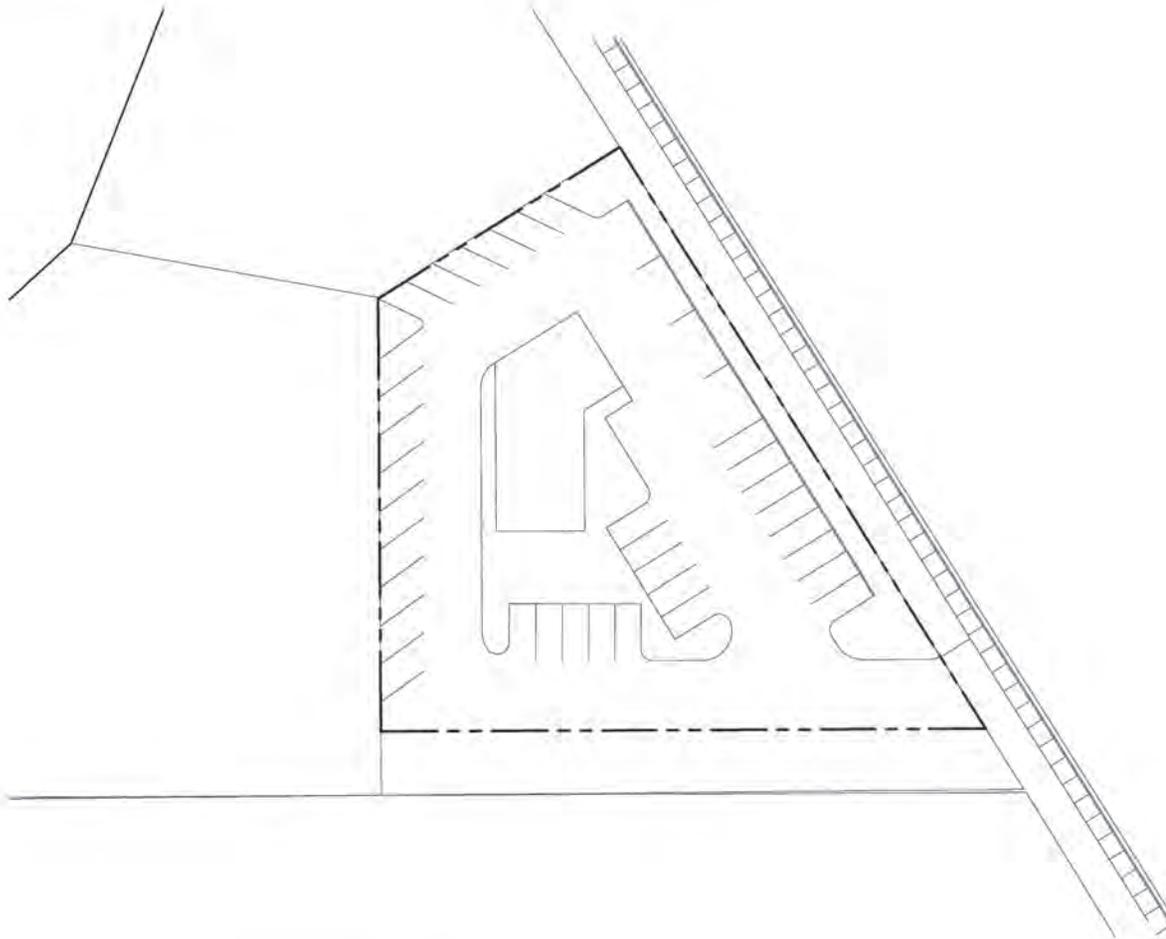
MAIN



Attachment 5



NORTH
1" = 20'



CHECKED notes to contractor

The Contractor is specifically cautioned that the location and/or direction of existing utilities as shown on these plans is based on records of the various utility companies and where possible from measurements taken in the field. The Contractor is not to be considered aware or alerted. The Contractor must verify the utility location center of each all lines prior to any excavation. To reveal the exact location of the utilities in the field. It shall be the responsibility of the Contractor to relocate all existing utilities which conflict with the proposed improvements shown on the plan.

Notes

1. Telecommunication consult shall be conducted to locate the lines. Run the conduit to the site from an existing service box of a nearby site as shown in the UTORA design. Run the conduit within the public Right-of-Way or private easements to run it on private property. Lay the conduit to a minimum depth of seven (7) feet.
2. Install one orange 3/4" diameter (300-1) electric conduit meeting ASTM D3351, or its equivalent equivalent and sizes as shown in the UTORA design. A twelve (12) gauge white THHN knee wire shall be installed inside all conduits according to NEC standards. Telecommunications consult shall include a 3" conduit hole installed in the pipe line trench approximately 12" below the ground surface, with the words "CAUTION, FIBER OPTIC CABLE" printed on it.
3. The applicant is responsible for compliance with all requirements of the "Americans with Disabilities Act" (ADA).
4. All landscaped areas shall have an automatic, underground sprinkling system with a backflow prevention device and a backflow prevention device to the building, unless landscaping is served by the secondary waste system.
5. Water Meters are to be located behind back of wall or back of curb in an area that is accessible, not located behind fence or under covered parking.
6. Linden Standard Specifications and Drawings apply to construction of public improvements that will be owned or maintained by Linden City and take precedence over other standards.

Notes

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Project Benchmark is the South quarter corner of Section 33, Township 3 South, Range 2 East, with an elevation of 4346.42

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DUDLEY AND ASSOCIATES
ENGINEERS PLANNERS SURVEYORS
353 EAST 1200 SOUTH, OREM, UTAH
801-224-1252

Site Plan

Date: 1-22-2015
Scale: 1" = 20'
By: [Signature]
Title: [Signature]
Drawing No.: L-

Sheet No.: **C-3**

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 backyard, 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.

Lindon City

"little bit of country"

Search



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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

X 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"

 Search

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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

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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 AMENDMENT

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

Not with the Johnsons of 145 W Harriott Cir.

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

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.

only 5 auto dealerships allowed

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 opened for public comment. *He is not telling the truth. We would never sell our property to an auto dealership*

Harcliff Circle was Not for sale

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.

In the Utah Valley magazine K Gallagher said: At his Lindon-based dealership, Utah Auto Sales, there are more than 300 cars in stock. 10/28/2008

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 future.

300
2013

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:

1. 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 RESIDENTIAL DISTRICT.

COMMISSIONER 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 car lot than any of the other neighbors on the west and south side

EXPERT: Kevin Gallagher

EXPERTISE: Cars



Although Kevin Gallagher, owner of Utah Auto Sales in Lindon, is an expert in all things auto, his vehicle of choice is a Harley Davidson motorcycle. His wife, Annetta, drives a Cadillac Escalade and Kevin's grown children all drive sport-utility vehicles.

FIRST CAR — Ford Fairlane shared with his older brother
SECOND CAR — Plymouth Duster that was bright yellow with a "pukey brown stripe."
CURRENT CAR — None, Kevin drives a 2003 Harley-Davidson motorcycle

Kevin 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 store, 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?" UV

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.

<p>Applicant: Lindon City Presenting Staff: Jordan Cullimore</p> <p>Type of Decision: Legislative Council Action Required: Yes</p> <p>Planning Commission Recommendation: The Planning Commission, on a 5-0 vote, recommends approval of the proposed ordinance.</p>	<p><u>SUMMARY OF KEY ISSUES</u></p> <p>1. Whether it is in the public interest to approve the proposed amendment.</p> <p><u>MOTION</u> I move to (<i>approve, deny, continue</i>) Ordinance 2015-03-O to amend section 17.04.090 of the Lindon City Code (<i>as presented, with changes</i>).</p>
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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

ORDINANCE NO. 2015-03-O

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AN ORDINANCE OF THE CITY COUNCIL OF LINDON CITY, UTAH COUNTY, UTAH, AMENDING SECTION 17.04.090 OF THE LINDON CITY CODE TO DEFINE WHEN AMENDMENT PROCEEDINGS ARE FORMALLY INITIATED AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the proposed amendment will provide greater certainty and predictability in the land use application process; and

WHEREAS, the proposed amendment is consistent with the goal of the General Plan to ensure that new development is of high quality; and

WHEREAS, the Lindon City Planning Commission has recommended approval of an amendment to section 17.04.090 of the Lindon City Code; 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 comments were received during the hearing; and

WHEREAS, the Council held a public hearing on February 3, 2015 to consider the recommendation and no adverse comments were received.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Lindon, Utah County, State of Utah, as follows:

SECTION I: LCC 17.04.090 of the Lindon City Code is hereby amended to read as follows:

Section 17.04.090 Amendment procedures.
The local City Council may amend this division, including the map, but only in accordance with the following procedures:

- 1. The ~~P~~lanning ~~C~~ommission may initiate division amendment recommendations to the City Council. Any other person seeking to amend this division or map shall make application for such amendment by filing the following materials with the ~~P~~lanning ~~C~~ommission:
 - a. A written petition designating the change desired and the reasons therefor;
 - b. A nonreturnable amendment review fee in an amount determined by resolution of the City Council.
- ~~a.2.~~ Lindon City formally initiates proceedings to amend this division when it gives notice, according to Lindon City Code Section 17.14.40, of the first public hearing in which the proposed amendment will be considered.
- ~~2.3.~~ The ~~P~~lanning ~~C~~ommission shall review the amendment application and certify its recommendations concerning the proposed amendment to the City Council within forty-five days from receipt of the amendment application in a regularly scheduled meeting. The ~~P~~lanning ~~C~~ommission shall recommend adoption of a proposed amendment only where the following findings are made:
 - a. The proposed amendment is in accord with the ~~master-general~~ plan of Lindon City;
 - b. Changed or changing conditions make the proposed amendment reasonably necessary to carry out the purposes of the division.

b.4. After receipt of the certified favorable recommendations of the Planning Commission, the City Council shall give notice of a public hearing to consider such amendment as provided by law for zoning amendments.

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 Planning Commission 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 ~~despite in spite of~~ the Planning Commission'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 Planning Commission, or as advertised, it shall refer such change back to the Planning Commission 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 receive 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.

(Ord. 2015-03, amended XX/XX/201X; Ord. inance 2005-17, amended 11/15/2005; Ord. no. 2003-3, aAmended, 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 PASSED and ADOPTED and made EFFECTIVE by the City Council of Lindon City, Utah, this
103 _____ day of _____, 2015.

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Jeff Acerson, Mayor

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112 ATTEST:

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Kathryn A. Moosman,

116 Lindon City Recorder

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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.

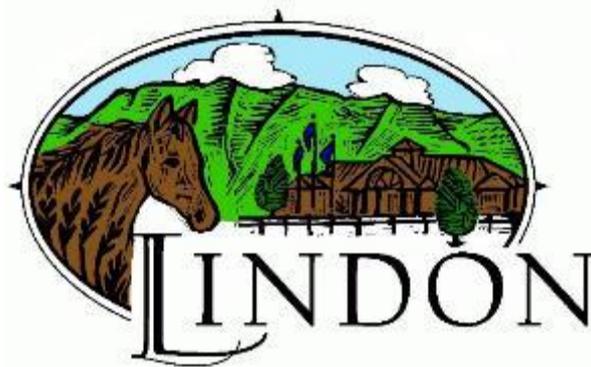
Based on JUB's findings, if the City invests \$400,000 per year into road maintenance projects, using funds only to keep the best roads in best condition (not reconstruct poor roads), by the year 2022 approximately 75% of roads in Lindon will deteriorate to poor or failed condition. Road investment of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



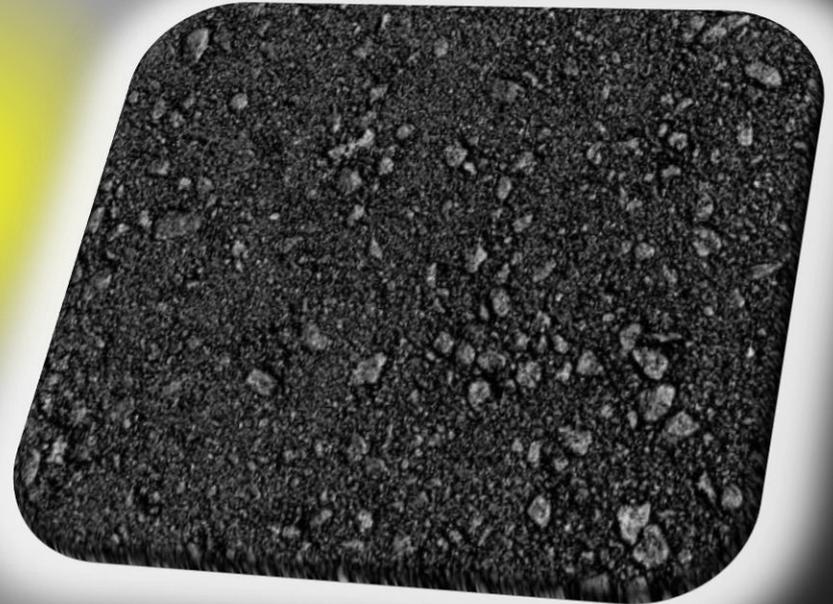
Single Largest Asset of Cities

- Roadways are the single largest 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

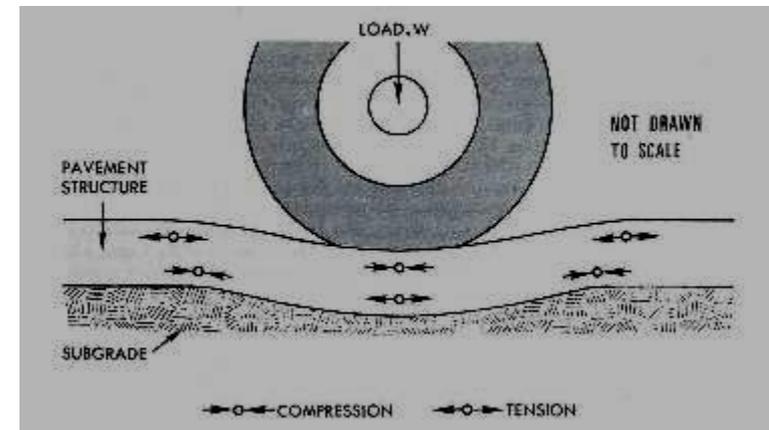
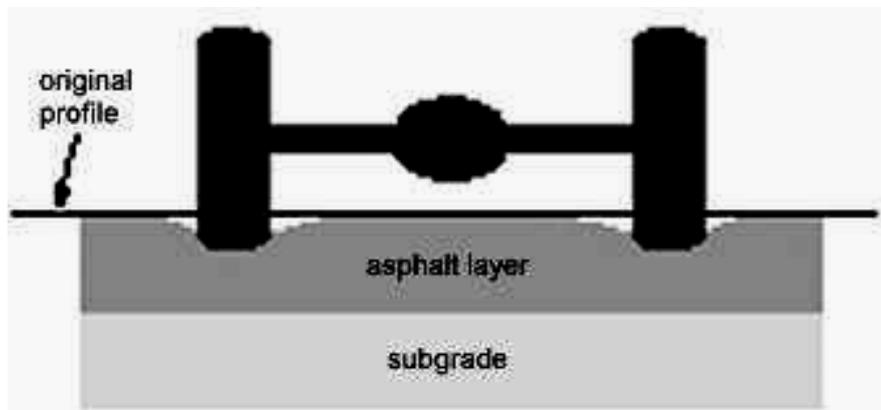
- The environment
 - Sunshine (ultraviolet rays)
 - Oxidation
 - Water penetration
 - Hydraulic action
 - Temperature and moisture
 - Expansion and contraction (freeze / thaw)



Source: Local Technical Assistance Program, Utah State University

Pavement Deterioration-- Causes

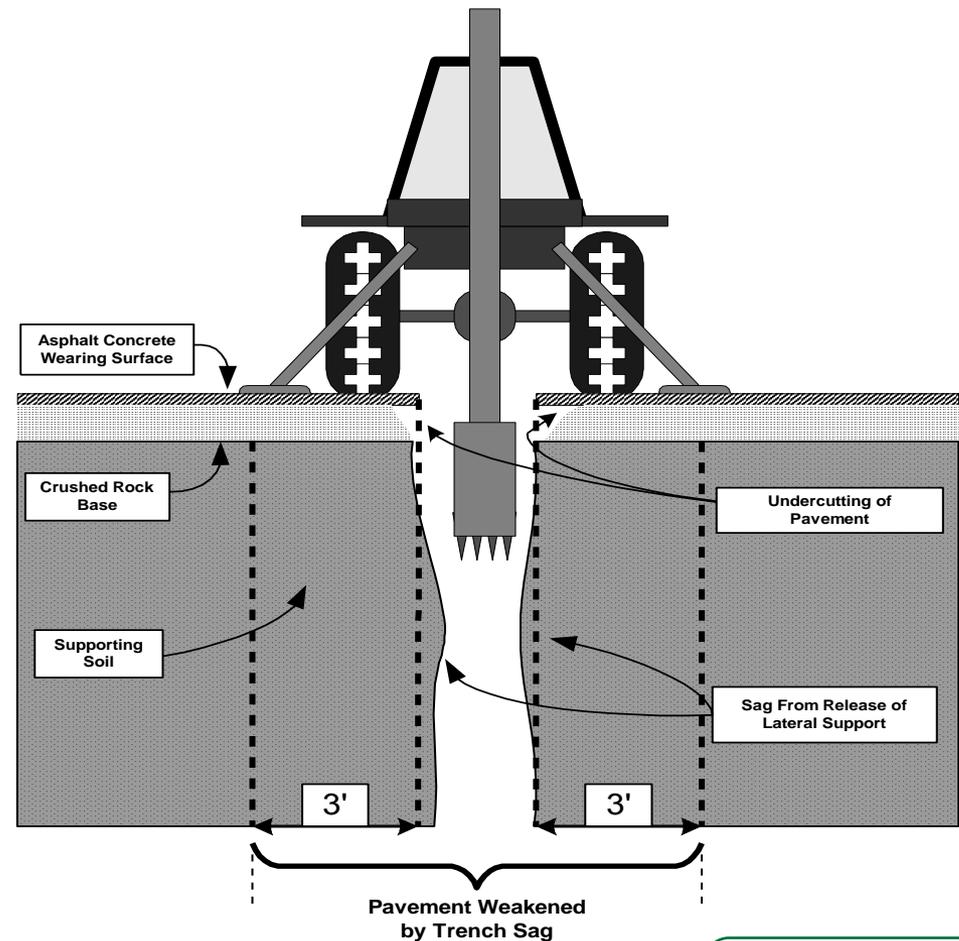
- Traffic Loading



Source: Local Technical Assistance Program, Utah State University

Pavement Deterioration-- Causes

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



Source: Local Technical Assistance Program, Utah State University

Pavement Treatment Toolbox

Routine Maintenance

- ❖ Spot Repairs
- ❖ Crack Seal

Preventative Maintenance

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

Rehabilitation

- ❖ Major Patching
- ❖ Overlay
- ❖ Mill & Overlay

Reconstrucion

- ❖ Pulverize Asphalt and Repave
(replacing yielding subbase as needed)

Full Reconstruction

- ❖ Replace Asphalt and Base
(and yielding subbase as needed)



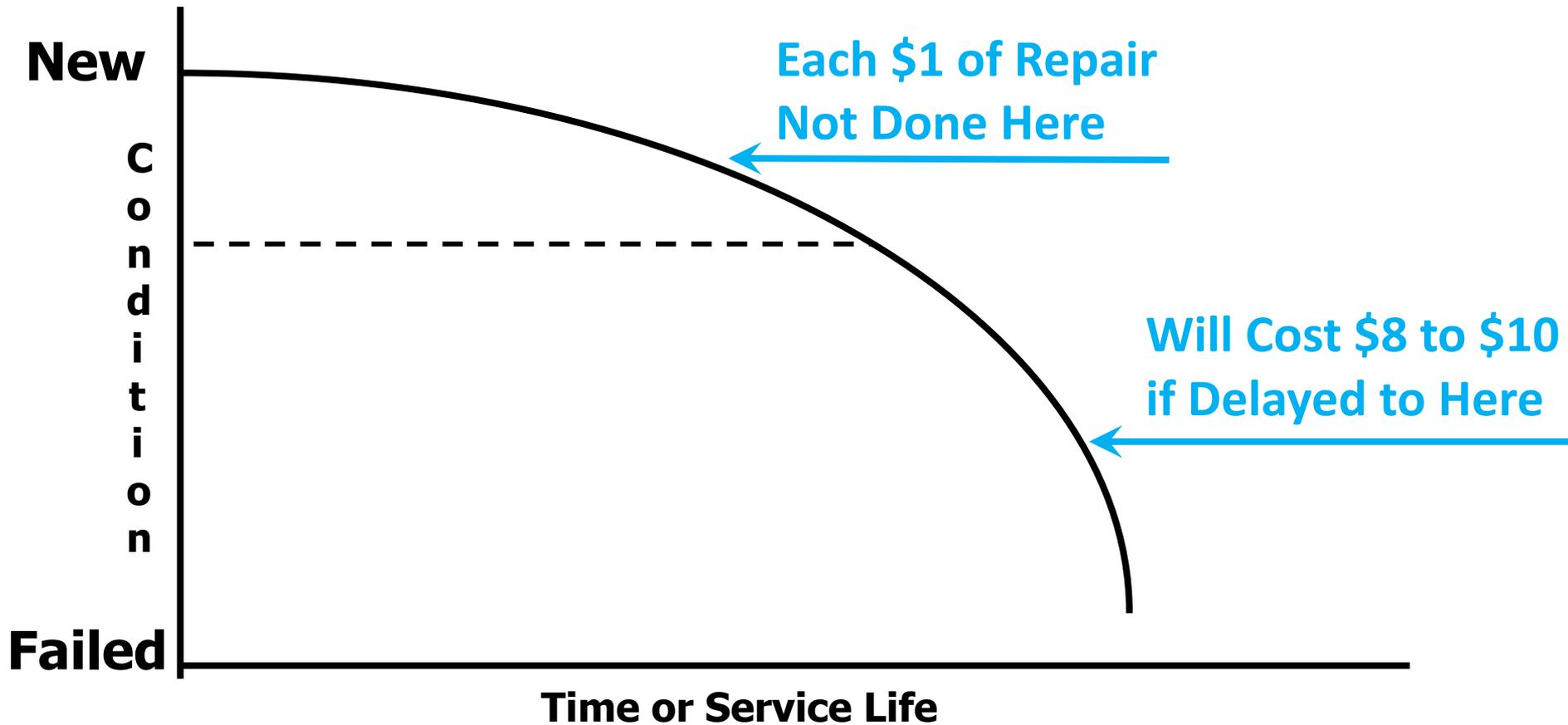
History of Pavement Management

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



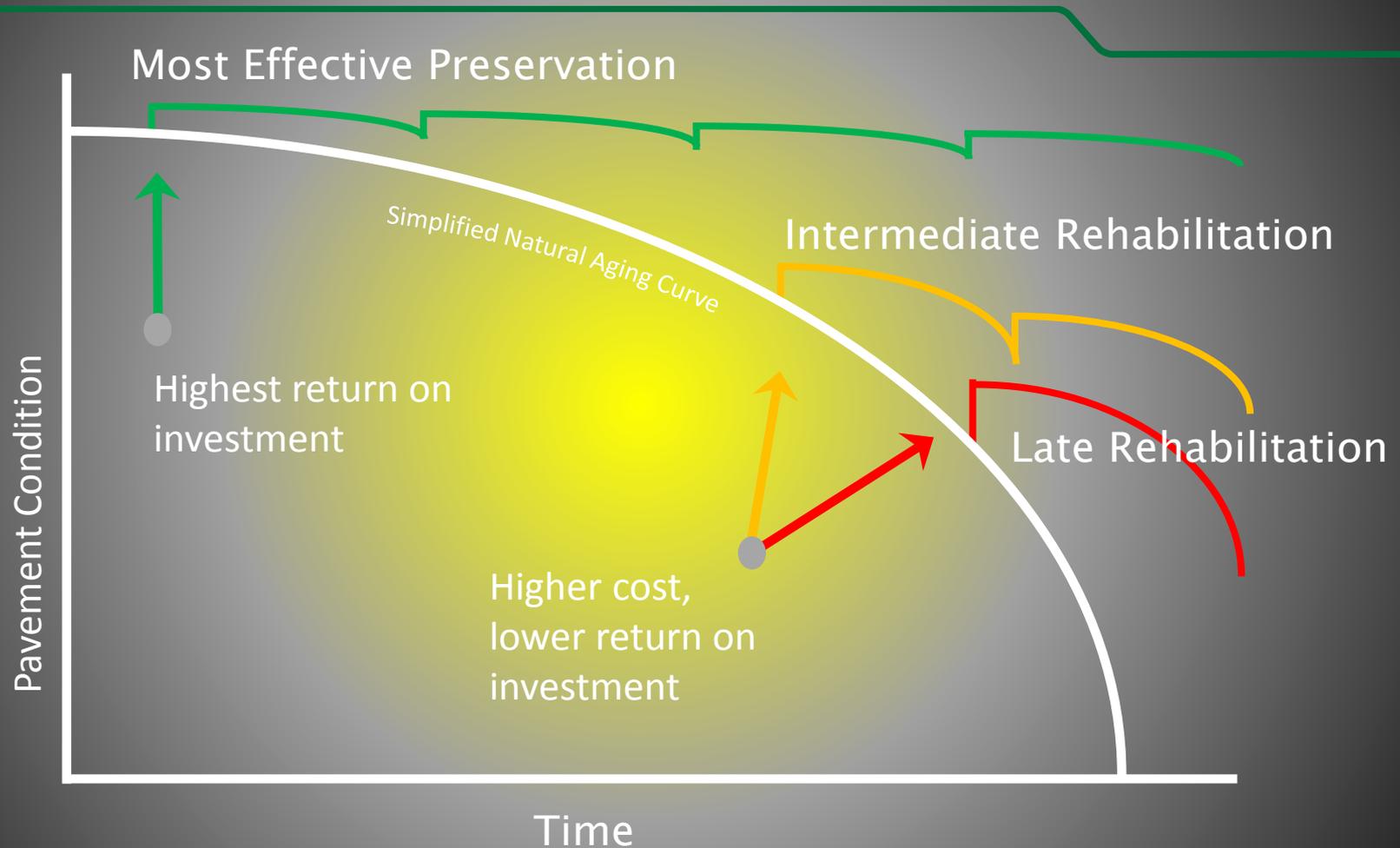
Source: Local Technical Assistance Program, Utah State University

The Cost of Pavement Deterioration



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

Pavement Life Curve



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

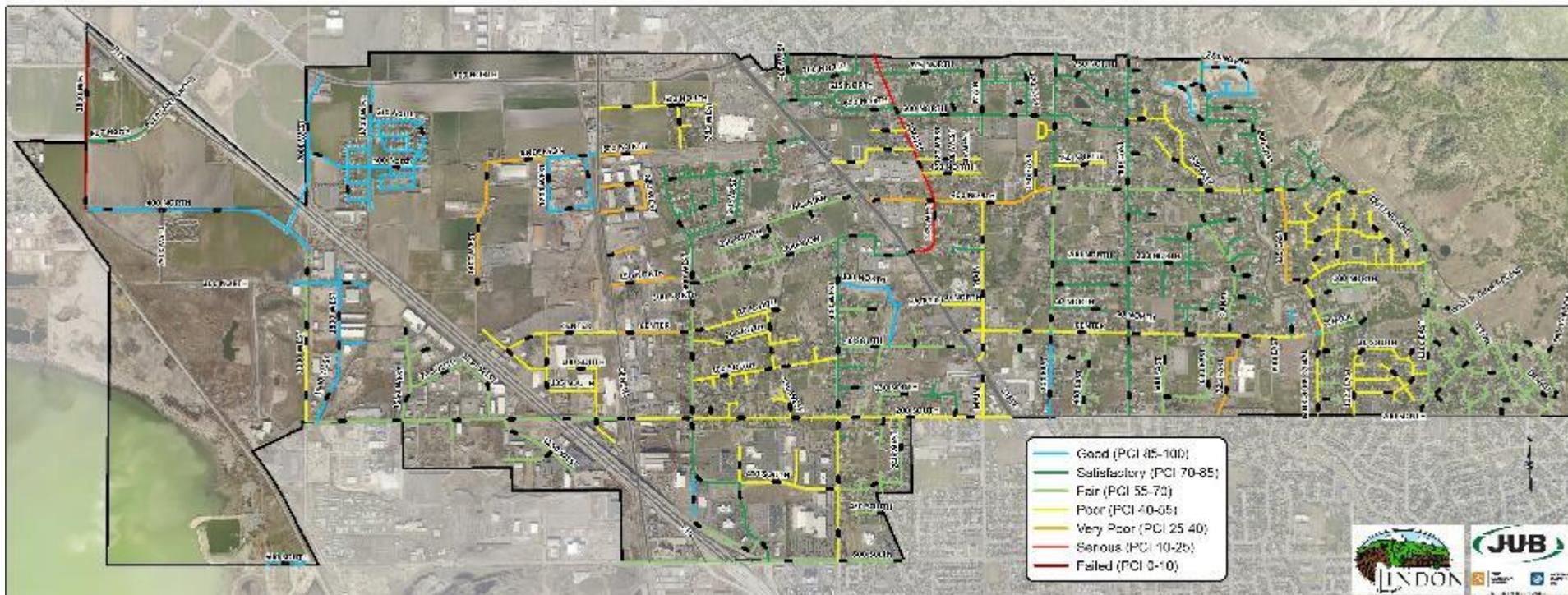


Source: Local Technical Assistance Program, Utah State University

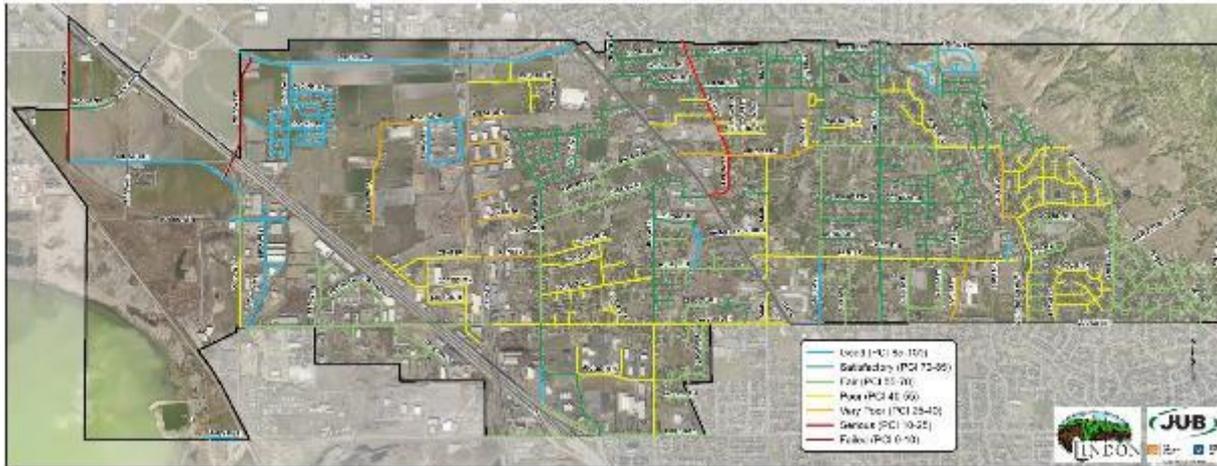
Lindon City – Pavement Management

Pavement Condition Maps

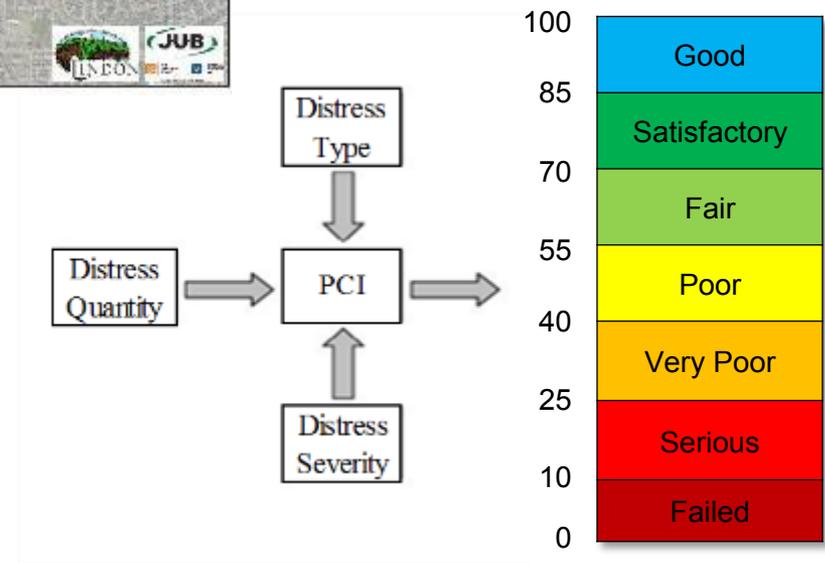
■ = 775 Inspection Locations
Throughout the City



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.



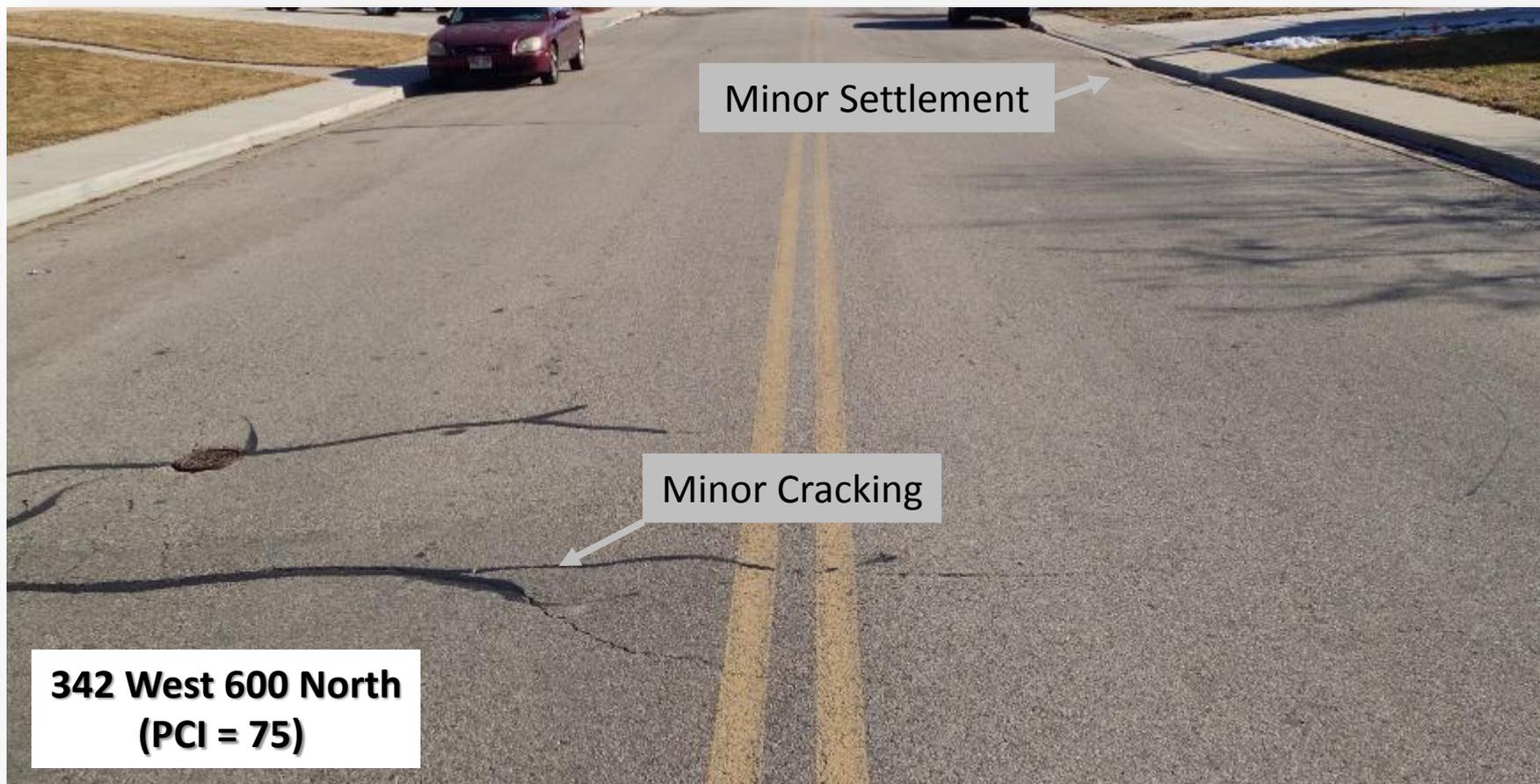
Example of a Good Road



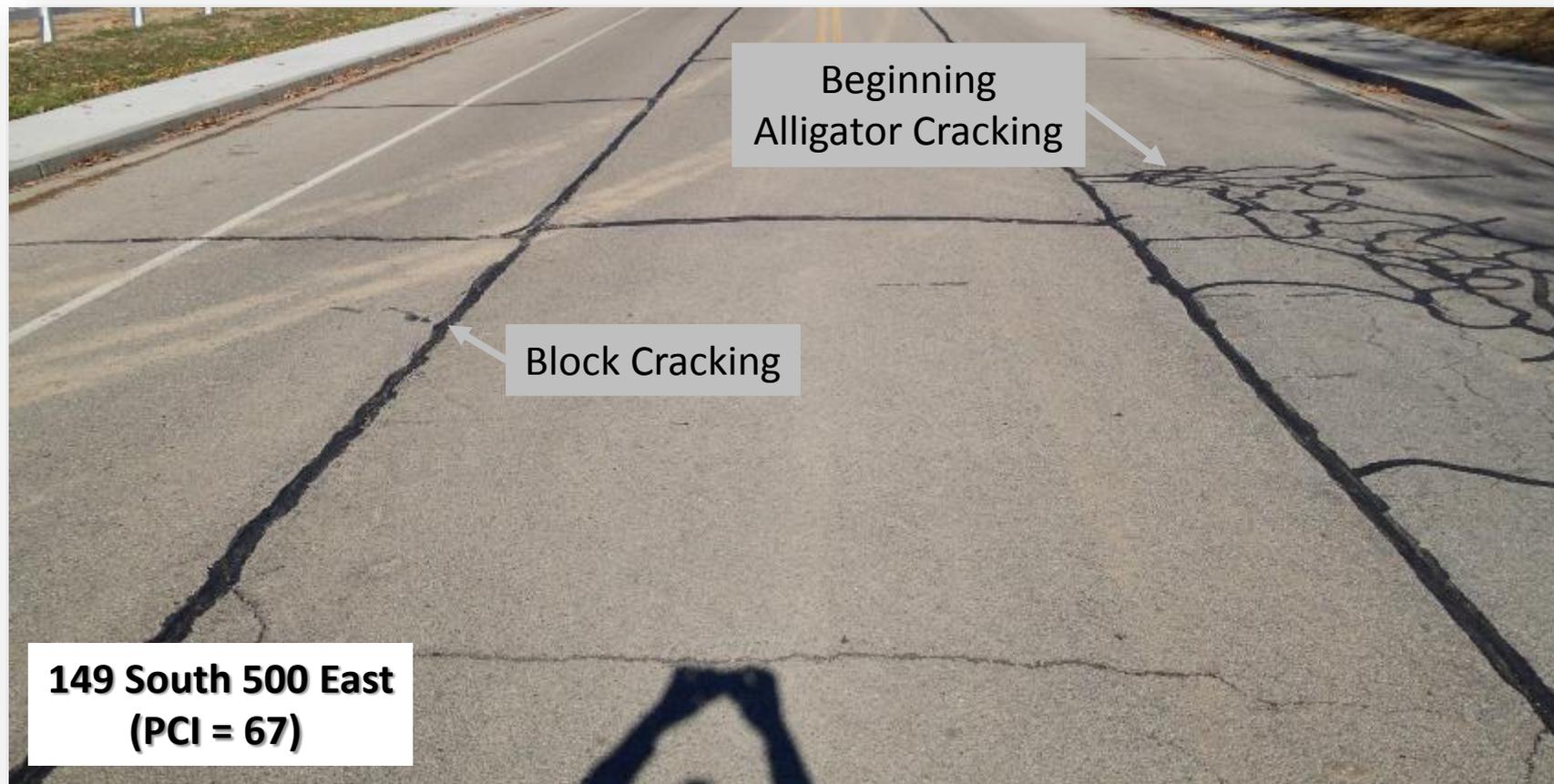
No Visible Distresses

**477 North 1790 West
(PCI = 100)**

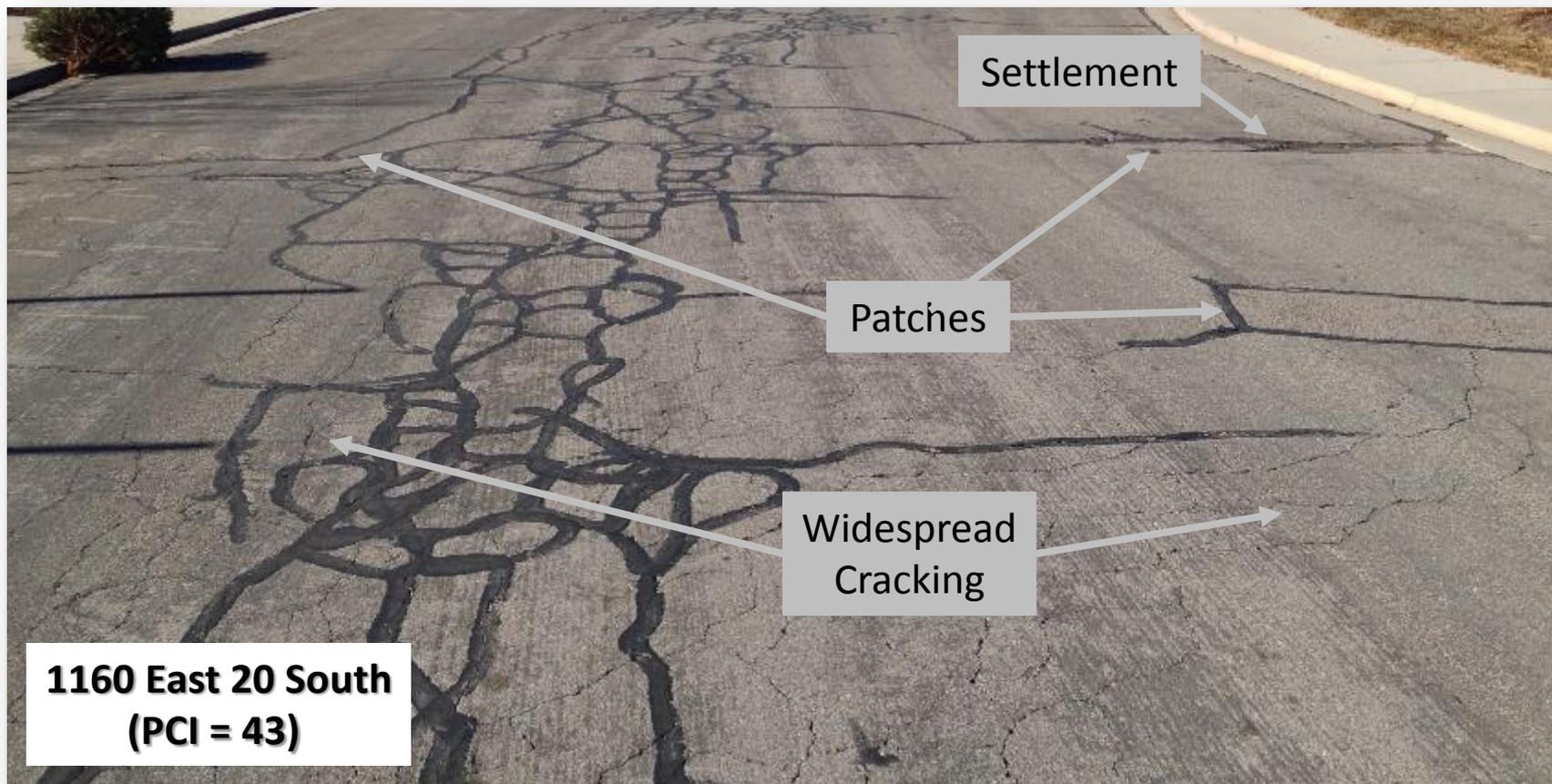
Example of a Satisfactory Road



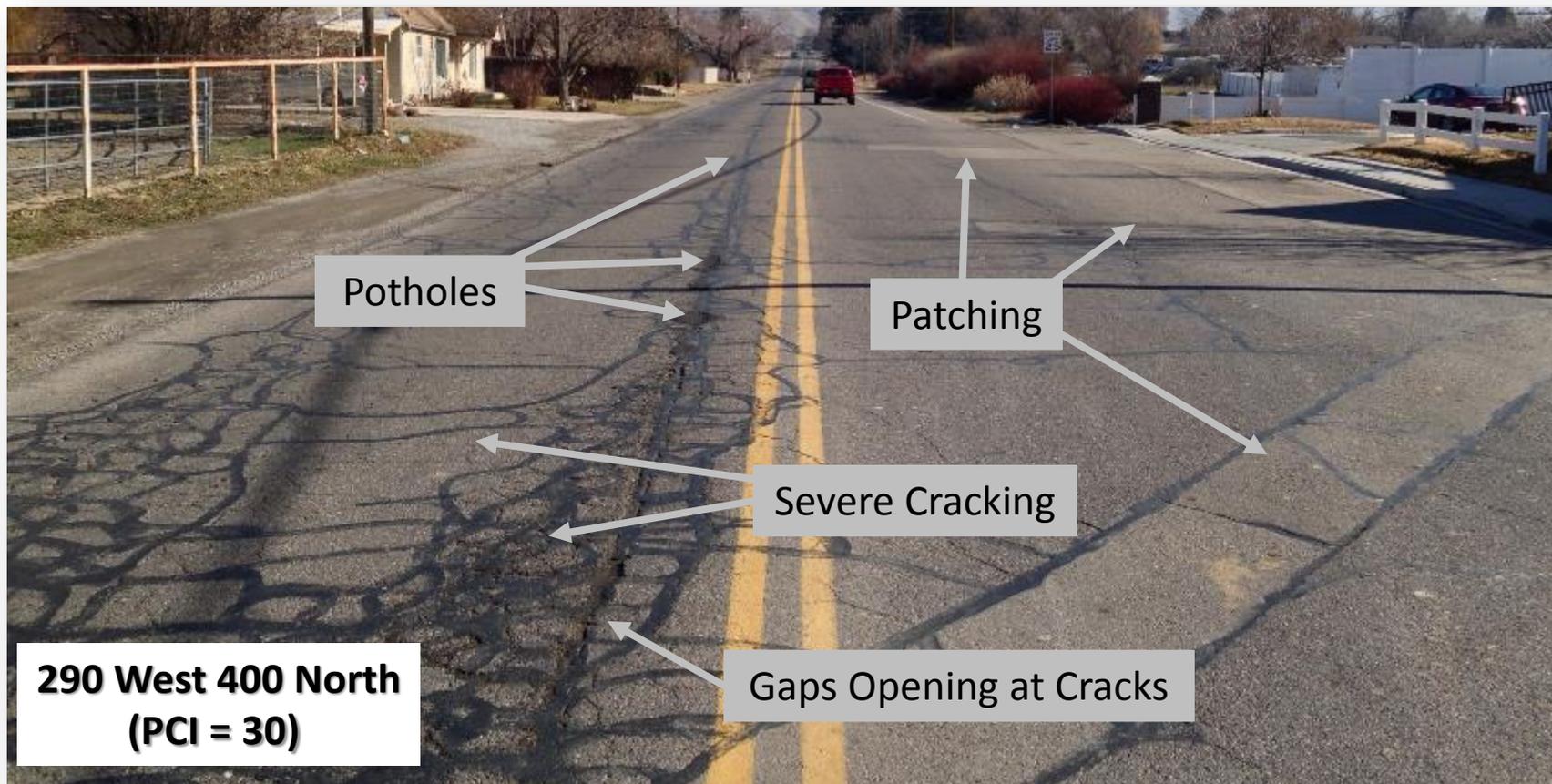
Example of a Fair Road



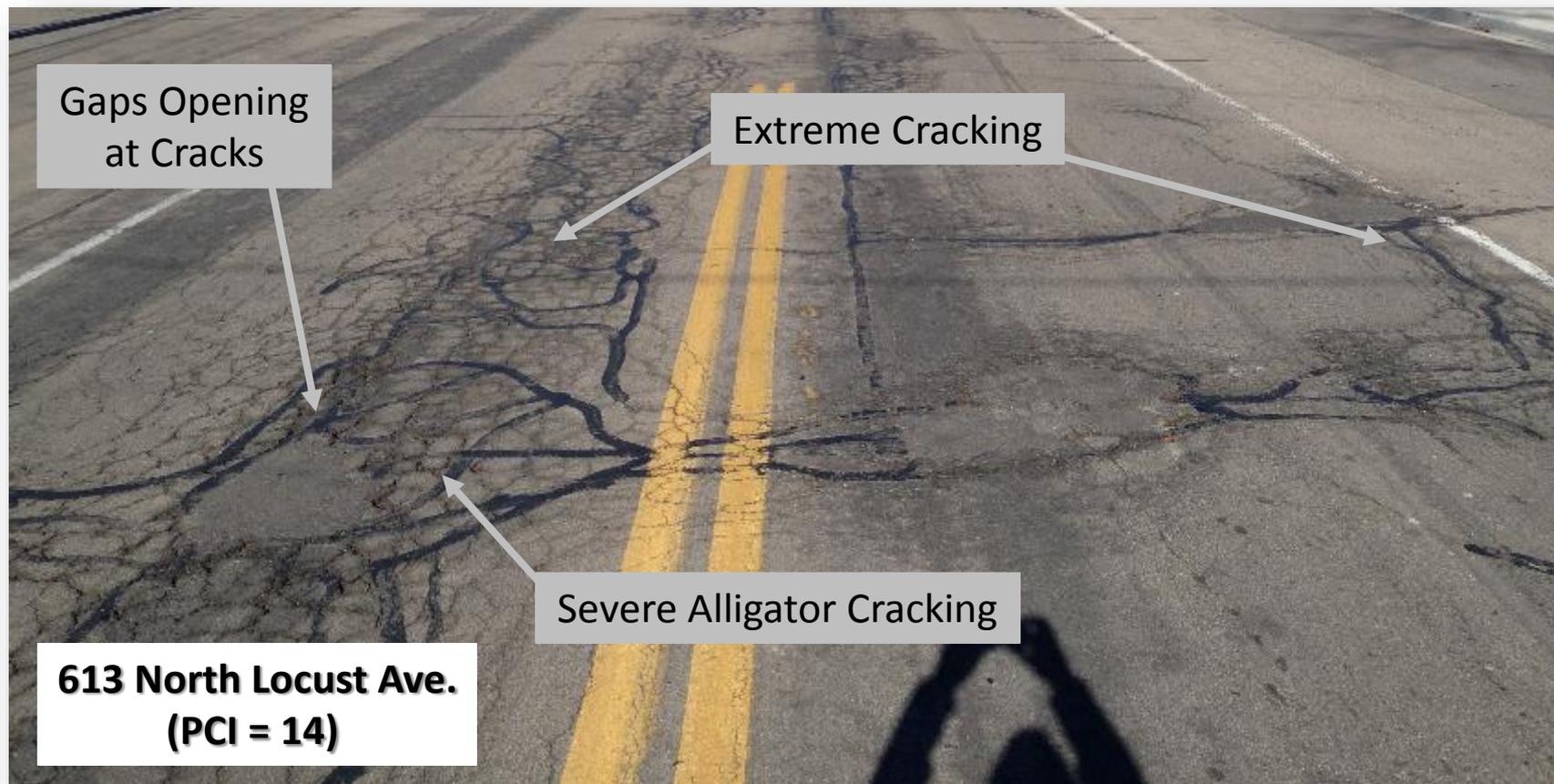
Example of a Poor Road



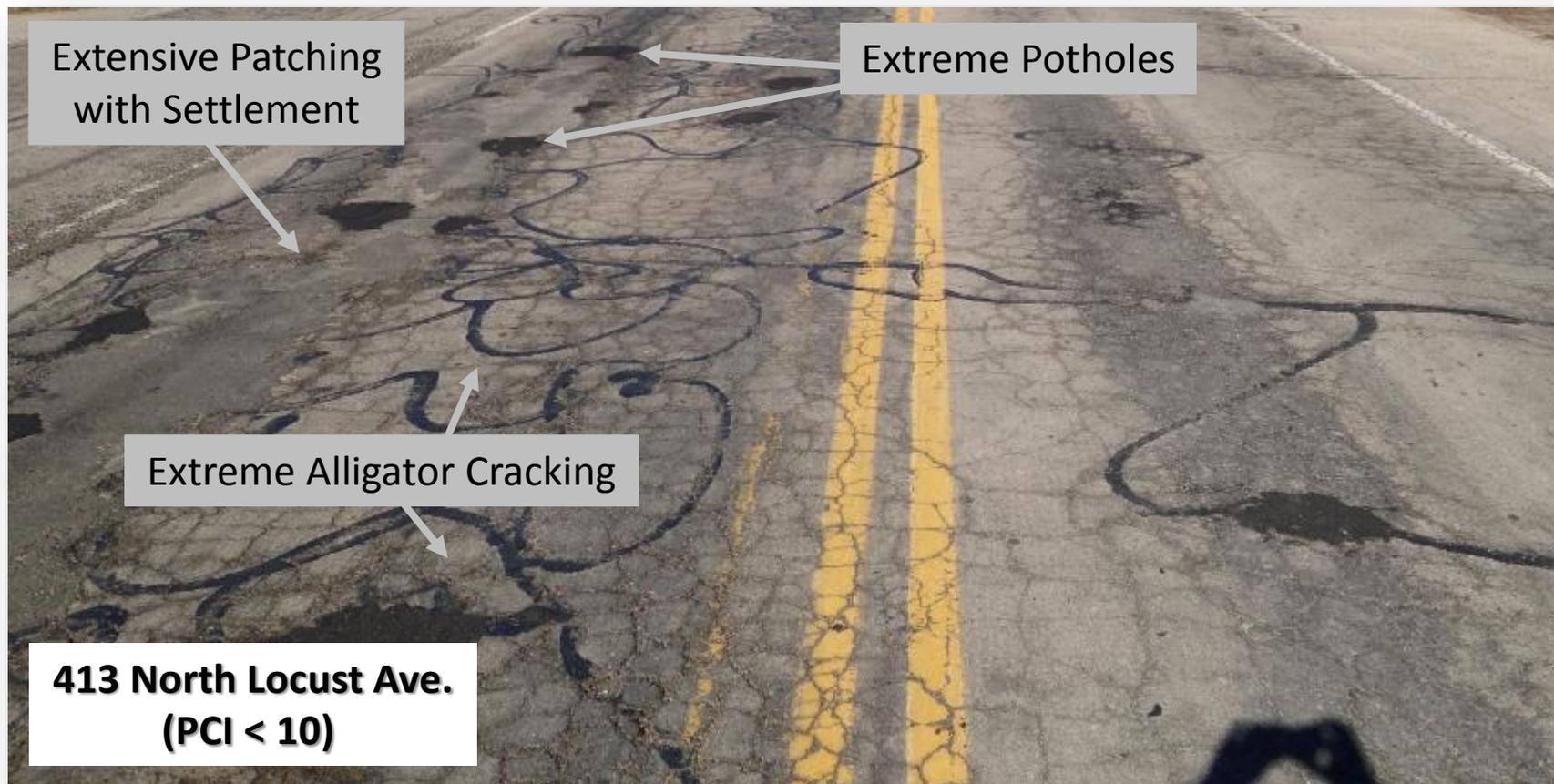
Example of a Very Poor Road



Example of a Serious Road



Example of a Failed Road



Current Road Conditions



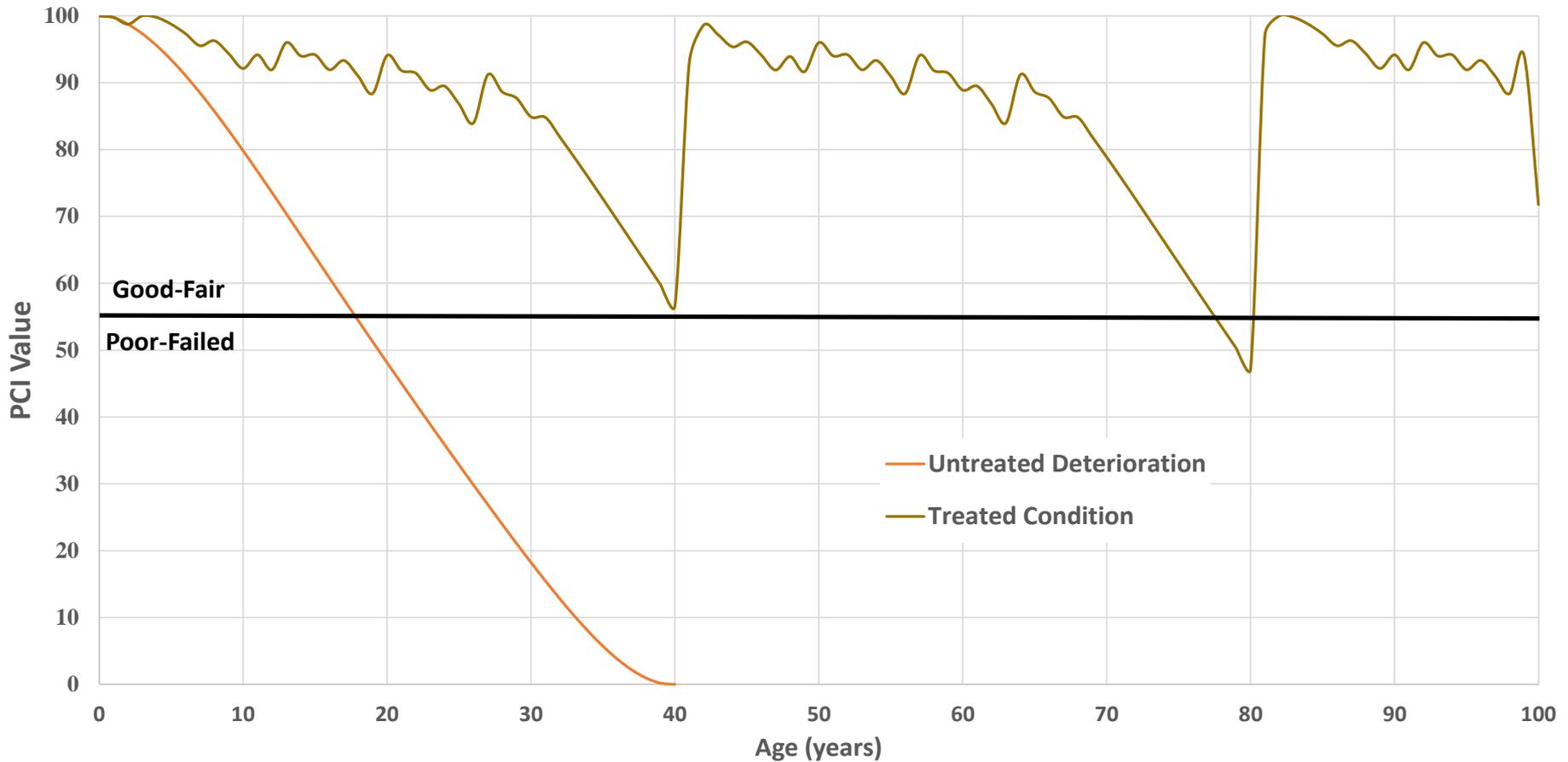
* 2007 & 2014 ratings based on inspections.

Types of Treatment

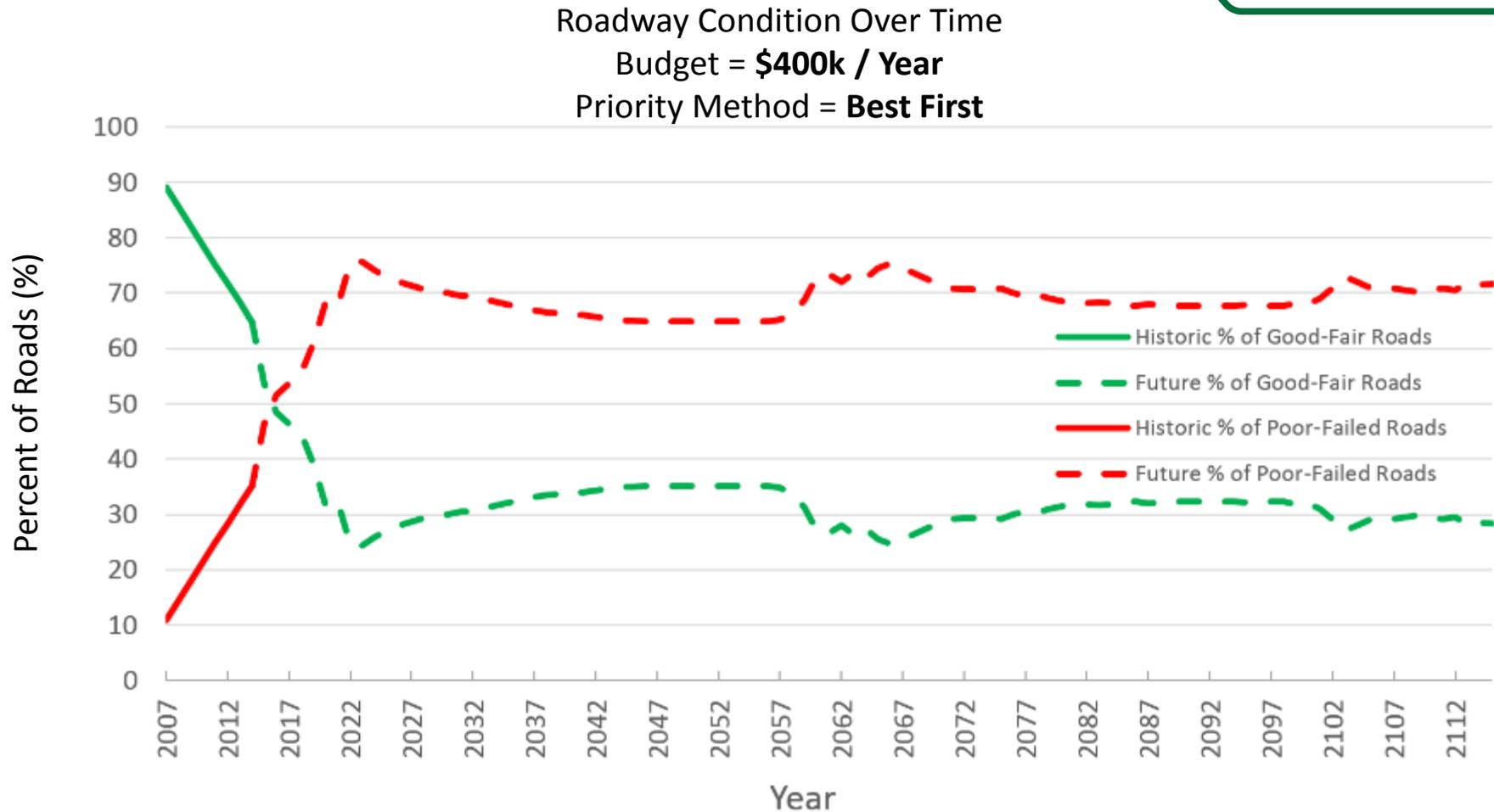
Type	Description	Cost per Mile
Major Reconstruction	Rebuild, replace Yielding Subbase	\$1,335,000 (\$6.50 / SF)
Minor Reconstruction	Pulverize and Repave, Replace Yielding Subbase	\$915,000 (\$4.40 / SF)
Major Rehabilitation	Mill and Overlay	\$625,000 (\$3.00 / SF)
Minor Rehabilitation	Overlay, Major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



Preservation Based Management



\$400k & Best First Treatment Scenario

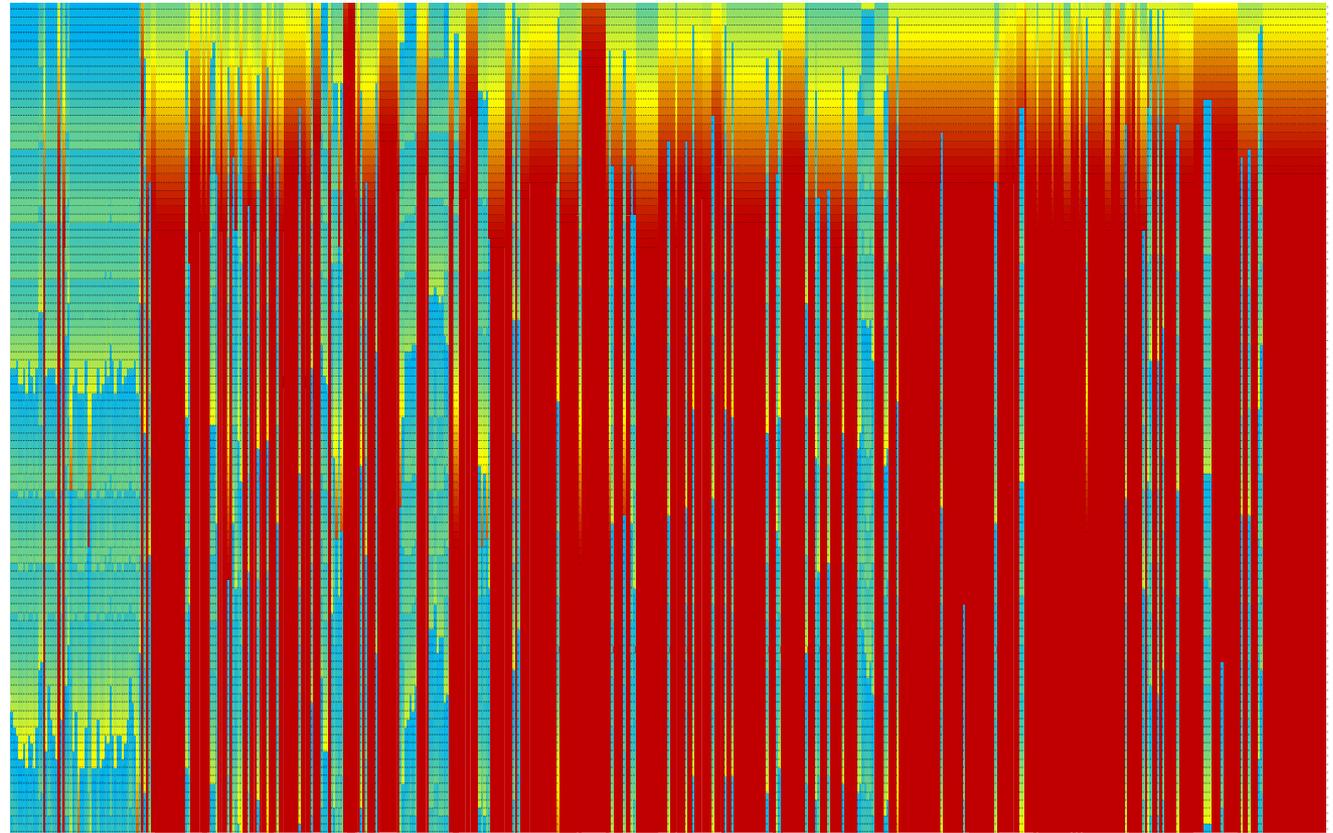


\$400k / Year & Best First Treatment Scenario

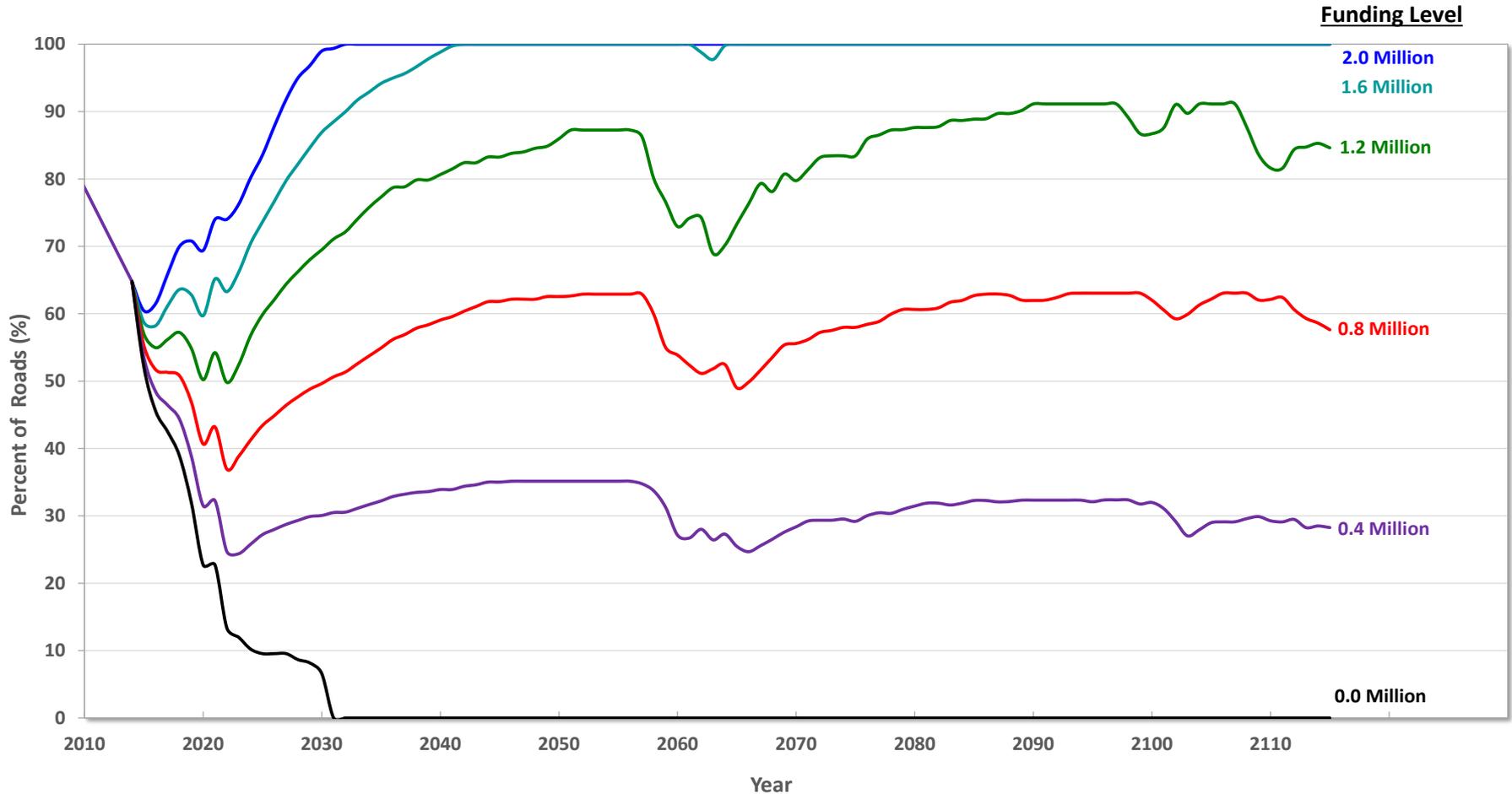


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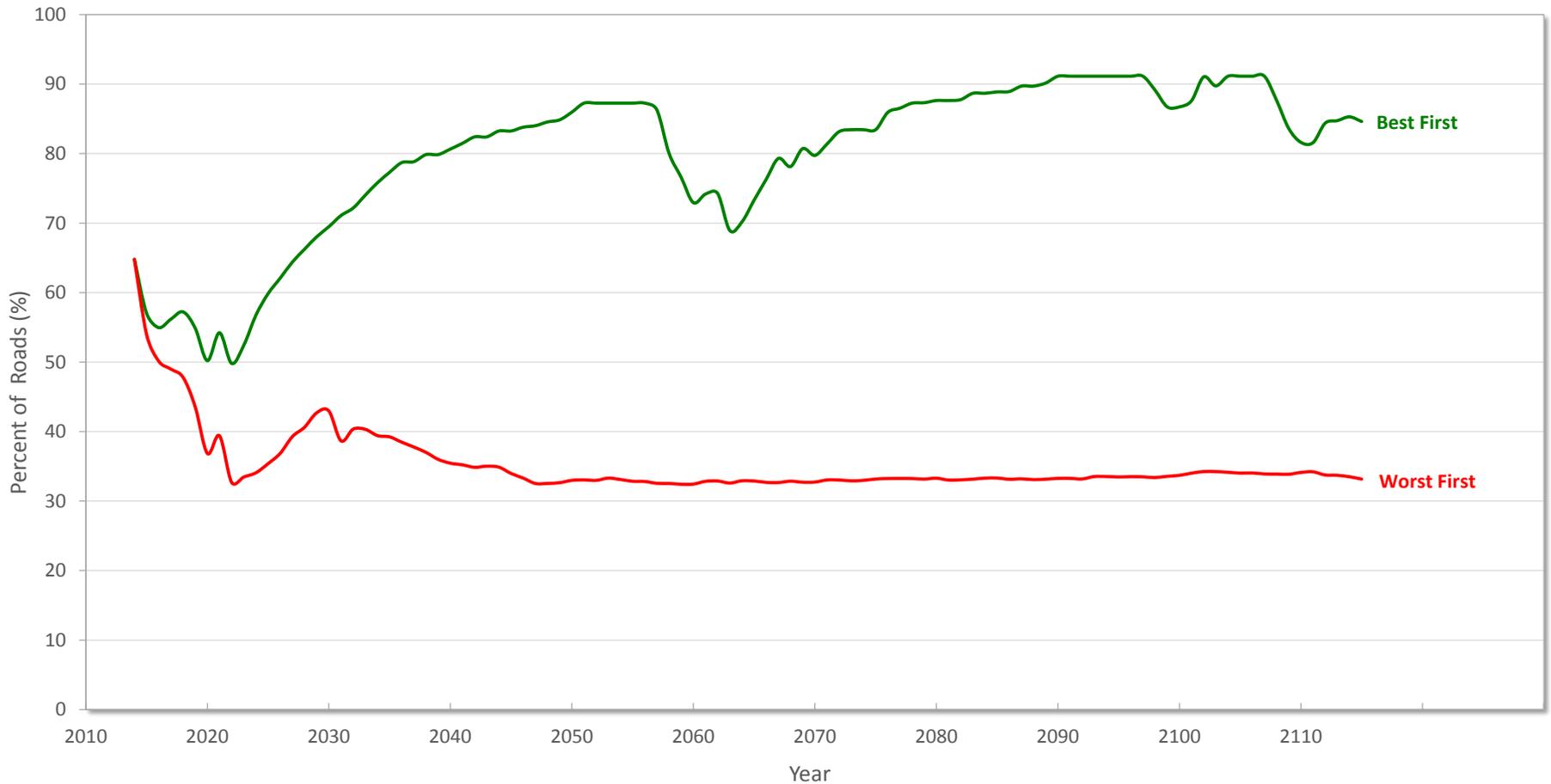


Percent of All Roads in Good to Fair Condition



Best First vs. Worst First

(at \$1.2 Million per Year)

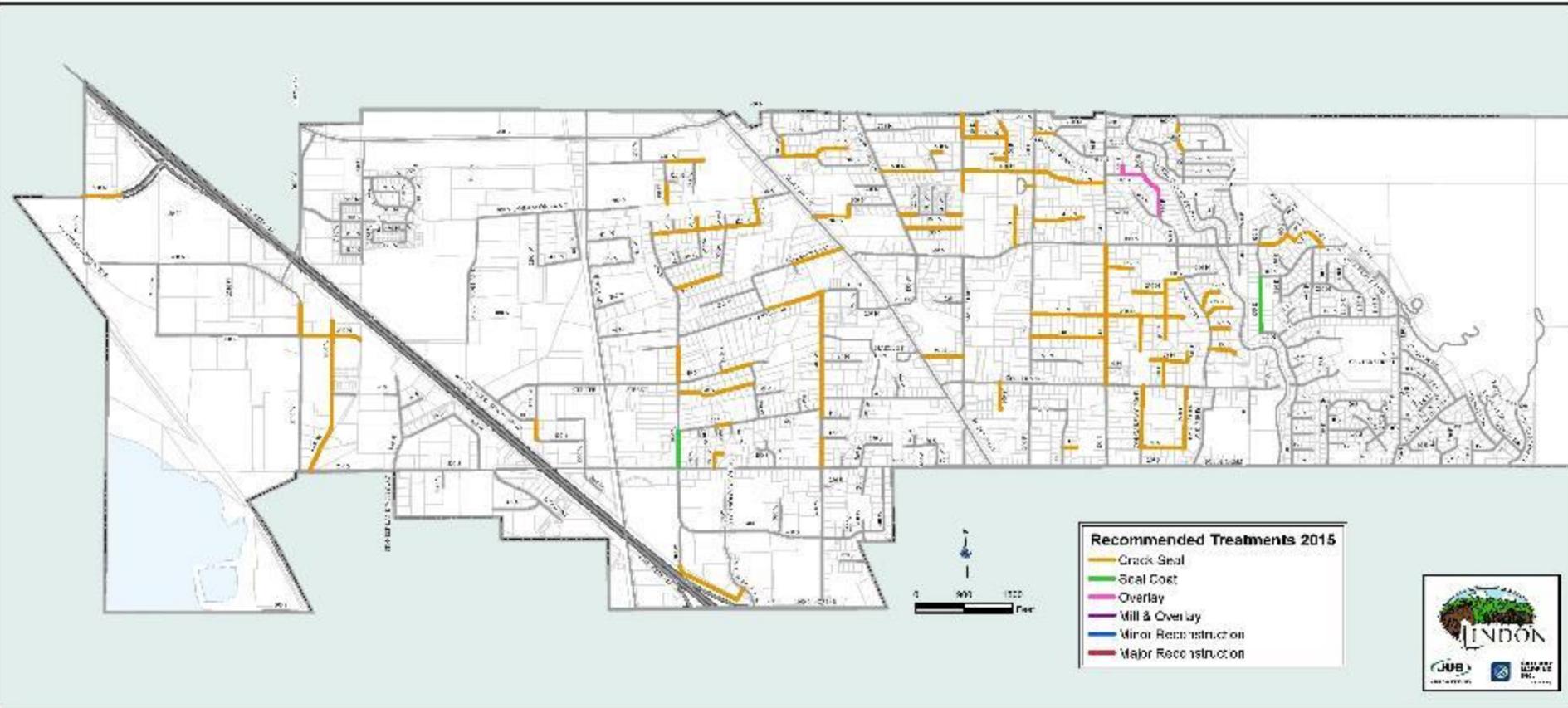


Possible Funding Sources

- ❖ 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)



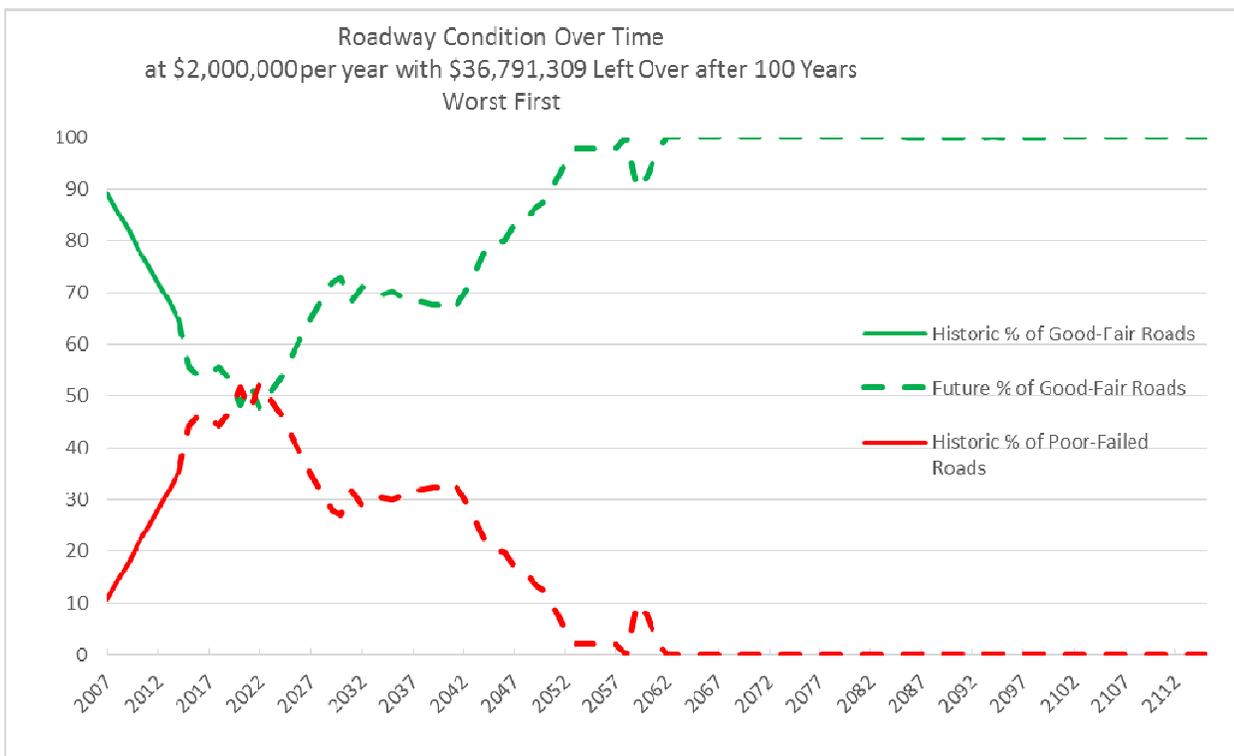
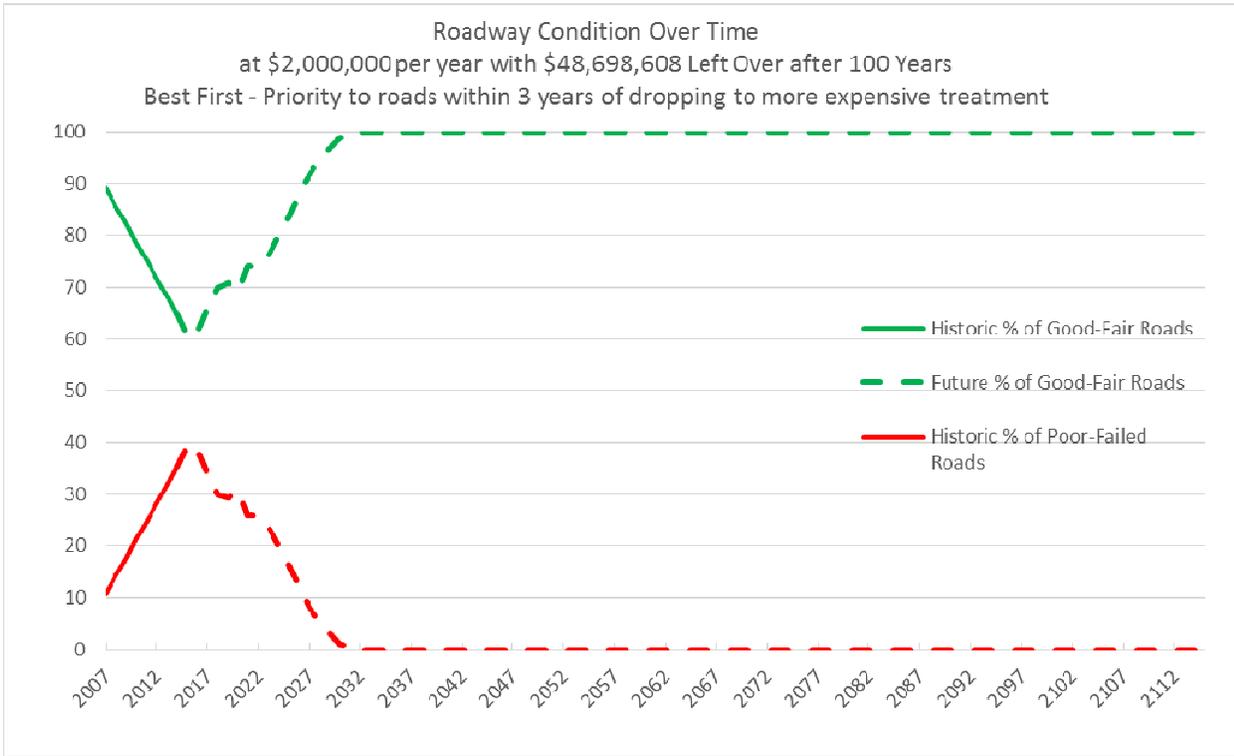
2015 Treatments



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 1, 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 1, 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 | <i>Total:</i> | <i>\$7,002,000</i> |
| | | |
| B. Separate Fire/Police buildings | | |
| a. Standalone Fire Station | | \$4,250,000 |
| b. Remodel - Expand Police Dept / City Center | | <u>\$2,547,000</u> |
| | <i>Total:</i> | <i>\$6,797,000</i> |

Available Funding:

- ~\$360,000. Reserve retired Hogan bond (Flow Rider) amounts for future Public Safety Building. (Approx \$180,000/yr) (FY2016, FY2017)
- ~\$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	1 Month	(July 2016)
• Inform / educate on final decisions		
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)
<u>Contingency & Move-in</u>	<u>2 Months</u>	<u>(May 2018)</u>
Total Estimated Development Schedule	31 Months	(July 2018)

**Lindon Public Safety Building
Site Evaluation**

Site: #2 - 40 West 25 North

Evaluation Criteria	Possible Points	Site Score	Site Specific Comments
1 Minimum Property Size Requirements 1 Level/2 Fire 2 Level Proposed Building Footprint 18412 S.F. 14275 S.F. Ancillary Building 2536 S.F. 2078 S.F. Parking and Hardscape 33830 S.F. 33730 S.F. Internal Landscaping 13695 S.F. 12521 S.F. Required Sideyards/Setbacks 14960 S.F. 14960 S.F. 83433 S.F. 77564 S.F. 1.92 Acres 1.78 Acres This Criteria also considers the Property configuration and Minimum Property Dimensions	15	15	The available 2.7 Acres will accommodate an optimum building configuration. The required Site area may also be reduced 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 new Ancillary Building at this site.
2 Property Ownership / Availability/ Cost Is the proposed property owned by the City or 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.
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	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	8	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	4	Existing Property is Zoned General Commercial and may require rezoning - This 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	8	Both State Street and 40 North street improvements are existing. Required Utilities appear to be available in the adjacent streets.
10 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	

1st Ranked Site

40 West 25 North



Public Safety Facilities Master Plan

Lindon, Utah



Project Budget Estimate

40 West 25 North

	Area	Unit Cost		Comment	
Construction Costs	Public Safety Building	22,134 S.F.	\$190.00 /S.F.	\$4,205,460	
	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	
	Estimated Construction Cost			\$4,562,460	2013 Dollars
	Contingency		10%	\$456,246	
	Inflation to Start of Construction	2 Yrs.	4%	\$401,496.48	
	Adjusted Construction Cost			\$5,420,202	2015 Dollars
Project Soft Costs	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		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	
	Data Cabling	22,134 S.F.	\$2.00 /S.F.	\$44,268	
	Other Project Costs				
	Site Suvey			\$6,000	Allowance
	Geotechnical Study			\$6,000	Allowance
	Phase 1 Environmntal Assessment			\$4,500	Allowance
	Thermal Conductivity System			\$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		



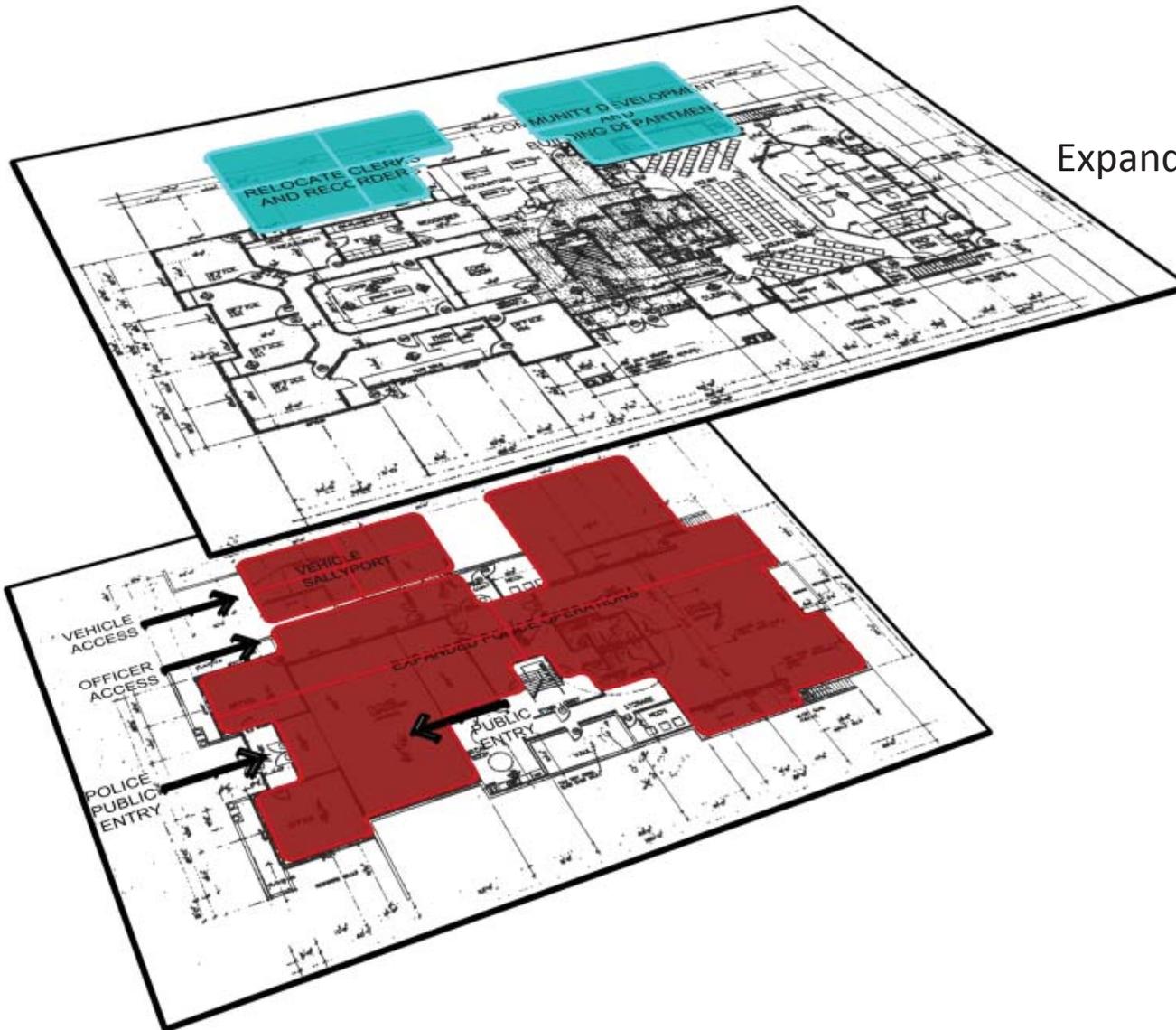
Public Safety Facilities Master Plan

Lindon, Utah



Option B

Expand and Remodel Existing
City Hall (Police Only)



Public Safety Facilities Master Plan

Lindon, Utah



Project Budget Estimate

Expand and Rennovate Existing City Hall

	Area	Unit Cost		Comment	
Construction Costs	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
	Other City Hall Improvements - Allowance	1,200 S.F.	\$80.00 /S.F.	\$96,000	
	Ancillary Building	0 S.F.	\$120.00 /S.F.	\$0	Utilize Existing Fire Station
	Site Improvement	15,000 S.F.	\$6.00 /S.F.	\$90,000	Allowance
	Estimated Construction Cost			\$1,952,000	2013 Dollars
	Contingency		10%	\$195,200	
	Inflation to Start of Construction	1 Yrs.	4%	\$85,888.00	
	Adjusted Construction Cost			\$2,233,088	2014 Dollars
Project Soft Costs	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				
	Audio/Visual System	11,200 S.F.	\$1.00 /S.F.	\$11,200	Training/Briefing/Community Rooms
	Phone Systems	11,200 S.F.	\$1.25 /S.F.	\$14,000	
	Data Cabling	11,200 S.F.	\$2.00 /S.F.	\$22,400	
	Other Project Costs				
	Site Suvey			\$5,000	Allowance
	Geotechnical Study			\$5,000	Allowance
	Phase 1 Environmtal Assessment			\$0	Allowance
	Owner Provided Construction Phase Testing		0.25%	\$5,583	
	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		



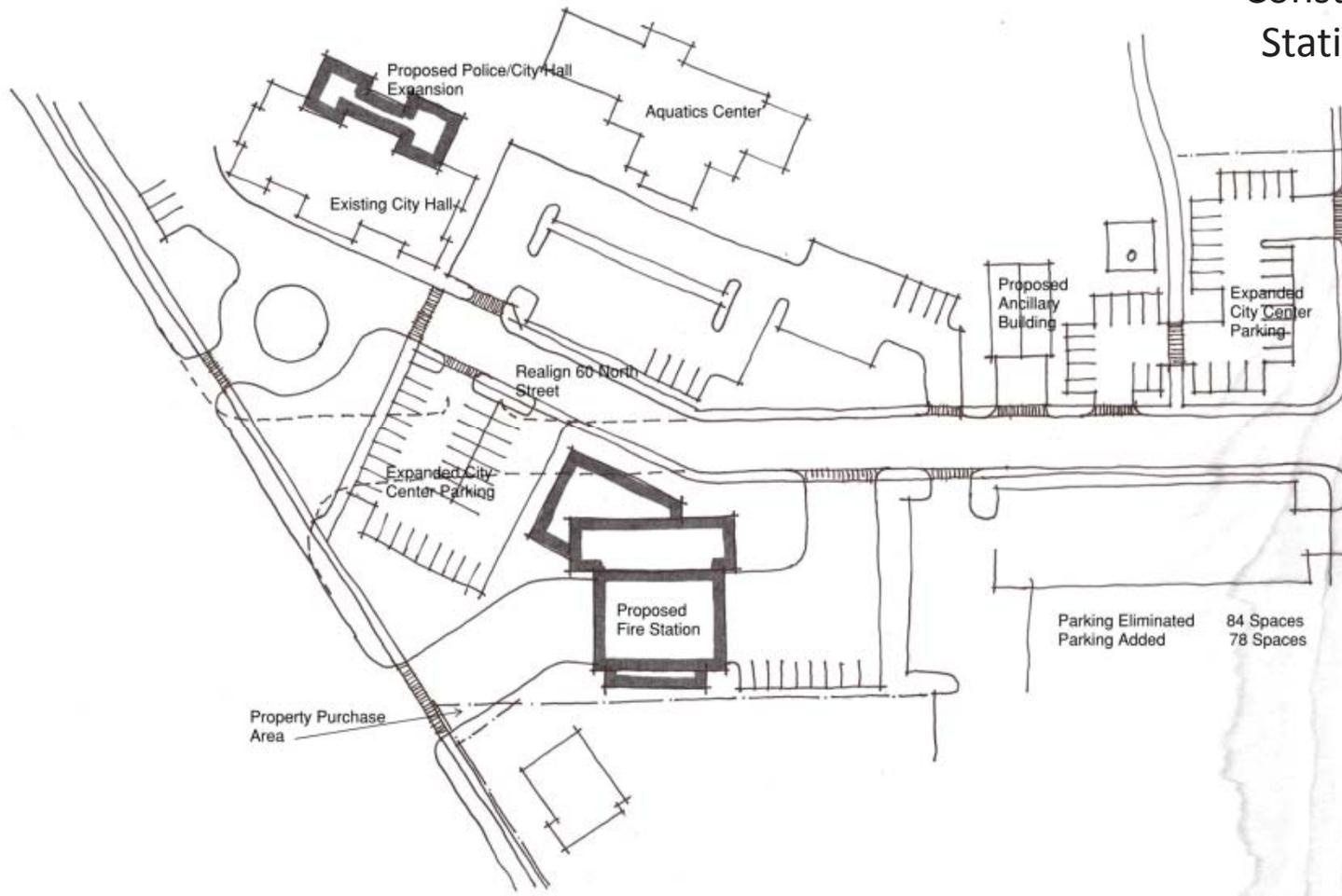
Public Safety Facilities Master Plan

Lindon, Utah



Option B

Construct Separate Fire Station on City Owned Property



Public Safety Facilities Master Plan

Lindon, Utah



Lindon Public Safety Building Site Evaluation

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



Evaluation Criterion	Possible Points	Site Score	Site Specific Comments
1 Minimum Property Size Requirements 1 Level/2 Fire 2 Level Proposed Building Footprint 18412 S.F. 14275 S.F. Ancillary Building 2536 S.F. 2078 S.F. Parking and Hardscape 33830 S.F. 33730 S.F. Internal Landscaping 13695 S.F. 12521 S.F. Required Sideyards/Setbacks 14960 S.F. 14960 S.F. 83433 S.F. 77564 S.F. 1.92 Acres 1.78 Acres This Criteria also considers the Property configuration and Minimum Property Dimensions	15	15	
2 Property Ownership / Availability/ Cost Is the proposed property owned by the City Or will it require Purchase - Is it Located in the RDA funding Area Allowing Use of those Funds?	15	15	
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	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 accommodated?	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 features" significantly 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	
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	7	Will Require Partial Relocation of 25 North Street
10 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	
Construction Costs	Separate Fire Station	13,718 S.F.	\$190.00 /S.F.	\$2,606,420	
	Fire Station Site Work	55,000 S.F.	\$6.00 /S.F.	\$330,000	
	Estimated Construction Cost			\$2,936,420	2013 Dollars
	Additional Site Development	45,000 S.F.	\$6.00 /S.F.	\$270,000	Includes Realignment of 25 North
	Contingency		10%	\$293,642	
	Inflation to Start of Construction	2 Yrs.	4%	\$258,405	
	Adjusted Construction Cost			\$3,758,467	2015 Dollars
Project Soft Costs	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	
	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
	Other Project Costs				
	Site Suvey			\$5,000	Allowance
	Geotechnical Study			\$5,000	Allowance
	Phase 1 Environmntal Assessment			\$2,500	Allowance
	System Commissioning		0.25%	\$9,396	If Persuing USGBC LEED Designation
	Owner Provided Construction Phase Testing		0.25%	\$9,396	
	Land Acquisition Costs	750 S.F.	\$10.00 /S.F.	\$7,500	Assumed Cost/S.F.
	Bond/Finance Charges			\$0	
	Legal Fees			\$0	
Moving Costs			\$0		
Total Estimated Project Costs				\$4,250,210	

Combined Project Costs

\$6,797,903



Public Safety Facilities Master Plan

Lindon, Utah





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	



Public Safety Facilities Master Plan

Lindon, Utah



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. Definitions.

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

- a. City means the City of Lindon, Utah, a municipal corporation organized under the laws of the State of Utah.
- b. Company means Veracity Networks, LLC, authorized to do business in the State of Utah.
- c. Facilities 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. Sidewalk 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. Street 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:

Jeff Acerson
Mayor

(SEAL)
ATTEST:

Kathryn A. Moosman
City Recorder

VERACITY NETWORKS, LLC

BY:

Title: _____

WITNESS:

Title: _____

II. 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.

1.2 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 shall apply herein unless a 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 to 10-1-410 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 of 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 _____, 20__

“CITY”
CITY OF LINDON

By: _____
Jeff Acerson, Mayor

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

CORPORATE ACKNOWLEDGMENT

STATE OF _____)
:ss.
COUNTY OF _____)

On the ____ day of _____, 20__ personally appeared before me Greg Lowe, who being by me duly sworn did say that he is the Chief Executive Officer of Syringa Networks, LLC, and that the foregoing instrument was signed on behalf of said company by authority of its board of directors and/or its company documents; and he acknowledged to me that said company executed the same.

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 | - Jeff Acerson |
| B) Public Works, Irrigation/water, City Buildings | - Van Broderick |
| C) Planning, BD of Adjustments, General Plan, Budget Committee | - Matt Bean |
| D) Parks & Recreation, Trails, Tree Board, Cemetery | - Carolyn Lundberg |
| E) Administration, Com Center Board, Lindon Days, Chamber of Commerce | - Randi Powell |
| F) Public Safety, Court, Animal Control, Historic Commission, Budget Committee | - 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: <https://member.everbridge.net/index/892807736722443#/login>
- Joint CC/PC work session w/ Ivory Homes, Tuesday, Feb. 10th 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 4th 8-10am – Utah Valley Visitors Bureau partnership meeting: **Mayor**
- Feb 5th @ 6pm – Budget Kick Off Meeting
- Feb 10th – Engineering Coordination Mtg @ Noon at Public Works: **Mayor, Van, ???**
- Feb 10th @ 6pm – Joint CC/PC works session w/Ivory Homes
- Feb 16th – City Offices Closed for Presidents Day
- March 7th @ 6:00pm – Little Miss Lindon Pageant @ Oak Canyon Jr High
- April 24th through May 1st – City Wide Clean Up (dumpsters for public use)

Future items:

- Employee Policy Manual updates

Adjourn

Annual Reviews				
APPLICATION NAME	APPLICATION DATE	APPLICANT INFORMATION	PLANNING COMM.	CITY COUNCIL
			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
<i>Annual review of care center to ensure conformance with City Code. Care center is a pre-existing use in the CG zone.</i>				
Annual review of CUP - Housing Authority of Utah County - Group home. 365 E. 400 N. (File # 03.0213.1) lsmith@housinguc.org	Existing CUP	Housing Auth. Of Utah County Director: Lynell Smith 801-373-8333.	March 2015 Last Reviewed: 3/14	N/A
<i>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.</i>				
Heritage Youth Services - Timpview Residential Treatment Center. 200 N. Anderson Ln. (File # 05.0345) info@heritageyouth.com info@birdseyvertc.com	Existing CUP	HYS: Corbin Linde, Lynn Loftin 801-798-8949 or 798-9077	March 2015 Last Reviewed: 3/14	N/A
<i>Annual review required by PC to ensure CUP conditions are being met. Juvenile group home is permitted for up to 12 youth (16 for Timp RTC) not over the age of 18.</i>				

Grant Applications	
Pending	Awarded
Bikes Belong - Trail construction grant. Requested amount: \$10,000 o 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.	EDCUtah 2014 — Awarded matching grant to attend ICSC Intermountain States Idea Exchange 2014.
Hazard Mitigation Grant / MAG Disaster Relief Funds- (pipe main ditch)	CDBG 2014 Grant – Senior Center Computer Lab (\$19,000)
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