

2 The Lindon City Council held a regularly schedule meeting on **Tuesday, October 7,**  
3 **2008**, beginning at 7:00 p.m. in the Lindon City Center, City Council Chambers, 100  
4 North State Street, Lindon Utah.

5 Conducting: James A. Dain, Mayor  
6 Pledge of Allegiance: Adam Cowie  
7 Invocation: Eric Anthony

8  
9 **PRESENT**

**ABSENT**

10 James A. Dain, Mayor  
11 Eric Anthony, Councilmember  
12 Bruce Carpenter, Councilmember  
13 Jerald I. Hatch, Councilmember  
14 Ott H. Dameron, City Administrator  
15 Adam Cowie, Planning Director  
16 Cody Cullimore, Chief of Police  
17 Debra Cullimore, City Recorder

Lindsey Bayless, Councilmember  
H. Toby Bath, Councilmember

18  
19 **MINUTES** – The minutes of the meeting of September 16, 2008 were reviewed.

20  
21 COUNCILMEMBER HATCH MOVED TO APPROVE THE MINUTES OF  
22 THE MEETING OF SEPTEMBER 16, 2008. COUNCILMEMBER ANTHONY  
23 SECONDED THE MOTION. THE VOTE WAS RECORDED AS FOLLOWS:  
24 COUNCILMEMBER ANTHONY AYE  
25 COUNCILMEMBER CARPENTER AYE  
26 COUNCILMEMBER HATCH AYE  
27 THE MOTION CARRIED UNANIMOUSLY WITH TWO ABSENT.

28  
29 **OPEN SESSION** –

30  
31 Mayor Dain called for comments from any resident present who wished to  
32 address an issue not listed as an agenda item. Doug Christiansen approached the Council.  
33 Mr. Christiansen stated that he lives adjacent to the Lindon Heritage Trail on Lakeview  
34 Drive. He stated that he requested that the area of his yard which was disturbed during  
35 construction not be hydro-seeded, as he had planted the area with desert plants. Mr.  
36 Christiansen reported that crews hydro-seeded the area around the plants, and inquired as  
37 to what action the City could take to remedy the situation. Mr. Dameron will discuss the  
38 situation with trails committee and follow up with Mr. Christiansen to resolve the matter.

39  
40 **MAYOR'S COMMENTS/REPORT** –

41  
42 Mayor Dain invited all present to attend the Lindon Heritage Trail ribbon cutting  
43 ceremony on Thursday, October 23, 2008 at 5:30 p.m. in the City Center park.

44  
45 **CONSENT AGENDA** –

2 No items.

4 **CURRENT BUSINESS** –

6 1. **Public Hearing** – *Amendment to the General Plan Land Use Map of Lindon City.*  
7 This is a request by Paul Washburn, representing Williamson Investments, for  
8 approval of an amendment to the General Plan Land Use Map of Lindon City for  
9 the rear (eastside) portion of the property located at approximately 148 South 800  
10 West. If approved, the request would change a portion of existing “Residential  
11 Low” designated property into “Light Industrial” designation. The Planning  
12 Commission recommended approval with no conditions.

14 COUNCILMEMBER CARPENTER MOVED TO OPEN THE PUBLIC  
15 HEARING TO CONSIDER THE GENERAL PLAN LAND USE MAP AMENDMENT.  
16 COUNCILMEMBER ANTHONY SECONDED THE MOTION. ALL PRESENT  
17 VOTED IN FAVOR. THE MOTION CARRIED.

18  
19 Paul Washburn and Dovey Roah were present as representatives for this  
20 application. City Attorney, Brian Haws, was also present for this discussion.  
21 Neighboring property owner, Tom Maxfield, as well as his attorney, Jim Wright, was  
22 also present in the audience. Mr. Cowie explained that this is a request for an amendment  
23 to the General Plan Land Use Map. The Council will also review and associated zone  
24 change for the subject property as an agenda item. The Planning Commission has  
25 reviewed and approved both requests. The request is to change property which is  
26 currently shown on the General Plan Land Use Map as “Residential-Low” to change to  
27 “Light Industrial.”

28 Mr. Cowie explained that there is a fairly significant topographical slope on the  
29 subject property. The proposed zone line change would make the zone boundary  
30 consistent with the slope area which drops off approximately ten to twelve feet. Mr.  
31 Cowie presented photographs of the site and slope area.

32 Councilmember Carpenter inquired as to what is located on the property to the  
33 north. Mr. Cowie stated that an agricultural barn associated with the neighboring  
34 residential use is located to the north. Councilmember Carpenter noted that possible  
35 impacts of the requested zone change on neighboring residential uses should be carefully  
36 considered. Mr. Cowie explained that this application was considered at two Planning  
37 Commission meetings. He stated that several residents had attended the first hearing and  
38 expressed general concerns regarding the impact of light industrial uses closer to  
39 residential uses. He explained that a 40 foot setback is required from any Light Industrial  
40 use to neighboring residential zones or uses.

41 Councilmember Carpenter asked what type of fencing barrier is proposed between  
42 the Light Industrial use and the neighboring residential use. Mr. Cowie stated that  
43 concept site plan drawings show an increased setback of approximately 70 feet, with a  
44 seven foot masonry fence at the top of the slope. He observed that neighbors will be able  
45 to see the fence rather than the building, and that the location of the fence at the top of the  
46 topographical slope will increase the barrier effect of the fence. He noted that the

applicant is aware of the requirements for this site, and has amended the site plan to not only comply with but to exceed requirements.

Mayor Dain called for public comment. Jim Wright asserted that there is no legal access easement through his client's property to allow access to the subject property. He stated that his client is not technically opposed to the General Plan Map amendment or Zone Change request. Mr. Wright submitted a letter opposing the subdivision plat application. The letter alleges that the recorded affidavit which supposedly established the existence of the access easement was "facially invalid" under Utah law, and would therefore not allow the creation of subdivision due to the lack of access to the property. Mr. Wright noted that the Planning Commission had recommended approval of the subdivision plat based on evidence before them that the access easement was valid.

Councilmember Carpenter stated that it was his expectation that the Council would take the same position as the Planning Commission with regard to the access easement. He observed that it is understood that access to the lot would be negotiated between the property owners prior to development of the site. Mr. Wright asserted that if the subdivision plat is approved as requested, it will create another point of potential litigation to be resolved in the courts. He requested that approval of the subdivision plat be delayed pending outcome of the lawsuit which he anticipates filing in the coming weeks.

Mayor Dain inquired as to whether the easement shows up on county records. Mr. Wright asserted that while the easement does show on county records, correct legal procedure was not followed to legally establish the easement. Mr. Washburn observed that the matter of the easement will ultimately be decided by a judge. He stated that he is confident that the courts will find the easement to be valid, as the dispute over the validity of the easement was caused by a minor typographical error which has since been corrected. Mr. Washburn noted that when Mr. Williamson purchased the property from Mr. Liston, the easement was properly recorded. Mr. Washburn noted that a site plan which showed the easement in the proper location was approved by the City in 1999. He stated that if litigation is filed with the courts, development of the project will be delayed until the issue is resolved. Councilmember Carpenter acknowledged that if the courts find the easement to be invalid, the subdivision plat would not be accessible. Mr. Washburn asserted that it is not likely that the courts will invalidate the easement. He also noted that the site is currently a Light Industrial lot, with the exception of the area near the slope. He stated that he does not see approval of any of the applications before the City as creating a judicial advantage in the courts.

Mr. Wright stated that he is in agreement that there probably was an error when the easement was recorded in 1999. He asserted that the question before the court will be who bears the burden of that error. He observed that the easement did not show on the property deed at the time Mr. Maxfield purchased the property in 2004, and that as the property owner Mr. Maxfield had no notice that the easement existed at the time he purchased the property.

Mr. Haws stated that the question of whether the affidavit filed with the county is facially invalid or not is a legal question to be addressed in court. He recommended that the City maintain their current position regarding the easement, and that any approval recognize that the validity of the easement is being disputed, and be conditioned upon indemnification to the City for any possible damage caused by the litigation. He stated

2 that the record should include a statement that documentation has been submitted to the  
City that the lot has a valid legal access easement, but that if the easement is invalidated  
4 by the courts, the lot will not be buildable unless another acceptable access is created.  
Mayor Dain noted that it may be possible to create access through another adjacent lot.  
6 Mr. Washburn noted that court proceedings may resolve the matter in a variety of ways  
involving various parties, such as the title companies involved in the dispute.  
8 Councilmember Carpenter reiterated that the City is aware of the dispute, and that any  
action to approve the applications before the Council does not imply or carry with it any  
weight that the City is making a judgment regarding the validity of the easement.

10 Mayor Dain called for further public comment. There was no additional public  
comment. He called for further comments or discussion from the Council. Hearing  
12 none, he called for a motion.

14 COUNCILMEMBER ANTHONY MOVED TO CLOSE THE PUBLIC  
HEARING TO CONSIDER THE GENERAL PLAN LAND USE MAP AMENDMENT  
16 REQUEST. COUNCILMEMBER HATCH SECONDED THE MOTION. ALL  
PRESENT VOTED IN FAVOR. THE MOTION CARRIED.

18 COUNCILMEMBER CARPENTER MOVED TO APPROVE THE  
20 WILLIAMSON LOT PROJECT GENERAL PLAN LAND USE MAP AMENDMENT  
WITH THE FINDING THAT THE CITY UNDERSTANDS THAT LITIGATION  
22 REGARDING THE VALIDITY OF THE ACCESS EASEMENT IS PENDING, AND  
THAT THE CITY TAKES NO POSITION ON THE VALIDITY OF THE EASEMENT  
24 TO BE DETERMINED BY THE COURTS. COUNCILMEMBER ANTHONY  
SECONDED THE MOTION. THE VOTE WAS RECORDED AS FOLLOWS:  
26 COUNCILMEMBER ANTHONY AYE  
COUNCILMEMBER CARPENTER AYE  
28 COUNCILMEMBER HATCH AYE  
THE MOTION CARRIED UNANIMOUSLY WITH TWO ABSENT.

- 30  
32 2. **Public Hearing** – *Amendment to the Zoning Map of Lindon City*. This is a  
request by Paul Washburn, representing Williamson Investments, for approval of  
34 an amendment to the Zoning Map of Lindon City for the rear (eastside) portion of  
the property located at approximately 148 South 800 West and the adjacent 5,500  
36 square foot parcel to the west. If approved, the request would include a portion of  
existing “R1-20” zone and an adjacent parcel to the west into the “LI” zone. The  
Planning Commission recommended approval with no conditions.

38 COUNCILMEMBER HATCH MOVED TO OPEN THE PUBLIC HEARING  
40 TO CONSIDER THE ZONING MAP AMENDMENT REQUEST.  
COUNCILMEMBER ANTHONY SECONDED THE MOTION. ALL PRESENT  
42 VOTED IN FAVOR. THE MOTION CARRIED.

44 Mr. Cowie explained that the requested zone change will correspond with the  
approved General Plan Land Use Map amendment.

2 Mayor Dain called for public comment. There was no public comment.  
3 Councilmember Hatch asked if it would be reasonable for any approved zone change to  
4 revert back to current zoning if the easement is invalidated by the courts.  
5 Councilmember Anthony observed that the proposed zoning seems to make sense due to  
6 the location of the existing topographical slope. Mayor Dain called for further comments  
or discussion. Hearing none, he called for a motion.

8 COUNCILMEMBER CARPENTER MOVED TO APPROVE THE  
9 WILLIAMSON LOT PROJECT ZONE CHANGE REQUEST. COUNCILMEMBER  
10 ANTHONY SECONDED THE MOTION. THE VOTE WAS RECORDED AS  
FOLLOWS:

12 COUNCILMEMBER ANTHONY AYE  
13 COUNCILMEMBER CARPENTER AYE  
14 COUNCILMEMBER HATCH AYE  
15 THE MOTION CARRIED UNANIMOUSLY WITH TWO ABSENT.

- 16  
17 3. **Preliminary Plat** – *Williamson Investments Residential and Industrial*  
18 *Subdivision, Plat “A”*. This is a request by Paul Washburn, representing  
19 Williamson Investments, for approval of Williamson Investments Residential and  
20 Industrial Subdivision, Plat “A”, 2 lots (one in the LI zone and one in the R1-20  
21 zone), at 148 South 800 West. The Planning Commission recommended approval  
22 with one condition.

24 Mr. Cowie explained that this is a minor subdivision preliminary plat application  
25 for Williamson Investments, Plat “A”. He explained that the proposed subdivision will  
26 combine four existing lots into two new lots, and that no new lots will be created. He  
27 also noted that the subdivision plat clears up several deed gaps along property lines. The  
28 subdivision lot lines are consistent with the approved zone lines.

29 Mr. Cowie explained that the property line currently runs to the center of 800  
30 West, and that there will be some area road dedication required. Street improvements  
will also be required along the 800 West frontage.

32 Mr. Cowie went on to review action taken by the Board of Adjustments on June  
33 12, 2008 which approved the use of the access easement which is currently being  
34 contested as required street frontage for the lots. Councilmember Anthony inquired as to  
35 whether access to the Light Industrial lot could be allowed through the adjacent  
36 residential lot. Mr. Cowie explained that current City ordinance will not allow access to  
a commercial or industrial lot through a residential lot.

38 Mr. Cowie explained that the City Attorney has made a legal recommendation  
39 that the City not get involved in the dispute regarding the validity of the access easement.  
40 The Planning Commission recommended approval of this request with the condition that  
41 the applicant provide a letter of indemnification to the City releasing the City from any  
42 liability associated with the easement. Mayor Dain called for further comments or  
discussion. Hearing none, he called for a motion.  
44

2 COUNCILMEMBER ANTHONY MOVED TO APPROVE THE  
3 WILLIAMSON INVESTMENTS RESIDENTIAL AND INDUSTRIAL SUBDIVISION,  
4 PLAT "A" PRELIMINARY PLAT WITH THE FOLLOWING CONDITION:

- 4 1. THAT THE APPLICANT SIGN A LETTER OF INDEMNIFICATION AS  
5 PREPARED BY THE CITY ATTORNEY. IF THE LETTER OF  
6 INDEMNIFICATION IS NOT SIGNED AND SUBMITTED BY THE  
7 APPLICANT, THE SUBDIVISION REQUEST IS NOT APPROVED.

8 COUNCILMEMBER CARPENTER SECONDED THE MOTION. THE VOTE WAS  
9 RECORDED AS FOLLOWS:

10 COUNCILMEMBER ANTHONY AYE

11 COUNCILMEMBER CARPENTER AYE

12 COUNCILMEMBER HATCH AYE

13 THE MOTION CARRIED UNANIMOUSLY WITH TWO ABSENT.

- 14  
15 4. **Site Plan** – *Residential Elderly Group Home*. This is a request by Ray Taylor for  
16 approval of a site plan and elderly group home application proposed to be located  
17 at 190 North 400 West in the R1-20 zone. The Planning Commission  
18 recommended approval with conditions.

19  
20 Ray Taylor was present as the representative for this application. Mr. Taylor was  
21 accompanied by his attorney, Jeff Skoubye. City Attorney, Brian Haws, was also present  
22 for this discussion. Mr. Cowie explained that this is a request for site plan approval for  
23 an elderly group home in the R1-20 zone at 190 North 400 West. Mr. Cowie noted that  
24 the one acre site has an existing vacant residential structure which will be removed as  
25 part of this project. Adjacent uses include the Lee Triplex R2 development to the south,  
26 the old City public works complex to the north, and commercial development to the east.

27 Mr. Cowie noted that the Standard Land Use Table lists residential care facilities  
28 for elderly persons as a permitted use in the residential zone. Site plan approval by the  
29 Planning Commission is required. However, Lindon City Code gives the City Council  
30 the ability to request final approval authority on any application, which has been done for  
31 this application.

32 Mr. Cowie went on to review specific criteria found in the City code in relation to  
33 elderly group homes as follows:

- 34  
35 1. ***Residential facilities for Elderly Person shall be a permitted use in all  
36 residential zones and require site plan approval by the Planning  
37 Commission.***

38  
39 Mr. Cowie noted that this request is for an elderly group home in the R1-  
40 20 zone.

- 41  
42 2. ***A residential facility for elderly person may not operate as a business  
43 (not for profits organizations).***  
44

2 Mr. Cowie explained that the City received a letter earlier in the day regarding the  
financial structure of the facility. The City Attorney has reviewed the letter, and will  
comment on the proposal later in the discussion.

- 4
3. ***A residential facility for elderly persons shall;***  
6 ***a. be owned by one of the residents or by an immediate family member***  
***of one of the residents or be a facility for which the title has been***  
8 ***placed in trust for a resident;***

10 The letter submitted by the applicant's attorney also addresses ownership of the  
facility, and will be addressed later in the discussion.

- 12
- b. be consistent with any existing, applicable land use ordinance***  
14 ***affecting the desired location; and***

16 The applicant feels that the proposed plans have been drafted to meet all the  
written requirements for 'residential facility for elderly persons' and all applicable  
18 requirements that govern homes in the residential (R1-20) zone. Any of the code  
requirements that are not addressed or met should be included as part of the conditions of  
20 approval-or basis for denial if the codes can not be met.

- 22 ***c. be occupied on a 24-hour-per-day basis by eight or fewer elderly***  
24 ***residents in a family-type arrangement or four or fewer elderly***  
***residents in a live-in care arrangement where care providers are paid***  
26 ***to assist and care for the residents.***

28 The proposal shows a total of nine 'units' with individual sleeping, living, and  
kitchen facilities. Each 'unit' accesses into a common living and kitchen area within the  
building. One of the units is proposed as the 'staff quarters' within the facility. The  
30 Planning Commission felt that the proposal met code requirements if staff did not live on  
site, but rather worked in rotating 24 hour a day shifts. The applicant has indicated that  
32 the facility will be marketed to single senior citizens, and that occupancy will not exceed  
eight elderly residents.

- 34
4. ***Each residential facility for elderly person is subject to state licensing***  
36 ***procedures and must provide the City proof of a valid license issued by***  
***the Utah State Division of Licensing and compliance with Department***  
38 ***of Human Services standards.***

40 Mr. Cowie indicated that the City has not received any of the required  
documentation that this requirement has been met. Mr. Taylor stated that any required  
42 state licensing will be obtained following approval of this application. Mr. Taylor's  
attorney, Jeff Scoubye, indicated that due to the nature of the facility, state licensing may  
44 not be required. He stated that any required licensing will be obtained and  
documentation submitted to the City prior to the facility becoming operational.



2 8. ***No residential facility for elderly person shall be established or***  
4 ***maintained within three fourths of a mile (3,960 feet) of another***  
6 ***residential facility for elderly persons, a group home for person with a***  
8 ***disability, juvenile group home, a transitional/treatment group home,***  
***or a transitional victim home as measured in a straight line between***  
***the closest property line of the proposed group home and the closest***  
***property line of the existing group homes identified above.***

10 Mayor Dain inquired as to whether this provision of the code would be violated  
12 due to the proximity of this proposed project to the existing Lee triplexes. Mr. Cowie  
14 explained that the triplex development is governed by a separate R2 Overlay ordinance.

16 9. ***The facility shall provide one off-street parking space for each***  
18 ***sleeping room, plus adequate parking for visitors and staff. In no***  
20 ***case shall the facility have less than three off-street parking spaces.***

22 The site plan includes four off-street parking stalls, including one ADA stall.  
24 Tenant parking is proposed inside the garage, which will include parking stalls for eight  
26 vehicles, one for each sleeping room. The Planning Commission felt that proposed  
28 parking met the intent of the ordinance.

30 10. ***The facility shall have six foot sight obscuring fencing along the side***  
32 ***and back yards that is constructed in a manner consistent with the***  
34 ***residential character of the neighborhood. Such fencing shall be***  
36 ***constructed and maintained in accordance with the Lindon City Code.***  
38 ***The Planning Commission shall approve the style and design of any***  
40 ***fencing before a permit is issued. A chain link fence with slats shall***  
42 ***not be considered sight obscuring for the purposes of this section.***

44 The applicant is proposing to install six foot high vinyl sight obscuring fence  
along the north property line to match the existing fence on the south property line. An  
eight foot masonry wall was installed on the east property as part of the Old Station  
Square commercial development and the Lindon Heritage Trail, which runs along the  
east property line.

36 11. ***No portion of the facility's front and side yard setbacks shall be used***  
38 ***to provide parking spaces as required by this section without prior***  
40 ***approval by the Planning Commission. Any use of the yard as***  
42 ***parking space shall not change the residential character of the***  
44 ***property.***

44 The proposed site plan does not indicate parking within any of the required  
setbacks.



- 2 5. The facility operator shall not accept any resident that would pose a  
direct threat to the health and safety of others in the facility or  
community.
- 4 6. The City shall record a notice against the property declaring the rules  
and occupancy restrictions associated with the facility, including the 8-  
6 resident limit, no live-in care provider, etc.
- 8 7. As required with other group home facilities in Lindon, the facility  
owner and/or operator shall present to the Planning Commission an  
10 annual report on the facility to ensure compliance with code  
requirements. Mr. Cowie noted that the applicant indicated in the  
12 Planning Commission meeting that he would be willing to submit to an  
annual review, although it is not required for this type of group home.  
14 Mr. Taylor has subsequently indicated that he does not feel he should  
have to submit to the annual review.
- 16 8. The applicant will provide suitable accommodations on the rear of the  
site for the continued access to the ditch which carries irrigation water  
to the Christiansen property to the north.

18 Mr. Cowie reviewed elevation drawings for the structure. He also showed  
photographs of the site, as well as photographs of surrounding properties.

20 Councilmember Hatch asked Mr. Taylor to explain the financial viability of this  
proposed facility given that it can not operate as a for profit business. Mr. Skoubye  
22 explained that although the facility can not operate as a for profit business, costs can be  
recouped through a non-profit organization. Mr. Skoubye asserted that the business will  
24 comply with all applicable ordinance requirements relative to elderly group home  
facilities. He explained that City ordinance will not allow the facility to be owned by the  
26 non-profit company. In order to comply with ordinance requirements, the facility will be  
owned by the Taylor family, but will be leased to the not-for-profit entity.

28 Councilmember Anthony noted that salaries can be paid as part of a not-for-profit  
business structure.

30 Councilmember Hatch inquired as to whether any government funding will be  
pursued for the facility. Mr. Skoubye stated that funding options have not been fully  
32 explored at this time, but that grant funding may allow the developer to keep costs as low  
as possible for residents.

34 Councilmember Hatch inquired as to whether the Taylor family would be  
involved in some way in the not-for-profit structure. Mr. Skoubye stated that they will be  
36 involved in some way, possibly serving as trustees on the Board of Directors. Mayor  
Dain inquired as to what procedure would be followed if the Taylor family were to sell  
38 the facility. Mr. Skoubye stated that in order to be compliant, it will be necessary to have  
a family member of the owner of the facility living in the home in a reasonable amount of  
40 time if ownership of the facility changes in the future. Mayor Dain observed that  
enforcement of this particular requirement would be difficult. Mr. Cowie stated that the  
42 intent of the annual review requested by the Planning Commission was to allow the City  
an opportunity to verify compliance with all ordinance requirements on an annual basis.

44 Councilmember Carpenter expressed concern that the owners of the facility may  
have an opportunity to make a profit from the lease agreement, which would circumvent  
46 the intent of the ordinance requirements which allow group homes in residential zones.

2 Mayor Dain agreed that while this proposed project is worthwhile, it does not appear to  
meet the intent of ordinance requirements governing group home facilities in residential  
4 zones. He observed that this facility would be more appropriately located in a  
commercial zone. Councilmember Hatch also agreed that the project does not have the  
6 look or feel of a single family residential home, and would not be appropriate in a  
residential neighborhood.

8 Mr. Taylor stated that he does not anticipate that the facility will be a “large  
money maker.” Councilmember Carpenter observed that according to City ordinance,  
the facility can not produce any profit. He clarified that the intent of allowing residential  
10 group homes for the elderly is not to create a business, and that the home is suppose to  
simply be a place for people to live. He stated that he has significant concerns with the  
12 proposed financial structure in relation to the requirement that the facility not be operated  
as a for profit business.

14 Mr. Taylor stated that it is his intent to create a facility which will benefit the  
community. Mayor Dain reiterated that the project is a worthy project, but that the  
16 residential zone does not appear to be the appropriate location. Councilmember Hatch  
stated that the facility is not a single family home, but an apartment complex, which does  
18 not meet the requirements for a group home in the residential zone.

20 Neighboring property owner, Joy Lee, asked the Council to consider what would  
be the best use of the property. She asserted that this site, as well as the old City property  
located to the north of the subject property, are currently not maintained and are a  
22 detriment to the neighborhood. She felt that this proposed project would be an  
improvement and will help to revitalize the neighborhood. Ms. Lee noted that a  
24 significant number of homes in the neighborhood are occupied by elderly residents. She  
felt that the proposed project would not impact the neighborhood negatively, and would  
26 be an appropriate use of the property. Councilmember Hatch explained that the old City  
property was sold, and that the City does not control what happens on the property.  
28 Councilmember Carpenter noted that problematic situations can be addressed using the  
nuisance ordinance.

30 Neighboring property owner, Doug Christiansen agreed that the subject property  
and the property formerly owned by the City have been in transition for quite some time.  
32 He encouraged the Council to consider rezoning both properties for commercial use to  
encourage appropriate redevelopment of the area. Mr. Christiansen stated that he would  
34 not be supportive of the proposed project based on the current residential zoning. He felt  
that rezoning in the area would allow the neighborhood to develop appropriately.

36 Mr. Skoubye stated that he would not necessarily disagree with the suggestion to  
rezone the property. He asserted that the reason elderly group homes are a permitted use  
38 in the residential zone is to allow occupants to live in a residential setting. He felt that  
the subject property is ideally situated, and would create an appropriate buffer between  
40 existing residential and commercial uses in the area. He stated that while rezoning may  
be a reasonable action, the facility as proposed with current zoning would not create a  
42 negative impact on the surrounding neighborhood.

44 Mayor Dain noted that written opposition to the proposed group home was  
submitted by a neighboring property owner, Steve Smith. Mr. Taylor observed that the  
letter submitted by Mr. Smith mentions several other projects which are pending in the  
46 neighborhood, and does not necessarily express opposition to this particular project but to

2 development in the neighborhood in general. Mr. Taylor asserted that the majority of  
3 residents in the neighborhood are supportive of the group home concept.

4 Councilmember Anthony inquired as to the cost of monthly rent for residents of  
5 the group home. Mr. Taylor stated that it is his intent to keep fees affordable for elderly  
6 residents who may be on a fixed income. He estimated rent to be approximately \$700 to  
7 \$800 per month. Mayor Dain asked if utilities would be individually metered for each  
8 unit. Mr. Taylor stated that he would like to separate costs as much as possible, and that  
9 private units would likely be metered individually. Eric Jones, architect for the project,  
10 noted that a shared meter would likely be used for the common kitchen and living area as  
11 well.

12 Councilmember Hatch submitted photographs of a similar facility in Payson for  
13 comparison. Councilmember Hatch stated that he visited the facility in Payson. He  
14 noted that the Payson facility appears to have a similar floor plan to the facility proposed  
15 by Mr. Taylor, but is marketed as individual apartments, not a family type group home.  
16 Councilmember Hatch stated that he does not feel that the project as proposed is an  
17 appropriate use in the residential zone. Mr. Skoubye asserted that the project is  
18 appropriate in this location due to the proximity of the site to the adjacent commercial  
19 zone and the existing triplex development. He felt that the project as proposed would be  
20 compatible with the surrounding neighborhood.

21 Mayor Dain suggested that the proper course of action may be for Mr. Taylor to  
22 submit an application to rezone the site for commercial use. Mayor Dain noted that  
23 rezoning the property to allow this proposed use would protect other residential  
24 neighborhoods where the facility would not be an appropriate use. He reiterated that this  
25 facility has the look and feel of an apartment building rather than a family type home.

26 Councilmember Carpenter stated that while he is sympathetic to the need to  
27 provide appropriate housing for elderly individuals, this particular project is not an  
28 appropriate use in a residential neighborhood. He noted that the question before the  
29 Council is not whether this is a worthy project, but what City ordinance will allow. He  
30 observed that the facility appears to be eight individual apartments which open into a  
31 common area, and that the proposed use is not permitted in residential zones.  
32 Councilmember Carpenter stated that the project as proposed violates the language as  
33 well as the intent of the existing ordinance. He stated that an ordinance change would be  
34 required to allow the facility in a residential zone.

35 Mr. Jones stated that as the architect, he has made a specific effort to maintain the  
36 residential look of the structure. He asserted that the facility would provide privacy and  
37 independence for residents, along with an opportunity to live in a group setting and  
38 associate with other residents. Councilmember Carpenter stated that while the goals of  
39 facility are laudable, the proposed structure violates the intent of the ordinance in relation  
40 to facilities in residential neighborhoods.

41 Mr. Jones asserted that no element of this structure would be rejected as part of a  
42 single family residential structure. Mayor Dain observed that individual utility meters  
43 would not be used for different areas in a single family residence. Councilmember  
44 Carpenter observed that while multiple kitchens are allowed in single family structures,  
45 specific requirements are applied to additional kitchens. Mr. Jones felt that allowing  
46 assisted living facilities in the residential zone but requiring them to comply with single

2 family residential structure standards creates competing perspectives which are difficult  
to reconcile.

4 Mr. Skoubye inquired as to whether the concerns of the Council regarding the  
living arrangement would be adequately addressed if units were not individually metered  
6 and if kitchens were removed from the units. Mr. Skoubye asserted that if the residential  
look of the facility was a concern, that the facility has more of a single family residential  
8 look than the neighboring triplexes. Councilmember Carpenter explained that R2  
projects are limited to three units in order to minimize the impact on the surrounding  
neighborhood. He felt that the proposed eight unit facility would be completely contrary  
10 to existing ordinance standards.

12 Mr. Taylor observed that there are no existing facilities in Lindon which meet this  
specific need. He suggested that the Council may feel uncomfortable with this proposal  
because it is a new concept in Lindon. Mayor Dain observed that group homes are not a  
14 new concept in the City, and that there are several functioning group homes in Lindon.  
Councilmember Carpenter observed that City ordinances do allow this type of use in  
16 appropriate zones.

18 Mr. Jones requested clarification on what elements of the project are not in  
compliance with the ordinance. He asserted that language in the ordinance is somewhat  
ambiguous, and that he is unsure of what adjustments need to be made.

20 Mr. Haws explained that the major question throughout this review has been the  
definition of a “family-type” living arrangement. He explained that language found in  
22 City ordinance is taken directly from state statute. He observed that the term “family-  
type” living arrangement is not clearly defined in either state or City code. He stated that  
24 when terms are not clearly defined in law, courts will typically look to apply a reasonable  
standard and interpret the code as a whole. Mr. Haws stated that he has specific concerns  
26 regarding the ownership structure of the facility, and tracking and monitoring ownership  
over the life of the facility. Mr. Haws also expressed concern regarding operation of the  
28 facility and the business structure. He stated that the burden fall on the applicant to  
provide sufficient proof of compliance with City code. Mr. Haws noted that the City  
30 does not have the authority to require an annual review. He stated that the property  
owner may voluntarily submit to the review, but a review can not be required under  
32 current ordinance. Mr. Haws stated that he is concerned about the lack of details  
regarding the business structure which have been submitted at this point.

34 Mayor Dain inquired as to how compliance would be verified and enforced  
without the annual review process. Mr. Haws explained that if the City receives  
36 information that the facility is out of compliance, and investigation can be conducted at  
that time. He observed that if the City finds that the facility is not compliant,  
38 enforcement then becomes problematic, as closure of the facility for non-compliance  
would displace the elderly residents.

40 Mr. Dameron inquired as to what level of discretion the City Council has in  
interpreting the definition of a family-type living arrangement. Mr. Haws stated that the  
42 City Council has broad discretion in applying undefined terms. He stated that the  
Council must define a reasonable basis for their interpretation. Mr. Skoubye agreed that  
44 the Council does have discretion in interpreting the ordinance. However, he asserted that  
this is an appropriate use on this particular site. He stated that the proposed facility  
46 provides an opportunity for both privacy and interaction for residents. He encouraged the

2 Council to not let the fact that the facility provides some privacy sway their interpretation  
3 of whether the facility would provide a family-type environment.

4 Councilmember Hatch reiterated that he has no opposition to the facility per se,  
5 but that he does not feel that it could be appropriately located in a residential zone. He  
6 observed that it may become necessary for residents to have a higher level of care at  
7 some point, which may become increasingly problematic. Mr. Skoubye stated that if a  
8 particular resident was in need of a higher level of care, it would be necessary to move

9 from the facility.  
10 Mr. Taylor stated that he is hopeful that the project will be approved. He stated  
11 that he does not have a great concern with submitting to an annual review if necessary.  
12 He read a quote found in the marketing pamphlet for the facility as follows:

13 *“It was once said that the moral test of government is how that government treats*  
14 *those who are in the dawn of life, the children; those who are in the twilight of life, the*  
15 *elderly; and those who are in the shadows of life, the needy and handicapped.”*

16 *Hubert Humphries*

17 Mr. Taylor expressed a willingness to work within the requirements of the  
18 ordinance. He noted that he has made several revisions to the proposal in order to come  
19 into compliance and address concerns of the City. He observed that the Planning  
20 Commission voted in favor of the project. He stated that he would like to move forward  
21 with the development with conditions that would address the concerns of the Council.

22 Councilmember Hatch suggested that this application would be more  
23 appropriately submitted by the non-profit company that will run the facility. Mr.  
24 Skoubye asserted that it is a “chicken and egg” issue. He explained that the applicants do  
25 not want to establish the non-profit company prior to approval of the project. He stated  
26 that the details of the business structure will be addressed following approval of the  
project.

27 Mr. Haws stated that the Council has expressed legitimate concerns regarding the  
28 business structure. He explained that it is the responsibility of the applicant to show that  
29 the developer will not make a profit from the facility and provide proof of the non-profit  
30 status of the business structure.

31 Mr. Skoubye stated that he respectfully disagrees with Mr. Haws. He felt that the  
32 demands of the City were excessive at this point. He observed that City ordinance  
33 specifically disallows ownership of the facility by a non-profit company, as ownership of  
34 the facility by a resident or an immediate family member of a resident is required. Mr.  
35 Taylor explained that the real estate will be held separately from the non-profit company.

36 Mr. Haws explained that the facility would not be considered a for profit business  
37 if fees are charged for actual and necessary costs to operate the facility. Councilmember  
38 Carpenter expressed concern that the proposed business structure may allow the  
39 developer to circumvent the intent of the non-profit requirement. He stated that while he  
40 is sympathetic to the goal of the facility, ordinance requirements must be enforced by the  
41 Council.

42 Councilmember Anthony stated that he has made his opinion clear since the first  
43 review of the project that he views the facility as individual apartments rather than a  
44 group home facility. He stated that the proposed facility is a worthy project, but would  
45 not be appropriate in the residential zone. He noted that allowing this facility in a  
46 residential neighborhood would set a precedent which may allow similar facilities in

2 other residential neighborhoods. He felt that the overall concept of the facility as individual apartments had not changed conceptually since the first Concept Review.

4 Mr. Jones stated that the applicant feels that it is important to include elements in the facility which allow residents to maintain their individual identity and independence. He asserted that the floor plan has been altered significantly since the initial Concept  
6 Review. He stated that the conceptual approach of the current design is to allow residents privacy or interaction based on their personal desires.

8 Mr. Taylor stated that in reviewing the minutes of previous discussion, Councilmember Bath specifically stated that he liked the kitchens in the units.  
10 Councilmember Carpenter stated that he also likes the idea of the kitchens in this facility, but that including kitchens creates apartments rather than a group home with a family-  
12 type living arrangement, which disallows the facility in a residential neighborhood. Mayor Dain noted that individual metering of each unit will require a separate address,  
14 which appears to constitute individual apartments rather than a single family-type group home.

16 Councilmember Carpenter observed that diversity in housing options for elderly and disabled residents is essential to meet individual needs. He explained that City  
18 ordinance does allow for a variety of housing options if those facilities are located in the appropriate zone.

20 Councilmember Anthony suggested that Mr. Taylor consider submitting an application for either a zone change or an ordinance change in relation to the project.  
22 Councilmember Carpenter noted that an ordinance change may not necessarily allow the project as presented.

24 Mr. Cowie noted that the floor plan originally presented has been amended significantly. He presented drawings of the original floor plan as well as the amended  
26 floor plan for comparison.

28 Mayor Dain called for further comments or discussion from the Council. Hearing none, he called for a motion.

30 COUNCILMEMBER CARPENTER MOVED TO DENY THE SITE PLAN FOR GOLDEN YEARS ELDERLY GROUP HOME WITH THE FOLLOWING  
32 FINDINGS:

- 34 1. THAT THE APPLICATION DOES NOT COMPLY WITH ORDINANCE STANDARDS, AT LEAST ONE OF WHICH REQUIRES A FAMILY-TYPE  
36 LIVING ARRANGEMENT FOR GROUP HOMES IN THE RESIDENTIAL ZONE.

38 COUNCILMEMBER HATCH SECONDED THE MOTION. THE VOTE WAS RECORDED AS FOLLOWS:

40 COUNCILMEMBER ANTHONY AYE  
42 COUNCILMEMBER CARPENTER AYE  
COUNCILMEMBER HATCH AYE

44 THE MOTION CARRIED UNANIMOUSLY WITH TWO ABSENT.

5. **Continued Discussion** – *Width to Depth Ratio – LCC Section 17.46.090(4)*. This is a City initiated review of Code Section 17.46.090(4) with regards to width to

2 depth ratios for developable lots, with particular implications for the R2 Overlay Zone.

4 Mr. Cowie explained that this discussion was continued for the previous City Council meeting to allow the City Council to research the reasoning behind previous ordinance changes which restricted width to depth ratios for R2 project to a ratio of 2 to 1. He stated that minutes of the review of the 2004 Nixon project which prompted the change, as well as minutes of discussions regarding the actual ordinance change have been provided for review by the Council. Mr. Cowie noted that discussions regarding the ordinance change included a list of 13 specific recommendations for various ordinance amendments which were carried through each of the discussions.

12 Mr. Cowie presented an overhead photo of a randomly chosen area of the City to demonstrate the number of properties which could be affected by the current allowable width to depth ratio. He noted that additional R2 Overlay requirements are fairly restrictive, such as lot size limitations and separation distances. He noted that based on the width to depth ratio restrictions, many platted subdivision lots would be precluded from R2 projects.

18 Councilmember Carpenter stated that it was his recollection that the concern regarding width to depth ratios was relative to access for lots with only 100 feet of frontage and multiple units. He suggested the possibility that if lot frontage were 150 feet or greater that width to depth ratios may be decreased to 2 to 1, but on lots with less than 22 150 feet of street frontage the 3 to 1 ratio would be applied. Mr. Cowie noted that a turnaround is required to allow emergency vehicle access on all R2 lots that do not have a driveway fronting a public street and that emergency access should not be problematic if ratios are reduced to 2 to 1.

26 Mr. Cowie recommended that the width to depth ratio for R2 projects be amended to be consistent with the 2 to 1 requirement for all other residential zones. Councilmember Carpenter stated that making the width to depth ratio requirement consistent throughout all zones would not be problematic, provided there are other adequate protections in place with regard to R2 projects. Mr. Cowie reviewed standards for R2 projects, such as maximum density, separation distance, driveway length 32 limitations, and turnaround requirements.

34 Mayor Dain suggested that it may be appropriate to have input from the two absent Council members prior to making a decision regarding any revisions. Mr. Cowie clarified that this is a discussion item only at this meeting. He stated that he will 36 advertise proposed revisions to be discussed in a Public Hearing at a future meeting.

38 \*Mr. Dameron noted that the City Engineer, Mark Christensen, was scheduled to attend this meeting to discuss the remaining agenda items with the Council. Mr. Christensen had not yet arrived at the meeting. The Council proceeded to Council reports to allow Mr. Christensen time to travel to the meeting.

44 **COUNCIL REPORTS** –

46 **COUNCILMEMBER HATCH** – *Water, Sewer, Solid Waste, Housing Consortium* –

2 Councilmember Hatch complimented that Healthy Lindon Committee on the  
recent community education class taught by Dr. Allen College.

4 **COUNCILMEMBER BAYLESS** – *Trails, Planning, Zoning, Board of Adjustments,*  
6 *Administration, Healthy Lindon* –

8 Councilmember Bayless was not present at the meeting.

10 **COUNCILMEMBER BATH** – *Public Safety, Court, Building Inspections* –

12 Councilmember Bath was not present at the meeting

14 **COUNCILMEMBER ANTHONY** – *Parks, Recreation, Engineering, Lindon Fair,*  
16 *Newsletter* –

18 Councilmember Anthony reported that the Tree Advisory Board will meet on  
Thursday, October 9, 2008. He stated that the Board is in need of new members who are  
excited and willing to serve the community.

20 Councilmember Anthony also reported that he is pleased to see road work on 400  
East underway.

22 **COUNCILMEMBER CARPENTER** – *General Plan, Streets & Sidewalks, Public*  
24 *Buildings* –

26 Councilmember Carpenter inquired as to whether any new information regarding  
the canal trail project is available. Mr. Cowie stated that he attended a recent planning  
28 meeting, but that no significant changes to previous plans were discussed. He stated that  
information is available on the project website.

30 Chief Cullimore extended an invitation to spouses of the City Council to attend an  
32 upcoming “RAD Women” class which teaches self defense and safety strategies. Chief  
Cullimore also discussed the possibility of involving the Police Department Honor Guard  
34 and bicycle officers in the Lindon Heritage Trail ribbon cutting ceremony.

36 Mr. Christensen arrived at the meeting at this time. The Council returned to  
discussion of agenda items.

- 38
- 40 6. **Review and Action** – *Warning Signs on 200 South (400 West to 800 West)*. This  
42 is a report and recommendation from the City Engineer in follow-up to citizens’  
requests for additional warning signs on 200 South (400 West to 800 West)  
regarding disabled children in the area.

44 Mr. Christensen explained that a motion made in the previous meeting relative to  
signage along 200 South called for an engineering recommendation regarding requested  
46 warning signs for a disabled child in the area. Mr. Christensen stated that the Manual of

Uniform Traffic Control Devices specifies that signs are used to identify unexpected conditions and to alert drivers to a necessary reduction in speed. The manual also states that use of signage should be based on engineering judgment, and that signage should be kept to a minimum so as not to breed disrespect for signage.

Mr. Christensen went on to explain that there seems to be broad opinions that signage relative to children with disabilities does not affect traffic speed, and that there are some statements that such signage may represent a liability. He stated that general engineering opinions have recommended that such signage not be used. He observed that when a sign is posted on a particular street, it indicates to drivers that they need to exercise a higher level of caution on that street. He noted that all streets have children and elderly residents that require an equal amount of caution on the part of drivers.

Councilmember Anthony noted that he personally tends to drive slower if he observes a sign identifying a disable child in the area. He inquired as to whether any studies have been conducted as to the effectiveness of the signage. Mr. Christensen stated that study results indicate that signage is not effective and that overuse breeds disrespect for traffic control signs in general. Mr. Christensen also noted that there is no mechanism in place which facilitates removal of the signage if it becomes obsolete in the future.

Mayor Dain called for further comments or discussion. Hearing none, he called for a motion.

COUNCILMEMBER CARPENTER MOVED TO ACCEPT ENGINEERING RECOMMENDATIONS TO NOT INSTALL SIGNAGE ON 200 SOUTH REGARDING A DISABLE CHILD IN THE AREA. COUNCILMEMBER ANTHONY SECONDED THE MOTION. THE VOTE WAS RECORDED AS FOLLOWS:

COUNCILMEMBER ANTHONY            AYE

COUNCILMEMBER CARPENTER        AYE

COUNCILMEMBER HATCH            AYE

THE MOTION CARRIED UNANIMOUSLY WITH TWO ABSENT.

7. **Review and Action** – *Cooperative Agreement – Modification #4 – Lindon Heritage Trail*. This is a request by staff for the City Council’s review and approval of Modification #4 to the Cooperative Agreement between Lindon City and UDOT for the Lindon Heritage Trail.

Mr. Christensen explained the funding process for the Lindon Heritage Trail project. He stated that the City was required to submit a check for their portion of the funding, including contingency funds, prior to the project being advertised for bid. When bids were received, it was determined that the \$1.2 million paid by the City would exceed the actual City portion of costs. Approximately \$900,000 of the original payment was refunded to the City at that time. He explained that following review of final costs for the project, several areas exceeded estimated costs, including engineering costs and additional base material used at the State Street under crossing. In addition, a curb wall was installed along the back of the trail. Mr. Christensen noted that the decision to install the curb wall was made when it seemed evident that there would be adequate revenue in contingency funds to cover the added expense.

2 Mr. Christensen stated that all federal funds for the trail have been expended, and  
that all cost overruns are now the responsibility of the City. The total cost for additional  
4 expenses incurred during the project are \$209,059.00. Mr. Christensen observed that  
there will be other minor expenses to be paid by the City, such as installation of fencing  
in some areas.

6 Councilmember Anthony requested clarification as to why the City is  
contractually responsible for 100% of the cost overruns on this project, rather than the  
8 expense being shared with the contractor. Mr. Christensen explained that a unit price  
contract was used for the project which determines the contract price. He stated that  
10 some actual costs were higher than estimates, and some actual costs were lower than  
estimates. He noted that installation of the curb wall was a discretionary item. In  
12 addition, on site engineering which was anticipated at 40 hours a week was actually  
necessary approximately 12 hours a day six days a week. Mayor Dain observed that even  
14 with the additional expense, actual costs to the City are far less than original estimates.

16 Mayor Dain called for further comments or discussion. Hearing none, he called  
for a motion.

18 COUNCILMEMBER ANTHONY MOVED TO APPROVE  
COOPERATIVE AGREEMENT – MODIFICATION #4 – LINDON HERITAGE  
TRAIL IN THE AMOUNT OF \$209,059.00 COUNCILMEMBER HATCH  
20 SECONDED THE MOTION. THE VOTE WAS RECORDED AS FOLLOWS:

22 COUNCILMEMBER ANTHONY AYE

COUNCILMEMBER CARPENTER AYE

COUNCILMEMBER HATCH AYE

24 THE MOTION CARRIED UNANIMOUSLY WITH TWO ABSENT.

26 **ADMINISTRATOR'S REPORT** –

28 Mr. Dameron reported on the following items:

1. The Council reviewed the Project Tracking List.
2. Construction on the aquatics center is proceeding on schedule.

32 COUNCILMEMBER CARPENTER MOVED TO APPROVE THE PAY  
VOUCHERS. COUNCILMEMBER HATCH SECONDED THE MOTION. THE  
34 VOTE WAS RECORDED AS FOLLOWS:

36 COUNCILMEMBER ANTHONY AYE

COUNCILMEMBER CARPENTER AYE

COUNCILMEMBER HATCH AYE

38 THE MOTION CARRIED UNANIMOUSLY WITH TWO ABSENT.

40 **ADJOURN** –

42 COUNCILMEMBER ANTHONY MOVED TO ADJOURN THE MEETING AT  
10:35 P.M. COUNCILMEMBER CARPENTER SECONDED THE MOTION. ALL  
44 PRESENT VOTED IN FAVOR. THE MOTION CARRIED.

46 Approved – October 21, 2008

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Debra Cullimore, City Recorder

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14 James A. Dain, Mayor

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