

**CITY OF SOUTH JORDAN
ELECTRONIC
PLANNING COMMISSION MEETING
COUNCIL CHAMBERS
May 10, 2022**

Present: Chair Michele Hollist, Commissioner Steven Catmull, Commissioner Laurel Bevans, Assistant City Attorney Greg Simonsen, City Planner Greg Schindler, Deputy City Recorder Cindy Valdez, Planner Damir Drozdek, Planner David Mann, Supervising Senior Engineer Shane Greenwood, IT Director Jon Day, Senior IS Tech Phill Brown, GIS Coordinator Matt Jarman, Meeting Transcriptionist Diana Baun, Director of Planning Steven Schaefermeyer

Absent: Commissioner Nathan Gedge, Commissioner Trevor Darby

Others: Abi Rushing, DBranch, Chris Evertz, Jerry Ohrn, Antonio Flores, Ryan Alvarez, Tina Franco, Matt Mecham, Gary Howland, Jay Mortensen, Patrick Egbert, Dean Prusse, Glade Mumford, Claudia Mumford, Shannon Ellsworth, Landon Allred, Daniel Branch

6:31 P.M.
REGULAR MEETING

A. WELCOME AND ROLL CALL – *Chair Michele Hollist*

Commission Chair Michele Hollist welcomed everyone to the Electronic Planning Commission Meeting. She noted that there are three commissioners present, which constitutes a quorum and allows this meeting to proceed as normal. For any motion this evening to pass it will require all three votes, a unanimous vote, as they normally have five members.

B. APPOINTING A COMMISSIONER TO CONDUCT THE MEETING

****Item removed per motion****

C. MOTION TO APPROVE AGENDA

Commissioner Bevans motioned to amend tonight’s agenda to strike Item B, appointing a commissioner to conduct the meeting, noting that Chair Michele Hollist is present to give the welcome and roll call tonight; she also motioned to approve the rest of the Planning Commission agenda for May 10, 2022 as published. Chair Hollist seconded the motion; vote was unanimous in favor. Commissioners Gedge and Darby were absent from the vote.

C. APPROVAL OF THE MINUTES

Commissioner Catmull motioned to approve the April 26, 2022 Planning Commission Meeting Minutes as published. Chair Hollist seconded the motion; vote was unanimous in favor. Commissioners Gedge and Darby were absent from the vote.

D. STAFF BUSINESS - *None*

E. OTHER BUSINESS - *None*

F. COMMENTS FROM PLANNING COMMISSION MEMB NERS – *None*

G. SUMMARY ACTION – *None*

H. ACTION – *None*

I. ADMINISTRATIVE PUBLIC HEARINGS

I.1. WALMART FUEL STATION SITE PLAN AND CONDITIONAL USE PERMIT

Location: 3590 W South Jordan Parkway

File No.: PLSPR202100290

Applicant: Antonio Flores

Planner David Mann reviewed background information from the Staff Report.

Commissioner Laurel Bevans noted that this appears to be very close to the pick-up area, and asked if they are planning on moving that or if they foresee any issues with this interfering with their pick-up lines.

Planner Mann said the applicant can address that. There is another application at this location for a proposed drive-up ATM that he believes is still currently under review by staff; that will come forward in the coming months.

Commissioner Bevans asked for more information about the waterline easement.

Supervising Senior Engineer Shane Greenwood said that with this fuel station, they are adding an additional waterline and service, so we required the easement to maintain that.

Chair Michele Hollist mentioned the added parking, and asked how many spots are lost due to this application, along with how many are required when adding this type of use to the site.

Planner Mann said that it's based on the size of the structure. This site is relatively small and the applicant did the calculations which are shown on the documents in the staff report. They took

into consideration the Walmart and the fueling station as a combination, so they added the two uses and the necessary required stalls and removed the stalls that would be taken by this fuel station; those calculations gave them the final number of 57 additional stalls needed to meet the minimum standard.

Chair Hollist asked which side the pumps will be on, and how many there will be.

Planner Mann said it looks like there are six pumps, double sided, with a canopy over the center of the site.

Chair Hollist invited the applicant to speak.

Ryan Alvarez (Applicant) was happy to answer any questions the commission might have. He also wanted to note that they have Chris Edwards from the architectural side online as well, and he is available to answer any questions about the building. Regarding the pick-up stalls and parking required around the site, they will be coordinating with the store and making sure the store still has their pick-up stalls available when the fuel station is built, as well as meeting the city required parking stall counts with the new improvements.

Chair Hollist opened the hearing to public comment. There were no comments and the hearing was closed. She also noted that her only concern is the new parking stalls being located in a place that doesn't seem convenient to the people accessing the development. They may possibly be intending to encourage employees to park there, but she also noted that she has never seen the parking lot full on a normal business day; because of this, she is comfortable with the arrangement. This seems like a reasonable location for this kind of use, and she is not seeing any other issues.

Commissioner Catmull agrees.

A member of the audience asked to make a comment, Chair Hollist responded and apologized, stating that the comment portion of the hearing for this item has already passed.

Commissioner Catmull motioned to approve File No. PLSPR202100290, for the construction of a fuel station, with the following provision: The applicant provide a 15 foot wide waterline easement to the city for a water lateral between the meter and the main water line. Chair Hollist seconded the motion. Roll Call vote was 3-0, unanimous in favor; Commissioner Gedge and Darby were absent from the vote.

I.2. RIDGECREST ESTATES SUBDIVISION AMENDMENT

Location: 892 W Brookcrest Circle

File No.: PLPLA202100128

Applicant: Jerry Ohrn

Planner David Mann reviewed background information from the Staff Report.

Chair Michele Hollist asked if we anticipate access for the property to the north extending

further to additional properties, and if they would use the Palmer Vista Drive should it develop later. She wants to make sure they aren't creating a situation where that flag lot access might extend further to multiple lots.

Planner Mann said no, the property would have to be rezoned to be developed; that would be under more scrutiny as far as proposed concepts and have more input from staff and the public to make sure any future designs would be done in a way that made sense logically.

Commissioner Steve Catmull noted that it's a flag lot today, but depending on what happens with Palmer Vista he wonders if there is a situation where that wouldn't be a flag lot any longer.

Planner Mann said that as of right now there is no other way to access that property, they would have to get access across the parcel, which is up to the property owner to grant. As the property to the north develops, if it does at a future time, it might turn into a standard lot and accessed from the north.

Commissioner Catmull said this was asked because if it was changed, then the requirements for the setbacks and other items could potentially change from a flag lot versus a standard lot.

Planner Mann said that if the design changed based on a flag lot versus a regular lot, it would enter the legal nonconforming classification.

Chair Hollist asked if with this piece of property moving into the subdivision, the subdivision as a whole still maintains the appropriate density.

Planner Mann said yes, because they are increasing the size of the subdivision and adding one lot, it keeps the density about the same as it was.

Chair Hollist invited the applicant up to speak.

Jerry Ohrn (Applicant) thanked the commission for reviewing this and all the help from the city to make sure everything was in compliance.

Chair Hollist opened the hearing for comments. There were no comments and the public hearing was closed.

Commissioner Bevans motioned to approve File No. PLPLA202100128, subdivision amendment. Chair Hollist seconded the motion. Roll Call vote was 3-0, unanimous in favor; Commissioner Gedge and Darby were absent from the vote.

I.3. COUSINS LANE PRELIMINARY SUBDIVISION PLAT

Location: 2726 W Cousins Lane

File No.: PLPP202100283

Applicant: Jay Mortensen

Planner David Mann reviewed background information from the Staff Report.

Chair Michele Hollist asked about fencing requirements, as it looks like the zone adjacent may not have farm animal rights.

Planner Mann said a masonry wall was installed with the development of those subdivisions because this property did have farm animal rights.

Commissioner Steve Catmull asked if the covered parking area shown on the map was going to be removed.

Planner Mann said that if that is to remain they would have to address it, but as far as he understands, the lot would be fully developed by the new owner and removed.

Commissioner Catmull asked if subdividing this puts it in any kind of nonconforming state with an existing structure there.

Planner Mann said that during either the final subdivision stage or applying for a building permit that would be addressed before any construction happens.

Chair Hollist asked if all offsets when subdivided still apply to the new property.

Planner Mann confirmed that yes, the offsets still apply.

Chair Hollist asked if the applicant was present. She noted that the applicant indicated from the audience that the structure Commissioner Catmull referred to is currently being removed and he has no further comment at this time. She then opened the hearing for public comment; there were no comments and the hearing was closed.

Commissioner Laurel Bevans added that, knowing the previous owner of this property, he would be thrilled with what's going on.

Commissioner Catmull motioned to approve File No. PLPP202100283, preliminary subdivision plat. Chair Hollist seconded the motion; Roll Call vote was 3-0, unanimous in favor. Commissioners Gedge and Darby were absent from the vote.

I.4. MUMFORD ESTATES PRELIMINARY SUBDIVISION PLAT

Location: 972 W Shields Lane

File No.: PLPP202100231

Applicant: Tina Franco, Howland Partners, Inc.

Planner Damir Drozdek reviewed background information from the Staff Report.

Chair Michele Hollist noted that the Staff Report indicated no fencing requirements. She is wondering if there will be any sort of wall or barrier requirement along the road, as it is very steep and the road coming in off of Shields Lane will be a pretty precipitous drop if someone were to go off the side.

Supervising Senior Engineer Shane Greenwood said it is his understanding that there will be a guardrail on at least the part of the road up to Shields. This project is a bit unique with that grade, and he believes staff required the developer to provide this.

Chair Hollist asked if that guardrail will ensure the safety of both pedestrians and cars.

Engineer Greenwood said he believes there is sidewalk curb adjacent on the west side, no sidewalk on the east side; there will also be a cable barrier along the side of the road.

Chair Hollist asked if engineering felt that this was sufficient to get emergency vehicles into the area.

Engineer Greenwood said he believes this has been reviewed with Fire and they were okay with it.

Chair Hollist asked for the standard road width in the city, she heard this will be between 25-31 feet wide.

Engineer Greenwood said that a standard residential road width is 27 feet, plus two feet of gutter on each side, making 31 feet. This will be a standard width down on the north end, but as it climbs the hill to Shields Lane, it tightens up to the 25 feet.

Chair Hollist asked about any plans to put curbing on Shields Lane to prevent left hand turns, to encourage one way in and one way out.

Engineer Greenwood said no, it will be a full movement intersection.

Chair Hollist asked if there will be anything done to ensure visibility coming out of that intersection, as it's on a bend.

Engineer Greenwood suggested having the applicant address that question.

Chair Hollist asked about a retaining wall possibly between the walking trail and tunnel immediately adjacent to this to the east.

Engineer Greenwood suggested asking the applicant about that as well.

Chair Hollist assumes that a retaining wall will be necessary, and that involves some heavy equipment; she asked what will be done to ensure the walking trail is still accessible and the tunnel won't be blocked during construction.

Engineer Greenwood noted the applicant will have to address that issue as well.

Chair Hollist asked if the city can stipulate that the trail and tunnel not be blocked during construction.

Engineer Greenwood said that hasn't been discussed.

Chair Hollist asked if this was county owned land.

Planner Drozdek said he would check on who owns the trail.

Commissioner Laurel Bevans asked, knowing this piece of land is near the river, if they will be required to do SWPP plans and keep in compliance or if there are specific portions of the SWPP plan that will be enacted because they are so close to the waterway.

Engineer Greenwood said they will be required to provide a SWPP plan, and to show where the runoff will go. He believes they are proposing to discharge their storm drain into the river, and that Salt Lake County Flood Control is reviewing that. The same requirements here apply just as anywhere else.

Planner Drozdek said the city owns the trail and the land.

Chair Hollist asked if we would be in line to put something in place to require the developer not to block that trail and maintain access to all portions of the trail during development and construction.

Assistant City Attorney Greg Simonsen said they could do that, but only if they had evidence presented that it was a detriment we are looking at; he doesn't believe we are looking at that. Homes are being built all along that river, and that trail diverts around the property; he believes they are set up to have access down to the property without having to use the trail at all, but he asked to have that confirmed with the applicant.

Chair Hollist's only concern is the section immediately coming out of the tunnel because it is so steep.

Commissioner Steve Catmull asked if any of those items were things they would address in a site plan versus a subdivision plat.

Planner Drozdek said there will be no site plan.

Chair Hollist invited the applicant forward to speak.

Gary Howland (Applicant) is the CEO of Howland Partners. They have been working for about 2.5 years on this particular development and there has been an awful lot of work that has gone into it. They want to thank the city for their time, effort and staff, as well as engineering. This has been a difficult project to tackle, but with their help and a lot of work and effort, they have been able to make this work in such a way that he can address many of the questions that the commission had. There are things they are going to do that are not required by the city, that you

typically don't see put in, which he will address as they are brought up because safety is first and foremost their concern on this development; that the people living in these homes, or coming out on to Shields Lane, are safe. The slope of the grade of the road falls within the city code, it is no steeper than is allowed by the city code. They will not in any way infringe on the trail. They have had to go to great lengths working with the county, the Jordan River Flood Control people; these issues are no different than the ones they ran into developing Phase 4 of West River Estates. On the east side of West River Estates, as it goes up along the trail, they built a launch trench that was over 10 feet wide and over probably 100 feet long that was L-shaped; this is was done to protect the stream and the sides of the stream so it doesn't change. One of the things they have done here is that all of the water does not discharge into the Jordan River, they are actually putting in a Stormtech or Primco system on the lots; that will be going on lot 4, along with a launch trench that you can see follows the entire length of the development. That trench is a 10 foot deep trench that is filled with liner and gravel, so water can drain and come out in a specific amount of cubic inches per hour to avoid flooding; County Flood Control has signed off on this. When they did Phase 4, they didn't know they had to go through all that. Having developed Phase 4 they knew this beforehand so it was addressed with the county before they got into whether or not this could even be done.

Chair Hollist noted there was a comment in the Staff Report about access being granted for the city and maintenance. She asked if that was just for the fire hydrants and water meters, or if this was for the drainage system as well.

Mr. Howland said the HOA will maintain the drainage system, it's just basically where the waterflow goes and then takes care of itself other than the service the HOA will maintain depending on the system. There is a sewer easement through there, and Mr. Mumford allowed them during Phase 4 to go through his property. The city asked him to straighten the waterline out so they have taken the water main and put it in the road, taking that out to Shields Lane so it's not impacted as well.

Chair Hollist asked about visibility, what are they going to do to increase visibility for this road exiting on to Shields Lane.

Mr. Howland said they will clear out the trees from the front so there is great visibility going both directions. They would have liked to align this road with the current road on the opposite side of the street, unfortunately that property isn't owned by South Jordan and it's wetlands so it can't be disturbed; it is also, he believes, part of the Jordan River Corridor and protected that way. There was really only one place they could get this road in, and it's at the grade and location it is because of that. South Jordan City helped them work that out, and then the developer approached the adjoining neighbor to acquire the necessary property from her and do some property trading to get the road in.

Chair Hollist asked for more details on the retaining wall that will be necessary.

Mr. Howland said the retaining wall on one side is roughly about 16 feet and 10 feet on the other. There will be a guardrail, not like the one that was explained, as it will be much more substantial than that; the last thing they want is for anyone to drive off the road. They will be

addressing the view corridor coming from both directions when they go through the design phase. There are other things they are looking into right now, he can't tell us for sure that they'll be doing them, but for sure they will be doing radiant heat at least two car lengths long. With the slope of the road, one of the concerns that they had on their own was in the winter with this being a north facing driveway, they didn't want cars sliding back or being unable to stop. They are looking at options right now, and they don't know how long they will carry that radiant heat as it is not a requirement.

Chair Hollist asked if the radiant heat system will be maintained by the HOA since it's a private road.

Mr. Howland said it will all be set up with a separate meter for the HOA since they are private, they will maintain it and pay for it through the HOA fees.

Chair Hollist asked for the slope of the road at its steepest point.

Mr. Howland said it's 8%.

Chair Hollist asked for the applicant to confirm again that they will not, at any point, infringe on the trail access.

Mr. Howland agreed they will not infringe on the trail or tunnel. Initially, city staff had them coming through the trail with the launch trench, but both the county and staff looked at it again and realized that with the size of the trench that didn't need to happen, even during construction. He noted that can be a condition if needed, to keep it clear at all times.

Commissioner Catmull said that years ago, he believes the plan was to come in off the circle and down for access, where there is an easement, rather than off of Shields Lane. However, it was discovered that because of the house built in that area, it might still be possible to do but not feasible.

Mr. Howland said that they don't want to go into that matter, it has become a civil matter between the parties; they don't want to make the city a party to that in any way, hopefully that will be settled. Their plan is to move forward right now without even looking at accessing through that property.

Commissioner Catmull noted that his point was there is a way to do it, there is an easement in place, however the civil matter would have to be resolved before that could be accessed.

Mr. Howland said yes, there is an easement in place however the matter would have to be resolved before the subdivision was built. Due to the unknowns and outcomes associated with the matter, their preference was to look for a solution rather than going the legal route. They feel they took the high road by immediately after having a restraining order put on their ability to access through that property they started looking for alternatives to be able to develop the Mumford Property. They don't want to get into that, or for it to be a part of the city; they want that to be a separate item that gets addressed by itself. To develop this subdivision they do not

need access through West River Estates, specifically the property facing northwest and through the two homes directly to the north; one is the Pettit's home, the other is the Carr's.

Chair Hollist opened the hearing for public comment.

Landon Allred (Representative of Pettit and Carr Families) said these two families own the homes that back onto the Mumford Estates, just past the hammerhead. To address Commissioner Catmull's question, there is a preliminary injunction in place that prevents any development in the easement for the time being, they don't know how that's going to end as they have to wait until the end of litigation, but for now there is no construction allowed in the easement per court order. He came to address one issue, and that is trail access. He has seen different versions of the site plan that show trails drawn, usually they are shaded in with what looks like stone. However, the site plan put up on the screen showed a sidewalk that he believes connected to the trail, but the site plan that was sent out with the public notice doesn't show any sidewalk. There is a reference to a sidewalk north of lot 4 and it points to dotted lines, but the dotted lines are sewer or water easements, they are not actually sidewalk. His understanding is that the city wants every subdivision to have trail access, and in the different versions of this that he has seen sometimes the trail access goes directly from the hammerhead next to lot 4 out to the trail, and in other versions the access goes off the end of the hammerhead up through the Pettit's and the Carr's homes to try and access Lazy Water Cove, hooking into a trail access that's off the cul-de-sac. As a friendly comment, the city should at least decide where the trail access is going to be if they want to make sure there is trail access. He sits on the Sugarhouse Park Authority Board and they work with county and city Parks and Rec, they say that the way to prevent bad actors is to make sure that areas are frequently visited. If that's the city's thinking in trying to require subdivisions to get trail access, you want to try and shuttle people towards the trail. If you plan it to go through the easement through the Pettit's and the Carr's homes you can't guarantee that; it can't be built right now and they aren't sure how that's going to end up at the end of litigation. Also, they will create parallel trails, a trail next to the river and then an access for someone on a walk or bike ride to cut through this Mumford Subdivision, through the easement, then on to Lazy Water Cove and they will never be on the trail. If the point is to increase traffic on the trail for safety or whatever reason, he would suggest having the trail go off the end of the hammerhead, or to the northeast of the hammerhead next to lot 4, directly to the trail from Mumford Estates, rather than trying to hook into Lazy Water Cove.

Chair Hollist closed the hearing to public comment. She asked staff to clarify what was brought up during public comment.

Planner Drozdek said the reason they didn't see the trail on the notice that went out was because it had a subdivision plat on the back. He didn't send out a site plan, which would show any improvements on site; this was just showing property lines and any easements. There is a trail access at the end of the hammerhead that goes out to the trail, there is no improvements being made.

Chair Hollist asked if it was a sidewalk.

Planner Drozdek said it is a paved access, it is also a private access that will not be open to the public; the owners can open and close it to whoever they choose.

Chair Hollist asked if that is the only point of shared access from this development.

Planner Drozdek said the residents can put a gate on their fence for access, that is what some of the homes to the north have done. This needs permission from the city, but it can be done for access to the trail. There are two trailheads within a half mile to a mile to the north of this project, this is the third access; again, it will be private and the other two accesses are public. They feel there is enough access to the trail from this location.

Chair Hollist said she is assuming he is also counting the access to the south with the small parking lot.

Planner Drozdek said that is an additional access on top of the two to the north.

Commissioner Catmull asked if there is a gate put on the northwest perimeter fence, and it's private access that can be closed, could we run into a situation where there is a gate in the fence that is somehow closed by the development property owners.

Planner Drozdek said this access would be maintained by the HOA. The HOA could decide to open or close it at their convenience.

Commissioner Catmull asked, even if the city approved a gate inside the fence, would that be something separate from the actual access on to the private sidewalk.

Planner Drozdek said that is correct, that is something that will have to be worked out with our Parks Department.

Commissioner Bevans asked staff about the other trail access with the small parking lot, is there full visibility between where this road comes on to Shields Lane and where the subdivision comes on. She wants to avoid issues with cars trying to both turn left at the same time and crossing.

Planner Drozdek referred to one of the aerial photographs from the Staff Report and said the two access points basically align with each other, and the grade is such that you can see across the road, so it is not going to create any visibility issues. Where the private road meets Shields Lane, there is a flat area for a car to stop and see what's on the main road.

Chair Hollist invited Mr. Howland up if he had anything to add.

Mr. Howland was surprised at the question to begin with. Again, his statement was that this development doesn't take into account any use of the Pettit's or the Carr's properties for access. They have planned all along to have a private access from lot 4 with a self closing gate and a keypad. Right now, the owners of the HOA and their kids would have access. He is not sure if the access from Phase 4 has been moved, they had it in one place and then the builders who

purchased the lots moved the access down closer to the end of the cul-de-sac; he believes that was a public access. For access, the people off the Mumford Estates only have to go down essentially one house and then they can go back up the access to get into West River Estates if walking. Walking up through and between the Pettit's and the Carr's homes certainly isn't necessary as it isn't any more of a walk than it is right now from the beginning of the hammerhead over to the fence. Again, it is a private access, there will be a keypad on it, and that was something the county wanted as they didn't want it to be a public access where people cut through to ensure privacy.

Chair Hollist said she can see the access to the north really is just two properties away, and she asked if that was a public access that would then connect up to the road

Assistant City Attorney Greg Simonsen said he walks that trail almost every day and he confirmed that is a public access that actually loops into the estates; there is another access a little ways down that comes into the trail as well.

Planner Drozdek said that access is about two homes up.

Commissioner Catmull said this isn't an ideal development because of the issues with the easement to the northwest and how that developed, the roads being roughly aligned is not ideal either. He remembers talking to Deputy City Engineer Jeremy Nielson about that when the rezone was done and he seemed to feel like there are plenty of mitigating things that would happen, and that the traffic count was so low going in to this new development that it wouldn't be a major problem. He has many reservations about this, but he sees nothing that is significant enough for him to not approve it.

Commissioner Bevans echoed what Commissioner Catmull said.

Chair Hollist added that she agreed with everything Commissioner Catmull said, and she is remembering the advice they were giving by Attorney Simonsen, representing the city as the legal advisor, that sometimes it is not worth the fight. However, she wants to express that she is disappointed that the easement was not honored, that this was not developed in a way that allowed this parcel of land to still have access to public roads; she thinks this rather complicated approach that she still has concerns about would not have been necessary. However, the way their roles are defined they are not allowed to deny an application if the city staff is able to go through and show that it meets all of our ordinances and requirements. Our Engineering Department is here tonight and has expressed it has been passed through Fire and Planning and met muster. Even though they have concerns about the grade, the safety on the edge of that road as well as accessing Shields Lane safely, she doesn't think they have the authority to deny.

Commissioner Bevans motioned to approve The Mumford Estates Preliminary Subdivision Plat, File No. PLPP202100231. Chair Hollist seconded the motion; Roll Call vote was 3-0, unanimous in favor. Commissioners Gedge and Darby were absent from the vote.

I.5. DISH COLLOCATION / PERFORMANCE PLACE TOWER CONDITIONAL USE PERMIT AMENDMENT

Location: 10246 S Redwood Road
File No.: PLCUP202200082
Applicant: Kate Hanstrom, Crown Castle

Planner Damir Drozdek reviewed background information from the Staff Report.

Chair Michele Hollist asked what prompted this application at this time.

Planner Drozdek said an application came in to do additional work on site, to add additional antennae and replace or repair some ground equipment; due to compliance/noncompliance issues we were unable to issue any more permits until they were fixed.

Chair Hollist asked if this will bring them into compliance with current code.

Planner Drozdek said yes.

Commissioner Steve Catmull asked whether the fencing material change could result in a reduction noise.

Planner Drozdek said the existing site currently has chain-link fencing. This new material being proposed meets the city masonry wall requirements and is a fence that has concrete on the outside and around the edges, but the inside of the fence is filled with some type of foam.

Commissioner Catmull asked for details on the decibel levels allowed within a certain distance of the tower, based on our wireless ordinance.

Planner Drozdek was not aware of the requirement, but he is sure the wall itself is not going to make much difference in terms of noise.

Commissioner Catmull assumed that noise requirement would only be acted on if there was a complaint regarding sound brought forth. It appears this is an upgrade from what is existing, as it currently has a chain-link fence, and it will actually be quieter.

Chair Hollist asked if there were any homes close enough to be notified for this.

Planner Drozdek said notices went out, the closest ones are to the northwest and he believes two of them were noticed and within 300 feet.

Commissioner Laurel Bevans asked if there are any parameters in place where if they hadn't come in with another application, we would have at some point called them back in. Do we have anyone out looking for these compliance issues, or this just a one-time circumstance.

Planner Drozdek said they come in quite often to swap out antennae and do work on these sites.

Assistant City Attorney Greg Simonsen said he thinks we will be seeing more of these as we have about 30 wireless sites in the city. There is a special body of law that goes well beyond our city code to govern these, one is a federal law where they can come in and make an Existing Facility Request (EFR). Rather than Sprint wanting to build a new tower, they would prefer to hang a new array on an existing tower; the property owner likes when this happens because they would collect more rent by having more carriers on the same facility. However, according the

carriers, cities were delaying these requests so they went to congress. That law that was created, and as interpreted by the FCC if you have an existing facility, and it's not a substantial change to the height as defined by the law, then it has to be approved. One reason we may not see some of these here is because our code is set up to approve an EFR request through staff. This one is coming before the commission because it's a change to the conditional use permit, and he believes they will see more of these in the future because to qualify as an existing facility it has to have complied with the initial approval. All of the sudden, people who have not listened to the city for years about building fences and other directions are having problems because they can't get their new approval until they comply.

Chair Hollist asked if this application would have been able to change things and comply with the original requirements, versus the current code.

Attorney Simonsen said they possibly could have gone back and done that, but if they had, according to the original approval, it would have been even more expensive.

Chair Hollist asked if there was a scenario that had made it less expensive to go back to the original requirements originally agreed to 20 years ago, could they then argue they should only have to comply with the lesser requirement.

Attorney Simonsen believes they could have probably done that. This application originally came in last August and they are supposed to be processed under the EFR within 60 days, he believes they were flummoxed by the city's position and as a result, they have been on the phone repeatedly; Attorney Simonsen has spoken with their counsel many times. This was basically them giving in as they are not used to having to do what the city says anymore since the EFR laws were brought in. Planner Drozdek and the rest of the planning department did a great job on this, and we have a resolution that will be a good one for the city.

Commissioner Catmull asked how they went for around 13 years without fulfilling the requirements; is there a gap there, or was there something missed by the city in terms of an inspection.

Planner Drozdek said they will be looking into that. He thinks the reason this ended up here was because they were not doing any inspections for these sites. They come in for the permit, we issue the permit, and then there are no follow-up inspections like there are on homes or commercial buildings.

Chair Hollist asked if there are follow-up inspections now.

Planner Drozdek said that's something they are looking into and trying to decide the best way going forward to avoid this situation again.

Attorney Simonsen said it would have been nice if there had been inspections, there is no denying that. However, like a child that just won't do what you say, the punishment that would get them motivated is so Draconian that it doesn't make sense. In this case, the only thing that would probably motivate these people is shutting down the site and having a lot of people without cell phone service. Them coming in and needing the city for once suddenly changes the negotiating dynamic, and it gives us a chance to show them they need the city and they at least need to go back and do what they originally committed to do.

Chair Hollist agreed with that policy, as she believes this was a site that benefited from not being

seen.

Commissioner Catmull noted that he was asking about that because he wonders if we can or should put a time window in which the conditions should be met on future conditional use permits. He would love to be able to avoid this again with multiple years of noncompliance, while recognizing that's what they're here for, to balance many interests, and he feels it's reasonable to expect within a set period of time to have compliance.

Attorney Simonsen understands and agrees with Commissioner Catmull, however, at the same time they are pretty highly motivated to get this done at this point because they cannot get the permit from their city to add on and they have a financial incentive tied to getting that EFR granted.

Commissioner Catmull was speaking more generally, what about the next tower that gets built. We will have to wait and see if this is a chronic problem.

Attorney Simonsen said these comments are timely as Director of Planning Steven Schaefermeyer called a meeting today where staff, the city attorney, himself and Planner Drozdek came up with what they felt was a good plan going forward to expedite these things. The amount of time required of the legal department and planning staff that has to go into these EFR requests is extensive, including researching what was originally approved, sometimes as far back as 1998, and then having to deal with angry calls from all over the nation including recently the president of DISH wireless. Attorney Simonsen doesn't believe anyone else is doing what we are going to do, but he predicts that sooner or later most cities will be following our lead.

Commissioner Bevans noted that, in reality, there could be a number of noncompliant sites in our city currently, and there isn't much we can do about it without making a lot of residents angry.

Chair Hollist opened the hearing for public comment.

Daniel Branch (Applicant) works for Crown Castle, and is a colleague of Kate Hanstrom who wasn't able to make it tonight. He thanked everyone for their time and appreciated the conversation that just took place; we can work together to make all these sites compliant and keep everyone happy.

Commissioner Catmull recognizes the tremendous value the wireless facilities provide to our city and citizens, and he wanted to thank the staff as it appears this has been part of a months' long journey. This compromise feels like it has a balanced interest, and almost like a win-win for everyone.

Chair Hollist added that City Council has noted on multiple occasions that cell phone reception is the number one item they hear from citizens about.

Commissioner Catmull motioned to approve File No. PLCUP202200082, conditional use permit amendment, replacing conditions 1 and 2 of the previously approved conditional use permit CUP-2009.17 with the following conditions:

- **Replace the existing wireless facility compound chain-link fencing with an eight foot decorative faux masonry wall or faux stone wall. Fence materials shall be RhinoRock concrete fencing, poly or similar core, wrapped with a fiber reinforced concrete shell or approved equivalent at the City of South Jordan's sole discretion.**

- **Replace the existing chain-link gate with a sight obscuring solid gate that is a maximum of 10 linear feet in width.**

Chair Hollist seconded the motion; Roll Call vote was 3-0. Commissioners Gedge and Darby were absent from the vote.

J. LEGISLATIVE PUBLIC HEARINGS

J.1. Resolution R2022-26, Adopting the City of South Jordan Annexation Policy Plan

City Planner Greg Schindler reviewed background information from the Staff Report. The only response received from an affected entity was from Rio Tinto/Kennecott, who asked us to delete the second sentence in Section 5 of the proposed policy plan regarding post mine closure recreation access; they didn't want to "create false hope for the city or the public." They also attached a letter (Attachment A) indicating there is no telling when that mine will close and they are having issues with people in current recreation areas near the mine property venturing onto the property and getting closer to the mine operations currently. He indicated that staff had no issue with deleting that statement from the policy plan, as it is a minor statement. Regarding page 6, Section 5, they would also like to insert the phrase "willing landowner" into the sentence "annexing properties where there is a willing landowner would allow the city to ensure appropriate development and protect important opportunities and resources in the Oquirrh Mountains that can be provided to the city and its residents." Staff also didn't see any issues with adding those two words to the noted section and will make the above noted changes.

Chair Michele Hollist asked if, with those changes, the map would stay the same.

Planner Schindler said the map would not change.

Chair Hollist noted that adopting this plan does not guarantee that any portion of this map will automatically become a part of the city in the future. Each amendment will be considered individually to make sure it has merit and fits with the plans for the city.

Planner Schindler noted that even if the city wants to annex a property, the landowner must be willing to do so, per the state code. If that annexation is in the city's best interest, the owner of the property still has to be willing to be annexed; we can't force that on anyone.

Commissioner Steve Catmull noted that he would love to see a regular refresh or update of this. He suggested previously to Director of Planning Steven Schaefermeyer that perhaps this becomes part of the General Plan update package in the future.

Planner Schindler said that was passed on to him as well, and that Director Schaefermeyer agrees that would be a good thing to do.

Chair Hollist opened the hearing for public comments.

Shannon Ellsworth (Rio Tinto) didn't intend to speak tonight, but thanked the staff for incorporating Rio Tinto's comments and ideas.

Chair Hollist closed the public hearing. She indicated that she was okay with the changes suggested this evening.

Commissioner Laurel Bevans asked if when sending the recommendation forward they need to word it to include what is being amended.

Planner Schindler said they could make the motion to recommend approval to the city council for the resolution, including the changes to the plan as discussed.

Attorney Simonsen thinks the actual letter from Rio Tinto would be appropriate to add the record.

Planner Schindler noted that he hasn't sent a copy to the recorder's office yet, but they will have that done (Attachment A).

Director of Planning Steven Schaefermeyer thanked Ms. Ellsworth for her attendance and comments. He will send a copy of the letter from Rio Tinto to the recorder's office and agrees that noting the changes to the policy plan in the motion would be appropriate.

Commissioner Bevans motioned to recommend approval to the city council for Resolution R2022-26, adopting the City of South Jordan Annexation Policy Plan, including the changes discussed this evening. Chair Hollist seconded the motion; Roll Call vote was 3-0, unanimous in favor. Commissioners Gedge and Darby were absent from the vote.

K. OTHER BUSINESS

City Planner Greg Schindler said he was unsure what the meeting in two weeks will look like, he believes Planner Ian Harris may have an item planned for that week however things can change between now and Thursday, when they send out their notices.

Chair Michele Hollist asked Assistant City Attorney Greg Simonsen if the next meeting would be an appropriate time to do some training if the agenda is looking light. She knows Commissioner Nathan Gedge will be at the next meeting, but he will not be at the first meeting in June.

Attorney Simonsen noted that he will be out of town for the next meeting, but City Attorney Ryan Loose will be here and he will discuss options with him and Director of Planning Steven Schaefermeyer.

Chair Hollist noted that they would only want to add the training to a lighter agenda.

Director Schaefermeyer said they can look at doing some sort of training at the next meeting. He will communicate with Attorney Loose, and noted there is plenty they can do that is less legal in nature and would meet the requirements if Attorney Loose is unable to participate. Also, the city council discussed during their last meeting making the alternate planning commissioner a full-fledged commissioner. This would mean that rather than having a five member commission, City Council has asked them to explore having a six person commission with all members having the ability to vote every time. They want to solve this issue quickly with summer coming, so there will be an effort to get something on the agenda for the next meeting. He thinks those changes will be fairly simple and straightforward.

Commissioner Laurel Bevans thanked the staff for all their hard work, she knows it takes long hours to get to this point and they very much appreciate everything they do.

ADJOURNMENT

Chair Hollist motioned to adjourn the May 10, 2022 Planning Commission meeting. Commissioner Bevans seconded the motion; vote was unanimous in favor. Commissioners Gedge and Darby were absent from the vote.

The May 10, 2022 Planning Commission Meeting adjourned at 8:17 p.m.

Meeting minutes were prepared by Deputy Recorder Cindy Valdez

This is a true and correct copy of the May 10, 2022 Planning Commission minutes, which were approved on May 24, 2022.

**Cindy Valdez
Deputy Recorder**

On behalf of Rio Tinto we appreciate the opportunity to frequently collaborate and coordinate with South Jordan City. We send this letter in response to the published draft annexation policy plan.

Rio Tinto has a strong track record as a community partner supporting various non-profits and local organizations through the Kennecott Foundation. Rio Tinto has been a proactive supporter of economic development in the Salt Lake Valley. We have facilitated trails access in Butterfield Canyon, and we donated Rio Tinto water rights which now flow to the Jordan River and into the Great Salt Lake for the next ten years, benefitting habitat and wildlife. While Rio Tinto property is privately held, we have shown a commitment to improving the community by addressing issues with air quality, the environment, recreation, and as a long-standing partner and taxpayer.

In light of the proposed draft annexation policy plan our primary concerns for Rio Tinto land have been centered on *safety* and *industry*.

- 1) Rio Tinto values safety at every level of our organization.
 - a) Trespassing has been an issue in Butterfield Canyon and elsewhere when people have wandered into reclamation areas and active mining operations. We have tried to prevent trespassing recreators along our tailings pipeline corridor, as well as people discharging firearms on our property.
 - b) Over the coming decades, as the City's and the County's populations are projected to grow, we want to reduce risk to both those working in active mining zones and those recreating by separating incompatible uses and discouraging trespassing.
 - c) We do not want to set an expectation that Rio Tinto Kennecott land is accessible or safe, by classifying it for recreation or conservation, which could promote further trespassing, vandalism, and physical endangerment.
 - d) Rio Tinto is adamant about protecting the health, safety, and welfare of citizens and employees in the area, and we hope to find ways to partner with South Jordan City to that end.
- 2) Rio Tinto Kennecott has a strong business plan and intends to operate for the foreseeable future.
 - a) Rio Tinto is the world's second largest mining and minerals company. Rio Tinto Kennecott has been operating in the Salt Lake Valley since 1903 and is the second highest producing copper mine in the U.S.
 - b) We aim to continue to operate the Kennecott mine, concentrator, and smelter for the foreseeable future. Accordingly, decisions about the use of Kennecott's land for mining and then closure activities will continue to be made over coming decades.
 - c) Although the current *approved* life of mine for Bingham Canyon is 2032, Kennecott's mine planning team is always looking at options to continue to grow and develop the mine for decades to come. Immediate plans are underway to expand unit production of copper, molybdenum, gold, and silver underground, and to reprocess tellurium.

- d) We are certain that copper is and will continue to be an essential mineral in supporting a national and global transition to green energy. As the US moves towards a green economy Rio Tinto Kennecott will support domestic supply.
 - e) We aren't sure when closure will take place, nor do we understand every constraint that will exist at that time, but we are under significant obligations from our regulators to carefully manage safety and environmental health.
 - f) When land is no longer critical to mining operations Rio Tinto has a strong track record of both reclamation and context-sensitive development, as illustrated at the award-winning master-planned community Daybreak. Safe and beneficial re-use of mining land is a hallmark of responsible mining, and this will mean different uses in different areas based on a myriad of regulatory and environmental factors.
- 3) Rio Tinto supports private property rights which protect our investments, make South Jordan City business-friendly, and support a global economy.
- a) We believe it is important to protect industrial and mining uses as land uses that can deliver economic benefits for the State of Utah, and we support future land uses and annexation policies that accurately represent Rio Tinto and allow flexibility.
 - b) We hope that South Jordan City will support current and future economic drivers. Government's support for industry and commerce facilitates our ability to directly employ more than 2,000 Utahns.
 - c) We support clarification of statements and policies that create false expectations for the public and current and future elected officials on the utility of and access to Rio Tinto land. As our business plan evolves and as we make decisions, we are open to conversations with the City and its stakeholders.

We expect this will be an ongoing conversation over the weeks, months, and years ahead, and we are committed to being at the table. We share your goals of creating a healthy, safe, and business-friendly community.

A handwritten signature in black ink, appearing to read "Gaby Poirier", written over a horizontal line.

Gaby Poirier, Rio Tinto Kennecott Managing Director



May 10, 2022

PLANNING COMMISSION MEETING SIGN IN SHEET

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