

**CITY OF SOUTH JORDAN
ELECTRONIC
PLANNING COMMISSION MEETING
COUNCIL CHAMBERS
December 14, 2021**

Present: Chair Michele Hollist, Commissioner Nathan Gedge, Commissioner Trevor Darby, Commissioner Steven Catmull, Commissioner Sean Morrissey, Assistant City Attorney Greg Simonsen, City Planner Greg Schindler, Deputy City Recorder Cindy Valdez, Assistant City Engineer Jeremy Nielsen, Planner Damir Drozdek, IT Director Jon Day, GIS Coordinator Matt Jarman, Meeting Transcriptionist Diana Baun

Others: Braxton Thompson, Deeann Huffman, Doug Schellenberg, Kacey Lauchnor, Eric, John Warnick, Gordon Wood, Jorie Hill, George, Rachel, pasker, Dan, Jason, Mark Halliday, Ryan Holt, Marianne Densley, Edward Steel, Herman Steel

6:32 P.M.

REGULAR MEETING

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

Chair Michele Hollist welcomed everyone to the Electronic Planning Commission Meeting.

II. MOTION TO APPROVE AGENDA

Chair Michele Hollist asked everyone in attendance to review the agenda and make sure the item they are here to speak to is there; the commission received several emails regarding the Jones property rezone that is not on the agenda this evening. When that item is scheduled to come before the commission for the public hearing, the appropriate people will be noticed as required beforehand.

Commissioner Gedge motioned to approve the December 14, 2021 Planning Commission Agenda as published and noticed. Chair Hollist seconded the motion; vote was unanimous in favor.

III. APPROVAL OF THE MINUTES

Commissioner Gedge motioned to approve the November 9, 2021 Planning Commission Meeting Minutes as published. Chair Hollist seconded the motion; vote was unanimous in favor.

IV. STAFF BUSINESS

Chair Michele Hollist mentioned an email from Planning Director Steven Schaefermeyer regarding the 4 hours of training required for all commission members.

Commissioner Nathan Gedge thanked staff for their hard work, especially during the long meetings. He also appreciated the detailed minutes from the last meeting.

V. COMMENTS FROM PLANNING COMMISSION MEMBERS - *None*

VI. SUMMARY ACTION – *None*

VII. ACTION – *None*

VIII. ADMINISTRATIVE PUBLIC HEARINGS –

A. DAYBREAK VILLAGE 9 PLAT 2 PRELIMINARY SUBDIVISION

Location: Generally 11435 S. Silver Pond Drive & 11390 S. Watercourse Road
File No: PLPP202100191
Applicant: Larry H. Miller Real Estate

City Planner Greg Schindler reviewed background information from the Staff Report.

John Warnick (Applicant) apologized for not being able to attend in person due to a previous commitment. The Village 9 plats that are going to start coming through are what they are calling their “move-up village,” and they are similar to some of the past villages they have done in Daybreak. It is part of the watercourse, as was mentioned, and he is really excited for bringing these online; there are four or five that the commission will hopefully be seeing shortly. They have had a lot of interest in these, the builders are all waiting for them and they can’t build them fast enough.

Chair Michele Hollist opened the hearing to public comment. There were no comments, the public hearing was closed.

Commissioner Gedge motioned to recommend approval of Project No. PLPP202100191, subject to all South Jordan City requirements being met before recording the plat. Chair Hollist seconded the motion. Roll Call Vote was 5-0, unanimous in favor.

B. HIGHRIDGE COMMERCIAL SUBDIVISION AMENDED, SUBDIVISION AMENDMENT

Location: 3576 W. South Jordan Dr
File No: PLPLA202100163
Applicant: Braxton Thompson, DIA

City Planner Damir Drozdek reviewed background information from the Staff Report.

Commissioner Steve Catmull asked if, as this gets developed, it will connect up to the commercial property to the north.

Planner Drozdek said they haven't seen any plans yet, so they don't know what the intent is, but that is common. He noted that fencing is prohibited between commercial properties, so it would remain open.

Chair Michele Hollist opened the hearing to public comment.

Braxton Thompson (Applicant) didn't have anything to add at this time. They will get drawings in for a site plan shortly after this.

Chair Hollist closed public comment.

Commissioner Darby motioned to recommend approval of File No. PLPLA202100163, Highridge Commercial Subdivision amended subdivision amendment. Chair Hollist seconded the motion. Roll Call Vote was 5-0, unanimous in favor.

C. ULTRADENT BUILDING 4, SITE PLAN AND CONDITIONAL USE PERMIT

Location: 10193 S. Jordan Gateway / 362 W. Ultradent Dr.
File No: PLSPR202100252, PLCUP202100254
Applicant: Matt Williams, PGAW Architects

City Planner Damir Drozdek reviewed background information from the Staff Report.

Chair Michele Hollist asked what changes the applicant made to the building at the request of the Architectural Review Committee.

Planner Drozdek said one of the biggest changes was to have some metal awnings added above the doors. All changes are listed in the staff report, but from what he can remember:

- The pilasters went about three-quarters of the way up the building, they were asked to extend those to the top.
- The parapet wall's finish had a different color, possibly white or gray originally; that was changed to black.
- They were showing some screen walls which were not there before. This ties in with the rest of the building and provides some additional screening of the loading areas.

Commissioner Nathan Gedge asked if there were any concerns or issues the commission should consider, specifically with this property up against the UTA Frontrunner line.

Planner Drozdek said we have done other projects along the TRAX line, but they have never been given any special requirements for fencing or anything else by UTA. Fencing can be a good and bad thing, as tagging does become a maintenance issue.

Chair Hollist asked if the applicant was present, and if they had anything to add to the staff report. They responded “no” from the audience and did not approach the stand.

Chair Hollist opened the hearing to public comment and mentioned she will give a 15 second warning if a member of the public is about to hit their three minute mark.

Mark Halliday (Resident) said one of his concerns is a ditch on the south side of the property, on the north side of Ultradent Drive. This is an irrigation ditch that runs from the UTA TRAX station to the north, down all the way west along Ultradent Drive, and continues to property underneath Gateway Road and a farm area. He is also concerned about the Dry Creek drainage. He noticed in the plans that they state there will be some drainage going into Dry Creek, he is concerned about what that might be and where it will come from. The other issue is with the road, Ultradent Drive. Ultradent Drive runs from the TRAX all the way down across Gateway Road to the west. He presented a copy of an agreement (Attachment B) that was signed by the city in 2019 that says Ultradent Drive, in its entirety, will be dedicated as a public access road. He is asking the city to honor their agreement, or be in violation. Another concern, as stated before, is the type of conditional uses being allowed in the building. He is not opposed to the building going in there, as it will be like the other buildings on that site, he is just concerned about the manufacturing that’s taking place as far as the dumping. He sees they stated there will be small to large amounts of hazmat waste, and he is wondering what that waste material might be; how it will be exposed into the environment both by air and/or by water or ground, how it will be utilized. He referenced a letter that was sent before the meeting (Attachment A) regarding issues with the ditch units. Regarding the Easement Agreement (Attachment B) dated December 20, 2018, he still doesn’t see where that has been marked on the County Assessor’s site as being a dedicated road down through, it still shows that property is abutted by DEF Properties; he asks that be taken care of. He spoke with the city’s attorneys around November 2020 in regards to that and he is asking that change be made so it shows and there are no problems with real estate agents and/or appraisers looking at that property as being a public access road.

Chair Hollist explained we will have the entire public hearing, write down all of the questions and concerns raised, and after public comment is closed staff and the applicant will help answer those questions.

Chair Hollist closed the hearing to public comment. She noted that the email referenced (Attachment A) was received before the meeting and reviewed, she asked staff if the issues raised in the email were something the city would be arbitrators of in any form.

Planner Drozdek said it sounds like a private issue, but he is not sure. Several years ago, there was a building to the north approved for Ultradent and these same issues were brought up at that hearing. Additionally, when the office buildings were being developed to the south of this site, the same issues were brought up again in regards to irrigation and the ditch.

Assistant City Engineer Jeremy Nielson said Engineering received a copy of the letter and reviewed it as well. They do not have any records for that irrigation ditch; it is a private ditch, so they were unable to do anything further as the city does not have access to any information on it.

Chair Hollist asked if the site plan incorporates some sort of modification to any of the water accesses in this area, or if that is even a part of what is being heard tonight.

Engineer Nielson said they forwarded a copy of the irrigation ditch concerns to the applicant for the engineer that surveyed the site and asked them to look into that; he suggested asking them if they have anything to share.

Assistant City Attorney Greg Simonsen said, with respect to the issue on Ultradent Drive, that is not before the planning commission tonight. The recommended motion by staff has Ultradent Drive as an approval being conditioned upon the city council subsequently approving the vacation of that portion. If that vacation of right-of-way is not approved by the city council, and the planning commission does the motion the way it has been suggested by staff, it would not go through.

Chair Hollist clarified that tonight they are not voting on vacating, nor do they have the authority to vacate, a public road; that will go before city council in the future. The motion being voted on tonight stipulates this can only pass if the city council approves the right-of-way vacation.

City Planner Greg Schindler said that if the city council does not approve the right-of-way vacation, the applicant will have to modify their site plan and come back here in the future. If this comes back to the planning commission because the right-of-way vacation is not approved, only the property owners adjacent to the property being vacated will be notified.

Commissioner Gedge said, in regards to the question asked during public comment, the reason this is probably not recorded with the county office is because that vacation process has not occurred yet.

Irwin Fischer (Applicant) is one of the Vice Presidents at Ultradent. They got the letter from Richard just last night or this morning, and in typical fashion it is a little convoluted and difficult to understand. This is typical of decades of trying to be good neighbors with Richard and it has been a difficult journey. He often makes a lot of baseless claims, this letter is full of baseless claims and is typical. This irrigation claim he is raising has nothing to do with this property in their opinion. They did have Ensign, with Layton Construction, do the full survey; they marked all of the easements through the property and it is all incorporated in the site plan. They have no intention of touching or altering his irrigation lines. A lot of the other claims in there have a history going back for years and are more personal matters. They have spent years trying to be good, respectful neighbors while spending hundreds, if not thousands of hours trying to address Richard's complaints; they don't believe it's possible and they don't think he will ever be happy, despite everything they have tried. Frankly, if he has claims that he thinks are legitimate against Ultradent on the irrigation systems, he needs to sue them and let the courts deal with it. They are done trying and it is just not possible to please him. Again, he doesn't think these claims have anything to do with the construction, they will not be impacting the irrigation system. They have no desire to use it, they have not used the irrigation system themselves since they sold their shares back in 2016 because it was too difficult to deal with him and his company. He thinks if there is any concern from the city on this, they could put a requirement into the permit that they don't modify or impact his irrigation system; they are the only owners of the land on both sides of Ultradent Drive. Regarding what's being made in the building, plastic injection molding that has been made on the other side of street will be moving into a portion of this facility. They are a medical device company, so they also make things like tooth whitening gel that is commonly on the market; they were one of the pioneers of that in the late 80s and that will be a portion of this building. Also, in this building will be medical devices like curing lights and equipment; they make one of the top selling units in the world for aluminum body curing lights used in dentistry. They will have roughly 200+ employees working this facility. As far as hazardous waste claims, he doesn't think they've ever had a hazardous waste issue in their facility and they've been there

since 1991. They have a professional, fully staffed environmental health and safety department with a good track record and a lot of people who are also concerned about being careful and responsible with their materials. Their feelings after speaking with Richard are that he is vindictive and wants to bring up anything he can with Ultradent. He wanted them to join him in a lawsuit against UTA a few years ago on this same ditch. They don't use the water anymore, deliberately because of dealing with him for years, and they refused to join the lawsuit; he thinks that is probably what's driving Richard on this.

Chair Hollist asked if they have any sort of flaring on site, and if they planned on removing all waste off site with no long term storage.

Mr. Fischer said they do not have any burning of gasses on their site. They never store anything on site and the little bit of waste they do have is dealt with through professional waste management companies.

Chair Hollist asked if there is any type of barrier between their property and the Frontrunner line.

Mr. Fischer said he believes there is an existing fence.

Chair Hollist asked if there is anything this road accesses, other than their two buildings.

Mr. Fischer said the road dead ends, you can't get to the tracks.

Commissioner Gedge asked if there will still be access to the shared parking, as people park there during the day for the Frontrunner.

Mr. Fischer said yes, they purchased the tower to the south earlier this year and there will still be a tenant on one of the floors there, as well as public access to the building as that's required to run their business.

Chair Hollist asked if they feel like they have accurate security for the building, as the Architectural Review Committee brought this up.

Mr. Fischer said they are regulated and audited by the Department of Homeland Security because they have chemicals of interest as part of their manufacturing process.

Chair Hollist asked if their doors are locked with employee only access.

Mr. Fischer said yes, the doors remain locked with employee only access and there are cameras everywhere, some of which have actually helped solve a few thefts in the community in the past.

Commissioner Steve Catmull asked if they have had any complaints or investigations in the past.

Mr. Fischer said he thinks they had a cleaning agent that backed up in a storm drain last year that had to be addressed with some improvement systems, but nothing toxic or hazardous; it was just a foam that was coming up from toothpaste. Toothpaste is what is primarily created in the building to the north; it is technically a "cleaning agent" and something they had to address. In terms of noise pollution, things are pretty quiet and he doesn't believe the process can be heard outside the buildings.

Chair Hollist asked if there was anything that would be consistently put into the water system.

Mr. Fischer said no, they don't drain externally. They have the same situation with their parking lots, they have to make sure they pass the sewer district requirements. Layton Construction can speak to drainage if they need to, but that has all been included in the site plan; this current plan includes a holding pond for 100 year storms and it has all been designed to meet code.

Chair Hollist asked if they are only using culinary water for their needs, since they don't use irrigation water.

Mr. Fischer said yes, and they are trying to move more and more to xeriscaping, which is why there is so little grass. On their other building they have been using culinary water for a few years now, and over time they will do the same thing and start converting more to xeriscaping.

Commissioner Gedge noted that he has extended (not immediate) family members who work for Ultradent, and assumes that would not disqualify him from this discussion, as he does not have a financial interest.

Attorney Simonsen said he is correct, that would not disqualify him.

Commissioner Gedge asked what is encompassed under dental products in terms of the conditional use permit, and can that change in the future if this property was sold.

Planner Drozdek said this conditional use permit is for manufacturing and fabrication, so any kind of manufacturing facility could come and already have that conditional use permit issued.

Planner Schindler said he thinks the question being asked is if the permit is issued for the manufacturing and fabrication of dental products in the new building, what about manufacturing of something other than dental products in the future.

Chair Hollist said she would like to see a future tenant come back before the commission if they want to change what is being manufactured there.

Commissioner Gedge said if they are restricting this to "dental products," he'd like to know what that includes. Is it just common sense stuff like dental floss, toothpaste, mouthwash and those types of things, or is it more broad and able to be expanded on.

Planner Schindler said the applicant explained what is being made there, the curing lights and other products used in dentistry, plastic molds, etc. There is no specific definition in the code regarding what dental products are.

Commissioner Gedge said he doesn't have any issues with the current applicant, but more with the future implications if this was sold down the road to someone else under the same purpose. He is comfortable with the way this is currently written.

Chair Hollist asked if they needed to address the applicant's offer regarding them not touching the irrigation system.

Planner Drozdek said if they are receiving the water, they have the legal rights to that water. If they have stopped receiving that water, then they could take them to court over that.

Engineer Nielson said this is a private matter and we don't want to be the regulators of that private irrigation system.

Commissioner Catmull asked if any of their manufacturing emissions could go into the intake air for the adjacent offices, and if that been analyzed or assessed.

Mr. Fischer said no, he doesn't believe they have any air emissions that need to be addressed.

Commissioner Gedge motioned to recommend approval of File No. PLSPR202100252, allowing for construction of a new commercial building, and File No. PLCUP202100254, to allow for manufacturing and fabrication of dental products with the stipulation that the Ultradent Drive 10200 South right-of-way vacation is approved by the City Council. Chair Hollist seconded the motion. Roll Call Vote was 5-0, unanimous in favor.

Chair Hollist thanked Ultradent for making the modifications requested by the Architectural Review Committee to make the building a little more visually appealing.

C. WOODLAND PARK ESTATES, PRELIMINARY SUBDIVISION PLAT

Location: 3148 W. 10755 S.
File No: PLPP202100224
Applicant: David Jenkins, Ensign Engineering

City Planner Damir Drozdek reviewed background information from the Staff Report.

Chair Michele Hollist asked if there is a second cul-de-sac that will be modified at the same time.

Planner Drozdek said yes, that will go to City Council on January 4th and is a separate issue. In the past, the subdivision plat was recorded but the actual improvements didn't match the plat drawings. The actual turnaround ended up being more to the west from what the subdivision plat was showing, so they are going to take away the north end of the cul-de-sac and record a new turnaround.

Chair Hollist opened the hearing to public comment.

Edward Steel (Resident) said this is not a small issue, it is taking away a big chunk of his parents' property. That cul-de-sac has been there for 52 years where he learned to ride his bike, and they are strongly protesting this. This came up in 2017 with he believes a previous owner of the property wanting to subdivide that section, they fought it at that time. The owner backed down on it, now he believes the new owners are trying to do the same thing. He believes that by law, this is acquiescence, in that the cul-de-sac has been there for 52 years; moving it down to his parents' is going to be detrimental to the driveway and to the irrigation ditch that serves both properties. Mr. Steel pointed to the map from the Staff Report and showed where his parents' property is located in relation to the proposed changes.

Planner Drozdek said nothing is being done to the properties to the south. Everything that is being realigned, and any improvements being made to the street, are happening at the north end of the road.

Mr. Steel continued to indicate the maps show otherwise, and that part of his parents' property is being cut out for this cul-de-sac.

City Planner Greg Schindler said he believes they are not going to require them to pave their yard, but that the road will no longer have any turnaround; there is not a full cul-de-sac anywhere currently. He explained that the black solid line is the recorded property line.

Planner Drozdek showed where the existing cul-de-sac is supposed to be per the subdivision plat. The north end has not been improved, it is just raw property. Because this was never improved, the applicant is suggesting to vacate that portion and then record another area for the turnaround; nothing is being done to the properties on the south side.

Planner Schindler asked about the portion that's in Mr. Steel's parents' front yard. It sounds like they never owned that property where the turnaround was supposed to be, and that they still won't own it.

Planner Drozdek said on the new subdivision plat, the portion of the turnaround on the property to the north is shown as public right of way.

Chair Hollist said it sounds like they will have a condition where they are hoping in the future it could potentially be a fully developed turnaround, but at this time the only portion becoming public right of way with the city is on the north side.

Mr. Steel said the drawing looks like they are changing the property.

Commissioner Sean Morrissey said according to the drawing, that it what exists right now.

Mr. Steel asked about the law related to it being this way for 52 years.

Planner Schindler said the proposed plat has the proposed property lines of lot 3 going around the new placement of the cul-de-sec. The space for the cul-de-sac is already on his parents' property and it's going to stay there, but the part to the north will become the owner's property as the city is going to vacate their portion; the city does not intend to vacate the lower half of the circle to the south. They are not improving it into the turnaround because the property line follows it. The turnaround will still be there on the plat, but the northern half will be public right of way, and the southern half will stay private. Per the key on the map, the dotted line indicates it will be vacated; only the solid lines are property lines.

Mr. Steel asked if, since they've been through this before, there was any way to get it recorded and officially stamped that this is how it is going to be.

Planner Schindler said the subdivision plat has to be recorded with the county, it will not be official until it gets recorded.

Chair Hollist recommended Mr. Steel take note of what is being said, and then reference the meeting minutes once they are approved.

Chair Hollist closed the hearing to public comment. She clarified that the only portion becoming a public right of way is on the northern portion of this road, it will only be taken from lots 3 and 4 of the proposed development.

Planner Schindler said that if the planning commission approves this preliminary plat tonight, that's the only thing that can get recorded as a final plat; the applicant cannot make modifications to it once it has been approved.

Commissioner Nathan Gedge asked if this is approved tonight, do they need to make any notations for future council action.

Planner Schindler said if the city council doesn't approve this, that space won't be vacated. The commission could make a stipulation that preliminary plat is approved by them, so long as it can't be recorded until the right of way vacation is approved and recorded.

Chair Hollist asked whether or not lots 3 and 4 will be allowed to access the cul-de-sac being discussed.

Planner Schindler said no, they will only have access to the cul-de-sac shown on the plat.

Planner Drozdek said the drawing shows a masonry wall along the right of way.

Commissioner Gedge motioned to recommend approval of File No. PLPP202100224, Preliminary Subdivision Plat, with the stipulation that the plat cannot be recorded until the City Council approves the vacation as discussed this evening. Chair Hollist seconded the motion. Roll Call Vote was 5-0, unanimous in favor.

D. GARDNER DENTAL PRELIMINARY SUBDIVISION

Location: 11381 S. Temple Dr.
File No: PLPP202100233
Applicant: Nate Lechtenberg

City Planner Greg Schindler reviewed background information from the Staff Report.

Chair Michele Hollist asked if the two properties could be sold separately at a future date.

Planner Schindler said yes, they could be sold separately because the access easement has been recorded and there will always be access to the residence.

Chair Hollist opened the hearing to public comment. The applicant was present in the audience, but did not have anything to add at this point in time.

Ryan Holt (Resident) doesn't have a concern with the use of this property, but rather with the traffic controls on 1300 West. Right now he travels that road four or five times a day, there is a lot of cross traffic that tries to cross the double lines. He was curious if there was a possibility of a raised curb so cars cannot cross traffic and create a safety concern. He has seen many near misses where the computer service building is on the corner and they are trying to cut across 1300 West instead of making a legitimate turn further down the road.

Connie Pearson (Resident) has concerns with if they build and resell, could it be a 7-11 or a halfway house in the future. She is happy with the way it's set up now, but concerned if 5-10 years down the road they sell it.

Chair Hollist closed the hearing to public comment. She asked staff about traffic concerns raised during public comment.

Assistant City Engineer Jeremy Nielson said that on 11400 South traffic concerns are under UDOT's control, however this site is being accessed off of 1300 West. This is something the city will be watching, but they don't expect a huge volume of traffic using this so initially it will be full access; this could be modified in the future if there were safety issues.

Chair Hollist asked staff about the development plan and what's allowed there.

Planner Schindler said anything that's allowed in the CN zone can be built there, which does include convenience stores. Gas stations and convenience stores usually require two accesses when located on a corner, but UDOT will not allow access to 11400 South here.

Chair Hollist asked if parking requirements would change with the use, or are they tied to the square footage.

Planner Schindler said yes, it parking tied to the square footage, but also to the use of the property; it is different for restaurants, retail and commercial. If this was sold and changed from a dentist's office to a restaurant, they would have to provide much more parking.

Commissioner Steve Catmull asked about the development agreement with the CN and residential zones, and how those work together for this and possible future projects.

Planner Schindler explained that the PD overlay is allowing the residential use.

Commissioner Catmull asked if this was sold and the business changed, would it have to come back to the commission for the site plan.

Planner Schindler said if they didn't change the building, only changed the use, and didn't need additional parking or changes to the site plan then it would just go through staff.

Commissioner Gedge pointed out that the safety concerns regarding traffic control on 1300 West and 11400 South were directed at both sides.

Chair Hollist said she was at the city council meeting where this was first discussed, and she knows the city council has been trying for years to find something to go on this property; they are very pleased with this option.

Commissioner Darby motioned to approve File No. PLPP202100233, for the Gardner Dental Preliminary Subdivision. Chair Hollist seconded the motion. Roll Call Vote was 5-0, unanimous in favor.

E. HIDDEN VILLAGE PHASE 3 PRELIMINARY SUBDIVISION

Location: 10291 S. 1230 W.
File No: PLPP202100248
Applicant: Trish Smith

City Planner Greg Schindler reviewed background information from the Staff Report.

Commissioner Nathan Gedge asked about the access for the new lane off Samuel Holt Drive, and if an existing home would need to be demolished.

Planner Schindler said no, that space is blank right now.

Chair Hollist asked about the hammerhead and why they weren't encouraging it to go all the way through.

Assistant City Engineer Jeremy Nielson said staff allowed the hammerhead because it meets our requirements; it will be located between lots 202 and 201.

Planner Schindler said the hammerhead and the space behind it is public right of way, however the city engineer can approve different types of turnarounds in certain cases.

Chair Hollist asked why city staff chose the hammerhead in this case.

Planner Schindler said he believes it was because there isn't enough room on the property for a full cul-de-sac. Having a cul-de-sac would have eliminated a few lots because of the minimum space required. They decided to use the area a little more efficiently with the hammerhead.

Chair Hollist can see 1230 West is an access for the homes, but is there another lane on the east that can be used for access to the north as well; she is worried about deadlocking the property to the north.

Planner Schindler said the property to the north was subdivided as a flag lot, so there is access to the lot from 1230 West. The lot further north is owned by the same person as the flag lot and has been subdivided for years, but currently does not have access as the city can't require access to the property from this subdivision as they are not connected. They will have to wait until the property develops to address access, or, since they own the property they could sell the property to someone else and provide a permanent easement through their property.

Dwayne Rasmussen (Applicant) has a lot of history here with Arbor Development and he was the original developer of Hidden Village. They have been working diligently on this. The city and the HOA had a lot of questions when this came before the commission originally, about

whether or not the streets would go public. The HOA voted to allow the streets to go public, and he believes the plat has been filed and the streets are now public; evidenced by the last snow storm when a city snow plow came through. These homes will be built to the same standards the HOA previously used in Hidden Village. The fellow that is going to build them is familiar to those here, David George, and lives here in South Jordan currently. He will be the builder on those homes, not Castlewood Development. He has acquired all of their plans and will be taking those to the Architectural Review Committee with any minor modifications he might have. He thinks we will get a continuation of Hidden Village, however there is still some question as to whether or not they will be a part of the HOA. The HOA will have to weigh in on that, as well as Mr. George, as it may not be necessary; they are not sure what benefits either side would have with this subdivision joining the HOA.

Chair Hollist opened the hearing to public comment.

Craig Cowdell (Resident) is the owner of the property north of this proposed subdivision. He is in no way against this proposal, he is happy for them. He appreciates it being brought up that he could be blocked in. His parents live to the west, there is no talk of dividing that property until they pass in the future. His dad has always wanted to have three third acre lots, so he asked if there is any opposition to having the road go all the way through to service the east lot. If not, is there a way they can exit out to the west and service three homes that way, going in between his parents' home and Rex Holt's home. Right now, that road is too skinny to provide access for three homes to exit. The field to the east is owned by the school district, so he doesn't know if that will ever be developed; that could be an option for access as well. He is just concerned about future access for the desired three third acre lots in the future, and if there is a possibility that road could go straight through with possibly the hammerhead on his property.

Chair Hollist asked to clarify that the properties impacted are the two that border the entire northern boundary of what we're discussing tonight, and that he is hoping to turn those two lots into three eventually.

Mr. Cowdell said yes, the lot to the west would be the flag lot in the future and that would go in and out to the west. The two properties to the east, his being one of them, could go out the west entrance on the lane that is currently there, but with the city variances right now the road isn't wide enough. He is worried about future progression for his family's property. If that road went all the way through, then possibly they could talk about selling the lots in the future to Hidden Village, or whatever his family wants to do. He just wanted to be here to represent his family.

Ryan Holt (Resident) this is his father's home and family trust. They have been before the commission a few times in the past, one of the issues that has come up in the past is the hammerhead. The hammerhead was only permitted because of the short length of the road. If that road was to continue through to the north, he believes the city would require a circle because there is an abbreviated distance in play with allowing the hammerhead to come in. Also, the description of this property is the house address, the house has been sold separate from the development so this should probably be adjusted. As far as the property to the north where the Cowdells are, there have been several alternatives kicked around for years, but nothing had ever really come of it that he can remember. The next parcel north of that, which is Don Holt's

property, has two lots; one of the lots has a metal shop with the house on the west portion. All three of those pieces of ground were part of his grandfather's property. The pieces with houses on them had been bought from family before his grandfather retained the back piece. When he passed, those three lots to the east of the houses were all sold or deeded over to the families; that is why they see that extra line across the middle of the map. While he respects the comments from Mr. Cowdell and his family, he believes his family was limited as most of this was done before Brad Sanderson stepped aside. Everything he is sharing is based on the conversations he remembered with Mr. Sanderson, and the discussions with the city regarding the hammerhead. Mr. Sanderson suggested they couldn't really turn the road to the east because they would have to have the school district's permission to attach the road to their property, and they didn't have solid plans for what they were going to do with their future development. Between that, and the length of the road projecting into his property to qualify for a hammerhead, it kind of limited the access to that point. He is sure that his cousin who will inherit Don Holt's property and Mr. Cowdell can work something out with the school district if they needed to. He did point out that 1230 West is a private road, it is not a city road; the easement for that whole road is tied into his father's house as he was the first one to build there. Using 1230 West as a public access for any more development would create quite a bit of pushback from the other family members that reside on 1230 West.

Chair Hollist closed the hearing to public comment. She asked staff where the plows would put the snow in a hammerhead like this, and if they can they even get in there?

Engineer Nielson said many times they push it to the end of the street, and then there is a snow easement to store it. They might also push it to a corner, but it varies year to year. They do the best they can to move it, but the homeowners ultimately are responsible for providing access.

Chair Hollist said she knows it isn't being considered tonight, but she asked staff to respond to Mr. Cowdell's potential for using a flag lot for a third lot.

Planner Schindler said he'd have to look at the flag lot ordinance. Originally, the ordinance allowed a single lot to create two extra lots with one flag. They may be able to do that, but there probably isn't enough room to run the access. He is not sure how he accesses his property, and it looks very narrow. The current zoning on the property appears to be agricultural, and as such, it can't be divided further without a rezone. There is no guarantee that they will be able to build multiple third acre lots there, and with the current zone they wouldn't be able to build any more. If he wanted to work with the property owners to the north of him, they seem to have a much wider strip of ground that comes off of 1230 West that could act as a proper driveway, or at least a private access to get to their back lot, and then to his property. He doesn't know how extending this subdivision's road up and stubbing it into his property would affect the layout of the lots, and Mr. Cowdell did say he would be willing to share the hammerhead on his property; that is between the two property owners at this point. This is not something we are going to require since our code says we have to provide access to undeveloped property if they don't already have it, his house is the development on the property. If he had a zone change already and was able to develop it further, then it would be a different story. He doesn't believe it would change staff's recommendation if Mr. Holt or the applicant agreed to running the road straight up, however that is a private matter.

Commissioner Nathan Gedge asked about the parcel on the southwest, that is about five feet wide and runs along lots 206 and 205. What is that piece for, and why is it not part of lots 206 and 205.

Mr. Holt said the piece of land goes with the home that has been sold. This is there because the existing lot with his sister's home has a shop on it and they had to move the property line to get clearance off the side of shop. At the time this was done, they were dealing with the Hidden Village development and the stone wall they were placing along that property line, so it made more sense to have the wall be in a straight line. There have been conversations between his cousin's kids who have bought the home and his sister, they are planning on doing a lot line adjustment at some point to clean that up. The intention was to have a straight line for the development, and in the future his sister and the other property owners can clean up the property line; this does not affect anything being discussed tonight.

Chair Hollist asked the applicant if they had anything to add, or if they have any interest in discussing anything further in relation to extending access to the adjacent properties.

Mr. Rasmussen said they probably would not be interested in anything additional. They would like the commission to approve what is here before them this evening, recognizing that it has been a long ways coming down here. He doesn't think it makes any sense to continue that access to the north, nor would the residents of Hidden Village feel like they wanted that.

Commissioner Gedge motioned to approve File No. PLPP202100248, Hidden Village Phase 3 Preliminary Subdivision. Chair Hollist seconded the motion. Roll Call vote was 5-0, unanimous in favor.

IX. LEGISLATIVE PUBLIC HEARINGS – None

X. OTHER BUSINESS

Chair Michele Hollist asked if the commission will be changing after the new year.

City Planner Greg Schindler said the re-elected city council members and the mayor will reach out to each of their appointees and discuss that with them.

Assistant City Attorney Greg Simonsen said each commissioner has a package on their desk and explained the enclosed book and author, it will be used for some trainings throughout the coming year. It is a great reference for preparation before meetings.

Commissioner Sean Morrissey shared that this will be his last planning Commission meeting. He has been in this position for seven years, and while Council Member McGuire has asked him to continue he has decided to allow a new commissioner to take his place.

ADJOURNMENT

Chair Hollist motioned to adjourn the December 14, 2021 Planning Commission meeting. Commissioner Darby seconded the motion; vote was unanimous in favor.

The December 14, 2021 Planning Commission Meeting adjourned at 8:24 p.m.

Meeting minutes were prepared by Deputy Recorder Cindy Valdez

This is a true and correct copy of the December 14, 2021 Planning Commission minutes, which were approved on January 11, 2022.

**Cindy Valdez
Deputy Recorder**

The following documentation is submitted to South Jordan City on December 13, 2021 to be included in the documentation for the public comment meeting scheduled for Tuesday, December 14, 2021 regarding the proposed ULTRADENT property development at 10193 S. Jordan Gateway. This documentation describes physical problems that exist on the proposed property development that were created by ULTRADENT during the initial construction of the Nelson Weir lateral irrigation ditch on property owned by ULTRADENT according to specifications defined by ULTRADENT. This ditch modification was constructed in approximately 2002. The information provided in this documentation has also been forwarded to the Salt Lake County Ombudsman's office. The Harrison family loving trust representative Marjean Harrison Nielson has requested the assistance of the Ombudsman in reaching a fair settlement involving correction of the problems created by the existence of this 117-foot-long unnecessary siphon system.

A 117 foot 24-inch concrete siphon was located on the north side of the 10200 S. Roadway. This siphon system was initially created by ULTRADENT to provide them with unauthorized access to irrigation water whenever irrigation water was present in the irrigation pipe. ULTRADENT added a 6-inch diameter PVC pipe to the interior of the 4' x 4' square manhole located at the downstream end of the siphon system pipe. The end of the 6-inch diameter PVC pipe was positioned about 6 inches above the bottom of the 20-foot-deep 4 x 4 manhole. The 6-inch diameter pipe entered into the manhole on the east side wall of the manhole at an elevation of approximately 4 feet below the ground surface on the outside of the manhole. This 6-inch pipe ran horizontally eastward for a distance of about 10-20 feet. The horizontal pipe buried below the outer surface of the manhole was connected to the 6-inch portion of the vertical pipe located inside the manhole with a 90° elbow. The 6-inch pipe outside the manhole diverted water to the north where it was connected to an electric pump controlled by an automated electrical panel. The water pump attached to the electric motor could be primed with water and the pump would begin the unauthorized removal of irrigation water into a system of sprinkler heads located on the proposed development property.

At a later date irrigation sprinkler head pipeline was expanded further to the north toward the ULTRADENT manufacturing building located adjacent to the east side of the Gateway Road and on the south side of the Dry Creek drainage. Once that extended pipeline was completed it enabled ULTRADENT to pump water into the north end of that pipe to force out all the air located in the pipe that was located within the 4' x 4' manhole. The northern end of this extended irrigation pipe was located at an elevation several feet below the elevation of the end of the pipe in the 4' x 4' manhole. Once the air was forced out of that pipe water would begin being siphoned out of the main ditch at the 4' x 4' manhole and was used for alternate purposes involved with their manufacturing operation. It might also have been minimally used to irrigate vegetation that was planted around the manufacturing building in a xeriscaping format.

Several years later, the ditch pipe system located upstream from this 117 foot length of ULTRADENT unauthorized siphon system, was modified to accommodate the construction of the UTA mass transit station located at approximately 10300 S., the UTA ditch modification contractor made a decision to modify a 900 foot siphon system that ran parallel to the railroad tracks on the west side of the tracks and that ultimately connected to the round manhole located on the north side of the 10200 S. Roadway. The 900-foot length of siphon system was initially installed by ULTRADENT in violation of an agreement with the ditch users that provided for the 900-foot section of irrigation ditch to be installed as a gravity flow system, buried just a few feet below the surface. The UTA contractor could have corrected the violation of the agreement perpetrated by Ultradent and against ditch users. This would have resulted in the UTA contractor not making a maximum profit from the ditch contract. The UTA contractor made a decision to maximize his profit by installing a more extreme siphon system requiring the addition of seven additional manholes to allow the contour of the ditch to follow the curvature of the railroad tracks. Most of the length of this revised siphon system had to be installed in an environment that consisted of the presence of groundwater that was 5 to 6 feet above the elevation of the top of the 24-inch concrete pipe being used to create the new siphon system. Water had to be continually pumped out of the trench in order to install the new ditch pipe. The manholes that were used were preconstructed and had to be sealed with a prefabricated mastic material that did a very poor job of sealing.

The 4' x 4' square manhole that is extending above the surface of the ULTRDENT property involved in the proposed development should be completely removed. The pipe downstream from this manhole should be extended further to the east and connected to the current 48-inch diameter manhole located immediately west of the railroad tracks. The contour of the soil around the base of the round manhole should be contoured to trap any water overflow from that manhole. Provisions for conducting irrigation system floodwaters into Dry Creek should be completed all of the way to Dry Creek. The entire length of irrigation pipe located east of the Gateway Road and connecting to the extended round manhole west of the railroad tracks should be examined from the interior of that pipe to ensure that no unauthorized connections have been made to that pipe to provide for the unauthorized removal of irrigation water by Ultradent. This inspection of the interior of the pipe should be performed by a company not affiliated with Ultradent.

The reason this solution is proposed is because the siphon system created on the north side of the 10200 S. Roadway was deliberately created by ULTRDENT for the sole purpose of being able to extract irrigation water from the irrigation ditch whenever they desired and in whatever quantity they desired without having the other ditch users having any means of preventing their unauthorized use of irrigation water present in the ditch pipe.

In order to protect the ditch users property interests the ditch users formed their own limited liability corporation ditch company. That company is called the Dry Creek Lateral Irrigation Ditch Company. ULTRDENT refused to participate with other ditch users in the formation of this company and refused to accept responsibility of membership in this company. They refuse to pay for their share of the maintenance and operation of the lateral irrigation ditch.

All of the stations ULTRADENT was using for withdrawal of irrigation water were points that allowed them to illegally withdraw water at their own discretion. In order to correct this problem, the ditch company hired a contractor to modify the ULTRDENT extraction points on the main irrigation ditch in a manner that would prevent ULTRADENT from continuing to illegally withdraw irrigation water from the ditch system. Ultradent threatened our contractor with boycotting their future business use by members of other companies that were affiliated with Ultradent. Our contractor told us he could no longer continue to make the modifications that we had hired him to make. The members of the Dry Creek Lateral Irrigation Company were forced to finish making the physical modifications to the irrigation ditch. Ultradent called South Jordan City Police in an attempt to have the responding officer force us to stop making the modifications to our own property. Once we completed our ditch modification work, Ultradent turned on their sprinkler irrigation system in an attempt to damage the new cement work we had just completed. We covered the open manholes with plywood to prevent water damage.

Shortly thereafter, Ultradent sold all of their water shares in the East Jordan Canal Company. They claimed they were going to file a request for the approval of drilling their own water well. I have no knowledge of whether they accomplished this task.

All the current ditch problems that exist today with the ditch system are a result of Ultradent's past attempts to manipulate control of the irrigation ditch system to their own advantage. If there is a legitimate 24-inch concrete pipe forcing the existence of the 117-foot siphon system on the north side of the 10200 south roadway it must not have Ultradent's proposed building constructed over the top of the 24-inch pipe running north to Dry Creek.

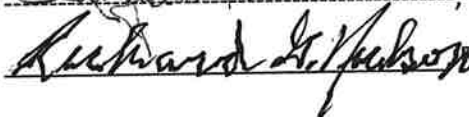
The bottom of every new manhole had to be sealed from the inside of the pipe with a mixture of sand and cement. The outside of the manhole could not be sealed because of the presence of groundwater. When the pumping of groundwater was terminated the level of the groundwater rose to a level of approximately half the depth of the manholes. The groundwater pressure on the outside of the manholes forced the interior sand mix cement away from the interior walls of the manholes. None of the seven manholes were ever sealed properly. When the irrigation water was first put through the siphon system, constructed by the UTA contractor, the chunks of sand mix and cement intended to seal the bottoms of the manholes, were all washed downstream and became trapped in the Ultradent 117-foot siphon system segment located on the north side of the 10200 S. Roadway. All of those broken pieces of solidified

sand mix and cement are currently obstructing the flow of irrigation water through the irrigation pipe that is beneath with the proposed Ultradent new development.

The presence of this debris in the siphon system located in the proposed Ultradent development is creating a blockage that has the potential of becoming severe enough to completely interrupt the flow of water through the irrigation ditch. This problem must be corrected before improvements are made over the ditch pipe easement located on the Ultradent property. This partial blockage is already contributing to increased pressures in the siphon system upstream from the north side of the 10200 S. Roadway. Several years ago, water loss measurements were made on the north segment of the ditch located within the east side of the ULTRADENT parking lot on the south side of the 10200-south roadway. Those measurements were made several years ago and the water loss at that time was recorded at just over one cubic foot of water per second. This water loss into the ground is the result of poor workmanship and Ultradent's initial violation of their initial agreement with the ditch users.

There has been no effort to resolve these problems with ULTRADENT. ULTRADENT refuses to contact adjacent property owners regarding any new proposed development projects being initiated by ULTRADENT. South Jordan City has refused to require ULTRADENT to cooperate with adjacent property owners regarding any of their future development plans. ULTRADENT'S past hostile behavior has never changed in the over 20+ years of their ownership of property within this portion of South Jordan City. South Jordan City Council and Planning Commission both seem oblivious to this problem.


_____, Marjean Harrison Nielson- TRUSTEE, Harrison Family Loving Trust


Richard G. Nielson Pres. Dry Creek Lateral Irrigation Ditch Company LLC.

EASEMENT AGREEMENT

This Easement Agreement (the "Agreement"), effective for all purposes as of the 20th day of December, 2018, is entered into by and among the City of South Jordan ("South Jordan"), on the one hand, and Marjean H. Nielson, Trustee of the Harrison Family Loving Trust ("Harrison"), on the other hand. South Jordan and Harrison are sometimes herein referred to as the "Parties" or individually as a "Party" in this Agreement.

RECITALS

WHEREAS, South Jordan has indicated its intent to acquire by eminent domain certain real property belonging to Harrison, which is part of a larger parcel of property owned by Harrison. The property sought to be acquired by South Jordan is more particularly described in **Exhibit A** hereto ("Subject Property"); and

WHEREAS, the public purpose of the condemnation is to provide vehicular access and turn-around area, all for public safety and use; and

WHEREAS, South Jordan intends to improve the Subject Property with fencing; and

WHEREAS, the Parties are desirous of amicably resolving the issue without a formal condemnation action being filed in court.

NOW, THEREFORE, for and in consideration of the mutual covenants, representations, warranties, and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are herewith acknowledged by each Party, the Parties agree as follows:

AGREEMENT

The Parties hereby agree and stipulate as follows:

1. Scope of Use of the Subject Property.

a. Temporary Construction Easement. South Jordan agrees to acquire a temporary construction easement on the Subject Property and Harrison agrees to convey such temporary construction easement to South Jordan. The form of the temporary construction easement is set forth in **Exhibit B** attached hereto.

b. Easement. South Jordan agrees to acquire an easement on the Subject Property and Harrison agrees to convey such easement to South Jordan. The form of the easement is set forth in **Exhibit C** attached hereto.

i. The easement reverts back to Harrison upon the following to occur: (1) Harrison, or its successors in interest, submits a plan for developing the Harrison property that includes an extension or other connection to Ultradent Drive; (2) the plan complies with applicable laws and ordinances; (3) the plan is approved by South Jordan; (4) Harrison, or its successors in interest, have paid applicable improvement

bonds for the plan; and (5) the construction of the public right-of-way is completed and the right-of-way is made available for public use.

ii. Pursuant to the easement, the Subject Property shall be available for public use. Notwithstanding the foregoing, neither the public nor any specific member of the public or adjoining landowner shall acquire any rights beyond those being transferred as contemplated herein. Any such use of the Subject Property shall be for general public use.

iii. South Jordan shall place appropriate traffic signs on Ultradent Drive stating that such road is not a thru street and is a dead end.

iv. South Jordan shall agree to indemnify and hold Harrison harmless from any and all claims or damages against or to Harrison arising from the use of the Subject Property or the manner in which any public improvement is constructed.

2. **Payment for Easement on Subject Property.** In consideration for the grant of the easement as provided in paragraph 1 above, South Jordan shall pay to Harrison the sum of **\$37,060.00** contemporaneous with the execution of this Agreement. Such sum shall be made payable to the Mitchell Barlow & Mansfield Client Trust Account and shall be made at the time this Agreement is delivered to South Jordan by Harrison.

3. **Fencing.** South Jordan shall, at its expense, construct fencing around the Subject Property. The location and technical requirements for the fencing are contained in **Exhibit D.**

4. **Dedication of UltraDent Drive.** South Jordan shall take all steps necessary to ensure that the entirety of UltraDent Drive, including those portions which currently underlay portions of real property currently owned by UltraDent, Inc. or its affiliates, shall be dedicated to the public so that complete and unfettered public access shall be available to the Harrison property.

5. **Entire Agreement; Amendment.** The Parties individually warrant that no promise, inducement, or agreement not expressed herein has been made to them in connection with this Agreement. This Agreement contains the entire agreement among the Parties. All prior negotiations and discussions are merged herein as expressed by the written terms set forth herein, and/or in any Exhibits identified and/or incorporated herein by reference. This Agreement may not be modified, changed, or altered in any way except in a writing signed by the Parties or their authorized representatives, which sets forth the change(s) to be made and the intent of the Parties to modify or amend this Agreement.

6. **Governing Law; Attorneys' Fees.** This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, without regard to the principles of conflicts of laws. By executing this Agreement, all Parties hereto agree to submit to the exclusive jurisdiction of and agree to the venue of the courts of the State of Utah, whether state courts located in Salt Lake County, Utah, or federal courts located in Salt Lake County, Utah. The parties hereto agree not to bring any action related to this Agreement, in any court of law located outside the State of Utah. If any term or provision of this Agreement shall be determined to be illegal or unenforceable, all other terms and provisions hereof shall nevertheless remain effective and shall be in force to the fullest extent permitted by applicable law. The prevailing party, as determined by the trial court, in any

action arising in connection with the enforcement of this Agreement shall be awarded its costs and reasonable attorneys' fees.

7. **Assignment/Successors.** This Agreement shall inure to and bind the successors and assigns of the respective Parties hereto.

8. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but such counterparts shall together constitute one and the same Agreement. Facsimile signatures in one or more counterparts of this Agreement shall be binding. All signatures shall be deemed effective as of the date first hereinabove written.

9. **Interpretation and Drafting Presumptions.** Unless the context requires otherwise, all words used in this Agreement in the singular shall extend to and include the plural, all words in the plural shall extend to and include the singular and all words in any gender shall extend to and include all genders. Each of the Parties understands, acknowledges, and agrees that each of the Parties hereto has contributed to the drafting of this Agreement, and no provision hereof shall be construed against any Party hereto as being the draftsman thereof. This Agreement shall therefore be construed without regard to any presumption or other rule requiring construction against the Party causing the Agreement to be drafted. Captions in this Agreement are for convenience only and are not intended to affect any provisions of this Agreement.

10. **Third Parties.** Except as is otherwise herein provided, each of the Parties understands, acknowledges, and agrees that no rights or interests whatsoever are given by this Agreement to any person or entity not a Party to this Agreement. It is the specific intent of the Parties that there should not be any specific third party beneficiary to this Agreement but rather the easement is for general public benefit and use.

11. **Further Assurances; Cooperation of the Parties.** The Parties hereto agree to execute, acknowledge, and deliver or cause to be executed, acknowledged, and delivered any and all documents or instruments reasonably required in order to complete the transactions contemplated hereby and to effectuate the terms, conditions, covenants, provisions, intents, and purposes of this Agreement.

12. **Notices and Opportunity to Cure.** Any notice required or permitted hereunder, including any notice of violation of this Agreement, shall be in writing and served by certified mail, courier, or other means reasonably designed to provide proof of receipt by the addressee, with e-mail requesting confirmation of receipt satisfying the writing requirement, addressed as follows:

To Harrison:

Harrison Family Loving Trust
Attn: Marjean H. Nielson, Trustee
561 West 10000 South
South Jordan, Utah 84095
E-mail: mhnielson22@gmail.com

With copy to:

Mitchell Barlow & Mansfield, P.C.
Attn: Robert E. Mansfield
Boston Building, 9 Exchange Place, Ste. 600
Salt Lake City, Utah 84111
E-mail: RMansfield@mbmlawyers.com

