



Farmington City Planning Commission

November 3, 2016



**AGENDA**  
**PLANNING COMMISSION MEETING**

**November 3, 2016**

Public Meeting at the Farmington City Hall, 160 S. Main Street, Farmington, Utah

*Study Session: 6:30 p.m. – Conference Room 3 (2<sup>nd</sup> Floor)*

**Regular Session: 7:00 p.m. – City Council Chambers (2<sup>nd</sup> Floor)**

*(Please note: In order to be considerate of everyone attending the meeting and to more closely follow the published agenda times, public comments will be limited to 3 minutes per person per item. A spokesperson who has been asked by a group to summarize their concerns will be allowed 5 minutes to speak. Comments which cannot be made within these limits should be submitted in writing to the Planning Department prior to noon the day before the meeting.)*

1. Minutes
2. City Council Report

**CONDITIONAL USE PERMIT**

3. Mike Wagstaff / Chris McRoberts (Public Hearing) – Applicant is requesting conditional use permit approval for a residential facility for the disabled on 5.07 acres of property located at 235 South 200 East in an R-2 (Multi Family Residential) zone. (C-14-16)

**OTHER**

4. Miscellaneous, correspondence, etc.
  - a. OTR Presentation from the APA Conference
  - b. Other
5. Motion to Adjourn

*Please Note: Planning Commission applications may be tabled by the Commission if: 1. Additional information is needed in order to take action on the item; OR 2. if the Planning Commission feels there are unresolved issues that may need additional attention before the Commission is ready to make a motion. No agenda item will begin after 10:00 p.m. without a unanimous vote of the Commissioners. The Commission may carry over Agenda items, scheduled late in the evening and not heard to the next regularly scheduled meeting.*

Posted October 28, 2016

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Eric Anderson  
City Planner

**FARMINGTON CITY**  
**PLANNING COMMISSION MEETING**  
October 20, 2016

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**FIELD TRIP/STUDY SESSION**

***Present:** Acting Chair Heather Barnum, Commissioners Connie Deianni, Bret Gallacher, and Dan Rogers, Community Development Director David Petersen, Associate City Planner Eric Anderson, and Recording Secretary Lara Johnson. Chair Rebecca Wayment and Commissioners Kent Hinckley and Alex Leeman were excused.*

**Field Trip**

The Planning Commission conducted a field trip and looked at the undeveloped land in the vicinity of Glovers Lane and the bird refuge

**Study Session**

**Item #3. Bruce Bassett – Requesting preliminary plat approval for the Eagle Cove Conservation Subdivision**

**Eric Anderson** said the applicant received schematic plan approval some time ago, and is now seeking preliminary plat approval for the Eagle Cove Conservation Subdivision. The property is located in the AA zone; however, the property for the proposed subdivision consists of three existing lots. The applicant has requested TDRs for the additional 13 lots, totaling 16 lots in the subdivision. The TDR transaction price has been determined through negotiations with the City Manager, but it has not yet been approved by City Council. The approval of the TDR transaction price needs to occur prior to final plat, so one of the conditions is that no vesting will be taking place until the TDRs are finalized. **Eric Anderson** said all other issues have been resolved. He also said there is one item that needs to be “cleaned up.” Currently, the applicant’s property line crosses over the existing ROW. The City is asking the applicant to quit claim any interest he may have, if any, in the 30’ of ROW to the City, and to show it on the site plan.

In discussing the proposed motion, **Eric Anderson** said Condition #5 states no on-site retention shall be allowed; this was a condition requested by the City Engineer. The City Engineer would like all storm water piped into the roads due to the high water table. The commissioners asked if Condition #6 means houses might be removed if the West Davis Corridor is approved for the Glovers Lane alignment. **Eric Anderson** said yes, houses might be removed; however, until a record of decision has been made for the WDC, the City cannot stop the application. **Eric Anderson** said the City Council added Condition #6 when the Council approved the schematic plan. The Council hoped that having a note placed on the plat would provide interested property owners a “buyer beware” clause.

**Bret Gallacher** asked for clarification on if the Commission is approving the TDR with the preliminary plat, although a final TDR transaction price has not yet been set. **Eric Anderson** said City Council has approved the lot count and the TDR transaction, but the Council has not approved the final price for the TDRs.

**Heather Barnum** also pointed out the motion should read “preliminary plat” in lieu of “schematic plan.”

**Item #4. Nick Mingo / Ivory Homes – Requesting preliminary plat approval for the Davis Creek Conservation Subdivision**

**Eric Anderson** said the applicant is requesting preliminary plat approval for the Davis Creek Conservation Subdivision, which is the residential subdivision and not the adjacent commercial one. He reminded the Commission that during the schematic plan, the Planning Commission, City Council, and staff requested that the applicant move the road to the western southern boundary of the subdivision so adjoining property owners would have access to the road for future development. In pushing the road to this location, it extended the length of the cul-de-sac longer than the 1,000’ dead-end restriction. The DRC, which includes the Fire Department, has reviewed the dead-end street and recommend approval of it.

**Eric Anderson** said the applicant has applied for a conservation subdivision, and has received approval of a waiver for the open space. He said the applicant has negotiated an amount, and the amount has been approved by City Council. The applicant has not yet paid the amount, but the payment will take place prior to final plat.

**Heather Barnum** also pointed out that the motion needs to be amended to read “preliminary plat” in lieu of “schematic plan.”

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**REGULAR SESSION**

***Present:** Acting Chair Heather Barnum, Commissioners Connie Deianni, Bret Gallacher, and Dan Rogers, Community Development Director David Petersen, Associate City Planner Eric Anderson, and Recording Secretary Lara Johnson. Chair Rebecca Wayment and Commissioners Kent Hinckley and Alex Leeman were excused.*

**Item #1. Minutes**

**Connie Deianni** made a motion to approve the Minutes from the October 6, 2016 Planning Commission meeting. **Dan Rogers** seconded the motion, which was unanimously approved.

**Item #2. City Council Report**

**Eric Anderson** gave a report from the October 18, 2016 City Council meeting. He said the Hunters Creek Conservation Easement Amendment was tabled. The Hunters Creek HOA approached City Council and staff to amend the conservation easement to allow for park improvements in its open space; however, many people voiced opposition during the public hearing. The City Council tabled the item so staff can work with the HOA to determine where certain uses will be allowed. **Eric Anderson** said the Nelson Property Rezone from A to LR for three estate lots was approved, as well as the Station Park West Rezone from A to the GMU zone. City Council reversed the Planning Commission’s decision for the Blackhurst Property Rezone. The Planning Commission was split 3-2 to deny the rezone application; however, after much discussion, the City Council decided to approve the request for the property rezone. **David Petersen** gave an update on the Special Assessment Area. He said the City dropped the assessment by two-thirds for each property owner. It seems that the City may be given a

grant and may be allowed to use Prop 1 funds to assist with the cost of the improvements. Even with the two-thirds decrease, the assessment may still be too high for many residents. **David Petersen** said in order to get approval for the SAA, 60% of the residents in the area must vote in favor of it.

## **SUBDIVISION**

### **Item #3. Bruce Bassett – Applicant is requesting preliminary plat approval for the Eagle Cove Conservation Subdivision consisting of 16 lots on 6.25 acres of property located at approximately 1100 West Glover Lane in an AA (Agriculture – Very Low Density) zone. (S-28-15)**

**Eric Anderson** said this subdivision is across from the new 1100 W. park, soccer fields and elementary school. Currently, the applicant's property is zoned AA, but is made up of three existing lots. The applicant is proposing 16 lots, including the existing home, which means the applicant needs TDRs for 13 lots. The City Council has approved the lot count and the TDR transaction, and the applicant has reached a negotiated price for the TDRs with the City Manager. The TDR transaction price has not yet been approved by City Council. Staff included a condition to the motion that City Council must approve the final TDR transaction price prior to final plat recordation.

**Eric Anderson** said the City Engineer has requested that no onsite retention be allowed, but that all storm water be piped into the road. A condition to the motion has been included to meet this request. **Eric Anderson** also said that the boundary for the subdivision is currently shown in the 1100 W. ROW. He said another condition to the motion is that the applicant quit claims any interest he may have in the 30' of property over to the City prior to final plat. **Eric Anderson** said all other issues have been resolved.

**Bret Gallacher** asked what circumstances made it necessary for the TDR transaction. **Eric Anderson** said the minimum lot size for the AA zone is 10 acres, but 5 acres is allowed under a conservation subdivision. The property for the subdivision consists of three existing lots, but the applicant could not subdivide the property anymore because of the minimum lot size. In order to reach the proposed 16 lots, the applicant is requesting 13 lots through TDRs. **David Petersen** said the City Council approved the use of TDRs in this circumstance; however, at other times the Council has said no. **David Petersen** said when the TDRs for this subdivision was approved, the City Council was trying to find ways to improve 1100 W. as it was prior to the construction of the elementary school. The City Council felt this subdivision would be helpful in improving the southern half of 1100 W.

**Heather Barnum** asked where the location is for the Glovers Lane alignment of the WDC. **David Petersen** said the Glovers Lane alignment is approximately 15' from Bruce Bassett's existing home, and then it cuts diagonally through the entire subdivision.

**Bruce Bassett**, 1132 W. Glovers Lane, thanked the Commission for their time, but did not have any further comments at this time.

**Heather Barnum** asked if Condition #3's language was sufficient to ensure the ROW is quit claimed to the City, or if additional language needs to be added. **Eric Anderson** said the language is sufficient. The ROW currently exists; however, the applicant's property line was erroneously placed over the ROW. Staff and the applicant are working to "deed," or otherwise amend, the 30' ROW to the City. The condition simply addresses that the ROW boundary needs to be correctly shown.

In reference to **David Petersen's** comment regarding the City Council's approval of TDRs in this subdivision in exchange for improvements of 1100 W., **Heather Barnum** asked if those expected

improvements should be specifically outlined. **David Petersen** said the applicant is responsible for improvements on their half of the ROW. He suggested if the Commission would like to, the Commission could specifically list the improvements, or add to Finding #2, "...as set forth in the staff report."

**Motion:**

**Bret Gallacher** made a motion that the Planning Commission recommend approval of the schematic plan for the Eagle Cove Subdivision, subject to all applicable Farmington City ordinances and development standards, and the following conditions:

1. The applicant shall address all outstanding DRC comments on final plat;
2. No vesting shall occur for this project until the City Council has approved the final TDR transaction, which must be completed prior to final plat consideration.
3. The applicant shall show the boundary of the subdivision to the western edge of the 1100 West right-of-way on final plat;
4. A note shall be placed on the plat addressing future property owners within the subdivision explaining that there may be odors associated with adjacent agriculture uses;
5. No on-site retention shall be allowed as part of this subdivision;
6. A note shall be placed on the plat stating: "the preferred alignment of the West Davis Corridor may affect this property, depending on the final record of decision."

**Dan Rogers** seconded the motion, which was unanimously approved.

Findings for Approval:

1. The proposed subdivision conforms to all of the development standards as set forth in the Farmington City Subdivision and Zoning Ordinances.
2. The proposed development will aid the City in improving Glover Lane and 1100 West as set forth in the staff report.
3. The densities requested are similar to those found in Farmington Park, and Farmington Creek Estates Phases II-IV.

**Item #4. Nick Mingo / Ivory Homes – Applicant is requesting preliminary plat approval for the Davis Creek Conservation Subdivision consisting of 15 lots on 9.5 acres of property located at 475 West Glover Lane in an AE (Agriculture Estates) Zone. (S-9-16)**

**Eric Anderson** said Ivory Homes is proposing Davis Creek commercial and residential subdivisions; however, only the residential subdivision is being considered tonight. **Eric Anderson** reminded the Commission that staff, the Planning Commission, and City Council all voted in favor of moving the road to the western and southern boundary so that future property owners could develop their property with access to the road. Moving the road to the western and southern boundary extended the cul-de-sac past the 1,000' dead-end restriction, so the Planning Commission and City Council approved the extension of the cul-de-sac. **Eric Anderson** said all outstanding issues from the DRC have been resolved. He also said the City Engineer requested that there is no onsite storm water retention, so Condition #1 requires a 30' storm drain easement so the storm water can be piped through the cul-de-sac and into the Davis Creek subdivision. **Eric Anderson** also said the price of the waiver for the open space has been agreed upon and approved by City Council, but that the amount must be paid prior to plat recordation.

**Chase Freebairn**, 978 E. Wood Oak Lane, Salt Lake City, said Ivory Homes is looking forward to building this development, and that he is available for any questions.

**Bret Gallacher** said he seems to remember many concerns about traffic during the public hearing on this item. He asked if those concerns have been addressed. **Eric Anderson** said he thought most of the traffic concerns were brought up during the proposed subdivision in the LM&B zone with regards to the Forza Fields. Many residents dislike the additional traffic the Forza Fields create. **Eric Anderson** said the road in this subdivision would not be affected by the Forza Fields. He also said, based on experience, if the City Traffic Engineer did review this subdivision, he would most likely determine it as having minimal impact.

**Connie Deianni** expressed her previous concerns regarding on-street parking, as the high school will be across the street. She asked if signs restricting on-street parking could be put up. **David Petersen** said the Police Department typically waits to see if there is a problem prior to putting signs up.

**David Petersen** made a recommendation for another condition. He said since Ivory Homes will soon be the property owner, **David Petersen** suggested a condition be included that Ivory Homes agrees to vote “yes” for the SAA, as long as the required improvements are equal to or less than the amount the applicant would have to pay if they were not part of the SAA. Representatives from Ivory Homes discussed it among themselves, but requested that they have time to consider it. **Eric Anderson** said he would make a note to include the recommendation as a condition for the approval of final plat.

***Motion:***

**Dan Rogers** made a motion that the Planning Commission approve the preliminary plat subject to all applicable Farmington City ordinances and development standards and the following conditions:

1. The applicant shall provide a 30’ storm drain, sanitary sewer, and secondary water easement from the cul-de-sac to the proposed Davis Creek Commercial Subdivision on final plat, as illustrated on the attached preliminary plat;
2. The applicant shall pay the approved open space waiver in the agreed upon amount of \$90,000 payable to the City prior to plat recordation.

**Connie Deianni** seconded the motion, which was unanimously approved.

Findings for Approval:

1. There appears to be no sensitive or constrained lands on site worth preserving, and the 2.85 acres of open space could be better used elsewhere in the City.
2. The lot sizes exceed the minimum and average lot size required in a Conservation Subdivision for an AE zone significantly.
3. The proposal seeks to create in-fill development in an area of the City where such development makes sense, i.e. across from the new high school.
4. By moving the road to the southern and western boundaries, the proposed preliminary plat is allowing for the future development of several adjacent property owners who otherwise might not be able to develop their long and deep parcels.
5. The applicant has addressed all of the conditions for schematic plan approval from both the DRC and the Planning Commission on this preliminary plat.
6. The applicant has received approval from the City Council for the cul-de-sac to exceed the dead-end street provision of 1,000 feet, because this road will provide access for neighboring properties to better utilize their long, deep parcels for future development.
7. The applicant has received approval from the City Council for the waiver of the open space provision of a conservation subdivision by a vote of more than four members.

## GENERAL PLAN AMENDMENT

**Item #5. Jonathan Hughes and Chase Freebairn / Ivory Homes – Applicants are requesting a recommendation for General Land Use Plan Amendment of 31.79 acres of property located at approximately 600 South 1525 West from DR (Development Restricted, Very Low Density, and/or Agriculture Open Space) to RRD (Rural Residential Density) designation. (Z-2-16)**

The Planning Commission, staff, and the applicant relocated to the Study Session room so that staff could more easily present all information to the Planning Commission regarding the 4218 elevation line and the possibility of moving it.

**David Petersen** presented the general plan map and text to the Commission. He said the Zoning Ordinance states that the accompanying text provides greater information to the general plan and is to supersede the map. **David Petersen** explained that there is also a transportation plan, trails master plan, park and leisure services plan, affordable housing plan, storm drainage plan, a downtown master plan, etc. He said in total, there are volumes that contribute to the City's General Master Plan, and all volumes have accompanying text.

**David Petersen** said the 4218 line was established as the demarcation line for the City in 1993. Since that time, the City Council has "stood tall" against any changes to it. He said there was a time when a developer asked to bring fill in for some low spots on a property to bring the elevation above the 4218 line. The City Council welcomed the applicant to bring fill in, but the Council would not change the location of the 4218 line, or in other words amend the general plan and the zone designation.

**David Petersen** then presented and reviewed key points of the Proposed General Plan Amendment. Listed below is an overview of the discussion staff and the commissioners had on each point.

### **OPEN SPACE**

**David Petersen** said the General Plan is to encourage the maintenance of farmland and other open lands. Currently, the 4218 line cuts through the Bangerter property. The Bangerter family is currently farming the property, and has plans to continue to do so. If the 4218 line is moved, it is important to consider how it may affect the farmland. Currently, the 4218 line has been helpful in preserving the farmland, as the 4218 line has been the boundary for the Development Restriction (DR) areas. The DR areas are very low density and allow for agricultural open space.

**David Petersen** said the City has liked the farmlands around wildlife corridors, including the bird refuge. He does not know the impact of moving the 4218 line to the west or south might have on these wildlife corridors and habitats.

The General Plan Amendment also calls for the City to perform an open space study to determine which lands have the highest priority in terms of preservation within a comprehensive open space system. **David Petersen** said this study has not been done, and that there is very little open space that remains within the City.

### **RECREATION/OPEN SPACE**

**David Petersen** said he feels moving the 4218 DR line should not affect the trails system within the City.

### **PUBLIC FACILITIES**

**David Petersen** said in the past, sometimes developers use small ponds to address their storm water; however, such ponds are onerous for the City to maintain. The City requires storm water to be piped in many circumstances. When the new elementary school was being built, the School District tried to obtain approval to pipe the storm water on the property owned by the DWR, but they were not granted approval to do so. If the demarcation line is moved, storm water placement may be a problem as the City anticipates possible pushback from related agencies.

### **TRANSPORTATION**

**David Petersen** said 1525 W. is a “problem child” within in the City. The road was built over a dirt road that was never properly compacted. A county overlay has been added a few times. 1525 W. was briefly considered when the City was looking into the SAA. **David Petersen** said the City is anticipating the need for 1525 W. to be improved as staff has looked at the 3 main ways to access the future high school, which include 650 W., 1100 W., and 1525 W. He said Flatrock Subdivision may be key in improving 1525 W.

### **AGRICULTURE**

**David Petersen** said the General Plan recommends an open space study; however, that study has not been completed.

### **RESIDENTIAL**

**David Petersen** said the applicant’s property has always been a concern regarding sewer; however, staff talked with Central Davis Sewer District (CDS) and determined the applicant’s property does have accessibility to sewer. CDS said the sewer line to the other properties would be very difficult. CDS has a policy that says another lift station cannot be created unless there are 150 homes. **David Petersen** said if the DR line is moved, 150 homes could easily be added, but sewer might remain a problem. **Dan Rogers** suggested working with CDS to create a DR line that follows where sewer may be restricted.

### **ANNEXATION**

**David Petersen** said that unincorporated property can be planned for beyond the City’s boundaries.

### **FLOOD PLAIN**

**David Petersen** said there is a lot happening with the flood plain. In the past, fill could be brought in so the lowest floor is above the flood plain line. Since that time, standards have become stricter, and developers are now required to obtain a Condition Letter of Map Revision (CLOMR) as part of the development process, and the LOMR (Letter of Map Revision) which removes the property out of the flood plain map. **Heather Barnum** asked if developers have an option to build in the flood plain, but are required to maintain flood insurance. **David Petersen** said that he understood that developers do not have that option. He showed the Commission the newly proposed FEMA flood plain line for Davis County. **David Petersen** said the new flood plain line is being protested by the cities of Layton and

Bountiful (among possibly others), so FEMA is required to go back to “the drawing board.” **David Petersen** said he feels whatever FEMA proposes for the new line it most likely will be similar to what was originally proposed for Farmington City.

**Connie Deianni** asked what options a property owner may have if the DR is moved, and the property owners want to develop, but then find themselves in the new flood plain. **David Petersen** said the property owners could still be removed from the flood plain. He explained Farmington Park and the new elementary school were both located in the flood plain; however, fill was brought in and a CLOMR and a LOMR were obtained to remove the park and school from the flood plain. **David Petersen** said he thought the new flood plain could be the new demarcation line; however, the new flood plain may not be adopted until 2018. He also said a developer could still request to be removed from the flood plain through a CLOMR and LOMR, so it may not adequately work as a demarcation line. **David Petersen** said the 4218 line was easy to enforce because it was a line. He said if Glovers Lane were the preferred alignment for the WDC, for example, the WDC would be another easy demarcation line to enforce. **David Petersen** said in review of all possibilities for a new demarcation line, **Jonathan Hughes’** property falls north of most lines considered.

### GREAT SALT LAKE

**David Petersen** said the only uses considered below the 4218 line are agriculture and open space.

### WETLANDS

**David Petersen** said the wetlands should be considered when determining a new demarcation line.

### SEWER

**David Petersen** said there are a dozen parcels or so that may be affected by moving the 4218 line. He suggested discussing each parcel individually with CDS. He said depending on what CDS is able to provide, a sewer restriction area may provide a more appropriate DR area than the flood plain line. **David Petersen** added that CDS did confirm there are no problems with providing sewer to Flatrock Subdivision, and the City said the same regarding culinary water.

**David Petersen** said staff did not provide a motion for the Planning Commission to consider as staff would like direction from the commissioners on how they would like staff to move forward. **David Petersen** said the applicant is not able to make the first City Council meeting in November due to timing issues with posting notices. If the Commission directs staff, staff can have a more defined motion in writing to consider at the next Planning Commission meeting without affecting the timing of the applicant going before the City Council. **David Petersen** also mentioned that zone changes are typically reviewed with the schematic plan. Previously, the applicant had only submitted a conceptual plan with the request for a zone change, but has since submitted an application for review. He said staff could also prepare the schematic plan for review, alongside the zone change, for the next Planning Commission meeting.

**Connie Deianni** said she feels using the sewer-restricted area as the new demarcation line may be the most reasonable. She expressed concerns that moving the line could cause development to affect the wetlands and/or bird refuge. She said she is not opposed to development in the area; however, she does not want it to affect these areas, so the sewer-restricted area may be a logical way to prevent it from getting any closer to the preservation areas.

**Bret Gallacher** asked if future sewer accessibility could create a moving target for a demarcation line if the sewer-restricted area is used as that new line. **David Petersen** said if 150 homes are proposed in an area, the developer can apply for a lift station, which could cause the sewer-restricted area to change.

**Heather Barnum** said she feels obtaining an open space study, which will prioritize critical preservation areas, may be the best option in determining a new line that will not move. **Connie Deianni** asked where the money would come for such a study. **Heather Barnum** said she thinks the City would be able to apply for a grant to do so.

**Dan Rogers** said another solution is to leave the DR line as is, and suggest the applicant could apply for TDRs to obtain higher density. **David Petersen** said a TDR is very costly; the applicant may come back with higher density in order to obtain the rooftops he needs to make the TDRs worth it. **Dan Rogers** said he understands that it is expensive, but nothing else would have to change.

**Bret Gallacher** said another solution is to deny it with the finding that the Commission would like to wait until a record of decision is made with the WDC, so the WDC could be the final demarcation line. He said he is not necessarily in favor of that solution, but it is an option.

**Heather Barnum** again suggested the open space study. She said if the City preformed this study, it could provide a list of the highest priority of preservation areas, as well as what properties may be in the clear because they are not critical to preserve. She said she feels a study like this may take some time, but it could provide a definite location for a demarcation line. The study could then provide a “shelter” in the future as to why other properties cannot be developed. **Heather Barnum** said she feels the time it takes to complete the study would be worth it. She also suggested the area to be considered for the open space study could be narrowed to shorten the length of time to complete the study; however, it may be difficult to consider the prioritization of preservation for one piece of property when a whole open space system should be considered. She suggested that staff could consider other areas to include in the study.

**David Petersen** suggested that the Planning Commission could vote to recommend approval of the Ivory Homes’ application, and not approve anything else until the study is considered. He said there could also be a more in depth review of which parcels should be included in the study. **Bret Gallacher** said perhaps instead of a defined line to establish the DR area, a standard could be created. **Heather Barnum** said she is not comfortable making a decision on this property until it is first reviewed as part of a comprehensive system. **Bret Gallacher** asked staff how the commissioners should move forward. **David Petersen** said a recommendation could be made to the City Council that the Commission does not recommend that the general plan be amended until a clear definition for the demarcation line is made.

**Nick Mingo**, 978 E. Wood Oak Lane, Salt Lake City, said he appreciates the policy discussion that has taken place regarding the 4218 line and how it impacts the City overall. He said he understands the struggle the commissioners are having as the 4218 line could create changes all over the City. He said **David Petersen** outlined many issues regarding the 4218 line, including the Great Salt Lake, agricultural land, storm water access to the Great Salt Lake, sewer, wetlands, and more. **Nick Mingo** said **David Petersen** pointed out that most, if not all of these issues do not apply to the Hughes’ property. He said he does not want to rush a citywide decision and feels it will be important to bring in multiple experts to be involved in the process, but feels the concerns addressed do not apply to the Hughes’ property. **Nick Mingo** said he feels the Commission should take time to study the general plan amendment, but asked that the Commission still consider the application before them. He said he feels the Commission should determine if they think 34 new lots on 32 acres of property with 9 acres of open space is appropriate for

this area. **Nick Mingo** said the new 4218 line or the new flood plain might be easy demarcation lines; however, many factors will play into a new line. He said he feels an open space study will provide the information the City needs to determine the new line. **Nick Mingo** said what Ivory Homes is asking at this time is that the general plan be amended for 32 acres to allow for 34 half-acre lots. He said the 32 acres can have sewer access, will not be located in the newly propose flood plain, are not sensitive wetlands, and should not be affected by other issues previously addressed.

**Bret Gallacher** thanked the applicant for the information he presented, but said he feels the applicant is saying Farmington should take time to do research to determine where the new line should be, except for the 32 acres they are looking to develop because it “probably” fits the definition. **Nick Mingo** apologized that he “made that jump bigger than he meant to.” He said he thought the feeling that those concerns did not apply to this property was mutual among staff and the commissioners. **Connie Deianne** agreed that she does not feel those concerns apply to the 32 acres; **Heather Barnum** disagreed with that assumption.

**Heather Barnum** clarified why she feels some of the presented concerns may affect the Hughes’ 32 acres of property. She asked **David Petersen** if he feels he could make a professional opinion on how this development may impact the wildlife habitat. **David Petersen** said no, he does not feel he could make a professional opinion on the matter. **Heather Barnum** said she feels there needs to be a few more “checks” with experts, including a wildlife expert, prior to recommending if this property does or does not fit in the DR area.

**Bret Gallacher** said he does not believe gathering more information would be a 3-year process; however, he feels doing so will provide an appropriate test to see how the 32 acres “fits.” **Connie Deianne** said she feels an open space study is a good idea. In the event the study comes back and said this property is not impacted, the line still needs to be moved, which could create other issues. **Heather Barnum** said the study could help determine what the priority of preservation line should be, as well as give recommendations on where to move the line. **Bret Gallacher** said the line may not be something drawn on a map, but could be based on certain standards.

**Nick Mingo** clarified that they, the applicants, are not seeking to move the whole line, but asking to move a small portion of it.

**David Petersen** said he could create a matrix consisting of the affected parcels that touch the current line and of standards from the general plan. He said he does not feel qualified to address wildlife concerns; however, the City does have access to a consultant that could speak to it. He said he could prioritize these standards, and then have the Planning Commission decide if that is enough to keep a DR line on that specific property. **Heather Barnum** said she likes that idea to determine what areas to consider for the open space study. She said the study might have to look at other areas outside of the affected parcels in order to determine what should be preserved, and not just “how developable it is.” She feels looking at a comprehensive system will determine how a change may impact the entire landscape of the City.

**Connie Deianne** asked how long it will take to obtain the money for the study and who will pay for it. **Heather Barnum** said the Planning Commission can make a recommendation to the City Council regarding the study, and the City Council may say we cannot afford it. **Bret Gallacher** asked if the Commission chooses not to make a recommendation until the study is completed or if the Commission makes a recommendation to complete the study. **Heather Barnum** said the Commission could make both recommendations. She said an application is before the Commission, and the Commission can make a motion to recommend denial or approval of it. **Bret Gallacher** said he would like to ask staff to put together a recommendation that includes a priority list and a motion based on that, which would

also include conditions and findings to the motion. **Dan Rogers** suggested making a motion to recommend denial of the application for a rezone, but recommend that the City Council consider the open space study. He said that gives the applicants the option to consider a TDR transaction on their own. He also suggested that the item could be tabled, so it remains with the Planning Commission to obtain more information. **David Petersen** said if the motion were tabled, it would still be presented to City Council to obtain approval of funds for a wildlife consultant. **Heather Barnum** suggested also making a motion on whatever the Commission feels best about because it is a legislative act, and the Commission is only a recommending body.

**Bret Gallacher** asked staff what their recommendation is regarding how to proceed forward. **David Petersen** suggested tabling the motion. He said he could immediately call the wildlife consultant, and then discuss the potential cost of the consulting fee with the City Manager. He said staff could put together a matrix as previously discussed, and present it at the next meeting. **Dan Rogers** said he is comfortable tabling the motion; **Heather Barnum** agreed, and suggested that the schematic plan also be presented to the Commission at the next meeting with the rezone. **David Petersen** said the motion to table the item does not need to include findings, but that it is okay to make a note for further direction to staff.

***Motion:***

**Connie Deianni** made a motion that the Planning Commission table the request for recommendation for the General Land Use Plan Amendment of 31.79 acres of property from Jonathan Hughes and Chase Freebairn from Ivory Homes and that the Commission provides direction to staff for a report for the next Planning Commission meeting. **Dan Rogers** seconded the motion, which was unanimously approved.

The Planning Commission stated the following as recommendations for staff to present at the next meeting:

1. A matrix that includes each factor regarding the decision, and a hierarchy matrix of all properties affected by the old 4218 line and the new 4218 line, as well as how the 5200 line is affected on the east side of the City;
2. The time frame, cost, criteria and feasibility to use general funds for an open space study of the overall comprehensive open space system, which would include the current properties along the 4218 line (as provided in the matrix completed by staff). This study should provide a comprehensive look of all open space to determine what open space has high priority for preservation in Farmington in the overall open space system and not just what land meets certain criteria within the matrix.

**OTHER**

**Item #6. Miscellaneous: a) OTR Presentation from the APA Conference**

**David Petersen** said the presentation is not ready at this time. **Heather Barnum** removed the miscellaneous item from the agenda.

**ADJOURNMENT**

***Motion:***

At 8:55 p.m., **Dan Rogers** made a motion to adjourn the meeting, which was unanimously approved.

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**Heather Barnum**  
**Acting Chair, Farmington City Planning Commission**

**WORK SESSION:** A work session will be held at 6:00 p.m. in Conference Room #3, Second Floor, of the Farmington City Hall, 160 South Main Street. The work session will be to discuss the Original Town-Site Residential Zone (OTR) and to answer any questions the City Council may have on agenda items. The public is welcome to attend.

## **FARMINGTON CITY COUNCIL MEETING NOTICE AND AGENDA**

Notice is hereby given that the City Council of **Farmington City** will hold a regular City Council meeting on **Tuesday, November 1, 2016, at 7:00 p.m.** The meeting will be held at the Farmington City Hall, 160 South Main Street, Farmington, Utah.

*Meetings of the City Council of Farmington City may be conducted via electronic means pursuant to Utah Code Ann. § 52-4-207, as amended. In such circumstances, contact will be established and maintained via electronic means and the meeting will be conducted pursuant to the Electronic Meetings Policy established by the City Council for electronic meetings.*

The agenda for the meeting shall be as follows:

### **CALL TO ORDER:**

7:00 Roll Call (Opening Comments/Invocation) Pledge of Allegiance

### **PUBLIC HEARINGS:**

7:05 Plat Amendment and Subdivision through Metes & Bounds

7:10 Plat Amendments for Hidden Meadows Phase III and Mountain Side Subdivision Plat "F"

### **SUMMARY ACTION:**

7:15 Minute Motion Approving Summary Action List

1. Approval of Minutes from October 4, 2016

7:20 City Council Committee Updates

### **GOVERNING BODY REPORTS:**

7:30 City Manager Report

1. Executive Summary for Planning Commission held October 20, 2016

7:35 Mayor Talbot & City Council Reports

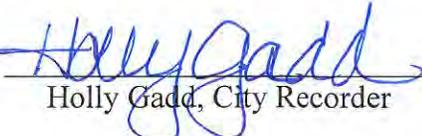
### **ADJOURN**

**CLOSED SESSION**

Minute motion adjourning to closed session, if necessary, for reasons permitted by law.

DATED this 27th day of October, 2016.

**FARMINGTON CITY CORPORATION**

By:  \_\_\_\_\_  
Holly Gadd, City Recorder

**\*PLEASE NOTE:** Times listed for each agenda item are estimates only and should not be construed to be binding on the City Council.

*In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this meeting, should notify Holly Gadd, City Recorder, 451-2383 x 205, at least 24 hours prior to the meeting.*



## Planning Commission Staff Report November 3, 2016

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### Item 3: Conditional Use Permit Approval for a Residential Facility for the Disabled

Public Hearing: Yes  
Application No.: C-14-16  
Property Address: 235 South 200 East  
General Plan Designation: LDR (Low Density Residential)  
Zoning Designation: R-2 (Multi Family Residential)  
Area: 5.07  
Number of Lots: 1  
Property Owner: Garff and Kim Cannon  
Agent: Chris McRoberts and Mike Wagstaff

Request: *Conditional use approval for a residential facility for the disabled.*

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#### **Background Information**

The applicant is requesting conditional use approval to repurpose an existing home for a residential treatment facility. The purpose is to serve individuals with mental health issues and learning/cognitive disabilities. In the R-2 zone, covered by Chapter 13 of the Zoning Ordinance, “Residential facilities for the handicapped” are listed as a conditional use. The proposed use does comply with the ordinance, is situated on a large 5-acre lot, and the home is setback from the street. Because the proposed use is to repurpose an existing home, a site plan approval is not required. Staff has included a document from the Department of Justice on the Fair Housing Act and this Act affects local municipalities; this was included to help inform and guide the Commission’s decision on this application. Staff feels that this property is an ideal location for the proposed use. Additionally, the narrative provided by the applicant describes that the number of residents will be limited to 16; this is set forth in State Code (*Utah Code Ann., § 10-9-103(m), as amended*) for residential neighborhoods. The City has always deferred to State Code for this definition and placed a cap on this type of facility at 16 beds.

#### **Suggested Motion**

Move that the Planning Commission approve the conditional use permit subject to all applicable Farmington City ordinances and development standards, and the following conditions:

1. Any signs proposed for the project must comply with the Farmington City Sign Ordinance. The sign plan shall indicate the location, height, and appearance of the signs upon the site and the effects upon parking, ingress/egress, and adjacent properties. Such signs shall be compatible with the character of the neighborhood;
2. The applicant must obtain all other applicable permits for the operation of the conditional use including but not limited to a business license from Farmington City, all health department regulations and all applicable building codes;
3. The applicant will provide any parking necessary for additional employees as set forth in Section 11-32-104 of the Zoning Ordinance regarding residential uses.

#### Findings for Approval

1. The proposed use of the particular location is necessary and desirable and provides a service which contributes to the general well-being of the community.
2. The proposed use complies with all regulations and conditions in the Farmington City Zoning Ordinance for this particular use.
3. The proposed use conforms to the goals, policies, and principles of the Comprehensive General Plan.
4. The proposed use is compatible with the character of the site, adjacent properties, surrounding neighborhoods and other existing neighborhoods.
5. The location provides or will provide adequate utilities, transportation access, drainage, parking and loading space, lighting, screening, landscaping and open space, fire protection, and safe and convenient pedestrian and vehicular circulation.
6. The proposed use is not detrimental to the health, safety, and general welfare of persons residing or working in the vicinity.
7. Persons with disabilities are a defined “protected class” according to the Fair Housing Act, and a municipality cannot exclude or discriminate against protected persons.

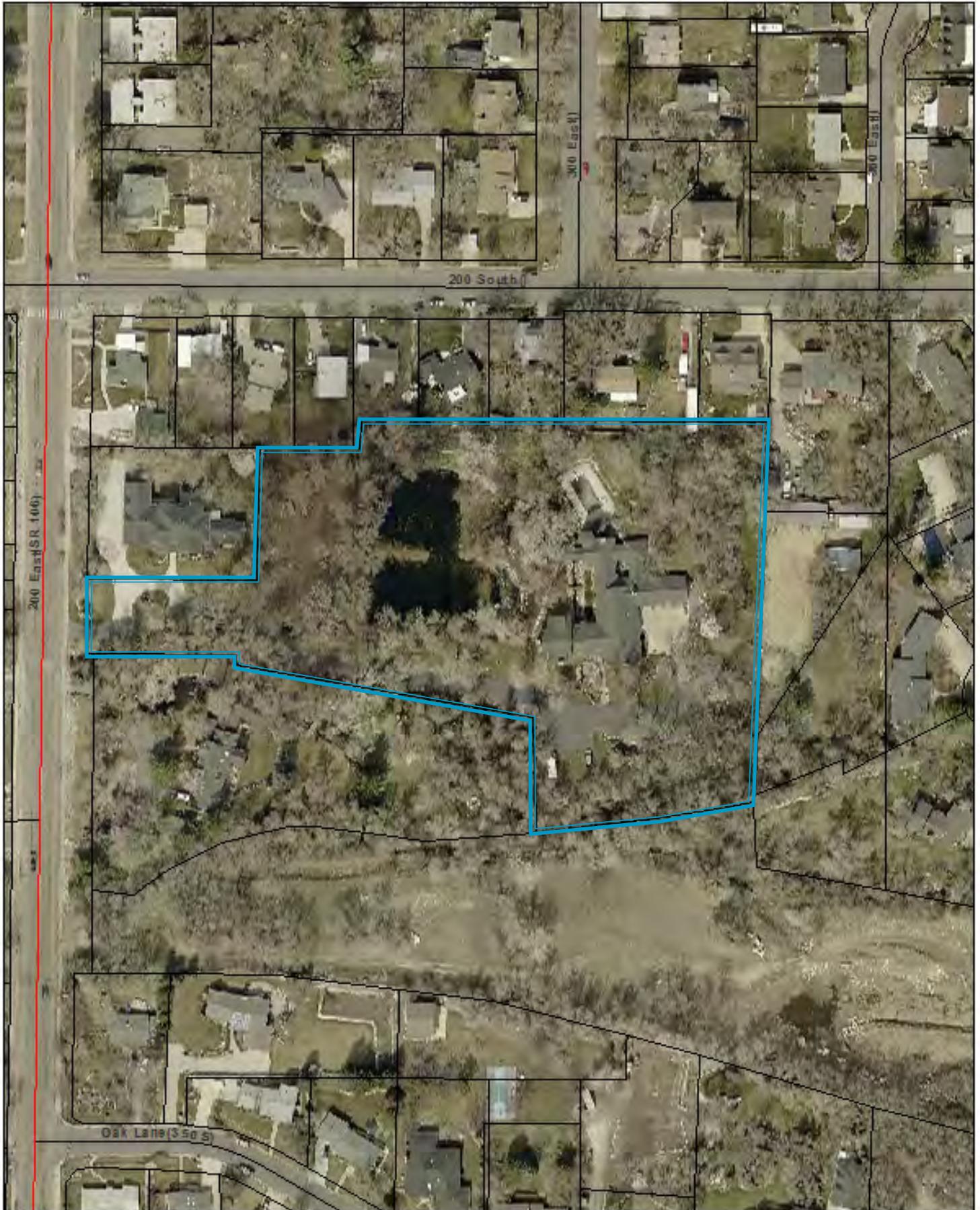
#### Supplemental Information

1. Vicinity Map
2. Narrative Description of Proposed Use from Applicant
3. Fair Housing Act Explanation from the Department of Justice website

#### Applicable Ordinances

1. Title 11, Chapter 8 – Conditional Uses
2. Title 11, Chapter 13 – Multi Family Residential Zones
3. Title 11, Chapter 35 – Home Occupations

# Farmington City



Date: October 19, 2016

## Farmington City Conditional Use Application

### Summary for Conditional Use Application for Property Located at 235 S 200 E

Our aim is to use take advantage of the secluded nature of the large home located on the 5.07 acres located at 235 South 200 East, Farmington and operate a residential treatment. We anticipate housing between 10 and 16 adult residents/guests. The facility will not be locked and guests will be free to come and go. Guests will be individuals with mental health problems and various learning, cognitive, and other disabilities. We may also house some staff on the premise. Operationally, we anticipate somewhere between 10 and 12 staff members working with our guests during business hours. We will have psychotherapy, occupational therapy, physical therapy and medication management services available for the clients on site. Clients will also participate in various off campus activities on a daily basis.

## Fair Housing Act

Since the federal Fair Housing Act ("the Act") was amended by Congress in 1988 to add protections for persons with disabilities and families with children, there has been a great deal of litigation concerning the Act's effect on the ability of local governments to exercise control over group living arrangements, particularly for persons with disabilities. The Department of Justice has taken an active part in much of this litigation, often following referral of a matter by the Department of Housing and Urban Development ("HUD"). This joint statement provides an overview of the Fair Housing Act's requirements in this area. Specific topics are addressed in more depth in the attached Questions and Answers.

The Fair Housing Act prohibits a broad range of practices that discriminate against individuals on the basis of race, color, religion, sex, national origin, familial status, and disability.<sup>(1)</sup> The Act does not pre-empt local zoning laws. However, the Act applies to municipalities and other local government entities and prohibits them from making zoning or land use decisions or implementing land use policies that exclude or otherwise discriminate against protected persons, including individuals with disabilities.

The Fair Housing Act makes it unlawful --

- To utilize land use policies or actions that treat groups of persons with disabilities less favorably than groups of non-disabled persons. An example would be an ordinance prohibiting housing for persons with disabilities or a specific type of disability, such as mental illness, from locating in a particular area, while allowing other groups of unrelated individuals to live together in that area.
- To take action against, or deny a permit, for a home because of the disability of individuals who live or would live there. An example would be denying a building permit for a home because it was intended to provide housing for persons with mental retardation.
- To refuse to make reasonable accommodations in land use and zoning policies and procedures where such accommodations may be necessary to afford persons or groups of persons with disabilities an equal opportunity to use and enjoy housing.
- What constitutes a reasonable accommodation is a case-by-case determination.
- Not all requested modifications of rules or policies are reasonable. If a requested modification imposes an undue financial or administrative burden on a local government, or if a modification creates a fundamental alteration in a local government's land use and zoning scheme, it is not a "reasonable" accommodation.

The disability discrimination provisions of the Fair Housing Act do not extend to persons who claim to be disabled solely on the basis of having been adjudicated a juvenile delinquent, having a criminal record, or being a sex offender. Furthermore, the Fair Housing Act does not protect persons who currently use illegal drugs, persons who have been convicted of the manufacture or sale of illegal drugs, or persons with or without disabilities who present a direct threat to the persons or property of others.

HUD and the Department of Justice encourage parties to group home disputes to explore all reasonable dispute resolution procedures, like mediation, as alternatives to litigation.

DATE: AUGUST 18, 1999

### Questions and Answers on the Fair Housing Act and Zoning

#### **Q. Does the Fair Housing Act pre-empt local zoning laws?**

No. "Pre-emption" is a legal term meaning that one level of government has taken over a field and left no room for government at any other level to pass laws or exercise authority in that area. The Fair Housing Act is not a land use or zoning statute; it does not pre-empt local land use and zoning laws. This is an area

where state law typically gives local governments primary power. However, if that power is exercised in a specific instance in a way that is inconsistent with a federal law such as the Fair Housing Act, the federal law will control. Long before the 1988 amendments, the courts had held that the Fair Housing Act prohibited local governments from exercising their land use and zoning powers in a discriminatory way.

### **Q. What is a group home within the meaning of the Fair Housing Act?**

The term "group home" does not have a specific legal meaning. In this statement, the term "group home" refers to housing occupied by groups of unrelated individuals with disabilities.<sup>(2)</sup>Sometimes, but not always, housing is provided by organizations that also offer various services for individuals with disabilities living in the group homes. Sometimes it is this group home operator, rather than the individuals who live in the home, that interacts with local government in seeking permits and making requests for reasonable accommodations on behalf of those individuals.

The term "group home" is also sometimes applied to any group of unrelated persons who live together in a dwelling -- such as a group of students who voluntarily agree to share the rent on a house. The Act does not generally affect the ability of local governments to regulate housing of this kind, as long as they do not discriminate against the residents on the basis of race, color, national origin, religion, sex, handicap (disability) or familial status (families with minor children).

### **Q. Who are persons with disabilities within the meaning of the Fair Housing Act?**

The Fair Housing Act prohibits discrimination on the basis of handicap. "Handicap" has the same legal meaning as the term "disability" which is used in other federal civil rights laws. Persons with disabilities (handicaps) are individuals with mental or physical impairments which substantially limit one or more major life activities. The term mental or physical impairment may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness. The term major life activity may include seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking, or working. The Fair Housing Act also protects persons who have a record of such an impairment, or are regarded as having such an impairment.

Current users of illegal controlled substances, persons convicted for illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders, are not considered disabled under the Fair Housing Act, by virtue of that status.

The Fair Housing Act affords no protections to individuals with or without disabilities who present a direct threat to the persons or property of others. Determining whether someone poses such a direct threat must be made on an individualized basis, however, and cannot be based on general assumptions or speculation about the nature of a disability.

### **Q. What kinds of local zoning and land use laws relating to group homes violate the Fair Housing Act?**

Local zoning and land use laws that treat groups of unrelated persons with disabilities less favorably than similar groups of unrelated persons without disabilities violate the Fair Housing Act. For example, suppose a city's zoning ordinance defines a "family" to include up to six unrelated persons living together as a household unit, and gives such a group of unrelated persons the right to live in any zoning district without special permission. If that ordinance also disallows a group home for six or fewer people with disabilities in a certain district or requires this home to seek a use permit, such requirements would conflict with the Fair Housing Act. The ordinance treats persons with disabilities worse than persons without disabilities.

A local government may generally restrict the ability of groups of unrelated persons to live together as long as the restrictions are imposed on all such groups. Thus, in the case where a family is defined to include up to six unrelated people, an ordinance would not, on its face, violate the Act if a group home for

seven people with disabilities was not allowed to locate in a single family zoned neighborhood, because a group of seven unrelated people without disabilities would also be disallowed. However, as discussed below, because persons with disabilities are also entitled to request reasonable accommodations in rules and policies, the group home for seven persons with disabilities would have to be given the opportunity to seek an exception or waiver. If the criteria for reasonable accommodation are met, the permit would have to be given in that instance, but the ordinance would not be invalid in all circumstances.

### **Q. What is a reasonable accommodation under the Fair Housing Act?**

As a general rule, the Fair Housing Act makes it unlawful to refuse to make "reasonable accommodations" (modifications or exceptions) to rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use or enjoy a dwelling.

Even though a zoning ordinance imposes on group homes the same restrictions it imposes on other groups of unrelated people, a local government may be required, in individual cases and when requested to do so, to grant a reasonable accommodation to a group home for persons with disabilities. For example, it may be a reasonable accommodation to waive a setback requirement so that a paved path of travel can be provided to residents who have mobility impairments. A similar waiver might not be required for a different type of group home where residents do not have difficulty negotiating steps and do not need a setback in order to have an equal opportunity to use and enjoy a dwelling.

Not all requested modifications of rules or policies are reasonable. Whether a particular accommodation is reasonable depends on the facts, and must be decided on a case-by-case basis. The determination of what is reasonable depends on the answers to two questions: First, does the request impose an undue burden or expense on the local government? Second, does the proposed use create a fundamental alteration in the zoning scheme? If the answer to either question is "yes," the requested accommodation is unreasonable.

What is "reasonable" in one circumstance may not be "reasonable" in another. For example, suppose a local government does not allow groups of four or more unrelated people to live together in a single-family neighborhood. A group home for four adults with mental retardation would very likely be able to show that it will have no more impact on parking, traffic, noise, utility use, and other typical concerns of zoning than an "ordinary family." In this circumstance, there would be no undue burden or expense for the local government nor would the single-family character of the neighborhood be fundamentally altered. Granting an exception or waiver to the group home in this circumstance does not invalidate the ordinance. The local government would still be able to keep groups of unrelated persons without disabilities from living in single-family neighborhoods.

By contrast, a fifty-bed nursing home would not ordinarily be considered an appropriate use in a single-family neighborhood, for obvious reasons having nothing to do with the disabilities of its residents. Such a facility might or might not impose significant burdens and expense on the community, but it would likely create a fundamental change in the single-family character of the neighborhood. On the other hand, a nursing home might not create a "fundamental change" in a neighborhood zoned for multi-family housing. The scope and magnitude of the modification requested, and the features of the surrounding neighborhood are among the factors that will be taken into account in determining whether a requested accommodation is reasonable.

### **Q. What is the procedure for requesting a reasonable accommodation?**

Where a local zoning scheme specifies procedures for seeking a departure from the general rule, courts have decided, and the Department of Justice and HUD agree, that these procedures must ordinarily be followed. If no procedure is specified, persons with disabilities may, nevertheless, request a reasonable accommodation in some other way, and a local government is obligated to grant it if it meets the criteria discussed above. A local government's failure to respond to a request for reasonable accommodation or an inordinate delay in responding could also violate the Act.

Whether a procedure for requesting accommodations is provided or not, if local government officials have previously made statements or otherwise indicated that an application would not receive fair consideration, or if the procedure itself is discriminatory, then individuals with disabilities living in a group home (and/or its operator) might be able to go directly into court to request an order for an accommodation.

Local governments are encouraged to provide mechanisms for requesting reasonable accommodations that operate promptly and efficiently, without imposing significant costs or delays. The local government should also make efforts to insure that the availability of such mechanisms is well known within the community.

**Q. When, if ever, can a local government limit the number of group homes that can locate in a certain area?**

A concern expressed by some local government officials and neighborhood residents is that certain jurisdictions, governments, or particular neighborhoods within a jurisdiction, may come to have more than their "fair share" of group homes. There are legal ways to address this concern. The Fair Housing Act does not prohibit most governmental programs designed to encourage people of a particular race to move to neighborhoods occupied predominantly by people of another race. A local government that believes a particular area within its boundaries has its "fair share" of group homes, could offer incentives to providers to locate future homes in other neighborhoods.

However, some state and local governments have tried to address this concern by enacting laws requiring that group homes be at a certain minimum distance from one another. The Department of Justice and HUD take the position, and most courts that have addressed the issue agree, that density restrictions are generally inconsistent with the Fair Housing Act. We also believe, however, that if a neighborhood came to be composed largely of group homes, that could adversely affect individuals with disabilities and would be inconsistent with the objective of integrating persons with disabilities into the community. Especially in the licensing and regulatory process, it is appropriate to be concerned about the setting for a group home. A consideration of over-concentration could be considered in this context. This objective does not, however, justify requiring separations which have the effect of foreclosing group homes from locating in entire neighborhoods.

**Q. What kinds of health and safety regulations can be imposed upon group homes?**

The great majority of group homes for persons with disabilities are subject to state regulations intended to protect the health and safety of their residents. The Department of Justice and HUD believe, as do responsible group home operators, that such licensing schemes are necessary and legitimate. Neighbors who have concerns that a particular group home is being operated inappropriately should be able to bring their concerns to the attention of the responsible licensing agency. We encourage the states

to commit the resources needed to make these systems responsive to resident and community needs and concerns.

Regulation and licensing requirements for group homes are themselves subject to scrutiny under the Fair Housing Act. Such requirements based on health and safety concerns can be discriminatory themselves or may be cited sometimes to disguise discriminatory motives behind attempts to exclude group homes from a community. Regulators must also recognize that not all individuals with disabilities living in group home settings desire or need the same level of services or protection. For example, it may be appropriate to require heightened fire safety measures in a group home for people who are unable to move about without assistance. But for another group of persons with disabilities who do not desire or need such assistance, it would not be appropriate to require fire safety measures beyond those normally imposed on the size and type of residential building involved.

**Q. Can a local government consider the feelings of neighbors in making a decision about granting a permit to a group home to locate in a residential neighborhood?**

In the same way a local government would break the law if it rejected low-income housing in a community because of neighbors' fears that such housing would be occupied by racial minorities, a local government can violate the Fair Housing Act if it blocks a group home or denies a requested reasonable accommodation in response to neighbors' stereotypical fears or prejudices about persons with disabilities. This is so even if the individual government decision-makers are not themselves personally prejudiced against persons with disabilities. If the evidence shows that the decision-makers were responding to the wishes of their constituents, and that the constituents were motivated in substantial part by discriminatory concerns, that could be enough to prove a violation.

Of course, a city council or zoning board is not bound by everything that is said by every person who speaks out at a public hearing. It is the record as a whole that will be determinative. If the record shows that there were valid reasons for denying an application that were not related to the disability of the prospective residents, the courts will give little weight to isolated discriminatory statements. If, however, the purportedly legitimate reasons advanced to support the action are not objectively valid, the courts are likely to treat them as pretextual, and to find that there has been discrimination.

For example, neighbors and local government officials may be legitimately concerned that a group home for adults in certain circumstances may create more demand for on-street parking than would a typical family. It is not a violation of the Fair Housing Act for neighbors or officials to raise this concern and to ask the provider to respond. A valid unaddressed concern about inadequate parking facilities could justify denying the application, if another type of facility would ordinarily be denied a permit for such parking problems. However, if a group of individuals with disabilities or a group home operator shows by credible and un rebutted evidence that the home will not create a need for more parking spaces, or submits a plan to provide whatever off-street parking may be needed, then parking concerns would not support a decision to deny the home a permit.

#### **Q. What is the status of group living arrangements for children under the Fair Housing Act?**

In the course of litigation addressing group homes for persons with disabilities, the issue has arisen whether the Fair Housing Act also provides protections for group living arrangements for children. Such living arrangements are covered by the Fair Housing Act's provisions prohibiting discrimination against families with children. For example, a local government may not enforce a zoning ordinance which treats group living arrangements for children less favorably than it treats a similar group living arrangement for unrelated adults. Thus, an ordinance that defined a group of up to six unrelated adult persons as a family, but specifically disallowed a group living arrangement for six or fewer children, would, on its face, discriminate on the basis of familial status. Likewise, a local government might violate the Act if it denied a permit to such a home because neighbors did not want to have a group facility for children next to them.

The law generally recognizes that children require adult supervision. Imposing a reasonable requirement for adequate supervision in group living facilities for children would not violate the familial status provisions of the Fair Housing Act.

#### **Q. How are zoning and land use matters handled by HUD and the Department of Justice?**

The Fair Housing Act gives the Department of Housing and Urban Development the power to receive and investigate complaints of discrimination, including complaints that a local government has discriminated in exercising its land use and zoning powers. HUD is also obligated by statute to attempt to conciliate the complaints that it receives, even before it completes an investigation.

In matters involving zoning and land use, HUD does not issue a charge of discrimination. Instead, HUD refers matters it believes may be meritorious to the Department of Justice which, in its discretion, may decide to bring suit against the respondent in such a case. The Department of Justice may also bring suit in a case that has not been the subject of a HUD complaint by exercising its power to initiate litigation alleging a "pattern or practice" of discrimination or a denial of rights to a group of persons which raises an issue of general public importance.

The Department of Justice's principal objective in a suit of this kind is to remove significant barriers to the housing opportunities available for persons with disabilities. The Department ordinarily will not participate in litigation to challenge discriminatory ordinances which are not being enforced, unless there is evidence that the mere existence of the provisions are preventing or discouraging the development of needed housing.

If HUD determines that there is no reasonable basis to believe that there may be a violation, it will close an investigation without referring the matter to the Department of Justice. Although the Department of Justice would still have independent "pattern or practice" authority to take enforcement action in the matter that was the subject of the closed HUD investigation, that would be an unlikely event. A HUD or Department of Justice decision not to proceed with a zoning or land use matter does not foreclose private plaintiffs from pursuing a claim.

Litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and the Department of Justice encourage parties to group home disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, like mediation. HUD attempts to conciliate all Fair Housing Act complaints that it receives. In addition, it is the Department of Justice's policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.

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1. The Fair Housing Act uses the term "handicap." This document uses the term "disability" which has exactly the same legal meaning.
  2. There are groups of unrelated persons with disabilities who choose to live together who do not consider their living arrangements "group homes," and it is inappropriate to consider them "group homes" as that concept is discussed in this statement