

2 The Lindon City Planning Commission held a regularly scheduled meeting on **Tuesday,**
3 **March 12, 2019 beginning at 7:00 p.m.** at the Lindon City Center, City Council
4 Chambers, 100 North State Street, Lindon, Utah.

6 **REGULAR SESSION – 7:00 P.M.**

8 Conducting: Sharon Call, Chairperson
9 Invocation: Scott Thompson, Commissioner
10 Pledge of Allegiance: Steven Johnson, Commissioner

12 <u>PRESENT</u>	<u>EXCUSED</u>
Sharon Call, Chairperson	Rob Kallas, Commissioner
14 Mike Marchbanks, Commissioner	Kathy Moosman, Recorder
Steven Johnson, Commissioner	
16 Scott Thompson, Commissioner	
Jared Schauers, Commissioner	
18 Mike Florence, Planning Director	
Anders Bake, Associate Planner	
20 Brian Haws, City Attorney	
Noah Gordon, City Engineer	

22

Special Attendee:

24 Matt Bean, Councilmember

26 1. **CALL TO ORDER** – The meeting was called to order at 7:00 p.m.

28 2. **APPROVAL OF MINUTES** –The minutes of the regular meeting of the
30 Planning Commission meeting of February 26, 2019 were reviewed.

32 COMMISSIONER JOHNSON MOVED TO APPROVE THE MINUTES OF
34 THE REGULAR MEETING OF FEBRUARY 26, 2019 AS AMENDED.
COMMISSIONER MARCHBANKS SECONDED THE MOTION. ALL PRESENT
VOTED IN FAVOR. THE MOTION CARRIED.

36 3. **PUBLIC COMMENT** – Chairperson Call called for comments from any
38 audience member who wished to address any issue not listed as an agenda item.
There were no public comments.

40 **CURRENT BUSINESS** –

42 4. **Fence Permit Appeal** – This item is an administrative appeal by Greg Horne for
44 the property located at 148 S. 1200 E. The appeal is regarding Lindon City staff's
determination to deny a fence permit modification per Lindon City Code
17.04.310.

46

2 At this time Brian Haws, City Attorney, explained the process on this appeal and
the Planning Commission's role. He explained the Commission is acting in a quasi-
4 judicial role tonight and will be reviewing a decision made by staff as outlined in code to
ensure that city staff and the city engineer did everything appropriately according to
6 statute (interpretation and application). Mr. Haws stated the burden in proving there was
a mistake is on the applicant, and if they don't carry the burden that there was a mistake
8 than statute outlines that it was a correct decision. He noted if the applicant has new
information (that they couldn't submit with the original information), they can present it
10 and the Commission can determine whether to review it. He added there must be four
votes to overturn the decision.

12 Mike Florence, Planning Director, then gave a brief history and current status of
the property located at 148 South 1200 East that was originally constructed with a vinyl
14 fence that was solid at the bottom and lattice work on top. Typically, these fences are six
feet in height and are 3 feet solid at the bottom with three feet of lattice fencing above.
16 He also referenced Google Street view photos of the fence in 2007 and 2012. He noted
that apparently, a vehicle damaged the fence at some point after 2012 and the fence was
18 replaced with solid vinyl along Canberra Drive and the driveway. The fence, as originally
constructed, probably met the three-foot maximum height restriction since the lattice
20 fencing did not obstruct the view.

Mr. Florence went on to say the property currently has a solid six-foot fence with
22 vegetation that exceeds the three-foot requirement as per Lindon City Code 17.04.310.
Previously, the owners did not seek a fence permit modification for the solid fence to
24 encroach into the 20-foot setback. After the notice was mailed from the City, the owners
subsequently applied for a fence permit modification which was denied by the City due to
26 public safety hazards and view obstructions which the owners appealed.

28 Mr. Florence then referenced the summary of Appeal Authority Responsibilities
and Procedures as follows:
30 According to Lindon City Code 17.04.310 the planning commission will act as the appeal
authority. Lindon City Code 17.09 outlines the process and procedures for hearing an
32 appeal. As per 17.09, the commission should consider the following:

- 34 • 17.09.050 – the appeal applicant has the burden of proving that the land use
authority (planning director and city engineer) erred;
- 36 • 17.09.060 – the appeal authority's review of the decision of the land use authority
shall be confined to the record of the proceeding;
- 38 • 17.09.070 – The appeal authority, may, at is opinion, by motion of the appeal
authority, hold a de novo hearing or admit additional testimony and other
40 evidence, if it is satisfied that the testimony or other evidence could not have been
presented upon initial hearing and action;
- 42 • 17.09.080 – the planning commission shall act in a quasi-judicial manner and
serve as the final arbitrator of issues involving the interpretation of application of
land use ordinances;
- 44 • 17.09.080 – The appeal authority shall determine the correctness of a decision of
the land use authority in its interpretation and application of a land use ordinance.
46 In exercising its powers, if the appeal authority finds that the land use authority
erred in its interpretation and application of a land use ordinance, the appeal
48 authority may reverse or affirm, wholly or partly, or may modify the order,

2 requirement, decision of determination and may make such order, requirement,
decision or determination as acceptable to the appeal authority.
4 • 17.09.080 - The concurring vote of the majority of the appeal authority shall be
6 necessary to reverse any order, requirement, decision or determination of the land
use authority, or to decide in favor of the appellant on any matter. Failure of an
8 appeal authority to arrive at a majority vote on an appeal shall constitute a denial
of the appeal application.

10 Mr. Florence further explained on May of 2017, the city received a written citizen
12 complaint that the fence located at 148 S. 1200 E. did not meet City setback requirements
because of a bus stop in the vicinity. Mr. Florence then referenced the following code
14 sections:

Lindon City Codes 17.04.290 and 17.04.310 states the following:

16 **17.04.290**

*Clear view of intersecting streets required. In all districts, no obstruction to view in
18 excess of three feet in height shall be placed on any corner lot within a triangular area
formed creating a starting point at the intersection of two streets, then moving out from
20 the starting point 40 feet in both directions along the right-of-way lines, then connecting
the end points to form the triangular clear vision area. See Figure 17.04.310. Exceptions
22 can be made for a reasonable number of trees and/or other vegetation pruned so as to
permit unobstructed vision to automobile drivers as determined by City code enforcement
24 staff. (Ord. 2009-2, amended, 2009; Ord. 111 §1, amended, 1985; Prior code §12-101-
31)*

26 **17.04.310**

*“No fence, wall or hedge exceeding three (3) feet in height shall be erected or allowed
28 closer to any street right-of-way line than the required building set back line, provided
however that on street side yards (as typically found on corner lots), no view-obscuring
30 fence, wall or hedge exceeding three (3) feet in height shall be erected or allowed closer
than twenty (20) feet from the street right-of-way line.*

32 Mr. Florence stated in 2017 city staff, reviewed the written complaint about the
34 fence not meeting setback requirements and sent the property owners, Greg and Jodi
Horne, notice on November 29, 2017 that they needed to bring the fence into compliance
36 by December 29, 2017. He indicated that it appears staff met with the property owners
but nothing was ever resolved and the fence did not come into compliance. In late 2018,
38 the City received a phone call from the original resident who filed the complaint asking
why the City had not yet enforced the code requirements.

40 Mr. Florence stated the new planning staff reviewed the fence issue again and
mailed a new notice to Mr. and Mrs. Horne on January 10, 2019 which required the fence
42 and vegetation to come into compliance by February 10, 2019. Staff met onsite with Mr.
and Mrs. Horne on February 5, 2019 to discuss the fence. He pointed out the lot is
44 irregularly shaped and has two corners on the lot. Due to city staff seeking clarification
about where to measure the setback of the fence from, staff subsequently sent a second
46 notice on February 5, 2019 giving the property owners addition time to bring the fence
and vegetation into compliance by March 27, 2019.

2 On February 8, 2019, Mr. and Mrs. Horne applied for a fence permit modification
as per Lindon City Code 17.04.310. A fence permit application allows a property owner
4 to request that the fence and vegetation setback requirements be modified. Lindon City
Code states the following:

6 *Mr. Florence noted the Planning Director and City Engineer can approve the
following types of modifications and exceptions to the standards listed above upon review
8 of a Fence Permit Application;*

a. Exemptions:

- 10 i. *Height modifications of fences, walls, and hedges that exceed eight (8) feet;*
- 12 ii. *Setbacks and heights on odd or irregular shaped parcels or parcels with unusual
development requirements due to easements, topography, etc.;*
- 14 iii. *Fences that encroach into the street side yard setback on corner lots;*
- iv. *Fences exceeding 3' in height within front setback areas.*

b. Criteria for evaluating exemptions;

- 16 i. *The Planning Director and City engineer, when modifying height and/or setback
requirements as provided herein, shall use the following review standards;*
- 18 ii. *The proposed height and/or setback modification is necessary to provide privacy
and protection of private property interests;*
- 20 iii. *The appearance of fence, wall, or hedge will not detract or cause aesthetic
damage to neighboring property owners;*
- 22 iv. *The proposed height and/or setback modification will not cause a public safety
hazard.*

24 *All appeals of decisions of the Planning Director and City Engineer will be made
26 to the Planning Commission.*

28 Mr. Florence indicated on February 11, 2019 the Planning Director, City Engineer
and Associate Planner, conducted a field inspection of the site. The fence permit
30 application request by the property owners was to allow the fence and vegetation to
remain how they are currently installed. As City staff reviewed the site, staff felt like they
32 could not approve the fence and vegetation how its currently installed due to public safety
hazards. In staffs review, there were two main obstructions from the solid fence and
34 vegetation that created public safety hazards. Those obstructions are where the sidewalk
and the home's driveway intersect and the other is on the sidewalk where Canberra Drive
36 and 150 South intersect.

38 Mr. Florence noted a letter was then sent to Mr. and Mrs. Horne on February 13,
2019 stating that in the fence's current configuration the City was denying their permit
but offered the following suggestions to bring the fence into compliance or staff was open
40 to suggestions from the property owners:

- 42 1. *Set the fence and vegetation back twenty feet as per ordinance 17.04.310*
- 44 2. *Construct the fence so that above three feet the fence is non-view obstructing and
trim the vegetation to no taller than three feet;*
- 46 3. *At the two corners of the fence where there are sight obstructions, make those
sections of the fence non-view obstructed within twenty-feet of the fence corners.
The twenty-foot clear view area is based off of the required twenty-foot setback
48 for obstructing fences as per Lindon City Code 17.04.310. See attached aerial
photo as an example. Two possible options:*

- 2 a. remove the solid fencing and vegetation above 3 feet in the clear view area.
Lattice fencing maybe installed on top of the solid three-foot fence;
- 4 b. install a picket type non-view obstructing fence in the clear view area.

6 Mr. Florence noted the hazard is created at the driveway because the concrete
driveway goes up to the solid fence. While the drive approach does not perfectly line up
8 with the concrete next to the fence both the fence and vegetation still create a visual
obstruction to the sidewalk. He also referenced the photo that shows a vehicle has to be
10 near the end of the driveway before pedestrians can be seen coming down the sidewalk.
He added the sidewalk obstruction occurs at the corner of Canberra Drive and 150 S. Due
12 to the solid fence and vegetation pedestrians cannot see one another as they approach on
the sidewalk at 150 South and Canberra Drive.

14 Mr. Florence went on to say the purposes of 17.04.290 and 17.04.310 are to reduce
injury and harm to pedestrians and vehicles. When using public infrastructure, the public
16 has an expectation that they will be safe. This is why sidewalks are installed, ADA ramps
are installed at sidewalk corners, and the City removes trip hazards when sidewalks begin
18 to buckle or are pushed up from tree roots.

At the corner of Canberra Drive and 150 South, the City could have required that
20 the forty-foot clear view triangle requirement, as described in 17.04.290, be met.
However, the City did not apply this requirement due a number of items. First, the
22 Horne's lot has an irregular shape with two corners. Second, vehicles traffic was not
obstructed at the corner of Canberra Drive and 150 South. Third, Title 17.04.310 allows
24 fence permit modifications. For this purpose, staff applied the fence permit modification
standards as found in 17.04.310 in trying to reduce public hazards while still maintaining
26 the privacy of the property owners.

Mr. Florence expressed that Staff feels they have tried to work with the property
28 owner in providing alternatives and also to go as far as asking the property owner to
suggest alternatives as well. He noted Mr. Horne claims in his appeal that staff has not
30 provided him with evidence on any obstructions or safety hazards. He indicated Staff
provided pictures to Mr. Horne (included in the staff packet). He also referenced a screen
32 shot of the email to Mr. Horne with the pictures attached showing the fence and
vegetation obstructions. He then referenced a letter provided by Mr. Horne as part of his
34 appeal.

Mr. Florence commented, according to Mr. Horne, a pedestrian accident has never
36 occurred as far as he is aware. However, the City, has the responsibility to reduce
potential public harm and have adopted ordinances to reduce that harm. Just because an
38 accident may not have ever happened up to this point, doesn't mean that one may not
happen. Mr. Florence then presented examples and a map of properties that are in
40 compliance. He then turned the time over to the applicant for comment.

Mr. & Mrs. Horne addressed the Commission at this time. Mr. Horne stated in
42 the staff report (in the policy) it indicates the intersecting portion doesn't apply. Mr.
Florence clarified staff felt because this is an irregular lot, they feel the 40 ft doesn't
44 apply and they could apply for this fence permit modification so they didn't enforce the
hard rule of the 40 ft. triangle. Mrs. Horne stated they were not aware they could bring
46 additional information to this hearing. She noted their house sits on a unique lot and their
purpose for their trees is because several times they have had vehicles come down the
48 slope in the winter and slide into their yard and fence. They have concerns as this is

2 where their children play. This is a dangerous corner and they feel their kid's safety
should be just as important as others. She added they can't understand how a 3 ft vinyl
4 fence will stop people from sliding into their yard where their kids play. Mr. Horne noted
the trees act as a barrier from car lights etc. and act as a barrier to cars sliding into their
6 yard. He noted coming out of the driveway can be a safety issue as they have to look 3
ways.

8 Chairperson Call asked the applicants if they have talked to staff about
recommendations. He noted they emailed back and forth and they felt the city made their
10 position clear. Mr. Horne stated they assumed the fence company knew what they were
doing and they were not being malicious in changing the fence from lattice to solid. Mrs.
12 Horne gave a brief history of the person who submitted the complaint noting it was a
personal attack. Chairperson Call stated the commission is just looking at
14 recommendation from staff and if this is in compliance or not. Mr. Horne stated they do
not feel there is pedestrian safety issues here. Mrs. Horne stated she also got signatures
16 from neighbors wanting to leave the fence and trees alone. Mr. Florence stated they are
open to reviewing other options as well. Chairperson Call suggested the applicants go in
18 and sit down with staff to look over all options.

Commissioner Marchbanks commented the triangle spot is pretty common but
20 they have a very unique lot as it creates a visibility issue in two corners. He would
suggest pruning the trees from the ground up to 6 or 8 ft. for visibility to make it safe. He
22 pointed out to allow the lattice on top of 3 ft vinyl is being a generous compromise by the
city. He added there may be a clear view for cars, but coming around on a bike or
24 skateboard could pose a safety issue.

Angie Neuwirth, resident in attendance, said the Horne's didn't know what their
26 options were, so it just appeared the city wanted them to cut down all the trees. This is a
unique property and they have invested in the trees. There is a lot that is not understood
28 with the city process.

Following some general discussion, the Commission agreed there is an issue for
30 better visibility here and agreed with staff's report of information and if it is in
compliance. They also agreed there are options and directed the applicants to work
32 further with staff to find a compromise that they can live with and also be in compliance.
Mr. Florence stated the ultimate goal is safety and compliance and they will work
34 together to find a compromise.

Chairperson Call called for any further comments or discussion from the
36 Commission. Hearing none she called for a motion.

38 COMMISSIONER THOMPSON MOVED TO AFFIRM AND SUPPORT THE
DECISION AND DETERMINATION BY CITY STAFF REGARDING THE FENCE
40 APPEAL AND DIRECT THE APPLICANT TO MEET WITH STAFF TO FIND AN
OPTION OR COMPROMISE THAT MEETS BOTH THE CITY REQUIREMENTS AS
42 WELL AS THE APPLICANTS DESIRES. COMMISSIONER MARCHBANKS
SECONDED THE MOTION. THE VOTE WAS RECORDED AS FOLLOWS:

44 CHAIRPERSON CALL	AYE
COMMISSIONER MARCHBANKS	AYE
46 COMMISSIONER JOHNSON	AYE
COMMISSIONER THOMPSON	AYE
48 COMMISSIONER SCHAUERS	AYE

2 THE MOTION CARRIED UNANIMOUSLY.

- 4 **4. Ordinance Amendment** - This is a recommendation to the Lindon City Council
6 to amend ordinance 17.64 by removing unrestricted habitation time limits in
8 Recreational Vehicle Parks and amending associated definitions, adding
10 Recreational Vehicle Parks as a conditional use under the RMU-W land use
12 district in the Appendix A Standard Land Use Table and adopting a new
14 ordinance section 17.78 titled Recreational Vehicle Parks (Ron Madsen).

16 COMMISSIONER JOHNSON MOVED TO OPEN THE PUBLIC HEARING.
18 COMMISSIONER MARCHBANKS SECONDED THE MOTION. ALL PRESENT
20 VOTED IN FAVOR. THE MOTION CARRIED.

22 Mr. Florence led this discussion by explaining the applicant, Ron Madsen is the
24 operator and lessee of the Lindon Marina. He noted Mr. Madsen made a concept plan
26 presentation to the Planning Commission and City Council the end of 2018. The land
28 where the Lindon Marina is located is owned by the State of Utah. Mr. Madsen has filed
30 an ordinance amendment application for adoption of a new Lindon City Code chapter
32 17.78 that would allow Recreational Vehicle Parks in the Recreational Mixed-Use West
34 zone as a conditional use. He pointed out that RV Parks will also need to be added to the
36 Standards Land Use Table and staff is proposing some “clean up” language to Title 17.64
38 regarding habitation requirements for recreational vehicles.

40 Mr. Florence indicated campgrounds are currently allowed in the RMU-W zone as
42 a conditional use. However, the City currently does not have development standards for
44 an RV Park. In addition, Mr. Madsen is proposing recreational vehicle rentals called Park
46 Model Recreational Vehicles as part of his proposal for the RV Park. In 2018, the State
passed Administrative Rule 392-301 that mainly regulates public health standards at RV
parks and assigns the local health department to administer approval and inspections of
an RV park.

He noted Rule 392-301 addresses items such as water supply, wastewater, on-site
service buildings, maintenance, food service, solid waste swimming pools and
inspections and enforcement. He pointed out in this case, the Utah County Health
Department would be responsible for public health approvals and inspections.

Mr. Florence noted the Lindon City General Plan states “The City should work
with the property owners of the Lindon Marina to pursue upgrading the Marina to a full-
service facility on Utah Lake.

He then referenced the Summary of Lindon City Code Amendments as follows:

1. Updates Title 17.64.010 and .020 to now reference recreational vehicles as
defined in Utah Administrative Rule 392-301 instead of trailer houses.

*"Recreational vehicle" means a vehicular unit, other than a mobile home or tiny
house, designed as a temporary dwelling for travel, recreational and vacation
use, which is either driven or is mounted on or pulled by another vehicle,
including: travel trailer, camp trailer, fifth-wheel trailer, folding tent trailer, truck
camper, or motorhome.*

2. Updates 17.64.020 to not allow recreational vehicle habitation for an unspecified time limit in mobile home or RV parks.
3. Adds Recreational Vehicle Parks as a conditional under the Recreational Mixed Use – West zone in the Standard Land Use Table. If the ordinance is approved by the city council then RV Park will come back to the planning commission for a conditional use permit before it can begin construction and open for operation.
4. Creates a new ordinance section title 17.68 – Recreational Vehicles
 - a. 17.68 references State Code and the new State Administrative Rule 392-301 for complying with those regulations, standards, and definitions;
 - b. Establishes RV park development standards with minimum park size, pad site size, landscaping, security and parking standards;
 - c. Defines RV park pad sites as either independent or dependent. Independent are those with full hook-up utility services and dependent are reserved for those RV's or tent camping that require restroom and other sanitary services;
 - d. Requires a recreational area for the RV park;
 - e. Describes the types of common facilities such as a management office, laundry rooms, restroom and shower facilities and sewer disposal and water stations;
 - f. Describes the utility requirements for full hook-up pad sites;
 - g. Describes park management practices as well as the requirement that all overnight camping occurs in designated pad sites. Currently, campers are scattered throughout the property. The Utah Department of Forestry and Lands as well as the City would like to see all campers in designated pad sites. Some of the areas where campers are currently staying were never design for camping;
 - h. RV parks are required to obtain a business license;
 - i. There is a fourteen (14) day maximum stay in an RV park. In addition, the State of Utah does not allow more than a 14-day camping on public lands;
 - j. Describes requirements for Park Model RV rentals and that only the RV park operator is allowed to rent Park Model RV's. The ordinance also outlines construction standards and specifications for each Park Model RV. State Code 41-1a-102 defines a Park Model Recreational Vehicle:
"Park model recreational vehicle" means a unit that:
 - a. *is designed and marketed as temporary living quarters for recreational, camping, travel, or seasonal use;*
 - b. *is not permanently affixed to real property for use as a permanent dwelling;*
 - c. *requires a special highway movement permit for transit; and*
 - d. *is built on a single chassis mounted on wheels with a gross trailer area not exceeding 400 square feet in the setup mode.*

Mr. Florence then presented the exhibits for discussion as follows, the proposed Ordinance Amendment 17.64, proposed ordinance 17.68, and amendment to Appendix A Standard, Land Use Table, Site Plan and pad sites for Lindon Marina, and Utah Administrative Rule 392-301.

2 There was then some general discussion with Mr. Madsen describing the marina
and future uses and events. There was also discussion regarding the skirting in the winter
4 months on trailers and tiny homes and the amount of days between stays. At this time,
Chairperson Call suggested making the changes discussed and continue this item to the
6 next meeting. Mr. Florence stated there are a couple of options. He noted the next city
council meeting is cancelled so he would suggest reviewing this item again on March 26th
8 with the items discussed added to the ordinance.

Chairperson Call suggested continuing the item and have the following changes
10 made, skirting in the winter and tiny home skirting and the seven days between stays, and
bring back on the March 26th meeting. She noted this item will go the City Council for
12 approval on April 2nd. The Commission also agreed the ordinance looks great and staff
did a great job.

Chairperson Call asked if there were any public comments or discussion. Hearing
14 none she called for a motion to close the public hearing.

16
COMMISSIONER MARCHBANKS MOVED TO CLOSE THE PUBLIC
18 HEARING. COMMISSIONER THOMPSON SECONDED THE MOTION. ALL
PRESENT VOTED IN FAVOR. THE MOTION CARRIED.

20
Chairperson Call called for any further comments or discussion from the
22 Commission. Hearing none she called for a motion.

24 COMMISSIONER MARCHBANKS MOVED TO CONTINUE ORDINANCE
AMENDMENT 2019-4-O TO THE NEXT MEETING TO ALLOW STAFF TO MAKE
26 CHANGES TO THE ORDINANCE. COMMISSIONER JOHNSON SECONDED THE
MOTION. THE VOTE WAS RECORDED AS FOLLOWS:

28 CHAIRPERSON CALL AYE
COMMISSIONER MARCHBANKS AYE
30 COMMISSIONER JOHNSON AYE
COMMISSIONER THOMPSON AYE
32 COMMISSIONER SCHAUERS AYE
THE MOTION CARRIED UNANIMOUSLY.

34
6. **New Business: Reports by Commissioners** – Chairperson Call called for any
36 new business or reports from the Commissioners. There were no new reports.

38 7. **Planning Director Report** –

40 Next meeting two ordinance amendments:

- 42 • Recycling businesses removed from the Standard Land Use Table
as a use category.
- 44 • Height and square footage allowance for detached accessory
apartments.

46 Chairperson Call called for any further comments or discussion. Hearing none she
called for a motion to adjourn.

