

2 The Lindon City Planning Commission held a regularly scheduled meeting on **Tuesday,**
3 **November 11, 2014 at 7:00 p.m.** at the Lindon City Center, City Council Chambers, 100
4 North State Street, Lindon, Utah.

6 **REGULAR SESSION** – 7:00 P.M.

7 Conducting: Sharon Call, Chairperson
8 Invocation: Andy Skinner, Commissioner
9 Pledge of Allegiance: Ron Anderson, Commissioner

10 **PRESENT**

11 Sharon Call, Chairperson
12 Ron Anderson, Commissioner
13 Mike Marchbanks, Commissioner
14 Rob Kallas, Commissioner
15 Matt McDonald, Commissioner
16 Andrew Skinner, Commissioner
17 Hugh Van Wagenen, Planning Director
18 Jordan Cullimore, Associate Planner
19 Cody Cullimore, Chief of Police
20 Kathy Moosman, City Recorder

10 **ABSENT**

11 Bob Wily, Commissioner

21 1. **CALL TO ORDER** – The meeting was called to order at 7:00 p.m.

22 2. **APPROVAL OF MINUTES** – The minutes of the regular meeting of October 28,
23 2014 and August 12, 2014 were reviewed.

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28 COMMISSIONER KALLAS MOVED TO APPROVE THE MINUTES OF THE
29 REGULAR MEETING OF OCTOBER 28, 2014 AND THE WORK SESSION OF
30 AUGUST 12, 2014 AS WRITTEN. COMMISSIONER SKINNER SECONDED THE
31 MOTION. ALL PRESENT VOTED IN FAVOR. THE MOTION CARRIED.

32 3. **PUBLIC COMMENT** –

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34 Chairperson Call called for comments from any audience member who wished to
35 address any issue not listed as an agenda item. There were no public comments.

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37 **CURRENT BUSINESS** –

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39 4. **Continued Item – Site Plan:** *Reflections Recovery Center, 145 South 200 East.* Ron
40 Wentz of Reflections Recovery Center seeks site plan approval for a residential
41 substance abuse disorder and mental health recovery center for up to 16 residents at
42 145 South 200 East in the R1-20 (Single Family Residential) zone. This item was
43 continued from the September 23, 2014 Planning Commission meeting.

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45 ***NOTE:** The Planning Commission will act as the final land use authority for this*
46 *item and will make a final decision on the application. The City Council initially*
47 *invoked section 17.08.090 of the Lindon City Code to become the final land use*
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2 *authority for the item. However, the City Council has reassigned the Planning*
3 *Commission as the final land use authority for this application. The City Council*
4 *will act as the appeal authority if the final decision for the Planning Commission*
5 *is appealed.*

6 Hugh Van Wagenen, Planning Director, opened the discussion by giving a brief
7 overview of this agenda item. He explained this is a request by Ron Wentz of
8 Reflections Recovery Center who is seeking site plan approval for a residential substance
9 abuse disorder and mental health recovery center for up to 16 residents at 145 South 200
10 East in the R1-20 (Single Family Residential) zone (approx.1.3 acres). Mr. Van
11 Wagenen noted this item was continued from the September 23, 2014 Planning
12 Commission meeting. He explained that tonight the Commission will be considering site
13 plan approval and in addition to that a reasonable accommodation request that the
14 applicants have put forward. He further explained, to be clear up front, this item was
15 continued, and at that time the City Council had invoked section 17.08.090 of the Lindon
16 City Code of what would have made them the final land use authority on this matter,
17 however, since that time they have changed their direction and have re-assigned the
18 Planning Commission to be the final land use authority which makes the City Council the
19 appeal authority on anything that happens here tonight.

20 Mr. Van Wagenen stated this is a site plan application for approval of a 7,822
21 square foot residential substance use disorder and mental health recovery center.
22 He noted the applicant is requesting a reasonable accommodation from Lindon City Code
23 17.70.040(6) to allow 16 residents instead of 4. Current code requires a maximum of four
24 (4) individuals in any one of these facilities and are permitted in the residential zone; at
25 this point the reasonable accommodation is the question as the applicants are requesting
26 approval for 16 individuals. Mr. Van Wagenen noted in the last meeting there was a
27 question on the reasonable accommodation and regarding what is reasonable and
28 necessary for that accommodation.

29 Mr. Van Wagenen then referenced the existing code briefly and recommended
30 conditions as follows (included in the packets):

- 31 1. (Paragraph 3) The applicant has passed pre-certification standards through the
32 Utah State Division of Licensing and Department of Human Services. The
33 facility will receive a license after final inspection. Staff recommends that the
34 Planning Commission require, as a condition of approval, that the applicant
35 submit the license to the City within sixty (60) days of site plan approval.
- 36 2. (Paragraph 5) The applicant has submitted plans, which have been reviewed
37 by staff. No significant structural changes have been proposed. Landscaping
38 hand surfacing alterations will accommodate on-site parking required by the
39 Lindon City Code, while maintaining a character that is conducive to
40 residential settings. A review of aerial photography indicates that it is not
41 uncommon on residential lots in Lindon for a dwelling to have a parkable
42 surface in a side yard that extends into the rear yard of the dwelling.

43 Mr. Van Wagenen explained the applicant's floor plan identifies 7 sleeping
44 rooms. Residents will not have their own vehicles, and there will be anywhere from 2-
45 6 employees on premise at any time. The applicant has indicated that visitors will
46 visit only occasionally, and not in large numbers. The site plan proposes 9 employee
47 spaces, 6 guest spaces, and an additional 2 ADA accessible spaces for a total of 17
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2 off-street parking spaces in the rear yard of the dwelling. The proposed number of
spaces satisfies Lindon City Code requirements and appears sufficient to
accommodate the facility's parking needs.

4 Mr. Van Wagenen then discussed the reasonable accommodation request. He noted
as part of the reasonable accommodation request staff sent out financial information from
6 the applicant to a third party, Lewis, Young, Robertson & Burningham Inc. (LYRB), a
financial consultant, to determine whether the requested accommodation is necessary to
8 allow the facility to succeed. LYRB's analysis has indicated that 16 occupants is
necessary for the facility to have a chance to be financially successful.

10 Mr. Van Wagenen also noted for reference the attachments included in the packets
as follows:

- 12 1. City Attorney's Memo on Request for Reasonable Accommodation
- 14 2. Staff's Analysis of Reasonable Accommodation Request
- 14 3. LYRB's Financial Analysis of Reflections Recovery Center
- 16 4. Fence Examples
- 16 5. Engineer's Opinion on Traffic Effect
- 18 6. Additional Documents Submitted after the September 23, 2014 Planning
Commission meeting
- 20 7. Additional Documents Submitted before the September 23, 2014 Planning
Commission meeting

22 Mr. Van Wagenen then referenced a memorandum from Lindon City Attorney
Brian Haws addressing standards to follow and factors to consider when making a
24 reasonable accommodation determination. He noted that staff has also prepared a
memorandum applying the recommended standards to the applicant's request for
26 reasonable accommodation from section 17.70.040 to allow up to 16 unrelated
individuals to reside in the home. Mr. Van Wagenen stated the conclusion of the
28 memorandum is to approve the site plan and grant the requested reasonable
accommodation to house up to 16 unrelated, disabled individuals in the home.

30 Mr. Van Wagenen noted that other than the request to house 16 unrelated,
disabled individuals in the facility, the applicant's request for site plan approval complies
32 with Lindon City Code (LCC) requirements. Mr. Van Wagenen stated the applicant has
requested an accommodation under the Federal FHA and ADA from the four occupant
34 limit required by LCC 17.70.040(6). The requested accommodation is to allow up to 16
unrelated, disabled individuals to live together in the facility. An analysis of the request
36 for accommodation has concluded that the request is reasonable and necessary to allow
disabled individuals equal opportunity to choose to live in residential housing. Mr. Van
38 Wagenen then turned the time over to Jody Burnett, Legal Counsel for the City in
addition to the City Attorney, to discuss the reasonable accommodation process and how
40 it functions within our city code.

42 Mr. Burnett thanked the Commission for the opportunity to assist them in what is
a difficult and challenging decision. He stated that he is an attorney with a law firm in
Salt Lake City, Williams and Hunt, that represents local governments in both land use
44 and zoning disputes that typically involve Fair Housing Act issues. He noted that he has a
lot of background with these issues and has handled more of these cases than any other
46 attorney in the state.

2 Mr. Burnett then presented a quick introduction with respect to the Fair Housing
Act and how the overlay affects the decision making compared to more typical land use
4 applications. He explained this is not like any other type of land use issue as it is not
entitled to the same presumptive validity and substantial deference from the court in the
6 event of a challenge in this type of an area. He noted we have to understand that there are
special rules that apply to reasonable accommodation. He stated that understanding this
8 particular type of facility begins with the acceptance of the fact that that recovering
substance abusers are persons with a disability and they are subject and entitled to
protections under the Fair Housing Act.

10 Mr. Burnett explained that these types of short term treatment facilities are their
residence or dwelling of choice (for purposes of applying the Fair Housing Act) even
12 though it may be a 60 or 90 day in-house treatment program. In addition to the fact that a
facility of this nature may be operated as a for-profit business is not really relevant. The
14 focus is actually on the individual resident and not the analysis, and the focus is that the
housing of choice is available to that type of resident. The courts have recognized these
16 group living arrangements are often the only realistic option the recovering substance
abuser has, which is why a lot of these cases involve these types of facilities.

18 Mr. Burnett then mentioned there are three (3) ways to get in trouble with the Fair
Housing Act as follows:

- 20 1. Have an ordinance that is subject to challenge as being intentionally or
inherently discriminatory (which is not being challenged here).
- 22 2. Have an ordinance that may be reasonable in content but neutral in its face but
applied in a way that has an impact subscribed on a particular target
24 population (which is not an issue here).
- 26 3. Have an applicant saying they are not challenging any otherwise reasonable
content neutral land use base regulations but just asking for a reasonable
accommodation from it (which is seen most typically).

28 Mr. Burnett further explained that in addition to the straightforward site plan
30 review component that is being considered tonight with the focus being the reasonable
accommodation component, they are asking for the accommodation from the normal
32 presumptive limit of four (4) unrelated persons living together in a Single Family
Residential zone, to 16 persons. He noted the Fair Housing Act can involve claims for
34 damages, costs and attorney's fees so there is risk involved, and it is something that has
to be taken very seriously and should be reviewed and considered very carefully.

36 Mr. Burnett then discussed individual circumstances. He stated he senses the
perception that this situation may be different if Lindon City had a different or better
38 ordinance. He stated that this is not the case and there is no magic bullet here; the City
ordinance is as good as any he has seen. And regardless of what the ordinance says, the
40 Fair Housing Act overlay requires that the Commission consider this.

42 Mr. Burnett stated the City has a good ordinance that incorporates a lot of the
concepts of the Fair Housing Act that is already a part of the ordinance (reflected in the
44 staff report), without imposing "ad hoc" conditions that addresses some of these concerns,
i.e., no resident can be an active user of alcohol or drugs, can't have a resident that poses
46 a direct threat or immediate harm to people or be violent, etc. He noted these things are
already incorporated in the ordinance; it is a good ordinance so it does not make a
48 difference.

2 Mr. Burnett then discussed three (3) points from the legal memorandum to
3 consider as follows:

- 4 1. The 2013 change in state law which was simplified to state that you can only
5 regulate residential facilities for people with disabilities to the extent that it is
6 consistent with the federal Fair Housing Act. It is important to understand this
7 is clearly a residential facility for persons with disabilities and it is allowed in
8 this zone and must be allowed in any zone where single family dwellings are
9 allowed; the only issue is number of occupants, which is the limited nature of
10 this conversation.
- 11 2. Some of the issues being argued are more applicable in the context where an
12 applicant is challenging provisions of an ordinance as being facially or
13 inherently discriminatory (which is not the case here) and which may be
14 perceived as unconstitutional. They are saying in order to provide housing of
15 choice, and make it available, we need a reasonable accommodation being
16 based primarily on financial viability or necessity; which is a tough concept
17 because naturally people are questioning is this just to guarantee that the
18 operator of the facility makes a profit. Mr. Burnett stressed that this is not the
19 case because if they are not able to keep their doors open then that housing of
20 choice, as a practical matter, will not be available to that entire population and
21 we have to take that into account.
- 22 3. There has been a reliance on some cases that are not comparable or analogous
23 to this situation. Primarily, with respect to the notion, that somehow the four
24 (4) person presumption enjoys some kind of status that doesn't require there
25 be an inquiry about financial viability. Mr. Burnett strongly disagrees with
26 that notion and would advise the Commission to make that inquiry and
27 consider the evidence presented before them tonight. He feels this is
28 qualitatively different because of a Draper City case he handled they did
29 exactly the same thing and were sued successfully in federal court and
30 eventually settled the case for \$650,000 with damages, costs and attorney's
31 fees. These are the kinds of implications if this is not handled carefully and
32 thoughtfully. He noted some of the cases being relied on, with respect to that,
33 primarily is the case from St. George (Cinnamon Hills Facility). Mr. Burnett
34 stated he hopes to help the Commission understand how a complete and total
35 prohibition on any residential use in a commercial zone, and a complete and
36 total prohibition against staying in a motel for periods of longer than 29 days
37 is qualitatively different than how many people can live in a single family
38 dwelling in a residential zone. He suggested thinking in terms of land use
39 impacts and, for example, the large family down the street with teenage
40 drivers and cars parked on the street 24/7 and objectively it has the same type
41 of land use impacts as the number of unrelated persons living together. He is
42 not challenging that limit, but in terms of the issue if we need to grant a
43 reasonable accommodation from that, it is very qualitatively different than the
44 total prohibition. Nobody in St. George can make residential uses in a
45 commercial zone, and nobody in St. George can stay in a motel longer than 29
46 days, there is not a differentiation between status and those definitions in
47 terms of how many people can reside in a single family residence. He then
48 highlighted the Wisconsin Community Services case regarding a Health
Clinic which is completely different than the situation we are facing here.

2 Mr. Burnett re-iterated there is no question that this use is allowed in the single
3 family residential zone, the only question is the number of un-related persons living
4 together based on the information submitted by the applicant and the independent
5 consultants, Lewis, Young, Robertson & Burningham (LYRB) who reviewed the
6 revenues and the cost projections, and per their review, they feel the applicants need the
7 16 applicants to be financially viable. Mr. Burnett concluded by stating the above
8 analysis of the request for accommodation indicates that the request is reasonable and
9 necessary to allow disabled individuals equal opportunity to choose to live in residential
10 housing. Mr. Burnett asked if there were any questions at this time. There were presently
11 no questions by the Commission. Mr. Van Wagenen then then turned the time over to the
12 applicants for discussion noting that questions may be asked of staff at any time during
the discussion.

13 The applicants, Ron Wentz and Dave Cox addressed the Commission at this time.
14 They thanked the Commission for allowing them the opportunity to speak again on
15 behalf of this application. They also acknowledged and expressed appreciation to the
16 Commission and staff for the assistance and help on this application. Mr. Wentz noted
17 they would like to re-address several points from the initial discussion as some have
18 changed slightly, and some issues seem to require clarification, and others have been mis-
19 interpreted or taken completely out of text. He explained they have reduced the
20 requested amount of residents to 16 people with the hope that would improve community
21 perspective on the situation and still allow the center to go forward. Mr. Wentz also
22 mentioned a couple of clarifications. The residential group size vs. the therapeutic group
23 size are two separate issues. The ideal residential group consists of 16-24 individuals and
24 the ideal therapeutic group ranges from 5-24 individuals. Most therapeutic groups operate
25 best around 8-10 individuals. They will be using those therapeutic groups within the
26 residential group. They will use all models but the ideal group size is 16 to 24 for a
residential living facility.

27 Mr. Wentz stressed that the key issue here is that their clients suffer from the
28 disease of addiction, they are middle class people who need help; they are our friends,
29 family and neighbors, noting frankly it could be anyone in this room tonight. Mr. Wentz
30 stated their clients are motivated people who are asking for help and it is their hope to
31 provide that help. He then addressed the concerns regarding safety issues. He noted they
32 will not admit anyone who poses a threat to the community, and will only allow clients
33 the State of Utah will allow. They will be under 24/7 supervision and they will also have
34 surveillance cameras to monitor residents that will promote security in the community
35 and it will also protect clients from false accusations. He noted clients must have
36 approval to leave the campus at all times and be accompanied by someone from the
37 facility for the safety of the client. Clients will follow a strict and demanding schedule
38 from 6:30 am to 10:30 pm. If a resident is expelled or voluntarily chooses to leave the
39 facility they must be released to a responsible family member and taken by staff to an
40 appropriate destination where proper authorities will be called for assistance.

41 Mr. Wentz noted there was also a question brought up previously about failure
42 rates. He stated at Reflections they prefer to talk about success rates. He then referenced
43 supporting statistics from www.drugabuse.gov. Lastly, Mr. Wentz addressed the question
44 of property values being affected. He noted that numerous studies have shown there is
45 no evidence to suggest that property values have been negatively affected by
46 residential treatment centers. He also referenced a study by Dr. Arens (included in
47 the packets) where he concludes that no matter which neighborhoods surveyed, the
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2 strong opposition to community residences was not a predictor of the subsequent
widespread acceptance. After experience with a community residence in their
4 “backyards,” the overwhelming majority of respondents were able to say that the
group home residents were good neighbors; they had no problems; and the homes did
not have a negative impact on their property values.

6 Mr. Wentz concluded by stating it is their hope that the Commission sees the
solutions, the educational contributions, and the positive impact the Reflections Recovery
8 Center will bring to Lindon City and it is their hope they approve this application.

10 Chairperson Call mentioned the last time the applicants were in they indicated
that for the program to be financially viable they would need 24 residents and now, with
12 the information provided, they are indicating 16 residents will make their program
financially viable and why the difference now. Mr. Wentz stated they made the decision
14 to go to 16 residents knowing that 24 residents would be the ideal number for a return on
the investment, which makes it clear they are not in this just for the money. He went on to
16 say, to go to the 24 residents would mean jumping up to the industrial zone with the
changes that would happen with the building codes and costs involved. He noted they
18 plan on being here for a long time and the community should be more receptive to 16
than 24. Looking at the financials, there is not a lot of profit there over and above the
20 standard occupancy to make this work, but they feel they can make it work. He noted
they are also looking out for the city and are eager to have the neighborhood behind them
22 because they want to be part of the community.

24 Chairperson Call also inquired what screening tools they plan on using. Mr. Cox
replied that screening starts with an assessment and other criteria that needs to be met
PAI (personality assessment inventory). Other screening tools includes a masters level
26 therapist basic assessment and a basic background check that is required.

28 Commissioner Marchbanks inquired if clients will be admitted who have drug
related felony charges or any degree of drug trafficking. Mr. Cox stated there are
different types of clients admitted but not these types and they would be referred to a
30 different type of program. Mr. Cox added that their policies and procedures prohibit that
any clients convicted of sexual or violent crimes are not permitted to the program. The
32 group they want is more of professional middle class people with a cohesive environment
to encourage the growth and success rate of the facility.

34 Commissioner Anderson asked, with the scope of people identified, if they feel
there will be enough clients within that market to keep the occupancy rate high enough to
36 be profitable. Mr. Cox confirmed that statement. He noted that one of the big problems is
there is an associated stigma, adding if he didn't work with these people on a day to day
38 basis he would have this stigma also. This stigma prevents a lot of people from getting
help because they are afraid they will be judged or criticized. Hopefully this will be a
40 place they can go to get their help and feel comfortable with like residents that they can
communicate with; there are plenty of people out there that need and want the help.

42 Commissioner Anderson mentioned the Juvenile Youth home in the city located
near his home, noting that he has had some of these same concerns over the years. He
44 stated there have been a lot of operators at the facility that define what types of youth will
be at the home and then to keep the facility to full capacity the criteria changes on the
46 types of youth allowed. He added that city code prohibits some types of clients at these
facilities. Commissioner Anderson also inquired if they have purchased the home. Mr.
48 Cox confirmed they have bought the home. Commissioner Anderson noted when the

2 youth home was purchased and not run through investors they did some upgrades and
now keep it up and run it right; before it was very run down and was not operated well.
4 Commissioner Anderson asked if they will have that commitment to keep the facility
nice. Mr. Wentz stated that part of their plan is not to rely on just new residents coming in
6 but a program where they can build a name and take people from other facilities; which is
a draw, along with the nice neighborhood and upscale home. This is what they are
8 counting on and that is their marketing plan. They also plan on continuing to do upgrades
on the facility.

10 Commissioner Kallas agreed with Mr. Wentz that most people are affected by
friends or relatives who have problems and need this help, but in the spirit of accuracy, he
12 asked what percentage of those who will be going to this facility are there because of use
of illegal drugs and if they have been prosecuted for a crime. Mr. Wentz stated that all of
14 the residents will be at the facility because of use of illegal drugs, but noted they are not
career criminals. Commissioner Kallas stated he would like clarification on their clients
and if they are assigned to not leave the facility. Mr. Wentz confirmed their facility will
16 be a closed campus. Mr. Cox mentioned this is a facility where they come in to get their
lives on track and because of different situations and it is best they are kept on a closed
18 campus to focus on treatment and life changing criteria. This is best for the clients and
the community and it brings respect from the neighbors.

20 Commissioner McDonald asked about the financial analysis that was done for
Lindon City and what is the revenue side of the equation. He questioned if they charged a
22 little more per month would it change the financial structure and the overall feel to bring
the amount of residents down. Mr. Wentz stated part of the reason their fee looks low is
24 because of the program they are doing. Some of the programs that are charging up to
\$20,000 per month have twice as many “masters” and the facilities on their level are
26 coming in at their rate to give the level of care and that is where they have to stay.
Chairperson Call inquired if dropping the amount of residents to 16 will affect the type of
28 professionals they can attract to assist with therapy at the facility. Mr. Cox stated they
will be able to attract very qualified, high-end professionals.

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32 Chairperson Call opened the meeting to public comment at this time even though
this is not a public hearing. She asked residents to keep the comments brief and to
address the Commission only and to provide input only; she noted that this is not a
34 question and answer period.

36 **Jean Hansen:** Ms. Hansen thanked the Commission for the opportunity to speak tonight.
She mentioned that she currently sits on a City Council at a large city to the north. She
38 mentioned she understands the concerns of the Commission and residents regarding this
type of facility and the number of residents they are asking for. She noted she has had
40 the privilege of reviewing the plans, the security involved, and the research done with this
treatment facility and this is one of the reasons she can speak in favor of it. They are
42 providing a needed service. There will be trained professionals and staff on hand 24/7 to
provide treatment for middle class individuals. Ms. Hansen also spoke on a personal
44 level as to why she is in favor of this treatment facility noting she has had a family
member who needed this type of treatment but succumbed due to his addiction at the age
46 of 36 and who was a husband and father. She noted her son got addicted to pain
medication following a surgery and he did not ask or search out to be addicted to
48 prescription drugs but he did seek treatment several times. Ms. Hansen stated they were

not the type of family that you would think would have a son addicted to drugs. This problem could affect anyone in this room tonight. Ms. Hansen stated there is embarrassment and failure associated with addiction but it should not be a stigma any longer. She understands and knows first-hand the trauma and long term effects this can have on a family. We as citizens, family, friends and loved ones need to stand together to help those seeking help. This facility is one way to help those who cannot see any way out of the terrible cycle they are involved in.

Val Killian: Mr. Killian expressed that all residents in attendance tonight are sympathetic to the problem of addiction and the pain it causes and agrees that there is a need for treatment, but they are neighbors too and they also have the right to not be discriminated against and to have the right to demand the law be fully in favor of them as much as it is for the applicants. Mr. Killian noted a letter emailed to the Commission and mentioned that he is aware that the city is afraid of a lawsuit if they deny this application or keep the occupancy at four (4) residents (which is what the city code allows). Mr. Killian then referenced 3 letters that were responded to in the plan check process from Mr. Yeomen with FHS. He concluded by stating if the Planning Commission is empowered to make this decision tonight they should be very concerned about any kind of an accident or any kind of a judgment or a need of not being able to access portions of that building as the city may get sued. They know the Reflections is trying to be a residential business, but in reality they are a commercial business and function like a regular business with profit being their motive. They should be able to meet all of the obligations and restrictions required to make their building commercially viable with respect to the ADA and the life safety standards.

Tom Robinson: Mr. Robinson stated that he received a notice from the city as he has two properties in the area. There are a number of things the Reflections Recovery Center has said, stated or put into writing that they have backtracked on; all relating to the numbers. Mr. Robinson stated the requested 16 beds to make a profit is wrong and he feels they can make a profit with far less than 16 beds. He also mentioned that the success rate or failure rate information is available from the Department of Veterans Affairs. He would encourage the Commission to consider, before make a decision, that they understand that much of the information given to them comes down to a trust issue and just by suggesting it does mean it is exactly what they are stating. He concluded by stating he will do his best to make sure that everyone in Lindon knows the City Council “punted” on this issue and pushed this issue onto the Planning Commission which was wrong.

Josephine Robinson: Ms. Robinson approached the Commission at this time and read a declaration prepared by Karena Jackson. (She presented a copy of the declaration to the Commission). She suggested to the Commission to request the names of the ‘masters’ who will be working at the facility be provided.

Justin Heideman: Mr. Heideman, attorney with Heideman and Associates, made mention of a memorandum previously sent to the Commission from his office regarding the laws applicable to this issue. He noted that he will be discussing several disagreements. He also echoed Mr. Killian’s comments. He noted there is a struggle here that was not created by the people in this room. There were other options and other

houses that could have been purchased and other locations, but instead they chose to locate here and now they are being faced with this highly charged issue, so much so that the City Council decided to “punt” this issue to the Commission because they didn’t want to make this decision. The applicants are hiding behind the idea that they will have handicapped individuals that qualify for federal protection. In so doing, there is an issue that is raised that has not been addressed that they have the burden of proof for presenting evidence, and there is nothing in the record for them to look at. They are not handicapped individuals if they are using or on drugs. The applicants claim they will have checks set up to secure the facility but the first time they find drugs in one of their patients does that mean they are not entitled to this exemption any longer and the Commission would have to go in and take that away? It is obvious they are newly recovering addicts and they have provided the Commission with nothing that supports the idea that they are off of drugs, simply by saying they are off and that declaration means they qualify for this exemption. It is their burden to establish that and he sees nothing.

Mr. Heideman noted a case that hasn’t been fully addressed that is remarkably similar. He then read the case (Brian Woods Inc. vs. Howard County, 1997). He stated his point is the financial viability is not a basis for a reasonable accommodation and it is not a proper analysis. It should not and cannot be the basis for this decision. He concluded by respectful disagreement that they are expressly authorized to look at those rehabilitation cases because the act was presented and approved in conjunction with that law and that is how it is interpreted. Mr. Heideman stated it is simply wrong to say this number is a reasonable accommodation when the only basis for it is so they can be financially viable. They have the burden to prove it and they have failed, and as a result the Commission should reject this application because it is inappropriate to consider or elevate the rights of one group above another group who also have legitimate rights that should merit serious consideration. They created the problem by purchasing a facility in an area they knew before buying it was not zoned for this type of use and they have to live with the fact that this variance is not appropriate. That is the analysis we should undertake, not whether financial viability is the issue at hand.

Travis Barney: Mr. Barney commented that he is the Vice Chair of this District and the qualified spokesman for this group. He noted these residents are here tonight because they are emotionally charged and feel neglected and thrown under the bus. He added they are all well educated about what we are facing here tonight. Mr. Barney commented that this is not an issue of whether or not we care about people, this is about money and profit and business, plain and simple. Mr. Barney stated that all the same rules should have to apply to everyone. He noted that this community treats each other kindly and he is offended that someone would come to his town and tell him he is a bad person because he won’t allow them to make money down the street. They claim they want to be part of the community but they don’t want to abide by the ordinances this community has deemed appropriate, and then insult us by stating we are insensitive to those with disabilities. They have been threatened to approve this or they will go to court. They have rights as citizens and they do not take their responsibilities lightly. He understands prescription pain medication and addictions, but that is not what this is about. As an American citizen he says no to this facility and would say if you don’t like it go to another town. This is about one thing only, someone coming to our town and telling us how to play the game; they must play by the same rules as everyone.

2 **Corrine:** She inquired if there is a different type of licensing procedure or
4 accommodation for mental health issues as opposed to addiction. She also inquired about
6 the issue of reasonable accommodation and if once this facility is open can it come
8 back in 5 or 10 years for a change; she feels this is a slippery slope argument but is
something that needs to be considered. The applicant indicated visitors will only visit
periodically and not in large numbers, but she does not understand the mechanism that
would force them to stick to that; she trusts that there will be more visitors or a different
type of resident in the home.

10 **Lance Tomasero:** Mr. Tomasero stated that at age 12 he became addicted to drugs and
12 alcohol and had been hiding it the entire time. He was educated then married and had a
14 daughter and it got to point that he could no longer hold a job. He expressed that he
16 understands the neighbors' concerns, but it is because of this type of program that he got
18 his family and his life back and is now a contributing member of society; this is not about
profit. Everyone has this issue in your own communities whether or not you want to
believe it. He re-iterated that he feels this is NOT about profit, they are only here to help
and he would hope the Commission will consider what they can do for the community
and look at the success stories.

20 **Terry Sellers:** Mr. Sellers commented that he is an addiction medicine physician and a
22 professional who benefitted from treatment 12 years ago. He noted he will be one of the
24 Master Level Clinicians at this facility. He stated that some of the accusations heard here
26 tonight are absurd and are not true. He feels there is a lot of fear and discrimination in the
room tonight and a lot of misinformation. He is a member of this community and
contributes to the community. He noted that he has run multiple treatment centers in this
state and he has not had one complaint in two years and he can testify to that.

28 **Mark Robinson:** Mr. Robinson made three points for consideration. He voiced his
30 concerns about the way the neighborhood will look and feel and also the parking
32 situation. In the applicants submission to the Planning Commission they looked at aerial
34 photography with commercial size parking space and he could not find one backyard that
36 had that size of a backyard for parking in a residential area. Mr. Robinson stated that he
38 understands the physical difficulties of an ADA condition. He came here with an ADA
40 chronic protected disease and where is his financial feasibility and justifiable
42 accommodation and what will his family get? He feels if we open this up to all ADA
protected disabilities having financial feasibility that will allow us to break code and the
only way the FHA applies. What reasonable accommodation will we give those suffering
from depression? Mr. Robinson stated if you give reasonable accommodations to those
with ADA disabilities then you must give exceptions for everyone. He stated that he has
the utmost respect for people with addictions, but where do we draw the line on what
ADA protected illnesses justify reasonable accommodation. If we make one exception
we have to allow that for all.

44 **William Barney:** Mr. Barney commented if this facility is approved tonight you are
46 taking away a right from the people. He would encourage the Commission to limit this to
48 four (4) people if approved. He stated that making someone profitable by destroying a
neighborhood is wrong. He also pointed out that not one Councilmember is here tonight.
He would encourage the Commission to make the right choice.

2 **Renee Condie:** Ms. Condie expressed that all in attendance tonight are aware that
people have these types of issues and problems and they are not against recovery centers.
4 She stated that the citizens rely on the city to set up the rules and laws which should be
equitable for everyone in the city and everyone should have had to abide by the same
6 rules. She voiced her opinion that it is not fair that they should have more rights than
other citizens in the city have been required to abide by.

8

10 **Russell Stay:** Mr. Stay commented that he lives on the east side of town and they have
concerns about this issue too. He mentioned they have only heard from central Lindon
12 residents and the only individuals heard from tonight are in support of this request are
nonresidents. Lindon residents input are those who should matter. His concern is that
14 financial viability leads to a logical, potential, occupancy issue. If they want to expand
this, logic would allow them to petition for a higher number which could be a slippery
16 slope. He is also concerned about the fact that they don't have viability, and in fact if we
deny this they would be looking at other ways to decrease costs and increase profitability.
He also has concerns about policing the claims but what are the provisions. He stated it
18 also goes against common sense that the property values will not decrease; it goes against
reason. Mr. Stay concluded by stating it is important that the petitioners realize that
20 given the request they will never be a welcome neighbor.

22 **Errol Porter:** Mr. Porter stated that he is the Principle of Timpanogos Academy. He
voiced his concerns that the literature they have provided is nothing definitive or solid.
24 He also stated that he has asked for a variance for his school several times and has been
denied because it is against the code, why should they be granted a variance and why is
26 this being considered at all. He feels we should all have to play by the same rules, codes
and ordinances. He noted that this facility should not be located within 500 ft. of the
28 school and he has concerns for the safety of the school children.

30 **Jean Larsen:** Mr. Larsen expressed his concerns that this is a moving target and the plan
has not been thought out and has been adjusted for convenience sake. The marketing plan
32 doesn't work and should the citizens have to ensure their financial vitality; it is really all
about the money. Let's call it the way it is so the city of Lindon isn't lassoed with this
34 problematic plan.

36 **Wayne Johnson:** Mr. Johnson stated that his son is bi-polar and has been in and out of
treatment with the money coming from Medicaid for his treatment. He mentioned that to
38 have this kind of facility down the street is not right as there are other locations rather
than a residential neighborhood. He does not feel that this has been thought through
40 carefully. He feels there will be trouble on that street and would ask that the Commission
think it through before making a decision.

42

44 **Matt Anderson:** Mr. Anderson commented that he has lived in Lindon for 8 years and
works for a pharmaceutical company. He stated there are people around us at all times
that continue to struggle with substance abuse issues. He noted that lack of treatment
46 facilities and lack of understanding from others is an issue. Mr. Anderson voiced his
opinion that this center will provide people with hope and an opportunity and a chance to
48 make their lives better in a serene environment. He expressed that 16 beds includes more

2 people who are trying to improve their lives and feels the residents and neighbors should
try to provide a beacon around the treatment center to show that our community cares.

4 **Val Killian:** In conclusion Mr. Killian encouraged the Commission to vote for four (4)
persons not the requested 16. He also would encourage them to vote to uphold what the
6 citizens of Lindon want and let the City Council, who are the elected officials, bear the
burden of writing or rewriting the code.

8
10 Chairperson Call closed the meeting to public comment at this time to bring the
discussion back to the Planning Commission and to also allow the applicants some time
12 for response to some of the concerns presented. This will also allow Jody Burnett, Legal
Counsel, time to give the Commission additional legal counsel.

14 At this time, Mr. Van Wagenen clarified the role of the Planning Commission and
the City Council regarding this issue. He noted there have been several comments about
16 the City Council “punting” this issue to the Planning Commission. He then explained the
reasoning behind this decision stating that originally the Council wanted to be the final
18 land use decision makers in this application, and understanding that meant any appeal
beyond them would go to the Board of Adjustment, and they did not want to push that
20 appeal onto the Board of Adjustment. Therefore, the Council made the decision to have
the Planning Commission be the final land use authority so that they themselves could be
22 the appeal authority which is something they anticipate will happen one way or another.
In that regard, none of the councilmembers are here tonight not due to fear or because
24 they “punted” but to be impartial to any appeal that may come to them and to review it on
its merits rather than anything that might be implied at tonight’s meeting.

26 Commissioner Kallas asked staff about the comment of the 500 ft. requirement
from a school. Mr. Burnett stated that it is clearly illegal and you cannot uphold arbitrary
28 separation requirements as it shows no threat or harm and cannot be enforced. He re-
iterated that the Commission is making a land use decision tonight. Utah code provides
30 the reasonability to license programs to operate facilities for persons with disabilities
shall rest with the Department of Human Services and are pre-empted from doing that so
32 you cannot base a decision on any assessment of the clinical effectiveness of the
program.

34 Commissioner Kallas also asked in making a reasonable consideration what limit
can we make and are we obligated to come back later and review it again. Mr. Burnett
36 stated that is a case by case determination as the analogies have been drawn. There was
then some general discussion regarding the issue of reasonable accommodation.
Chairperson Call brought up the concern that all areas of the building need to be
38 accessible. Mr. Burnett stated that is a building code issue. He noted that the
Commission is reviewing site plan approval for a reasonable accommodation and the
40 only reason it segway’s into any kind of building code issues is the issue under the FHA
about the exterior look and feel of the home not changing the fundamental character of
42 the neighborhood; whatever the building codes are they have to comply with.

44 Chairperson Call asked about staffing. Mr. Cox stated it is mandated by the state
of Utah that here will be certain staff in place. He asked Marilee, who is a master
46 clinician in attendance to address the Commission at this time.

48 **Marilee:** She commented that as far as staffing goes, without a master level in this highly
regulated industry and a high level of a medical and licensed staff they would not obtain a

license and move forward without it. It is also impossible to think they would bring adolescents into the facility as this will be licensed as an adult facility only. She added that she knows that Mr. Cox is a man of high character and it is his job, as a therapist, to create a safe place to recover. She stated that both mental health issues and drug addictions must be treated together, and the nature of the work requires the patients to be stable. She went on to say that no controlled substances are allowed at the facility and you will not find these substances in a rehabilitation facility. She also noted that criminal behaviors are not tolerated. She mentioned that the four (4) persons is not a therapeutic milieu, 8-20 residents is what is recommended and saying it would not be supported by any psychological evidence. She concluded by stating this is a great work and a spiritual work and people can and do recover.

Chairperson Call then asked staff to explain the appeals process and if it can be appealed to the City Council and if it is dependent on the decision made tonight. Mr. Van Wagenen stated any decision made tonight can be appealed to the City Council; the applicant and the citizens have the right to appeal to the City Council. Mr. Van Wagenen also stated he does not believe there is an application fee.

Chairperson Call stated they can also determine what conditions to place on the application. She recommended a condition that they are required to pass precertification standards to the Utah State Division of Licensing and Human Services within 60 days of site plan approval. Commissioner Kallas asked staff if they have to have the licensing in place before they can operate. Mr. Burnett confirmed that statement. He stated that a lot of the conditions are already covered and required in the code. Commissioner Anderson asked if part of that licensing would have to be certified by the state before they can operate. Mr. Burnett confirmed that statement. Mr. Wentz stated there are many steps and details to being licensed to operate and they have to re-certify every year. This is very highly regulated and they will be monitored or “policed” by the State of Utah.

Commissioner Skinner commented that the issue here is really the number of occupants based on financial viability. Mr. Burnett confirmed that statement. Commissioner Skinner questioned, in effect, is the Commission not being asked to guarantee financial profitability legally. Mr. Burnett stated yes, in an indirect way, but it is really focused on the potential residents in making that housing of choice available to them. Financial viability is a legitimate basis for making a reasonable accommodation and if we can't establish that it be a viable operation and deny a reasonable accommodation and based on that then we are in jeopardy as we are making the housing of choice less readily available to the person who has protected status.

Mr. Wentz stated from their standpoint on financial viability, they are not asking anyone to guarantee them an income. From their side of the fence financial viability is used to limit the number of clients that they can have; the third party review (hired by the city) verified the numbers. A citizen in attendance inquired what is legal for the city to do to better represent the concerns of the citizens. Mr. Burnett stated that essentially land use regulations have been adopted and they are obligated to comply with the FHA and the numbers are based on the actual evidence to contradict the evidence the Planning Commission has in terms of the financial viability issue (which was reviewed by LYRB) and they need to make a decision tonight after hearing public comment even though this was not a public hearing. There was then some additional discussion regarding this issue.

Chairperson Call stated that with the information they have the Planning Commission needs to determine the motion and what conditions will be placed on the

2 motion and determine the conditions if approved. There was then some discussion on the
recommended conditions by staff.

4 Chairperson Call called for any further discussion. Hearing none she called for a
motion with the conditions as discussed that are not already covered within the code.
6 Commissioner Anderson expressed that this is a difficult issue that has not been handled
lightly. He stated the City has consulted outside experts and legal counsel and the City is
in a position to legally follow what the experts have directed the Commission to do.

8
10 COMMISSIONER ANDERSON MOVED TO APPROVE THE APPLICANTS
REQUEST FOR SITE PLAN APPROVAL OF THE REFLECTIONS RECOVERY
12 CENTER AND GRANT THE APPLICANTS REQUEST FOR REASONABLE
ACCOMMODATION FROM LINDON CITY CODE 17.70.040(6) TO ALLOW UP TO
14 16 UNRELATED, DISABLED INDIVIDUALS TO RESIDE IN THE DWELLING AT
145 SOUTH 200 EAST, LINDON, UTAH SUBJECT TO THE FOLLOWING
CONDITION THAT THEY WILL NOT OPERATE UNTIL ALL STATE AND CITY
16 LICENSES ARE OBTAINED. COMMISSIONER MCDONALD SECONDED THE
MOTION. THE VOTE WAS RECORDED AS FOLLOWS:

18 CHAIRPERSON CALL AYE
COMMISSIONER ANDERSON AYE
20 COMMISSIONER MCDONALD AYE
COMMISSIONER KALLAS NO VOTE
22 COMMISSIONER MARCHBANKS NO VOTE
COMMISSIONER SKINNER NO VOTE

24 THE MOTION FAILED WITH COMMISSIONER MARCHBANKS CALLING FOR
MORE DISCUSSION BEFORE ALL VOTES WERE CAST.

26
28 Commissioner Marchbanks asked for more discussion at this time. Commissioner
Marchbanks read the sample order of conditions and would recommend that they be
included in the motion. Commissioner Marchbanks also expressed that they have come
30 full circle on this issue and he has recently spent time visiting some of these facilities on
a personal level to obtain an intervention and treatment for a close family friend. He
32 noted as they looked at facilities it was difficult to find a facility that was affordable and
that met the criteria that was needed. He noted the facility they found is similar to what
34 the applicants are putting forth. He agrees that all codes need to be followed and enforced
and building and ADA codes need to be complied with also. He feels the Commission
36 has been schooled and their hands are tied and based on the information given to them
and the legal counsel provided that he feels they have no choice but to move forward.
38 Commissioner Kallas asked to amend the motion by adding the five (5) conditions listed
by staff in the sample order be included in the motion.

40 Chairperson Call asked Commissioner Anderson to restate the motion including
the five (5) conditions listed in the sample order.

42
44 COMMISSIONER ANDERSON MOVED TO APPROVE THE APPLICANTS
REQUEST FOR SITE PLAN APPROVAL OF THE REFLECTIONS RECOVERY
CENTER AND GRANT THE APPLICANTS REQUEST FOR REASONABLE
46 ACCOMMODATION FROM LINDON CITY CODE 17.70.040(6) TO ALLOW UP TO
16 UNRELATED, DISABLED INDIVIDUALS TO RESIDE IN THE DWELLING AT
48 145 SOUTH 200 EAST, LINDON, UTAH SUBJECT TO THE FOLLOWING

2 CONDITIONS: 1. HOME WILL NOT OPERATE WITH OUT FIRST OBTAINING
3 ALL REQUIRED STATE AND CITY LICENSING. 2. NOTICE OF THE
4 ACCOMMODATION SHALL BE RECORDED WITH UTAH COUNTY AND; 3.
5 THIS REASONABLE ACCOMMODATION TO LCC 17.70.040(6) ALLOWS 16
6 UNRELATED, DISABLED, INDIVIDUALS TO OCCUPY THE DWELLING AND; 4.
7 THE REASONABLE ACCOMMODATION TERMINATES WHEN THE DWELLING
8 IS NO LONGER USED AS A HOME FOR PERSONS WITH A DISABILITY AND; 5.
9 THIS REASONABLE ACCOMMODATION DOES NOT RUN WITH THE LAND
10 AND; 6. THE DWELLING MUST BE OPERATED TO COMPLY WITH BUILDING,
11 HEALTH, AND SAFETY REQUIREMENTS, INCLUDING STATE OR LOCAL
12 LICENSING LAWS WHERE APPLICABLE. COMMISSIONER MARCHBANKS
13 SECONDED THE MOTION. THE VOTE WAS RECORDED AS FOLLOWS:

14 CHAIRPERSON CALL AYE
15 COMMISSIONER ANDERSON AYE
16 COMMISSIONER KALLAS AYE
17 COMMISSIONER MARCHBANKS AYE
18 COMMISSIONER MCDONALD AYE
19 COMMISSIONER SKINNER AYE
20 THE MOTION CARRIED UNANIMOUSLY.

21 At this time Mr. Van Wagenen read LCC Chapter 17.09, the appeal process and
22 application steps for the benefit of the residents in attendance. Chairperson Call thanked
23 all in attendance for their input and comments.

24
25 5. **Conditional Use Permit** – *Planet Power Toys, 165 South State Street.* Lyunn Clingo
26 of Planet power Toys, LLC requests approval of a conditional use permit to operate
27 as a licensed dealer for sales and service of automobiles, boats, RVs, adult and youth
28 ATV's and UTVs. scorpion Stevenson of Coleman Group requests a Zone Map
29 amendment to change the zoning designation of property located at approximately
30 600 South and Geneva Road from General Commercial A8 (CG-A8) to Light
31 Industrial (LI). The applicant intends to establish retail and office/warehousing uses
32 on the site. Recommendations will be made to the City Council at their next available
33 meeting after Planning Commission review.

34
35 Mr. Cullimore advised the Commission that this items has been tabled for two
36 weeks and Staff is recommending continuance until the next meeting at this time.
37 Chairperson Call called for any further discussion from the Commission. Hearing none
38 she called for a motion.

39
40 COMMISSIONER KALLAS MOVED TO CONTINUE THE APPLICANT'S
41 REQUEST FOR A CONDITIONAL USE PERMIT TO OPERATE A VEHICLE
42 DEALERSHIP LOCATED AT 165 SOUTH STATE STREET IN THE GENERAL
43 COMMERCIAL (CG-A) ZONE TO THE NEXT PLANNING COMMISSION
44 MEETING. COMMISSIONER SKINNER SECONDED THE MOTION. THE VOTE
45 WAS RECORDED AS FOLLOWS:

46 CHAIRPERSON CALL AYE
47 COMMISSIONER ANDERSON AYE
48 COMMISSIONER KALLAS AYE

