

**FARMINGTON CITY
PLANNING COMMISSION MEETING
December 1, 2016**

STUDY SESSION

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

Item #3. Mike Wagstaff / Chris McRoberts – Requesting conditional use permit approval for a residential facility for the disabled

David Petersen said the public hearing will be held for this item tonight. He reminded the Commission that each person is allowed 3 minutes to talk. He said **Todd Godfrey**, the City Attorney, will first present and train the Planning Commission regarding the federal law and his experience with residential facilities for the disabled. He said the hope is that the residents in attendance will also be listening so that their questions may also be answered.

Todd Godfrey said that he understands applications like this are difficult for everyone, but that these types of facilities are tightly restricted by federal law. He said the City's ordinance has not yet caught up with federal law; this use is listed as a conditional use, but that is not correct under federal law. He said he feels the Commission should move forward with holding the public hearing as is required with the conditional use approval process. He asked that the commissioners allow the public the opportunity to voice their opinions knowing that in the end the facility is so tightly restricted their input may not make a difference.

Todd Godfrey said currently, the City's ordinance states that up to five unrelated people can live together in a single-family home (SFH); however, it may be necessary to have more than five persons with a disability in a residential facility to make the facility work. He said the ordinance has to give way to the federal law. He said the applicant will ask for reasonable accommodations, and there are certain parameters the applicant must take to show necessity. If the applicant shows necessity, the Planning Commission is obligated to grant the reasonable accommodations.

Todd Godfrey said some of the things that can be reviewed with these types of applications are traditional land uses, set back issues, lot coverage issues, traffic concerns, etc.; however, he said he feels none of those items is a concern with this facility. **Todd Godfrey** said that the applicant must also show that 16 residents are a necessity. He said in his experience, showing necessity can take the form of a financial component, meaning it takes a certain number of residents to hit a financially viable point. Another way an applicant can show necessity is in the form of treatment success. He said in his experience, there is a "sweet spot" for the number of patients in residential environments to generate the greatest success rate with treatment. **Todd Godfrey** said the applicant does not have to show both financial and treatment success, but does have to show necessity on either to deem the use reasonable.

Dan Rogers asked if there is a motion before the Commission that needs to be voted on. **Todd Godfrey** said there might be a motion if the applicant has all the information needed. **Dan Rogers** asked if the Commission has a choice on denying the motion. **Todd Godfrey** said once the proper information

is presented by the applicant, the City's hands are tied. He said the Commission might see an amendment to the conditional use process for residential facilities for the disabled as there is no reason for the public to come and make a comment on a decision that is governed by federal law. He said the goal of the ordinance is to treat this application for this use as any other residential SFH.

Dan Rogers asked if the item should be tabled to allow for an amendment to the ordinance to be passed. **Todd Godfrey** said the timing of tabling the item might compromise things for the applicant. He said he feels hearing this application on an ordinance that is compromised so that the applicant can move forward with their application is the right thing to do.

Kent Hinckley asked if the "pro-forma" financial form has been reviewed. **David Petersen** said staff has reviewed it and feels the applicant can be profitable with 16 patients in the facility. **Todd Godfrey** said reviewing the financial analysis can be awkward and backward; however, it shows the facilities viability and productivity. He said financial analysis is one side of granting reasonable accommodation, but treatment is the other. If the applicant meets one of those, the applicant is entitled to receive reasonable accommodation from the City.

Connie Deianni expressed concern that most letters from residents received expressed fear. She said she understands the federal law supersedes the ordinance, but asked if there is anything the Planning Commission could do to mitigate the fears of the community. **Todd Godfrey** explained there are lots of treatments covered by the ADA, and cognitive disability treatment may address addiction. He said he does not think the Commission will see a "group home" in this application as a group home is traditionally a half-way house. He said criminals are not typically covered by the ADA; however, it does make many uncomfortable that alcohol and drug addiction is considered a disability.

Bret Gallacher asked how old the ADA laws are. **Todd Godfrey** said the ADA began in the mid-1980s and the Federal Fair Housing Act (FHA) was adopted in the 1970s. He said residential environments for treatment began in the late 1980s and 1990s, but case laws began in the late 1990s and continue to today. He said the lines of decision are consistent, and cities that deny these types of applications rarely hold up in court. **Bret Gallacher** asked how the rare applications do hold up in court. **Todd Godfrey** said if this application was an "outlier," the discussion could be different; however, there is nothing unusual about this application.

Bret Gallacher said there have been many concerns that this facility is in close proximity to a school, and that many school-aged children regularly pass by. He asked how the Commission could mitigate concerns that patients of the facility are not predatory people. **Todd Godfrey** said the applicant might further address this, but that patients of the facility are persons that suffer from addiction or cognitive disability.

REGULAR SESSION

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

Item #1. Minutes

Bret Gallacher made a motion to approve the Minutes from the November 17, 2016 Planning Commission meeting. **Dan Rogers** seconded the motion, which was unanimously approved.

Item #2. City Council Report

Eric Anderson said there is nothing to report at this time, as City Council will meet next Tuesday, on December 6, 2016.

CONDITIONAL USE PERMIT

Item #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 (Multiple Family Residential) zone. (C-14-16)

Eric Anderson said this application is for a conditional use permit 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. As a land use, the proposal complies with the Zoning Ordinance. Since the proposed use is to repurpose an existing home, site plan approval is not required. **Eric Anderson** said this item was previously tabled at the November 3, 2016 Planning Commission meeting; he turned the time over to the City Attorney to explain why it was tabled.

Todd Godfrey, with the law firm Hayes Godfrey and Bell, said they have been providing legal advice to Farmington City for a number of years. He said he is here to review a number of issues. Farmington City Ordinance allows five unrelated individuals to live together in a single-family home (SFH). Under the terms of the Federal Fair Housing Act (FHA) and the Americans with Disabilities Act (ADA), that provision of the City’s ordinance is suspect. In addition, the ordinance standards with respect to this use have not caught up to the state and federal laws regarding residential facilities for persons with a disability. Currently, the City is in the middle of a conditional use process with a public hearing scheduled for tonight. **Todd Godfrey** said he felt it was appropriate that the Planning Commission, staff, and those in attendance step back to assess the application materials, as well as allow the Planning Commission the opportunity to consider all the ramifications of federal law as it relates to this particular application and the circumstances before the Commission tonight.

Todd Godfrey said under the ADA and the FHA, the requirements for the City are that a residential facility for the disabled or persons with a disability must be listed as a permitted use in any zone where single-family residences are allowed. He said that is a very clear and bright line requirement under federal law. He said it then further states that if a City’s ordinance has other standards that impinge on the use, such that it would not permit it, an applicant is entitled to an accommodation from the City’s ordinances. **Todd Godfrey** said this means the applicant has the ability to maintain their use notwithstanding the City’s ordinance if the applicant can show that their use is both reasonable and necessary. He said those are two separate legal requirements.

Todd Godfrey said under the standard of reasonableness, the court looks at the traditional land use in a neighborhood and the impacts from a traditional land use to see if there is some way it impinges on the residential character of the neighborhood in a way that is unreasonable. He said the court would look at traffic concerns, lot coverage issues or setback issues that may exist. He said in his review of this application for this use on this lot, he does not feel there are any issues of reasonableness.

He said the character of the 5-acre lot and the location of it suggests, in his opinion, that the applicant satisfies that hurdle.

Todd Godfrey said the other issue is that of necessity. He said the applicant has to show that the accommodation from the ordinance standards is necessary for the applicant to be able to provide the residential living opportunity that a person without a disability might also enjoy. He said there are many court decisions that amplify that requirement, and supports that if an applicant can show either financial or treatment necessity to the accommodations then the applicant is entitled to an accommodation from the City's ordinances under federal law. **Todd Godfrey** said financial necessity refers to the number of residents in the home to allow the home to be able to offer the treatment services for the disability. The treatment necessity refers to the number of residents required for a reasonable level of success in a treatment environment. **Todd Godfrey** said the applicants have submitted data regarding this, but that he would let the applicant address that data with the Planning Commission so the applicant can demonstrate to the Commission why they believe they have met the necessity requirement.

Todd Godfrey said in the event the City decides not to vote in favor of this use, notwithstanding a reasonable showing from an applicant that their use is both reasonable and necessary, the City would be in violation of the FHA and ADA. He said doing so would leave the City subject to lawsuits under the Civil Rights Act. A lawsuit under the Civil Rights Act is harmful to the City because of damages, attorney fees, and the loss of traditional protections a City may have from a lawsuit, but that goes away with a Civil Rights violation. He said the stakes are high for the City.

As he reviewed the City's ordinance, **Todd Godfrey** said the City's processing of this application, as a conditional use is not ideal. He said he mentioned the federal law now requires that any residential facility for disabled persons be permitted as a permitted use in any single-family residential zone. The applicants, notwithstanding the City's ordinance requirements, filed an application and have gone through the current conditional use process without complaint. **Todd Godfrey** said based on where the City is in the conditional use process, he feels it is appropriate to go ahead and finish processing the application as is, and ask that the Planning Commission evaluate issues of reasonableness and necessity. He said, in his opinion, the City should focus on the necessity requirement. He said because the conditional use process has the requirement for a public hearing, he feels it is important to hold the public hearing and allow the public to provide their comments on the application. He said he is happy to answer any questions from the Planning Commission at the end of the public hearing.

Dan Rogers said if he is understanding correctly in that the City's ordinance does not comply with federal law. He asked if the Planning Commission voted "no" with regards to the application, would the City be in a position for a federal lawsuit. **Todd Godfrey** said there is a good chance that would be the case. He said it is hard to say that the City would absolutely be put in that position. He said the applicant still has an obligation to show both the reasonableness and necessity requirements. He said this is strictly his opinion, and that the ultimate decision lays within the Commission's province. **Todd Godfrey** said he feels the reasonableness requirement has been met, but that the determination is ultimately the Commission's decision. He said he does not feel he has seen anything that would suggest land use impacts that would make this use unreasonable in the neighborhood. He said that he has seen a number of these applications over the last 5 years. He said in the cases where cities and applicants pay \$5-7,000 to obtain a traffic study on similar facilities, the studies show there is less impact than a traditional SFH. **Todd Godfrey** said he has seen lot coverage issues where there is a large facility on a smaller lot; however, he does not feel this is an issue as he feels the 5-acre lot meets the lot coverage concerns. **Todd Godfrey** said on the necessity requirement, the applicant has the obligation to show necessity. If the applicant shows that, and the City would then vote "no" to the application, then the City would then be in a position for a lawsuit.

Kent Hinckley asked what are considered disabilities. **Todd Godfrey** said under the ADA, there is a long list of criteria. He said from a general standpoint, persons with cognitive disabilities generally are disabled. He said addiction is considered a qualifying disability under the ADA. He said the case law is very clear on that, and the City does not have the ability to alter that in any way. He said alcohol or drug addiction is a qualifying disability under the ADA.

David Petersen asked Mr. Godfrey to explain conditional uses, the Land Use, Development, and Management Act (LUDMA), and how they relate to each other. **Todd Godfrey** said under the state land use regulation laws, which is included in a chapter called The Land Use, Development, and Management Act (LUDMA), a conditional use is required to be approved unless there is no set of conditions, which would mitigate any harmful effects. He said if the City could not find reasonable ways to mitigate things regarding traditional land use impacts like traffic, lot coverage, or setback issues, a City may say “no” to a conditional use. If any reasonable conditions can be imposed to mitigate harmful effects, an applicant is entitled to conditional use approval. **Todd Godfrey** said he feels the name “conditional use” is a little misleading. He said when something is labeled as a conditional use in the ordinance, the City is saying a specific use is appropriate for the listed zone, and the City just has to make sure there are not harmful effects that could not be mitigated. In regards to the application before the Commission tonight, **Todd Godfrey** said he thinks the conditional use evaluation ties in and meshes with the reasonableness requirement under the ADA and FHA. He said he does not see any significant land use impacts with this application that would prevent the granting of this conditional use. **David Petersen** said if he is understanding Mr. Godfrey correctly, the City’s ordinance is not “in-step” with the federal laws. He said if that is correct, a conditional use for residential treatment facilities should be a permitted use. **Todd Godfrey** said yes, in his opinion, it should be a permitted use.

David Petersen said he began working with the City in 1994 and two conditional uses listed in residential zones are “residential facilities for the elderly,” which has been assumed as an assisted living facility, and the other is “residential facilities for the disabled.” He said those were in the ordinance long before 1994, and perhaps had been in the ordinance since the 1960s. He said the FHA started in the late 1970s or mid-1980s. **David Petersen** says he remembers getting the City’s first application for an assisted living facility. He said he remembers doing research on and talking with approximately 11 similarly sized facilities by the applicant that was proposing the facility in Farmington. He said he was surprised at how little traffic was generated by the facility. He also talked with neighbors of the facility. He said all neighbors said they were not originally in favor the facility, but actually like the use once it was up and running. Most of the neighbors said the assisted living facility was very non-impactful. **David Petersen** said this is the first time the City has received an application for a facility that is not for the elderly, but that he feels the use will be non-impactful like an the assisted living facility. **Todd Godfrey** agreed, he said in his experience those cities that pay for a traffic study, the results show the traffic impact is less than a SFH. He also stated that the facility would receive a license from the State Department of Health; it is a tightly controlled and monitored treatment of care. These types of facilities, like what is being proposed, are watched closely. The City does not take on the burden of monitoring the facility, as it is something that is done by the State.

David Petersen said he has never reviewed an application like this before. He asked Mr. Godfrey how this application compares to an assisted living facility. **Todd Godfrey** said in his review of the land use impact and the associated use after approval, these kinds of uses for residential treatment on a 30-90 day time, the cities rarely see or hear complaints about impacts. Persons with disabilities are living in the facility so typically, someone drives the person in and drives them out of the facility, and then the patient remains there for a time. Generally, patients do not have visitors as frequently as an assisted living facility does. The staff is generally a little lower for a residential treatment facility than for an assisted living facility. Based on his memory, **Todd Godfrey** said he thought the state licensing

requires approximately four staff members during the day and two during the night for a 16 resident facility. He said the traffic in and out of the facility would be minimal.

Dr. Chris McRoberts, 1417 Haight Creek, Kaysville, said he has been a Kaysville resident for 16 years, and that the city of Farmington is his backyard. He said he is a member of the community and does want to bring something in that will damage the community. He said fear is a terrible thing, and since the submission of this application, there has been a lot of fear within the community. He said he has seen many emails and has talked with many local residents around the property. He said the common thing he hears in these discussions is fear. He said he is here to mitigate those fears of the Planning Commission and the community.

Dr. McRoberts said they are proposing a residential treatment facility for 16 clients. He said the clients that will be in the treatment facility are not what is being portrayed by the community. He said the clients they will be accepting are not criminally insane, drug abusers, sexual predators, etc., but will be like neighbors, family members and friends. He said one difference is that the clients they accept are typically very wealthy and that they value their privacy. He said this is the reason why this property is perfect for the treatment facility they are seeking to create. He feels this home is one that promotes peace, comfort, and care. **Dr. McRoberts** said the clients they will accept are people that are struggling one way or another with mental health, substance abuse, thinking and reasoning wisely. He said at this time, these types of clients only other option is a psychiatric ward; however, insurance only allows a small window before they are “kicked out” and that option may be more than what they need. **Dr. McRoberts** said this facility would allow for holistic type treatments. Clients will be able to garden or sit and fish in the pond. They may also participate in yoga or occupational therapy and walk or bike the trails system. He said the clients are not dangerous people, and the facility will not be locked. He said those staying at the treatment facility will be adults wanting treatment, and they can come and go as they please.

Dr. McRoberts said he has seen a lot of concern from the community that clients of the facility will be insane or criminally insane. He says these concerns stigmatize people with disabilities, and creates fear. He said those that may attend the treatment facility are normal adults that may struggle with depression, anxiety, or even obsessive-compulsive disorder. He said these types of people are those we already know, love, and live in our neighborhoods. He said these clients might feel like they need assistance more than seeing a therapist once a week, but that a hospital visit is far too much. **Dr. McRoberts** said he feels the community will not know the treatment facility is there, except for the fact that clients may want to participate in service projects within the community. He said he feels they will be good neighbors, and hopes the community will be as well. **Dr. McRoberts** said an added benefit is that these clients may come from out of state, which may result in visiting family staying in the City’s hotels and shopping at local stores. He feels it will bring financial business to the City, as well as help those that need it.

Bret Gallacher asked if the proposed clients would be in the treatment facility by their own volition, and not under court order. **Dr. McRoberts** said the clients will not have been ordered to this specific facility, but may have been told by a judge that they need treatment. He said an example of this is a businessperson that received a DUI; a judge may tell him he needs to seek treatment.

Alex Leeman asked the applicant why he is proposing a 16-client facility. **Dr. McRoberts** said the federal law standards change at more than 16 clients. He said there is a significant amount more that has to be done to the property for more than 16 clients, including a commercial kitchen. He said it is also harder to work with and manage more than 16 people. He said less than 16 clients can also be a problem as the customary and optimal way for group treatments is to work with groups of 8 people. At 16 clients, it allows for two groups of 8. He said in a group setting, less than 8 people limits the group

interaction, but more than 8 people creates too much interaction and is hard to manage. He also said that in working with groups of 8, if the facility only allows 8 clients, the center is not financially viable, but 16 clients allows for the optimal groups while being financially viable. **Dr. McRoberts** said he has been working with treatment centers for over 22 years, and 16 clients is the standard.

Rebecca Wayment asked what the average time frame is of a client staying in the treatment facility. **Dr. McRoberts** said they plan for most clients to stay 2-4 months based on how they do in the facility. He said he has worked with treatment facilities in the past, including those for adolescents, and some clients stay in the facility for years. He said this would not be the case with the proposed facility.

Dan Rogers asked what the proposed age range is for the facility's clients. **Dr. McRoberts** said the facility will accept 18-50 year olds; however, the main age group that seems to come through other facilities they have seen are 18-25 year olds. **Dan Rogers** asked if there will be any minors accepted in the facility. **Dr. McRoberts** said no, they will not accept minors.

Rebecca Wayment asked how many staff members would remain at the facility, and the amount of traffic they anticipate staff to generate. **Dr. McRoberts** said, by regulation, the facility is to have four staff members during the day; however, due to the nature of their clientele, there will be additional staff, including yoga instructors, recreational therapists, etc. He said he feels there may be 7-8 staff members during the day, possibly 4 in the evening, and a few staff members during the night.

Dan Rogers asked the applicant what his involvement would be at the treatment facility. **Dr. McRoberts** said he would be very involved in the facility for the first six months. He is a licensed psychologist and will be the one assessing the clients' problems and treatments. He said he would also be the one developing the program that will be used at the facility. He said his involvement would then taper off as another psychologist will be introduced, and **Rob Ryan** will take over as the executive director of the program. **Dr. McRoberts** said he will still remain on the Board of the facility.

Connie Deianni asked what licensing would be required by the State and if inspections occur to ensure the facility is running smoothly. **Dr. McRoberts** said the licensing for the facility is not an easy process. He said he must receive approval from many departments, including the State Health Department and the Fire Department. He said he has to receive approval for their treatment program, and ensure there is enough staff to manage it. He said once the treatments' license is obtained, there are regular and surprise inspections by the Licensing Board to ensure regulations are being strictly followed. **David Petersen** asked if there are regulations regarding the outward appearance of the home. **Dr. McRoberts** said no, but there are strict requirements regarding the safety of the home. He said since they are seeking very "high-end clientele" for the treatment facility, the property will be well maintained.

Bret Gallacher said he saw a few common threads in the letters the Planning Commission received from residents concerned with the proposed treatment facility. He said the first is the concern that nearby property values will go down. He said that concern does not give the Planning Commission reason to deny the application as it is allowed under federal law. He said the second is the concern that many school kids will walk by the proposed treatment facility. **Bret Gallacher** asked the applicant to address the second concern. **Dr. McRoberts** said the clients they will accept are not predatory in nature. He said the clientele would be moms, dad, brothers, sisters, neighbors and friends. He said there is no reason the community should be fearful of these clients, as they will screen out any sex offenders. **Bret Gallacher** asked for clarification from the applicant that they would not accept clients with any kind of criminally insane or predatory background. **Dr. McRoberts** said yes, the treatment facility would not accept those types of clients.

Rebecca Wayment opened the public hearing at 7:44 p.m.

Rebecca Wayment said there were multiple emails and letters received by staff and the Planning Commission. The emails were reviewed by the Planning Commissioners and entered into the record.

John Green, 303 S. 200 E., said he lives directly south of the property being considered for the residential facility for the disabled. He said that a long time ago he considered building condos on that property prior to the construction of the current home. The property had a couple of ponds located on it. He said he was told by the Army Corps of Engineers that he could not remove the ponds. He said the current property owner has removed one of the ponds. He asked how the property owner was able to do so. **John Green** also said that during the construction of the current home, the City required the property owner to have a driveway turnaround in the back of the property to allow for truck access by the Fire Department. He said the home currently has a couple of vehicles parked on the turnaround. **John Green** said he expects that no vehicles should be parked on the turnaround and that parking would have to be located somewhere else. He also thinks that the parking that was created by the removal of the pond may have to be removed and the pond put back.

Michael Jordison, 320 E. 200 S., said he is speaking on behalf of the Jordison Family Trust. He said SFH residents are different as neighbors get to know who is coming and going. He said neighbors get to see, meet and know family members. He said he has an unobstructed view of what happens at the property being discussed tonight, but that also means the property will have an unobstructed view of his home and family. **Michael Jordison** said he is concerned with the turnover of patients, staff members and guests visiting on any day. He expressed concern that neighbors will not know who should be there. He also expressed safety concerns with the patients being treated there as the proposal is for persons with mental issues and cognitive disabilities. **Michael Jordison** said the wetland designation may trump what the applicant would like to do with the pond located on the property. He said he has talked with many nearby residents that did not receive a notice regarding this application. He thinks the applicant may have failed to provide all the appropriate names to the City regarding the notice of a public hearing mailing. He expressed frustration that the current property owner built a multi-million dollar home in an older neighborhood, and that the surrounding residents will pay for his decision. **Michael Jordison** said his family has been on their property for over 100 years, and feels “big money will win out.” He asked that the Planning Commission deny the application, as there are too many safety concerns and the failure to provide proper notice to all property within a 300’ radius. He also said the wetlands should be taken into consideration.

Doug Holmes, 321 Oak Lane, said he understands that federal law will trump all concerns on this issue. He said the applicant sounds reasonable based on the business plan he has created. He asked the Commission what the property could evolve into if this residential facility fails. He said the facility might work out; however, there is always risk in a business plan. He asked if the facility could evolve into something more risk tolerant to make the business plan more viable. He asked if there are restrictions that could be put in place regarding the future use and involvement of the property. He also asked what the applicant’s financial backing and stability to show that this facility would be successful.

Stan Allen, 450 E. 500 S., said he cannot imagine that this facility would not impact the property value of the surrounding area. He asked what kind of guarantee the applicant will provide regarding the criminality of the clients the facility will serve or the danger these clients may pose to themselves or others. He expressed concern that, down the road, the treatment center may take others of a different criterion as part of their “money-making venture.” He said he has lived in the City for 32 years and has paid a lot of property taxes. He feels it is worth the City’s money to fight the proposal. **Stan Allen** also

said he regularly volunteers at the Davis County Jail and loves those he serves, but knows they are emotional unstable and would not want them living near him.

LeRoy Sturgeon, 285 S. Cobblecreek Road, said that one does not have to be a traffic engineer to know there will be more traffic than a SFH with all the employees that will be at the facility. He said he is familiar with treatment facilities as a result from family members. He said the way the applicant is describing the age groups and the two groups of 8 clients, he feels this residential facility sounds like a substance abuse program. He said he is not completely sure on how the property will actually be used.

Justin Green, 303 S. 200 E., said he grew up on the property south of the proposed treatment facility, but now lives in west Farmington. He said he has worked in the mental health and counseling field for over 15 years. He said he has concerns with the business moving in. He said there would be increased traffic with the mental health professionals, maintenance, staff members, etc. He said he has worked in residential as well as outpatient facilities, and feels it is very rare to come across people that want to be in treatment. He is also concerned that a wealthy clientele may feel entitled and that the rules do not apply to them. He also feels property values for the surrounding neighbors will be impacted.

Matthew Rodgers, 1919 Old Fort Road, said his family is always visiting the property south of the proposed treatment facility as his in-laws live there. He said he understands the situation with the FHA. In his career, he has worked through state licensing and different accreditations. He said one of the things that concerns him is the “dressing up” of the facility that there would always be good people filling the facility. He said no one could say if that will happen, although everyone hopes that it will be the case. He hopes that with the requirements under the Licensing Act, the applicant will be good neighbors. With regards to licensing, he asked if the applicant has notified the City under Title 62 section 102 as to what the specific intent of the facility is to see if the applicant makes a specific case as to what this facility actually will be. He said the neighbors will be closely watching the facility to ensure all licensing requirements under Title 62 are strictly observed; if all requirements are not strictly observed, residents will ensure there will be multiple visits each time something happens.

Diane Peterson, 387 Oak Lane, said she has lived in her home for 47 years, and has watched the whole city grow. She said she recently retired from being a psychiatric nurse for in-patient, outpatient, and residential facilities. She said her concern is that you cannot always know what may trigger mentally ill patients. She said in her experience, residential treatment centers are for those patients that are a little more severe and in need of help. She said there will also be an increase in traffic, as previously pointed out, with staff members, maintenance employees, occupational therapists, dieticians, etc. She said the real concern, however, is that there is not a guaranteed behavior with mentally ill patients. She said wonderful things can take place in residential facilities, but there are still many challenges with them.

Dave Barlow, 298 S. Cobblecreek Road, said he feels the inconsistency of information presented is bothersome, including that the facility will cause less traffic than a SFH, the neighbors will not be affected, the clients will be too wealthy to care what others think, patients that are doing illegal drugs can't control themselves, etc. He said he feels it is a tough position for everyone to be in right now. He said he listened to what the lawyer said about how the federal law requires the approval of this facility. He also said, based on what the applicant said, he was under the impression that this was a facility to treat cognitive health issues, but he now believes this is really a rehabilitation facility. He said the residents want security that this is not a rehabilitation facility, but that the residents did not receive that security regarding this facility.

Rebecca Wayment closed the public hearing at 8:08 p.m.

Rebecca Wayment invited the City Attorney back up to address some of the residents' concerns and questions.

Todd Godfrey said the facility's licensing from the City will be for a residential facility for persons with a disability, and if the nature of the disability changes, the state licensing will dictate what they have to do. In his experience, he has seen one of these facilities transition from treating one kind of disability to another. In that circumstance, the State notified the City, and the City required a re-licensing. The only reason the City knew about the change was because the City was contacted by the State, which told that the facility's license had changed. In the event there is no contact with the State, he is unsure how a City would know there was a change. He said he does not know if there is any way the City can absolutely secure the nature of who will be at the treatment facility. The state licensing will have more of an affect than the City licensing will on that point.

Todd Godfrey said the City reviews traditional land use impacts from a use like this, but the City does not "audit" the facility as an audit is left to the State. He said from his experience, a facility has to comply with those licensing requirements. He said in the last 5-7 years, he has seen approximately 10-12 of these types of applications, and he has then watched these facilities in operation. In his opinion, the treatment of drug and alcohol addiction is the "highest dollar" part of the business. He said, in his experience, treating persons with court ordered treatment is not the "high dollar" end of the business. He said in terms of financial viability, facilities like what is being proposed have longer "staying power" than other kinds of facilities.

Todd Godfrey said that with regards to talk of reduction of property values, he understands that it is a realistic fear and concern property owners have. He said he recently went through an appeal of a facility like this that was constructed. He said declining property values was also a concern expressed there. The applicant completed an exhaustive study using three different MIA certified appraisers and looked at the property values around other treatment facilities in a before and after condition. The study showed there was no reduction of property values. He said while it seems like a realistic concern, the only study he has seen completed did not bare the declining property values as anticipated.

Todd Godfrey said based on the 7-8 staff members, and the residents living at the facility, there will be cars going in and out. He said looking at the nature of 200 E. and the surrounding area, the facility might be adding approximately 2-3 more cars on the road in a 2-3 hour period. He said, in his opinion, from a land use standpoint, the added traffic is not significant. He said from what he can see, it is not an issue.

Kent Hinckley asked for clarification that if the applicant evolves the facility and the applicant went through the licensing to do so, would it affect how the federal law treats the facility. **Todd Godfrey** said if the facility went to providing more of an outpatient service model, then it would change the nature of the use from the City's perspective. The accommodation for approval that the City does grant, assuming it does grant that approval, would no longer be viable any more. The FHA is a residential "housing" requirement. If the applicant decides to move to treating in an outpatient type program, the applicant would no longer be authorized under "housing" laws for this location, so that would invoke a change. If the applicant changes the nature of the disability they are treating on the property, that type of change may not come through the City. Since the State requires a detailed treatment philosophy and plans, the applicant's licensing with the State would surely change. **Todd Godfrey** said he could not necessarily say that the change would come back before the City, but that there is a chance it could. He said that type of change is not something the City would be able to actively audit. **Alex Leeman** asked if the change did come before the City, would the law change the way it is applied. **Todd Godfrey** said as long the residential facility treats disabilities, the law does not

change the way it is applied. **Alex Leeman** clarified that the disability can be mental illness, addiction, paraplegics, or otherwise, and the facility will still qualify under the FHA. **Todd Godfrey** said it is difficult to make a blanket statement that covers everything because the number of residents is tied to the operation of what the applicant is proposing today. He said the applicant's necessity may change, and that could dictate the number of beds. He said that the comment that suggested 8 was the ideal for rehabilitation programs is correct, but that in his experience, that is the ideal for any treatment paradigm. He also pointed out that the applicant suggested they would treat those with addiction disabilities. **Todd Godfrey** reiterated that if this remains a residential treatment facility for persons with a disability, it is governed by federal law.

Bret Gallacher referenced the report Mr. Godfrey saw regarding a study on how the property values were not affected by a similar facility. He asked if the report had shown property values decreasing, would it change anything about how the Commission is to view this application. **Todd Godfrey** said the change would have to be dramatic to the point of a total loss of all financial viability of a property, or in other words, a residential property would have to lose all of its value before that could be cognizable by the Planning Commission. He said those circumstances are not seen. **Bret Gallacher** asked where the definition for financial viability is found. **Todd Godfrey** said that concept deals with traditional land use takings and the secondary effects law. He said it is not related specifically to residential treatment facilities, but is a general principle in land use law.

As per a question by a resident during the public hearing, **David Petersen** asked what will happen if the facility fails. **Todd Godfrey** said it would remain a SFH in the event the facility fails. If someone else wants to use the property as a residential facility for persons with a disability, and the treatment plan was different, the new applicant would have to be relicensed by the State. Depending on the time lapse between failure and re-initiation of that use, the new applicant may or may not have to come back before the City for approval of the conditional use. **Alex Leeman** clarified that that would only be the case only if this is still listed as a conditional use at that time. **Todd Godfrey** said there would still be a process for the City to consider a request for reasonable accommodation. He said if there is not a re-initiation within a year, the new applicant would have to come back for the reasonable accommodation request.

David Petersen asked what Title 62 is. **Todd Godfrey** is a part of the State's Health and Human Service Code, which is the authority by which the State governs uses like what is being proposed.

Rebecca Wayment said the City currently has this use as a conditional use because of the way the ordinance is written; however, it should be a permitted use. She said a lot of times with conditional uses the Commission approves the use with conditions to ensure the use fits better into a neighborhood. She asked if the Commission is able to place conditions on this use to address concerns. **Todd Godfrey** said conditions may be placed on it if there was something that related to the reasonableness of the use as it relates to the surrounding land use. He feels it is hard to evaluate that. He said he knows there was one concern regarding the fire truck turnaround. **David Petersen** said when the property owner Garff Cannon received building approval, the turnaround for fire trucks and a fire hydrant were required by the Fire Marshall to meet fire code requirements. **David Petersen** said the applicant will have to follow building code requirements, and review by the Fire Marshall will be part of that process and approval. **Todd Godfrey** said he feels the fire turnaround will have to be maintained, and will have to be left available for fire apparatus. He feels that it would also be a condition for state licensing, as the state licensing process is significantly more stringent than any approval for a SFH.

Kent Hinckley asked if there are any concerns with parking issues, as parking is not something that would be considered if this were to remain as a SFH. **David Petersen** said he had a question for the applicant that may address the parking concern. He asked the applicant if they have plans to remodel

the home to accommodate the use. **Dr. McRoberts** said yes, they have a lot of remodeling to do on the home. **David Petersen** said the applicant will have to obtain a building permit application for the remodels. During that process, staff will ask for a site plan, like what would be done with a SFH. During the site plan review, staff will look at the driveway width and parking requirements. He said if the applicant requests to have wider driveways, as per the requirements in Chapter 32, there is a chance the application may come back before the Planning Commission to address the driveway requirements; however, that would also be the case with a SFH.

Rebecca Wayment said concerns were presented regarding the pond and wetlands located on the property. She asked if the applicant has been in contact with the Army Corps of Engineers regarding how the pond can be used. **Dr. McRoberts** said they have not been in contact with the Army Corps of Engineers; however, Garff Cannon has the information about the wetlands from when the home was originally built and landscaped. He said he will follow up on it, and he assured the Commission he would not put fish in the pond unless he has approval by the Army Corps of Engineers to do so.

Rebecca Wayment said she has heard a few things regarding the facility, including clients are driven in and driven out of the facility, they stay for the duration of their treatment, they are not under lock and key, and are free to come and go as they choose. She asked what kind of security system would be in place to ensure there are not people wandering through the neighborhoods. **Dr. McRoberts** said the house has an alarm system on all windows and doors; however, they secure the facility with additional staff that is monitoring the comings and goings of clients. He said initially clients will stay on the campus, but will then have more interaction with the community as time goes, including access to the bus. **Dr. McRoberts** said contrary to what has been said, he is not proposing a rehabilitation facility, but a facility to treat mental and cognitive health disabilities. He said it was mentioned that the community wants a “safety guarantee;” however, he said there is never a guarantee with anything, whether it be a treatment facility or new neighbors. He said they will make every effort to not take clients that are risky, and to accept people that want the help. He said the doors will not be locked, but that clients still have to abide by the standards of the program, which means they are not allowed to leave without permission until later in the program. **Dr. McRoberts** said there would not be people simply roaming, but that there will be checks and balances with the supervision of the clients. **Kent Hinckley** asked if part of the licensing with the State is a copy of the application stating the types of clients the facility will take in. **Dr. McRoberts** said no, the stringent application is their choice for their facility. He said the State does not care if a treatment facility takes someone with a violent background; however, he said they care as a facility and will screen those types of clients out voluntarily.

Dr. McRoberts said there were also concerns that the disability treated in the facility may change if the facility no longer becomes financially viable. He said his passion, and what he specializes in is, A-typical learning or cognitive disabilities. He said this facility will be the 8th facility he has been part of starting, and all of the facilities have been very successful.

Rob Ryan, Executive Director of the proposed residential facility, said he has been in the social work field for over 22 years. He said he has had the opportunity to be involved with four different startup facilities. He said he has been to many meetings like this where people are fearful, and he said he understands the concerns. He said at the same time, people have to think if this location is not the right place, which community will a facility be best served. He said he entered the social work field to help people. **Rob Ryan** said he understands that he is often viewed as the “ugly guy” in these meetings when in reality he is trying to provide people an opportunity to heal. He said there are never guarantees in life, but what he can guarantee is that they will do all they can to ensure clients coming into the facility will not jeopardize the safety of the community. He said in order to sustain a profitable business, they cannot let anyone through the doors. He said they will not be treating sexual predators, and will work very diligently to supervise their patients as they care about their safety. **Rob Ryan** said they could

not guarantee things; however, the likelihood of problems will be limited. He said he is passionate about this and asked that the community give them a chance so that they can then in turn give back to the community.

Alex Leeman said a concern was raised about residents not receiving City mailings, as well a question regarding how the measuring is determined. **David Petersen** said staff uses a GIS tool to do a 300' radius around the outside edge of the property. He said he was notified that one resident stated he did not receive a notice; however, his name was on the list of mailings that went out. He said he does not know what happened when it entered the mail system, but that that resident was on the list that was generated. He also said the City determines names to send mailings to, and it is not the applicant's responsibility.

Alex Leeman thanked the applicant for the explanation provided regarding the application before the Commission. He said it shed light on the situation and alleviated concerns he had. He said he respects what the applicant is doing and how he goes about doing it. **Alex Leeman** thanked the public for their comments. He said the Commission values the public's opinion, but that they also have to consider what is appropriate. He said the Commission reviews multiple applications, and the commissioners have never asked an applicant to guarantee that nothing bad will happen. He said with regards to traffic concerns, he said he does not think this use will change the traffic on 200 E. **Alex Leeman** said he was listening with an ear as to what reasonable conditions could be placed on the application; however, he did not hear anything that the Planning Commission could address in a motion.

Connie Deianni agreed with **Alex Leeman's** comment. She said when this was previously presented to the Commission four weeks ago, there were a lot of concerns and the room was more full with people than it is at this meeting. She said as they have delved into federal law, FHA, ADA, Civil Rights Law; all of those oversee these type of facilities and supersedes what the City is allowed to do. **Connie Deianni** said after she listened to the applicant present information regarding the facility, she feels more comfortable with the facility. She said one concern that was presented was how the wetlands will be used, preserved, mitigated, or paved over. **David Petersen** said when the applicant submits site plan for his remodel, the wetlands will appear, and staff will review it to ensure they are being appropriately protected. He pointed out that the wetlands are also protected and governed by federal law.

Kent Hinckley said he would like to echo those comments previously made. He said he is cognizant of the community's fears; however, he feels a facility like this is necessary and appreciated.

Rebecca Wayment said she listened during the presentation and discussion of the item for conditions that could be added. She said she understands the fears and worries of the citizens. She said her own children walk by this property every day on their way to school. She said the thing that gives her hope for trusting that it will work out is that the applicant is from our community. She said unlike other applications she has seen, the applicant is not from out of state and is coming in to create something detrimental to our community. She feels the applicant would not put something in that will change their community. She said she feels the community can better trust that the applicants will be good neighbors. **Rebecca Wayment** said she believes, whether we admit it or not, that there is a need for a facility like this. She said she is grateful there are those people that are willing to address that need.

Bret Gallacher said he agrees with all comments made.

Dan Rogers said that he wishes there was something he could say to make sure everyone goes away feeling good about what is happening. He said when he heard the applicant's presentation he

liked what the facility would offer without having a serious impact on our community. He said he understands a need for a facility like this, and is grateful to have a nice home where it can be located. He said since the City is going to have this facility in its community, the best thing everyone can do is be as good of a neighbor as possible.

Motion:

Alex Leeman made a motion 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 and fire 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;
4. Reasonable accommodation is granted to the applicant to allow for 16 residents at the facility.

Connie Deianni seconded the motion, which was unanimously approved.

Findings:

1. The proposed application and requested accommodation is reasonable based on the necessity for the financial and therapeutic viability of the facility.

OTHER

Item #5. Miscellaneous: a) Tree Preservation Plan – Symphony Homes – Rock Creek Subdivision

Eric Anderson said at the November 17th Planning Commission meeting, Symphony Homes proposed a street cross-section modification request for the Rock Mill Estates Subdivision. The Planning Commission added a condition for approval, which was that the applicant comes back with a tree preservation plan prior to City Council consideration of the item. **Eric Anderson** said the applicant has done that; however, the condition was not clear if the tree preservation plan needed to be approved. Staff is recommending approval of the plan before the City Council hears the application for the street cross-section modification on December 6th.

Connie Deianni said she reviewed the tree preservation plan; she asked how the applicant will guarantee that the trees on the plan will be preserved. She said a similar request was given to another applicant to preserve as many trees as possible, and the applicant did not preserve any trees. **Alex Leeman** pointed out that that applicant removed all those trees prior to Planning Commission and City Council approval. **Alex Leeman** said he feels it would be challenging to administer some kind of guarantee.

Rebecca Wayment asked why the applicant provided the outline of the corner lot home on the tree preservation plan. She said it looks like the lot is mostly trees so she wondered if it could be built upon anyways. **Eric Anderson** said the house footprint was needed when the applicant requested the street cross-section. He explained when the original Rock Mill Estates plan was memorialized some lots were not buildable due to the topography of the property. He said narrowing the streets, as was proposed in the street cross-section modification, will “loosen” some lots to make the lots buildable.

Russell Wilson, 526 N. 400 W., said when he walked the property, most of the trees in the area that are mature are on a significant slope. He said **Eric Anderson** is right that the street cross-section will “loosen” the area. He explained the footprints of the homes were for their own planning purposes to ensure they can build a home in those areas. He said they want to preserve the slope and the trees, especially for privacy reasons. He said he feels there will be a few other trees that will be saved; however, they cannot guarantee those trees as they do not know where driveways and utility lines will be located at this point. He said they hope to save some of those additional trees in parking strips.

Rebecca Wayment asked how the applicant plans to preserve these trees with new homeowners coming to purchase a lot. **Russell Wilson** said Symphony Homes has a packet disclosing the specifics of each lot, what easements are there, etc. He said a note could be included referring to this tree preservation plan. **Bret Gallacher** said that he does not feel this plan should be forever binding in that future property owners could never take a tree down. He said he feels this plan is nice so Symphony Homes can make the subdivision aesthetically pleasing. **David Petersen** agrees, he feels the developer will take great care to preserve the trees in that neighborhood as he feels future homebuyers will buy there for the mature trees. **Kent Hinckley** said he agrees as he purchased his lot because of the trees; however, in his retirement, he has removed many trees because they no longer fit. He said he does not feel the Planning Commission could or should tell a property owner they cannot cut down their trees. **Rebecca Wayment** said she agreed, but said she feels the tree preservation plan is important to ensure the developer does not clear the entire lot. **Alex Leeman** said he believes “trees are money,” so he has a hard time imagining the developer will cut down more trees than necessary.

David Petersen asked if they will control excavators to ensure there is no vandalism. **Russell Wilson** said yes, they will be there to control excavators. He also added that there are a lot of “weed trees” located on the property that will not be preserved; however, it is also important to preserve trees on the slope for aesthetics as well as to ensure additional problems are not created by movement on the slope.

Motion:

Connie Deianni made a motion that the Planning Commission approve the proposed Tree Preservation Plan for the Rock Mill Estates Subdivision as shown on the attached plan, subject to all applicable Farmington City ordinances and development standards.

Kent Hinckley seconded the motion, which was unanimously approved.


Findings:

1. The proposed Tree Preservation Plan preserves as many mature trees as possible.

ADJOURNMENT

Motion:

At 8:57 p.m., **Dan Rogers** made a motion to adjourn the meeting, which was unanimously approved.



Rebecca Wayment
Chair, Farmington City Planning Commission