

## September 18, 2013 City Council Minutes

Minutes of the Payson City Council Meeting held at the Payson City Center, 439 West Utah Avenue, Payson, Utah on Wednesday, September 18, 2013 at 6:00 p.m.

### ROLL CALL:

Mayor Rick Moore presiding.

### PRAYER & PLEDGE OF ALLEGIANCE

Prayer offered by Councilmember Skinner and Pledge of Allegiance led by Councilmember Phillips.

### CONSENT AGENDA

MOTION by Councilmember Phillips to approve the Consent Agenda consisting of: approval of September 4, 2013 City Council Minutes, and approval of Cahoon Industrial Park Deferral Agreement. Motion seconded by Councilmember Hardy. Motion carries.

### SWEARING IN OF NEW OFFICERS

Judge Dahlquist administered the Oath of Office to new officers: Joshua Glenn Janda and Allyson Monsen and the City Council welcomed them to Payson's workforce.

### COUNCIL AND STAFF REPORTS

Personnel Coordinator Dora Edvalson presented Employee Service Awards to:

35 years: Larry Reynolds, Vehicle Maintenance  
10 years: Dennis Jacobson, Storm Drain Maintenance  
5 years: Judge David Dahlquist

Travis Jockmunsen reported that the lakes in the canyon are up a couple of inches from the rainfall received, and that we still plan to turn off PI system at the end of the month. He also said that they will be sending out RFP for the impact fee updates.

Councilmember Hancock noted that there is a lot of water in Dry Creek and wondered if that was just run-off and Mr. Jockmunsen thought it was.

Councilmember Phillips wondered why there were so many water leaks recently and Mr. Jockmunsen thought it was just old pipe.

Chief Spencer reported the fire and ambulance departments have been busy helping with flooded homes and other calls. He said he is in the process of obtaining bids for the new engine.

Mayor Moore wondered about the solution for the flooding of the creek around 300 North and Councilmember Phillips said they were in the process of raising their surface so it doesn't slope towards the home, and we talked about piping the creek.

Councilmember Hardy reported on Chamber activities over the past few weeks and he thanked city crews for all their work during the rain storms. He said he attended the 9-11 service and thought it was very nice.

Councilmember Ford also appreciated everyone for helping during the storms. She thanked all city crews for how busy they have been and helping with all the events along with their other duties.

Councilmember Hancock said that the Council received the study from SUVMWA regarding recharge, and said that it would soon be published, then towards the end of October there will be a combined meeting (probably the third Thursday) to summarize the report to all the cities' Councils and Mayors.

Councilmember Phillips thought the employee "thank-you" party was nice. He also thanked Public Works Superintendent Jockmunsen for checking on everything through all the flooding. He said the street department is still paving more roads, and they are about  $\frac{3}{4}$  finished with the new cart paths.

Mayor Moore agreed that there were a lot of homes impacted with the storms and there were numerous people coming together to help with sandbags, etc. He said he attended Utah League of Cities and Towns meetings last week and said their

## September 18, 2013 City Council Minutes

main theme this year was on health and staying healthy. He also said that there was some discussion on cooperating with each other (cities, special districts, etc.) to help save money. He encouraged all councilmembers to attend the league meetings next year, and said there is some great training for local entities.

### PUBLIC HEARING – ORDINANCE AMENDMENTS

MOTION by Councilmember Ford to open the public hearing regarding Ordinance Amendments. Motion seconded by Councilmember Hardy. Motion carries.

Public hearing opened at 6:30 p.m.

Planner Spencer presented the following:

On occasion, changes in development practices, new land use goals of the City Council or other appropriate circumstances result in the need to update or revise the development ordinances of the City. Staff generally compiles several potential amendments until a pressing issue arises at which time the proposed amendments are prepared for review by the Planning Commission and City Council. In this instance, the proposed ordinance amendments are suggestions of staff with the exception of a request to amend Appendix A of the Payson City Zoning Ordinance.

Staff is proposing amendments to the development ordinances (Title 19 and Title 20) that will modify the requirements for annexation. As currently adopted, a request for annexation requires the annexation petitioner(s) to enter into an agreement with Payson City to clarify the obligations of each party as they relate to existing and future development within the annexation area. Each annexation is reviewed on its own merits and the terms of each annexation agreement will vary because of site specific requirements. In some cases, the City Council may determine that an annexation agreement is not necessary. Therefore, staff is suggesting the ordinance be amended to allow the City Council to waive the requirement of an annexation agreement if deemed appropriate.

During the public hearing at the Planning Commission meeting on August 28, 2013, a request was made to allow automobile and passenger truck sales in the CC-1, Central Commercial Zone. Bill Beifuss is interested in purchasing the property located at 94 West 100 North in Downtown Payson and operate an automobile sales and auto body restoration business on the site. The City Council approved auto body work and restoration as a conditional use in the CC-1 Zone on October 19, 2011. However, automobile sales are not currently allowed in the zone. The applicant is requesting an amendment to Appendix A of the Zoning Ordinance to allow this use in the CC-1 Zone.

Staff would also like the City Council to consider amendments to the RMO Overlay Zones. Currently, the RMO Overlay Zones are written in a manner that the overlay zones (RMO-1, RMO-2, and RMO-3) are only eligible in certain zoning districts. Over the years, applicants and property owners have suggested the RMO Overlay Zones be regulated by parcel size rather than zoning district. In other words, if a parcel of land satisfies the lot area and lot frontage requirements for a duplex or twin home structure, an applicant may request approval of a multi-family structure regardless of the zoning district in which the parcel is located. Approval of an overlay zone is a legislative decision of the City Council, which they are not obligated to approve. This item has been placed in the packet for discussion only. If the City Council is favorable to this change, the amendment would need to be prepared by staff.

### **Analysis**

The authority for municipalities to adopt ordinances to guide development can be found in §10-9a Utah Code Annotated. Development ordinances are also influenced by federal laws and case law. It is the role of staff to ensure that any proposed amendments are consistent with the provisions of state and federal statute and all levels of case law. That said, despite the many laws and provisions that guide the creation of development ordinances, the City Council is granted a great deal of deference to enact development regulations tailored specifically for our community. The following list of ordinance amendments is proposed for consideration by the City Council:

### **Title 19, Zoning Ordinance**

1. Chapter 19.4, Off-Street Parking – Staff is proposing minor amendments to the off-street parking provisions of the Zoning Ordinance. Specifically, it is proposed that the design and location of off-street parking be reviewed and approved administratively by staff.
2. Chapter 19.12, Annexations – Staff is proposing various changes to the Annexation Ordinance, including an option for the City Council to decide, petition by petition, if an annexation agreement is necessary.

## September 18, 2013 City Council Minutes

3. As mentioned above, staff is requesting guidance from the Planning Commission and City Council regarding the RMO Overlay Zones and whether or not multi-family dwellings should be considered in all residential zoning districts.

### **Appendix A of the Zoning Ordinance**

1. It is proposed that the City Council allow automobile and passenger truck sales as a permitted use in the CC-1, Central Commercial Zone.

### **Title 20, Subdivision Ordinance**

1. Section 20.17.1, Page 20-29 – This amendment would expand the City Council's authority to collaborate with an adjacent municipality to provide utility services for parcels within each city.

On August 28, 2013, the Planning Commission, following a public hearing, recommended the City Council approve the proposed amendments to Title 19, Zoning Ordinance, Appendix A, and Title 20, Subdivision Ordinance with the following considerations:

- Annexation agreements must be prepared for all annexations, except when deemed appropriate by the City Council to waive the requirement. In other words, the preparation of an annexation agreement should be the standard for all annexations, unless a special exception is granted by the City Council.
- A positive recommendation was provided regarding the ability to collaborate with adjacent municipalities to provide utility services for certain parcels within Payson and for staff to approve the design and location of off-street parking.
- The Planning Commission agreed to include Mr. Beifuss' request with the amendments proposed by staff. This will eliminate the need for the applicant to process a separate application.
- The Planning Commission shared differing opinions regarding the RMO Overlay Zones. The Commission recommended the City Council refrain from modifying the RMO Overlay Zone requirements. However, the motion was not unanimous (3-2).

Councilmember Skinner wondered if changing the ordinance regarding RMO would have any effect on a developer coming in with a Development and Planner Spencer said that the applicant would not be able to use both options to his benefit.

Bill Beifuss said he has just purchased a home between Payson and Elk Ridge and found a property on the curve of Hwy 198 for his business of repairing and selling cars. He said they would sell cars they repair on the front of the property and do the repairs behind.

Amanda Peterson thought the RMO overlay zone was an excellent idea. When multi-family is done well, you don't even notice that it is not single family. She believes it is nice to have the multi-family spread out and not concentrated in one area.

Receiving no further input MOTION by Councilmember Hardy to close the public hearing. Motion seconded by Councilmember Phillips. Motion carries.

Public hearing closed at 7:45 p.m.

Councilmember Phillips would like to raise the bar, so there are nice multi-family units and maybe require garages for duplexes instead of outdoor parking, in some areas you cannot tell it is a duplex because there are garages.

Councilmember Hardy wondered how we would protect the landowners and the city if we improve an annexation without an Annexation Agreement. He is a little uneasy doing this, without some type of trigger in place. Planner Spencer hoped we didn't approve many without an agreement, but the protection they would have would be in the ordinances and we could always change the ordinances.

MOTION by Councilmember Hancock to approve Ordinance #09-18-13-A, an Ordinance approving Title 19, Zoning Ordinance and including Appendix A as presented. Motion seconded by Councilmember Hardy. All councilmembers voted aye. Motion carries.

MOTION by Councilmember Hardy to approve Ordinance #09-18-13-B, an Ordinance approving amendments to Title 20, Subdivision Ordinance as presented. Motion seconded by Councilmember Phillips. Motion carries.

## September 18, 2013 City Council Minutes

Discussion was held regarding the preparation of some general guidelines that emphasize the idea that we expect improvements not just the ability to put in multi-family or duplexes, along with off-street parking or garages. Staff will prepare something for the RMO to bring back to Council.

### **PUBLIC HEARING – D. MOODY SUBDIVISION AND OVERLAY ZONE**

MOTION by Councilmember Ford to open the public hearing regarding D. Moody Subdivision and Overlay Zone. Motion seconded by Councilmember Hardy. Motion carries.

Public hearing opened at 7:05 p.m.

Planner Spencer presented the following:

#### **Background**

The applicants, Daryn and Coleen Moody are requesting approval of the D. Moody Subdivision located south of 400 South at approximately 800 East. The subdivision consists of three (3) lots, one of which contains an existing single family dwelling. The subdivision is located in the R-1-10, Residential Zone which allows single family dwellings on lots containing at least ten thousand (10,000) square feet of lot area and one hundred (100) feet of frontage. Although the subdivision may be considered a traditional subdivision, the request involves legislative matters that must be approved by the City Council.

In addition to the request for subdivision approval, the applicants are requesting the street cross-section requirements be modified in accordance with Chapter 20.27 of the Payson City Subdivision Ordinance, and approval to reduce the lot frontage requirements in accordance with the provisions of the I-O, Infill Overlay Zone. These matters are a legislative action of the City Council and the Council is not obligated to approve the request(s).

Because of the topography and other physical challenges of the site, it was necessary for staff to pay particular attention to the hillsides, impact on existing dwellings in the immediate vicinity, access and egress concerns, and maintenance issues. Furthermore, staff has determined the available water flow and residual pressure is not adequate to support additional dwellings in this area. Therefore, additional structures cannot be built in the proposed subdivision until upgrades to the existing drinking water system in the area are completed or internal fire sprinkling systems are installed in the dwellings.

The applicants initiated the review process in 2008; however, following a review of the project, staff determined that upgrades to the drinking water system were necessary to provide adequate volume and fire flow for the dwellings in the proposed subdivision. At that time, the applicants were provided the option to install an internal sprinkling system in the new dwellings, but they chose to delay the request. The applicants are now ready to proceed with the subdivision and are willing to provide a fire suppression system for the new dwellings to satisfy the fire flow requirements of the adopted fire code.

In order to obtain approval of a preliminary plan and the overlay zone, the applicant must receive a recommendation from the Planning Commission and the City Council must grant approval. Prior to forwarding a recommendation to the City Council, the Planning Commission held a public hearing to receive input from the public in relation to the proposal of the applicant. Their recommendation is included in the recommendation portion of this staff report. The public hearing for the City Council meeting has been properly noticed and courtesy notices have been mailed to the appropriate property owners.

#### **Analysis**

The subdivision was reviewed for compliance with Title 19, Zoning Ordinance; Title 20, Subdivision Ordinance; the Design Guidelines and Standard Specifications of Payson City, and the applicable provisions of the development ordinances of Payson City. Following staff review of the proposed D. Moody Subdivision a list of items has been generated that will need to be satisfied in conjunction with preliminary plan approval. Following preliminary plan approval, the final plat will be reviewed for compliance with the development ordinances.

1. The lots in the proposed subdivision satisfy the minimum lot area of the R-1-10, Residential Zone; however, the lots do not satisfy the minimum frontage requirements of underlying zone. To develop the property as proposed, the applicants will need to obtain approval from the City Council for use of the I-O, Infill Overlay Zone. Lot 3 is considered a lot of record, but has not been developed due to limited access and lack of adequate firefighting facilities. Access to the lot and provision of utility services are contemplated on the project drawings.
2. The applicant is requesting approval of a private road with an alternate street cross-section. Section 20.19.1 of the Subdivision Ordinance enables the City Council to approve an alternate street cross-section and Chapter 20.27 provides guidelines for access on hillsides. The City Council is not obligated to approve the alternate cross-section.

## September 18, 2013 City Council Minutes

- a. The cross-section of the roadway is not consistent with the minor street cross-section of Payson City. The applicant is requesting approval to reduce the roadway width, provide a hammerhead turn-around rather than a cul-de-sac, and eliminate the installation of curb, gutter and sidewalk. The City Council will need to identify an acceptable design for the roadway and determine the ownership of the facility (i.e. private or public).
  - b. Staff would suggest the width of the private drive be increased along the frontage of Lots 1 and 3 and include, at a minimum, curb and gutter to protect the life of the asphalt and channel storm water to the storm water sumps. The City Council will need to determine if sidewalk is necessary along the private drive.
  - c. Because of the physical terrain, public safety access and turn around areas are an important consideration. The applicant will need to work closely with the Payson City Fire Chief to identify and construct appropriate turn around areas and access. Furthermore, the applicant will need to work with the Fire Chief to identify and properly locate the fire-fighting facilities in the proposed development. At a minimum, the public safety plan will need to include information on roadway design, turnarounds, and placement of fire hydrants. The applicant will need to submit all testing and inspection fees assessed by the Fire Department.
  - d. If the alternate cross-section is not approved, the subdivision cannot be approved as proposed because the development will not meet the minimum requirements of the development ordinances.
3. The applicant will need to reimburse Payson City for the costs associated with the courtesy notice mailings for the Planning Commission and City Council meeting.
  4. A title report will need to be submitted that indicates any encumbrances, easements, deed restrictions or other barriers that could impact development of the site.
  5. The applicant will need to address the following concerns related to the provision of public and private utilities:
    - a. It is proposed that the roadway will remain in private ownership. Therefore, the utilities outside of the public right-of-way will be privately owned and maintained. The Final Plat will need to include a project note that indicates the extension of 800 East is a private street and maintained by the owners within the development.
    - b. The applicant will need to coordinate solid waste collection with the Payson City Streets Superintendent. If adequate access, turn around areas and egress cannot be identified, the residents may be required to transport solid waste containers to an appropriate location on a public street.
    - c. Regardless of road ownership, the fire hydrants that serve the proposed development will need to satisfy the regulations of the Payson City Fire Department.
  6. The applicants will need to work with the Payson City Fire Chief on the firefighting plan for the subdivision, including the requirement for internal sprinkling systems.
  7. The applicants will need to work with the Payson Power Department to design the electrical layout of the proposed subdivision. The power connection for the existing dwelling, as well as the proposed new dwellings will need to be located underground. The applicant will need to submit payment of the material and labor costs associated with the installation of power facilities by the Payson Power Department.
  8. The applicants will need to work with the City Engineer to address the following concerns related to slope stabilization and lot to lot drainage:
    - a. A storm water plan must satisfy the storm water storage and discharge limitations for the twenty four (24) hour twenty five (25) year storm event. Storm water system details including easements, drainage basins and storm calculations will need to be provided.
    - b. A geotechnical report will need to be prepared that identifies any special construction methods to ensure the improvements and buildings will be constructed in a manner suitable for the location.
    - c. A slope stabilization plan will need to be prepared that addresses the stabilization of the lots in the proposed subdivision, specifically the northern boundary of the subdivision (Lot 1 and Lot 3).
    - d. Due to topography, it is important that a lot to lot drainage plan be prepared and implemented to ensure that storm water generated on the site will not trespass onto adjacent properties.
  9. The project drawings will need to be modified to indicate the following:
    - a. A number coordinate will need to be provided for the private street.
    - b. An address will need to be provided for each lot.
    - c. The size of the drinking water main in 400 South will need to be changed to a four inch (4") line.
    - d. Other changes as required by the City Engineer following a review of the project drawings.
  10. Letters indicating a willingness to serve the project site will need to be obtained from each of the private utility providers (i.e. Questar, CenturyLink, Comcast, and UTOPIA) and submitted to staff. Due to the location of the proposed development and the proximity to the High Line Canal, a letter will need to be provided from the High Line Canal Company as well. Any improvements required by the private utility providers will need to be completed prior to the issuance of a building permit and at the applicant's expense.

## September 18, 2013 City Council Minutes

11. The applicants will need to contact the post office on the mode of mail delivery for the proposed subdivision. Staff would suggest that individual mailboxes be provided along 400 South. If a CBU is proposed, the location will need to be approved by Payson City.
12. Following Preliminary Plan approval, the Final Plat will be reviewed by staff and the City Council. The Final Plat must be consistent with Chapter 20.29 of the Subdivision Ordinance. An application will need to be submitted and review fees paid.
13. All maintenance and repair of the road, utilities and other improvements associated with the private street will be the responsibility of the homeowners. The lots will need to be deed restricted to inform residents of the private street and the responsibilities associated with the private street, such as repair, maintenance, and snow plowing. Staff would suggest the formation of a homeowners association (HOA) to address access, maintenance, ownership and similar issues through the creation of project covenants, conditions and restrictions (CC&R's).
14. Prior to the issuance of a Certificate of Occupancy, the front yard landscaping for each dwelling will need to be completed in accordance with the provisions of the development ordinances.
15. The applicant will need to transfer an adequate amount of water to serve the development to Payson City in accordance with Title 10, Water Ordinance of the Payson City Municipal Code.
16. The applicant will need to submit a performance guarantee in the form of a cash bond or irrevocable letter of credit in an amount equal to one hundred twenty (120) percent of the engineer's cost estimate for completing the project improvements.
17. Prior to the improvement of the site and construction of any structures, all debris and waste, including unused construction materials and asphalt will need to be removed from the site and may not be used as fill material.

### **Recommendation**

This staff report identifies items that are not in compliance with the Payson City Development Code. It was the intent of the staff to complete a thorough review and identify all items that do not satisfy the requirements of Title 10, Water Ordinance; Title 19, Zoning Ordinance; Title 20, Subdivision Ordinance; the Design Guidelines and Standard Specifications; and any and all other development requirements of the City. However, failure of the staff to identify an inconsistency with any City requirement does not release the applicant of the obligation to satisfy all development requirements of the City. If an item is identified at a later date, the applicant will be responsible to satisfy the relevant development requirements.

On August 28, 2013, the Planning Commission, following a public hearing, recommended approval for use of the I-O, Infill Overlay Zone and the preliminary plan for the D. Moody Subdivision contingent upon the satisfaction of staff conditions.

The applicant is requesting approval of a subdivision, use of the I-O, Infill Overlay Zone, and other legislative approvals. Because each application requires separate motions from the City Council, staff has appropriately separated the requests of the applicants:

#### Approval of the I-O, Infill Overlay Zone

The applicant is seeking approval for use of the I-O, Infill Overlay Zone to reduce the frontage requirement for the lots in the proposed D. Moody Subdivision. Approval of an overlay zone is a legislative action which the City Council is not obligated to approve. Upon review of the request, the City Council may approve, modify and approve or deny the proposed use of the I-O Infill Overlay Zone.

#### Alternate Street Cross-Section

There is an existing private access on the site that provides primary access to the applicants' dwelling as well as secondary access for parcels owned by Dean Moody and Blaine Montague. The applicants are requesting approval for two (2) additional dwellings to access the private street. The action to approve access onto a private street is a legislative action which the City Council is not obligated to approve. Therefore, staff would suggest it is the burden of the applicants to demonstrate that access to the private street will result in safe and adequate access to the site. It is likely that various improvements will need to be completed to the existing road in order to accommodate additional traffic.

#### D. Moody Subdivision

Following a review of the proposed subdivision, the City Council will need to determine if the subdivision satisfies the provisions of the adopted development ordinances. Following a review of the information, the City Council may:

1. Remand the proposed subdivision back to staff or the Planning Commission for further review. If the City Council requires more information to reach a reasonable conclusion, the project could be remanded to staff with specific instructions to obtain and submit additional information for review by the City Council.

## September 18, 2013 City Council Minutes

2. Approve the subdivision as proposed. If the City Council chooses to approve the subdivision as proposed staff would suggest that an opportunity to require the applicant to satisfy the regulations of the Payson City development ordinances and the land use goals of the City Council will be missed.
3. Approve the subdivision contingent upon the satisfaction of the conditions included in this staff report. Staff would suggest that if the applicant is able and willing to satisfy the conditions listed herein, additional dwellings may be appropriate in this area. The primary concern of staff is centered on the private access and whether safety, fire and utility issues can be effectively mitigated.
4. Deny the proposed subdivision. This action should be taken if the City Council determines that the applicant is unwilling or unable to satisfy the regulations of the Payson City development ordinances and the land use goals of the City.

If the City Council is inclined to approve the request, staff would suggest the City Council refrain from granting final plat approval until the conditions of preliminary plan approval are satisfied. Once the necessary conditions of approval are satisfied, the final plat will be forwarded to the City Council for consideration.

Darren Moody, the applicant explained the slope of the land and where he would like to have his home. He said that the past storm didn't have any run-off coming off his property onto his neighbors. He also explained the where the private road is and how the neighbors access from that lane also.

Planner Spencer said that in 1998 the existing home was approved by the fire department, but hadn't asked them specifically about this one.

Mayor Moore wondered what the difference was with this request and the Fawson's. Planner Spencer said that the areas and topography is very similar, however the turn-around was the issue for Fawson's.

Mr. Moody explained that there would be a hammerhead road for turn around on his property.

Public Works Director Jockmunsen said the sumps do not work right now, so something would need to be done there and some type of grading done so as not to cause problem for run-off because of more impervious materials going in.

Receiving no further input MOTION by Councilmember Phillips to close the public hearing. Motion seconded by Councilmember Skinner. Motion carries.

Public hearing closed at 7:25 p.m.

MOTION by Councilmember Skinner to remand this item back to staff until all the conditions are satisfied with the direction that they be completed soon. Motion seconded by Councilmember Phillips. Motion carries.

### DEFERRAL AGREEMENT FOR LOT 2 OF GATEWAY TOWN CENTER SUBDIVISION & DISPOSAL OF CITY PROPERTY

Planner Spencer explained that on September 11, 2013, the Planning Commission reviewed and approved Plat D of the Gateway Town Center Subdivision, a two (2) lot subdivision located at approximately 1050 West 800 South in the S-1, Special Highway Service Zone.

The Planning Commission recommended that the Deferral Agreement only delay installation of improvements along 1040 and along 800 South.

Also, during staff review of the proposed subdivision it was discovered that Payson City owns two (2) parcels of land immediately adjacent to the proposed subdivision. One parcel is landlocked and the other is configured in a manner that restricts access to an adjoining parcel. Staff is requesting the City Council consider relinquishing ownership of the two (2) parcels located adjacent to proposed subdivision to the owner of Lot 2, Black Watch Payson LLC.

- Indicated as Parcel A on the Final Plat (attached), there is a three (3) foot wide strip of land owned by Payson City along the entire frontage of Lot 2 adjacent to 1040 West. This parcel restricts access to the roadway and public utilities in 1040 West for Lot 2. Staff would suggest the City Council consider deeding this parcel of land (0.028 acres or 1,204 square feet) to the owner of Lot 2 to eliminate a nuisance strip and facilitate development of the property.

## September 18, 2013 City Council Minutes

- Payson City owns a small piece of property near the northwest corner of Lot 2 (Utah County Parcel 30-063-0055 = 0.016 acres or 690 square feet). Due to the size and location of the parcel, staff would suggest the parcel be deeded to the owner of Lot 2 and incorporated into the project. Because the parcel is currently owned by Payson City Corporation, the City Council must authorize the adjustment of property lines and the disposal of public property.

It should be noted that the request to dispose of public property is a suggestion of staff and not a request of Black Watch Payson LLC. The property owner may not be interested in accepting the ownership of these parcels of land at this time. Nonetheless, use of these parcels will need to be resolved prior to the improvement of Lot 2 of the Gateway Town Center Subdivision, Plat D.

Councilmember Skinner wanted to make sure we were confident that the property wouldn't be needed for utilities or something else. Planner Spencer said that the same type of thing happened on other parcels and the city received an easement for a trail, etc. but still disposed of the property.

Ernie Smith, the applicant, explained that he sees the need for the sidewalk and they are ok with doing that that. He said that he sees the reason for the property disposal is to clean-up the lines of the area and Woodbury is willing to accept that.

Mayor Moore and Councilmember Phillips both expressed frustration with Woodbury Corporation for maintenance of the area. He said that the agreement with Woodbury was for them to do some things for the City on Main Street prior to any development in the area and he felt this is development. He understands his issue is with Woodbury and Mr. Smith said he would relay that message. Mr. Smith explained that they are purchasing the property from Woodbury to build Jiffy Lube and doesn't know anything about the city's agreement with Woodbury.

Planner Spencer noted that the Planning Commission Motion stated that work could not commence with Jiffy Lube until the rest of the property is cleaned up and Mr. Smith is aware of that.

MOTION by Councilmember Hardy to approve the Deferral Agreement as modified to defer improvements on 1040 and not defer them on 800 South and to include the recommendation of Planning Commission regarding the property clean up. Motion seconded by Councilmember Skinner. Voting aye: Councilmembers: Ford, Hancock, Hardy, and Skinner. Voting nay: Councilmember Phillips. Motion carries.

MOTION by Councilmember Skinner disposal of the property as presented. Motion seconded by Councilmember Phillips. Motion carries.

ADJOURN

MOTION by Councilmember Hancock to adjourn. Motion seconded by Councilmember Skinner. Motion carries.

Council adjourned at 7:50 p.m.