



ENT 101817:2015 PG 1 of 58
JEFFERY SMITH
UTAH COUNTY RECORDER
2015 Nov 10 1:07 PM FEE 272.00 BY EO
RECORDED FOR SARATOGA SPRINGS CITY

**SIERRA ESTATES
AMENDED MASTER DEVELOPMENT AGREEMENT**

THIS AMENDED MASTER DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into on March 25, 2014, by and between the City of Saratoga Springs, Utah, a Utah municipal corporation (“City”) and PHI Properties, Inc. (formerly known as Patterson Homes, Inc.) (“Developer”).

RECITALS:

WHEREAS, Developer is the current owner and developer of undeveloped and unrecorded parcels in the development known as Sierra Estates in Saratoga Springs, Utah (the “Property”), which is more fully described in Exhibit 1 attached hereto and incorporated herein; and

WHEREAS, Developers, or their predecessors in interest, entered into the Sierra Estates Master Development Plan Agreement (“MDA”) on or about October 6, 2006, recorded at the Utah County Recorder’s Office as Entry 112973:2007. The Master Development Plan Agreement (the “MDA”) was accompanied by a Master Development Plan (the “MDP”) per City ordinances; and

WHEREAS, the entire acreage covered by the MDA and MDP consists of 90.37 acres; to date, 46.54 acres have been developed; and

WHEREAS, the Property consists of the remaining 43.83 acres covered by the MDA and MDP; and

WHEREAS, the MDA and MDP are set to expire on October 10, 2014, upon which all development rights for the Property will expire unless the Developer has received final approval of any subdivisions and site plans and has recorded such prior to the expiration of the MDA and MDP; and

WHEREAS, Developer has requested to amend the MDA and MDP to allow the Property to remain in the R-3 and R-6 zone (the “Request”), continue to allow the uses specified in the MDA and MDP, to extend the terms of the MDA, to replace the MDP with current exhibits and plans, and to address current conditions related to the Property; and

WHEREAS, 29.99 acres of the Property are currently zoned R-3 and 13.84 acres are zoned R-6. Developer wishes to continue development of the Sierra Estates project and is proposing to develop 94 single family homes on 28.27 (out of 29.99) acres within the R-3 zone with lot sizes ranging from 9,000 square feet to 14,456 square feet. On the 13.84 acres zoned R-6, Developer wishes to develop 20 single family lots ranging in size from 6,000 to 6,745 square feet, 56 single story cottage units in the form of two-family and three-family dwelling as defined in the City’s Land Development Code, and an assisted living facility, as more specifically

described in the new Master Plan attached as Exhibit 2. Developer wishes to preserve the remaining 1.72 acres for future acquisition by UDOT and/or the City for the future location of the Mountain View Corridor (the entire Property and Master Plan are collectively referred to hereinafter as "Project"); and

WHEREAS, the Master Plan, attached as Exhibit 2, among other things, identifies land uses, number of units Developer may be able to build, major roads, required open spaces and trails, drainages, and power line corridors; and

WHEREAS, upon expiration of the MDA and MDP, the proposed Project will not meet the R-6 and R-3 zone requirements due to insufficient open space because the credits for the previously-installed open space will also expire. Further, Developer wishes to preserve the 1.72 acres of property to be acquired by the City and/or UDOT for the future Mountain View Corridor and transfer the density from that 1.72 acres to the remainder of the Property. Therefore, in order to develop the Project according to these requests (the "Request"), Developer wishes to enter into this Agreement and to be voluntarily bound by this Agreement in order to be able to develop the Project as proposed; and

WHEREAS, this Agreement is intended by the parties to be an amendment to the MDA and MDP referenced above; however, if this Agreement is ever held to be an invalid amendment to the MDA and MDP the parties agree that this Agreement may then stand on its own, and where necessary incorporate the provisions of said MDA and MDP into this Agreement, and bind the parties to the terms of this Agreement; and

WHEREAS, the terms of this Agreement only apply to the undeveloped portions of the Property listed in Exhibit 1 and will not modify the original MDA and MDP as it pertains to phases that have received final plat approval and have been recorded as of the date of execution of this Agreement; and

WHEREAS, to assist the City in its review of the Request and to assure development of the Property in accordance with Developer's representations to City, Developer and City desire to voluntarily enter into this Agreement, which sets forth the processes and standards whereby Developer may develop the Property; and

WHEREAS, the City desires to enter into this Agreement to promote the health, welfare, safety, convenience, and economic prosperity of the inhabitants of the City through the establishment and administration of conditions and regulations concerning the use and development of the Property; and

WHEREAS, on February 27, 2014, after a duly noticed public hearing, City's Planning Commission recommended approval of Developer's Request, this Agreement, and the Master Plan, and forwarded the application to the City Council for its consideration, subject to the findings and conditions contained in the Staff Report and written minutes attached hereto as Exhibit 4; and

WHEREAS, on March 25, 2014, the Saratoga Springs City Council (“City Council”), approved Developer’s Request, this Agreement, and the Master Plan, subject to the findings and conditions contained in the Staff Report and written minutes attached hereto as Exhibit 5; and

WHEREAS, to allow development of the Property for the benefit of Developer, to ensure that the development of the Property and Project will conform to applicable ordinances, regulations, and standards, Developer and City are each willing to abide by the terms and conditions set forth herein; and

WHEREAS, pursuant to its legislative authority under Utah Code § 10-9a-101, et seq., and after all required public notice and hearings, the City Council, in exercising its authority, has determined that entering into this Agreement furthers the purposes of the Utah Municipal Land Use, Development, and Management Act, the City’s General Plan, and the City Code (collectively, the “Public Purposes”). As a result of such determination, City has elected to process the Request and authorize the subsequent development thereunder in accordance with the provisions of this Agreement, and the City has concluded that the terms and conditions set forth in this Agreement accomplish the Public Purposes referenced above and promote the health, safety, prosperity, security, and general welfare of the residents and taxpayers of the City.

AGREEMENT:

Now, therefore, in consideration of the recitals above and the terms and conditions set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Developer agree as follows:

1. Effective Date. This Agreement shall become effective on the date it is executed by Developer and the City (the “Effective Date”). The Effective Date shall be inserted in the introductory paragraph preceding the Recitals.
2. Affected Property. The property ownership map, vicinity map, and legal descriptions for the Property are attached as Exhibit 1. In the event of a conflict between the legal description and the property ownership map, the map shall take precedence. This Agreement shall be recorded against the Property as provided in Section 26 below. No other property may be added to or removed from this Agreement except by written amendment to this Agreement executed and approved by Developer and City.
3. Zone Change and Permitted Uses. Subject to the terms of this Agreement, the future development of the Property shall be subject to the provisions of the R-3 and R-6 zones as they exist on the effective date of this Agreement with respect to the maximum allowed density and permitted and conditional uses. However, the land uses allowed on the Property shall be governed by Title 19 of the City Code in effect at the time of preliminary plat application, except to the extent this Agreement is more restrictive.
4. Applicable Code Provisions. All provisions of Title 19 of the City Code as constituted on

the effective date of this Agreement shall be applicable to the Project with respect to the maximum allowed density and permitted and conditional uses, except to the extent this Agreement is more restrictive. All other regulations on the land uses allowed on the Property shall be governed by Title 19 of the City Code in effect at the time of preliminary plat application, except to the extent this Agreement is more restrictive. The parties acknowledge that in order to proceed with development of the Property, Developer shall comply with the requirements of this Agreement, Title 19 of the City code as provided in this paragraph, and other requirements generally applicable to development in the City. In particular, and not by way of limitation, Developer shall conform to the requirements of Chapter 19.04 (Establishment of Land Use Zones and Official Map) and the City's engineering standards and specifications, and the project plan approval processes therein.

5. Rights and Obligations under this Agreement. Provided the Request is granted, and subject to the terms and conditions of this Agreement, Developer shall have the vested right under this Agreement to develop the maximum allowable densities and the permitted and conditional uses under the R-3 and R-6 zones as those zones exist on the effective date of this Agreement. Developer shall be required to apply for and obtain approval for each subdivision or site plan provided for in the Preliminary Project Plans and to otherwise comply with all provisions of the City Code in effect at the time of preliminary plat application, except as otherwise expressly provided in this Agreement. Developer's vested right of development of the Property pursuant to this Agreement and the R-3 and R-6 zones is expressly subject to and based upon strict compliance and performance by Developer of all of the terms, conditions, and obligations of Developer under this Agreement, City ordinances, regulations, specifications, and standards (hereinafter "City regulations"), and the exhibits attached to this Agreement.

6. Reserved Legislative Powers. Nothing in this Agreement shall limit the future exercise of the police powers of City in enacting zoning, subdivision, development, growth management, platting, environmental, open space, transportation, and other land use plans, policies, ordinances, and regulations after the date of this Agreement. Notwithstanding the retained power of City to enact such legislation under its police power, such legislation shall not modify Developer's rights as set forth herein unless facts and circumstances are present that meet the compelling, countervailing public interest exception to the vested rights doctrine as set forth in *Western Land Equities, Inc. v. City of Logan*, 617 P.2d 388 (Utah 1988), or successor case law or statute. Any such proposed change affecting Developer's rights shall be of general applicability to all development activity in City. Unless City declares an emergency, Developer shall be entitled to prior written notice and an opportunity to be heard with respect to the proposed change and its applicability to the Project.

7. Installation of Improvements Prior to Building Permits. In accordance with City regulations, building permits will not be issued until all improvements required in this Agreement, all exhibits, and City regulations are installed in accordance with City

regulations, accepted by the City in writing, and guaranteed by a warranty bond to guarantee that the improvements remain free from defects and continue to meet City standards for a period of one or two years as allowed in Utah Code § 10-9a-604.5. Concurrent with posting the warranty bond, Developer shall be required to enter into a warranty bond agreement on a form provided by the City. The City may allow issuance

of building permits prior to installation of all improvements in accordance with current City regulations, which may change from time-to-time.

8. Water Infrastructure, Dedications, and Fees.

- a. Dedication of Water. Developer shall convey to or acquire from the City water rights sufficient for the development of the Property according to City regulations in effect at the time of plat recordation. Water rights to meet culinary and secondary water requirements must be approved for municipal use with approved sources from City owned wells or other sources at locations approved by the City. Prior to acceptance of the water rights from Developer, the City shall evaluate the water rights proposed for conveyance and may refuse to accept any right it determines to be insufficient in annual quantity or rate of flow, has not been approved for change to municipal purposes within the City and for diversion from City owned wells by the Utah State Engineer, or does not meet City regulations.
- b. Water Facilities for Development. At the time of plat recordation, Developer shall be responsible for the installation and dedication to City of all onsite and offsite culinary and secondary water improvements, including water sources and storage and distribution facilities, sufficient for the development of Developer's Property in accordance with the City regulations and this Agreement. The required improvements for each plat shall be determined by the City Engineer at the time of plat submittal based on current City regulations and any applicable law.
- c. City Service. City shall provide service to Developer's property and maintain the improvements intended to be public upon dedication to the City and acceptance in writing by the City at the end of the warranty period so long as the improvements meet City regulations and the requirements of any applicable special service district.

9. Sewer, Storm Drainage, and Roads.

- a. At the time of plat recordation, Developer shall be responsible for the installation and dedication to City of all onsite and offsite sewer, storm drainage, and road improvements sufficient for the development of Developer's Property in accordance with the City regulations and this Agreement. The required improvements for each plat shall be determined by the City Engineer at the time

of plat submittal based on current City regulations and any applicable law.

- b. City shall provide service to Developer's property and maintain the improvements intended to be public upon dedication to the City and acceptance in writing by the City at the end of the warranty period, so long as the improvements meet City regulations and the requirements of any applicable special service district.

10. Open Space Improvements.

- a. Developer shall be responsible for the installation of open space improvements in the general location as shown in and as provided by Exhibits 2 and 3 at the time of plat recordation. All open space improvements shall be dedicated to and maintained by a homeowners association. The required improvements for each plat shall be determined by the City at the time of plat submittal and shall primarily be based on the Master Plan but may be adjusted in accordance with current City regulations and applicable law. However, City and Developer may not adjust the percentage of required open space as shown on the Master Plan.
- b. Developer shall ensure that a homeowners association assumes maintenance and operation responsibilities for the open space improvements, except for open space improvements shown clearly on the plat as City open space, and provide written documentation to City of such. If Developer is unable to immediately provide such documentation, Developer shall maintain the open space and post a maintenance bond in a form approved by the City to guarantee continued maintenance of the open space until assumption by a homeowners association.

11. Street Lighting SID. At the time of plat recordation, the Property shall be added to the City's Street Lighting Special Improvement District ("SID") for the maintenance of street lighting, unless the City Council finds that inclusion of the property within each plat will adversely affect the owners of properties already within the SID. Developer shall consent to the Property being included in the SID as a condition to final plat approval. The SID is not for the installation of street lights but for maintenance by the City. In all cases, Developer shall be responsible for installation of street light improvements. In addition, should the Property be included in the SID, Developer shall be responsible for dedication to the City of the street lighting improvements, after which the City shall maintain the improvements.

12. Capacity Reservations. Any reservations by the City of capacities in any facilities built or otherwise provided to the City by or for the Developer shall be determined at the time of plat recordation in accordance with City regulations.

13. Title – Easement for Improvements. Developer shall acquire, improve, dedicate, and convey to the City all land, rights of way, easements, and improvements for the public facilities and improvements required to be installed by Developer pursuant to this Agreement. The City Engineer shall determine the alignment of all roads and utility lines

and shall approve all descriptions of land, rights of way, and easements to be dedicated and conveyed to the City under this Agreement. Developer shall also be responsible for paying all property taxes including rollback taxes prior to dedication or conveyance and prior to acceptance by City. Developer shall acquire and provide to the City, for review and approval, a title report from a qualified title insurance company covering such land, rights of way, and easements. Developer shall consult with the City Attorney and obtain the City Attorney's approval of all instruments to convey and dedicate the land, rights of way, and easements hereunder to the City.

14. Sewer Fees. Timpanogos Special Service District ("TSSD") requires the City to pay a Capital Facilities Charge, which is billed to the City on a monthly basis and is subject to change from time to time. The Capital Facilities Charge is currently collected by the City with monthly utility billing to utility users, but may hereafter be collected directly by TSSD and may hereafter be collected as a Capital Facilities Charge. This is a separate and distinct charge from the TSSD impact fees. The City also imposes and collects sewer connection fees and sewer impact fees on development. Developer acknowledges and agrees that the said TSSD Capital Facilities Charge or TSSD impact fee is separate from and in addition to the City's sewer connection fees and sewer impact fees and that payment of both the TSSD Capital Facilities Charge and impact fee and the City's impact and connection fee for each connection is a condition to the City providing sewer service to the lots, residences, or other development covered by this Agreement.
15. Other Fees. The City may charge other fees that are generally applicable to development in the City, including but not limited to subdivision, site plan, and building permit review fees, connection fees, impact fees, taxes, service charges and fees, and assessments.
16. Plat, Site Plan, or Development Plan Approval. In the event the City Council approves the Request and Developer is ready to proceed with preliminary plat or site plan submittal and approval, Developer shall submit preliminary plat applications for all or a portion of the Property. Such application shall include project plans and specifications (including site and building design plans) (referred to in this Section as "Plans") for the portion of the Property being developed.
 - a. In particular, such Plans shall meet the following requirements:
 - i. be in sufficient detail, as reasonably determined by City, to enable City to ascertain whether the project meets current City regulations (including the size, scope, composition of the primary exterior components, on- and off-site vehicular and pedestrian access, and general project design) and in accordance with the terms and conditions of this Agreement;
 - ii. comply with all City standards and requirements applicable to drainage, utilities, traffic, etc.;
 - iii. comply with conditions imposed on the project by the Planning Commission and the City Council during the plat approval process as set

- iv. forth in the adopted staff reports and official written minutes; and comply with all City codes, ordinances, regulations, and standards; and
- b. Developer shall:
 - i. comply with the conditions of approval of this Agreement, Master Plan, and the Request, as set forth in Exhibits I through 6;
 - ii. comply with all City codes, ordinances, regulations, specifications, and standards;
 - iii. provide other information as City may reasonably request; and
 - iv. note any requirement herein on all final plans and final plats for the project on the body of the plan or plat along with all other notes required by City; provided, however, that a condition need not be placed on a final plan or plat as a note if such plan clearly illustrates the substance and requirements of the condition.
- c. Standards for Approval. The City shall approve the Plans if such Plans meet the standards and requirements enumerated herein and conforms with current City regulations. Developer shall be required to proceed through the preliminary plat and final plat approval process as specified in Title 19 of the City Code, record a Final Plat with the Utah County Recorder, pay all recording fees, and comply with all City regulations.
- d. Commencement of Site Preparation. Developer shall not commence site preparation or construction of any project improvement on the Property until such time as the Plans have been approved by City in accordance with the terms and conditions of this Agreement and all City regulations.
- e. Project Phasing and Timing. Upon approval of the Plans, subject to the provisions of this Agreement and exhibits attached hereto, Developer may proceed by constructing the project all at one time or in phases as allowed in City regulations.
- f. Changes to Project. No material modifications to the Plans shall be made after approval by City without City's written approval of such modification. Developer may request approval of material modifications to the Plans from time to time as Developer determines necessary or appropriate. For purposes of this Agreement, a material modification shall mean any modification which: (i) increases the total perimeter size (footprint) of building area to be constructed on the portion of the Property being developed by more than ten (10) percent; (ii) substantially changes the exterior appearance of the project; (iii) reduces the total percentage of open space areas and public improvements by any amount that is not de minimus; or (iv) changes the functional design of the project in such a way that materially and negatively affects traffic, drainage, or other design characteristics. Modifications

to the Plans which do not constitute material modifications may be made without the consent of City. In the event of a dispute between Developer and City as to the meaning of “material modification,” no modification shall be made without express City approval. Modifications shall be approved by City if such proposed modifications are consistent with City’s then applicable rules and regulations for projects in the zone where the Property is located and are otherwise consistent with the standards for approval set forth herein.

17. Wildland-Urban Interface Code. Prior to or concurrent with the approval of any site plan or subdivision plat for the Property or a portion thereof, Developer shall demonstrate compliance with the Wildland-Urban Interface Code and all other applicable building and fire codes related to the prevention of wildfires as adopted by the City. Developer may be required to record restrictions on certain lots as specified by such regulations.
18. Time of Approval. Any approval required by this Agreement shall not be unreasonably withheld or delayed and shall be made in accordance with procedures applicable to the R-3 and R-6 zones, the City’s Land Development Code, and City regulations.
19. Termination of Agreement. The term of this Agreement shall commence on the date of this Agreement and shall continue for a period of 10 years from said date. This Agreement shall continue beyond its term as to any rights or obligations for subdivisions or site plans that have been given final approval and have been recorded prior to the end of the term of this Agreement, provided that the City has proceeded in good faith to review the submissions or site plans within a reasonable time. However, this Agreement shall terminate as to any subdivisions or site plans that have not been given final approval and have not been recorded prior to the end of the term of this Agreement. This Agreement shall also terminate at such time as all development covered by this Agreement is approved and completed and all obligations of Developer have been met, at which time the City and Developer may execute a “Notice of Termination/Expiration” to be recorded against such portion of the Property to which this Agreement no longer applies. Upon expiration of this Agreement or breach by Developer in accordance with section 22 below, the zoning for the Property (or portion thereof owned by a breaching developer in the event of an uncured breach by one developer) shall automatically revert to the R-3 zone for such portions of the Property that have not received final approval and have not been recorded. One or more developers and City may extend this Agreement beyond its 10 year term by mutual agreement of the parties.
20. Successors and Assigns.
 - a. Change in Developer. This Agreement shall be binding on the successors and assigns of Developers. If any portion of the Property is transferred (“Transfer”) to a third party (“Transferee”), the Developer and the Transferee shall be jointly and severally liable for the performance of each of the obligations contained in this Agreement unless prior to such Transfer Developer provides to City a letter from Transferee acknowledging the existence of this Agreement and agreeing to be

bound thereby. Said letter shall be signed by the Transferee, notarized, and delivered to City prior to the Transfer. Upon execution of the letter described above, the Transferee shall be substituted as a Developer under this Agreement and the persons and/or entities executing this Agreement as Developer of the transferred property shall be released from any further obligations under this Agreement as to the transferred property.

- b. Individual Lot or Unit Sales. Notwithstanding the provisions of subsection 21.a., a transfer by a Developer of a lot or dwelling unit located on the Property within a City approved and recorded plat shall not be deemed a Transfer as set forth above so long as the Developer's obligations with respect to such lot or dwelling unit have been completed. In such event, the Developer shall be released from any further obligations under this Agreement pertaining to such lot or dwelling unit.

21. Default.

- a. Events of Default. Upon the happening of one or more of the following events or conditions, Developer or City, as applicable, shall be in default ("Default") under this Agreement:
- i. a warranty, representation, or statement made or furnished by Developer under this Agreement is intentionally false or misleading in any material respect when it was made;
 - ii. a determination by City made upon the basis of substantial evidence that Developer has not complied with one or more of the material terms or conditions of this Agreement; or
 - iii. any other event, condition, act, or omission, either by City or Developer, that violates the terms of, or materially interferes with, the intent and objectives of this Agreement.
- b. Procedure Upon Default.
- i. Upon the occurrence of Default, the non-defaulting party shall give the other party thirty days written notice specifying the nature of the alleged Default and, when appropriate, the manner in which said Default must be satisfactorily cured. In the event the Default cannot reasonably be cured within thirty days, the defaulting party shall have such additional time as may be necessary to cure such Default so long as the defaulting party takes significant action to begin curing such Default with such thirty day period and thereafter proceeds diligently to cure the Default. After proper notice and expiration of said thirty day or other appropriate cure period without cure, the non-defaulting party may declare the other party to be in breach of this Agreement and may take the action specified in subsection 22.c. herein. Failure or delay in giving notice of Default shall not

- c. Exhibit 3 Open Space
- d. Exhibit 4 Planning Commission Staff Report and Written Minutes with Adopted Findings of Fact and Conditions
- e. Exhibit 5 City Council Staff Report and Written Minutes with Adopted Findings of Fact and Conditions
- f. Exhibit 6 Special Conditions

25. General Terms and Conditions.

- a. Incorporation of Recitals. The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.
- b. Recording of Agreement. This Agreement shall be recorded at Developer's expense to put prospective purchasers, owners, and interested parties on notice as to the terms and provisions hereof.
- c. Severability. Each and every provision of this Agreement shall be separate, severable, and distinct from each other provision hereof, and the invalidity, unenforceability, or illegality of any such provision shall not affect the enforceability of any other provision hereof.
- d. Time of Performance. Time shall be of the essence with respect to the duties imposed on the parties under this Agreement. Unless a time limit is specified for the performance of such duties, each party shall commence and perform its duties in a diligent manner in order to complete the same as soon as reasonably practicable.
- e. Construction of Agreement. This Agreement shall be construed so as to effectuate its public purpose of ensuring the Property is developed as set forth herein to protect the health, safety, and welfare of the citizens of City.
- f. State and Federal Law; Invalidity. The parties agree, intend, and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. The parties further agree that if any provision of this Agreement becomes, in its performance, inconsistent with state or federal law or is declared invalid, this Agreement shall be deemed amended to the extent necessary to make it consistent with state or federal law, as the case may be, and the balance of the Agreement shall remain in full force and effect. If City's approval of the Project is held invalid by a court of competent jurisdiction this

Agreement shall be null and void.

- g. Enforcement. The parties to this Agreement recognize that City has the right to enforce its rules, policies, regulations, ordinances, and the terms of this Agreement, and the Developer has the right to enforce the terms of this Agreement, by seeking an injunction to compel compliance. In the event Developer violates the rules, policies, regulations, or ordinances of City or violate the terms of this Agreement, or in the event City violates the terms of this Agreement, the non-breaching party may, without declaring a Default hereunder or electing to seek an injunction, and after thirty days written notice to correct the violation (or such longer period as may be established in the discretion of the non-breaching party or a court of competent jurisdiction if the breaching party has used its reasonable best efforts to cure such violation within such thirty days and is continuing to use its reasonable best efforts to cure such violation), take such actions as shall be deemed appropriate under law until such conditions have been rectified by the breaching party. The non-breaching party shall be free from any liability arising out of the exercise of its rights under this paragraph.
- h. No Waiver. Failure of a party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future time said right or any other right it may have hereunder. Unless this Agreement is amended by vote of the City Council taken with the same formality as the vote approving this Agreement, no officer, official, or agent of City has the power to amend, modify, or alter this Agreement or waive any of its conditions as to bind City by making any promise or representation not contained herein.
- i. Amendment of Agreement. This Agreement shall not be modified or amended except in written form mutually agreed to and signed by each of the parties. No change shall be made to any provision of this Agreement or any condition set forth in Exhibits 1 through 6 hereof unless this Agreement or exhibits are amended pursuant to a vote of the City Council taken with the same formality as the vote approving this Agreement.
- j. Attorney Fees. Should any party hereto employ an attorney for the purpose of enforcing this Agreement or any judgment based on this Agreement, for any reason or in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief, or other litigation, including appeals or rehearings, and whether or not an action has actually commenced, the prevailing party shall be entitled to receive from the other party thereto reimbursement for all attorneys' fees and all costs and expenses. Should any judgment or final order be issued in any proceeding, said reimbursement shall be specified therein. If either party utilizes in-house counsel in its representation thereto, the attorneys' fees shall be determined by the average hourly rate of attorneys in the same jurisdiction with

or property damage or other liabilities arising from: (i) the willful misconduct or negligent acts or omissions of the City, or its boards, officers, agents, or employees; and/or (ii) the negligent maintenance or repair by the City of improvements that have been offered for dedication and accepted in writing by the City for maintenance

- o. Relationship of Parties. The contractual relationship between City and Developer arising out of this Agreement is one of independent contractor and not agency. This Agreement does not create any third-party beneficiary rights. It is specifically understood by the parties that: (i) all rights of action and enforcement of the terms and conditions of this Agreement shall be reserved to City and Developer, (ii) the Project is a private development; (iii) City has no interest in or responsibilities for or duty to third parties concerning any improvements to the Property; and (iv) Developer shall have the full power and exclusive control of the Property subject to the obligations of Developer set forth in this Agreement..

- p. Annual Review. City may review progress pursuant to this Agreement at least once every twelve months to determine if Developer has complied with the terms of this Agreement. If City finds, on the basis of substantial evidence, that Developer has failed to comply with the terms hereof, City may declare Developer to be in Default as provided in section 22 herein. City's failure to review at least annually Developer's compliance with the terms and conditions of this Agreement shall not constitute or be asserted by any party as a Default under this Agreement by Developer or City.

- q. Institution of Legal Action. In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any Default or breach, to specifically enforce any covenants or agreements set forth in this Agreement, to enjoin any threatened or attempted violation of this Agreement, or to obtain any remedies consistent with the purpose of this Agreement. Legal actions shall be instituted in the Fourth Judicial District Court, State of Utah.

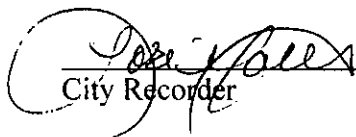
- r. Title and Authority. Developer expressly warrants and represents to City that Developer (i) owns all right, title and interest in and to the Property, or (ii) has the exclusive right to acquire such interest, and (iii) that prior to the execution of this Agreement no right, title or interest in the Property has been sold, assigned or otherwise transferred to any entity or individual other than to Developer. Developer further warrants and represents that no portion of the Property is subject to any lawsuit or pending legal claim of any kind. Developer warrants that the undersigned individuals have full power and authority to enter into this Agreement on behalf of Developer. Developer understands that City is relying on these representations and warranties in executing this Agreement.

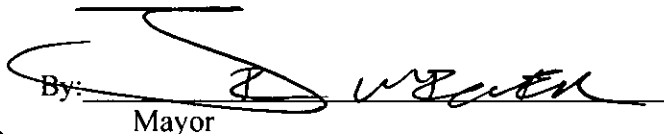
- s. Headings for Convenience. All headings and captions used herein are for convenience only and are of no meaning in the interpretation or effect of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by City and by a duly authorized representative of Developer as of the date first written above.

Attest:

City of Saratoga Springs, a political subdivision of the State of Utah


 City Recorder

By: 
 Mayor



DEVELOPER: PHI Properties, Inc.

By: 
 Blaine E. Patterson
 Its: President

State of Utah
County of UT

The foregoing instrument was acknowledged before me this 2nd day of September 2014 by Blaine E. Patterson of PHI Properties, Inc.


 Notary Public



Exhibit Summary

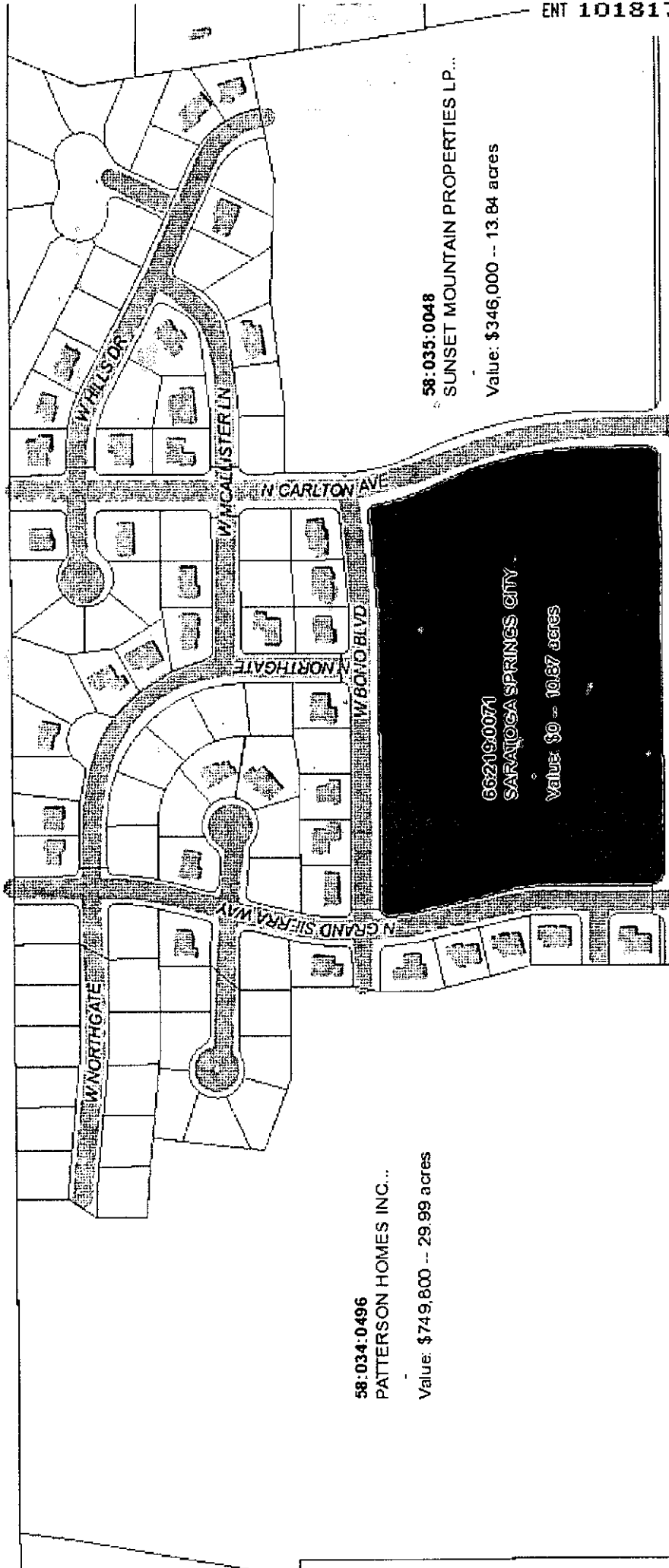
- a. Exhibit 1 Property Ownership Map, Vicinity Map, and Legal Descriptions
- b. Exhibit 2 Master Plan
 - Overall Plan
 - Undeveloped R-3 Zone Concept Plan
 - Undeveloped R-6 Zone Concept Plan
 - Undeveloped R-6 Zone Open Space Concept Plan
- c. Exhibit 3 Open Space
- d. Exhibit 4 Planning Commission Staff Report and Written Minutes with Adopted Findings of Fact and Conditions
- e. Exhibit 5 City Council Staff Report and Written Minutes with Adopted Findings of Fact and Conditions
- f. Exhibit 6 Special Conditions

Exhibit 1

Property Ownership Map, Vicinity Map, and Legal Description

Utah County Parcel Map

58:034:0519
CORP OF PRES BISHOP CHURCH OF ...
Value: \$0 -- 107.03 acres



58:034:0496
PATTERSON HOMES INC...
Value: \$749,800 -- 29.99 acres

58:035:0048
SUNSET MOUNTAIN PROPERTIES LP...
Value: \$346,000 -- 13.84 acres

66219:0071
SARAJOGA SPRINGS CITY
Value: \$0 -- 10.87 acres

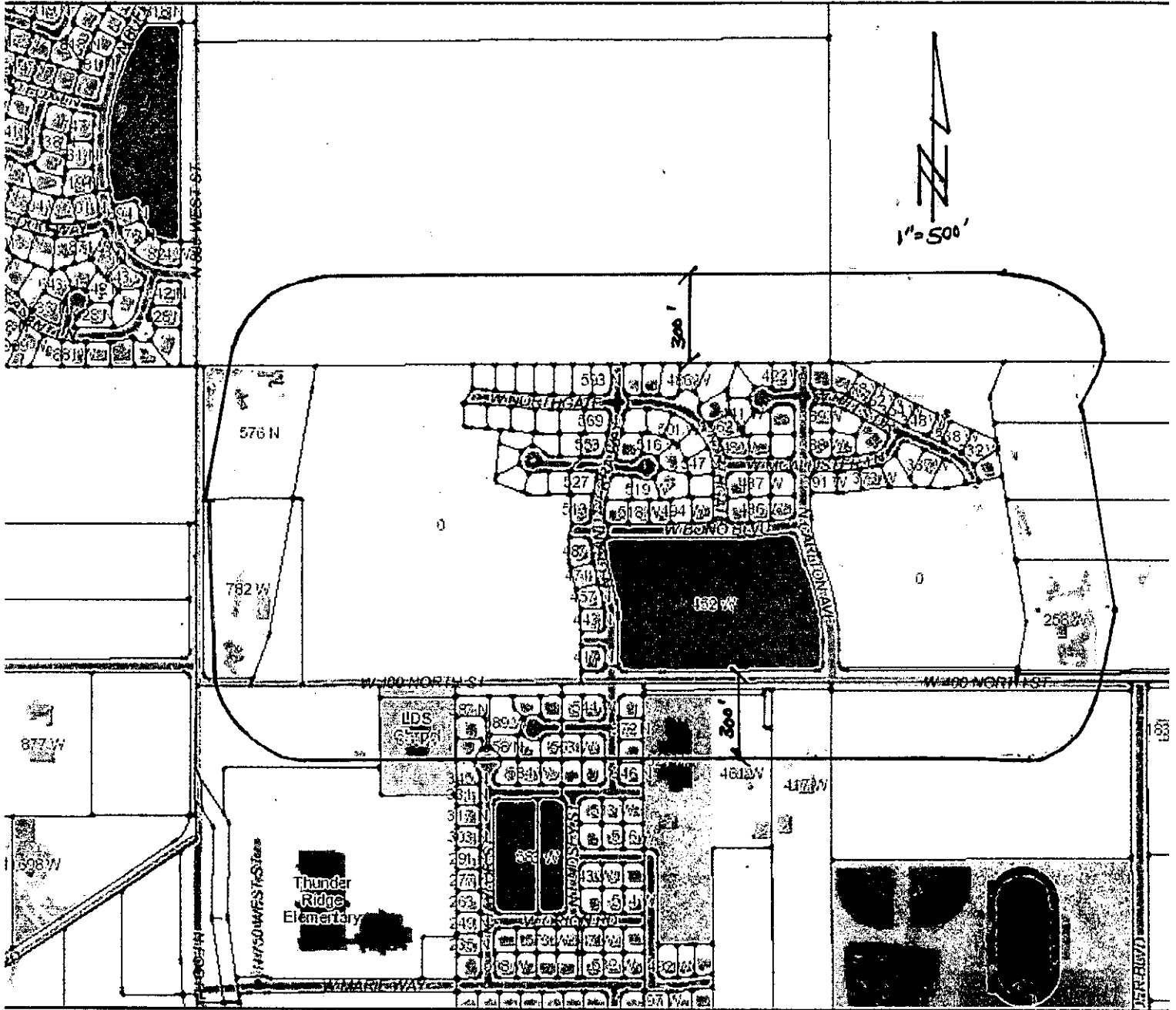


LDS
Chapel

Lifeview
Academy

66:290:0008
ALPINE SCHOOL DISTRICT...
Value: \$0 -- 20.14 acres

SS



SIERRA ESTATES MASTER DEVELOPMENT PLAN AMENDMENT

SARATOGA SPRINGS CITY – JUNE 2013

VICINITY SKETCH - PROPERTIES WITHIN 300'

Overall Sierra Estates Description (Includes City Park and Roadways)

Beginning at the East Quarter Corner of Section 22, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence South 89°53'17" West 2215.27 feet; thence North 777.24 feet; thence West 36.43 feet; thence North 10°11'51" East 457.00 feet; thence North 07°41'35" East 100.61 feet; thence North 89°54'49" East 1157.30 feet; thence South 89°54'47" East 1002.32 feet; thence South 89°57'07" East 728.52 feet; thence South 22°45'00" West 154.00 feet; thence South 08°54'00" East 689.07 feet; thence East 2.41 feet; thence South 08°54'00" East 263.84 feet; thence South 10°56'00" West 219.24 feet; thence South 30.18 feet; thence North 89°43'02" West 779.53 feet to the point of beginning.

Area = 90.149 Acres

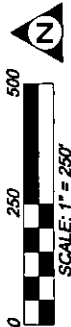
Exhibit 2

Master Plan

- Overall Plan
- Undeveloped R-3 Zone Concept Plan
- Undeveloped R-6 Zone Concept Plan
- Undeveloped R-6 Zone Open Space Concept Plan

SIERRA ESTATES

SARATOGA SPRINGS CITY MASTER DEVELOPMENT PLAN AMENDMENT



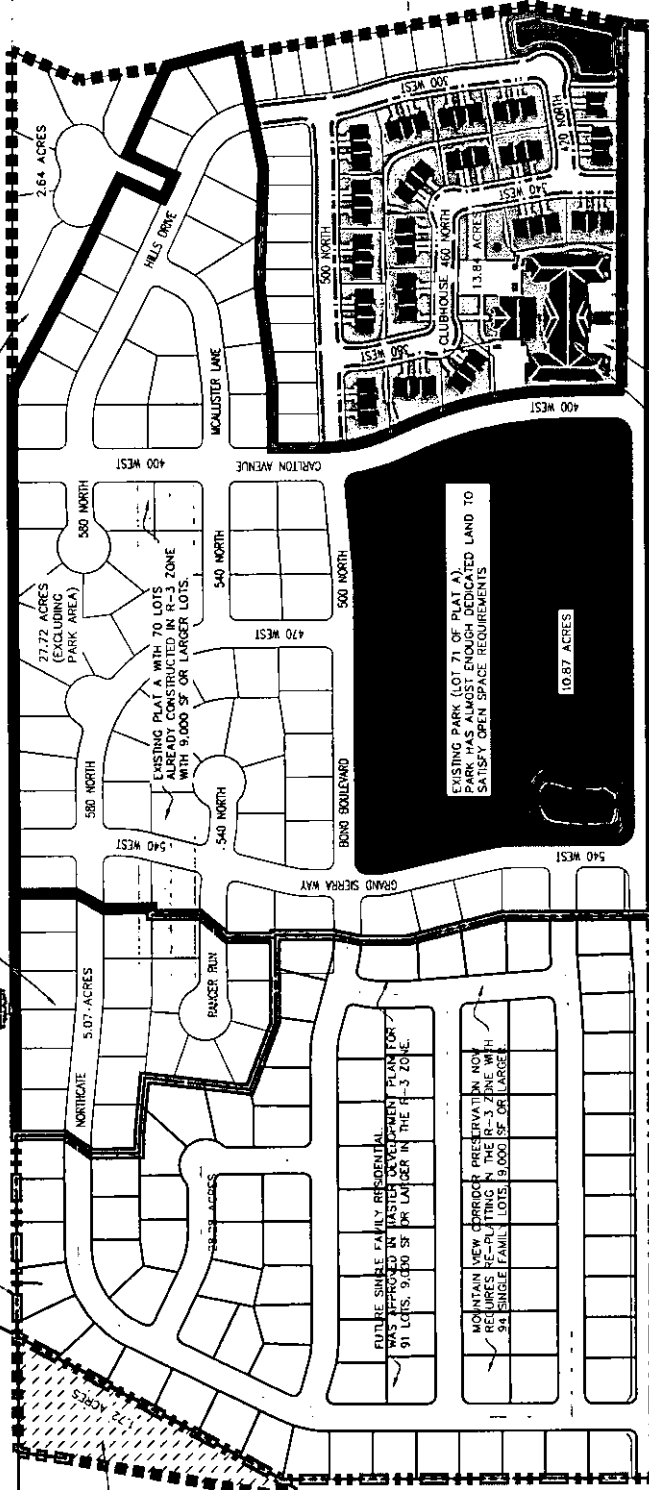
SUNRISE MEADOWS SUBDIVISION

POSSIBLE CONNECTION FOR APPROX. 1,500 LF OF 14" PRESSURE IRRIGATION LINE TO SUPPLY SIERRA ESTATES FROM UPPER PRESSURE ZONE IF NEEDED BY CITY TO PROVIDE SERVICE.

NORTHEAST AREA - WAS PRESERVED FOR UDOT AND CONSTRUCTION OF PROMER CROSSING EXTENSION. NOW NO LONGER NEEDED. TO BE DEVELOPED AS PLAT C IN EXISTING R-3 ZONE WITH 6 LOTS, 10,000 SF OR LARGER.

EXISTING PLAT B WITH 18 LOTS ALREADY CONSTRUCTED IN R-3 ZONE.

PROPOSED LOCATION OF MOUNTAIN VIEW CORRIDOR. LOTS TO REMAIN UNPLATTED AND PRESERVED.



EXISTING R-6 ZONE AND CONCEPT WAS APPROVED AND PLANNED FOR 100 SENIOR HOUSING UNITS. CURRENT CONCEPT IS FOR 83 UNITS. P.U.D. CONFIGURATION NOW TO BE A SENIOR HOUSING PROJECT IN THE R-6 ZONE WITH 83 UNITS INCLUDING AN ASSISTED LIVING FACILITY, BUT NOT IN A P.U.D. CONFIGURATION. THIS INCLUDES SUFFICIENT PUBLIC OPEN SPACE TO MEET CODE REQUIREMENTS.

PROPOSED ASSISTED LIVING FACILITY

SHEET 7

DESIGN BY: SES SCALE: 1"=250'
 DRAWN BY: RC DATE: 27 JAN 2014

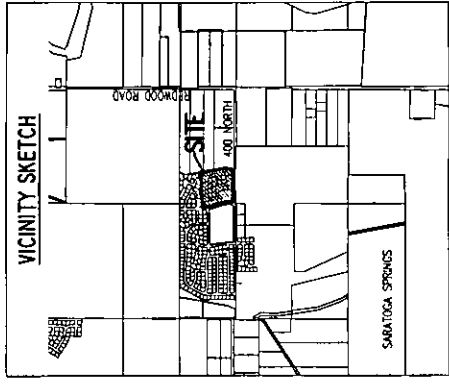
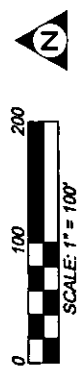
SIERRA ESTATES MASTER DEVELOPMENT PLAN AMENDMENT

SUNSET MOUNTAIN PROPERTIES, L.P.
 10000 W. 100TH AVENUE, SUITE 100
 HIGHLAND, CO 80430

TWIN PEAKS ENGINEERING & DESIGN
 11824 125th AVE., SUITE 100
 STURBEK, CO 80449
 303-556-1728 www.twinpeakseng.com

SIERRA ESTATES

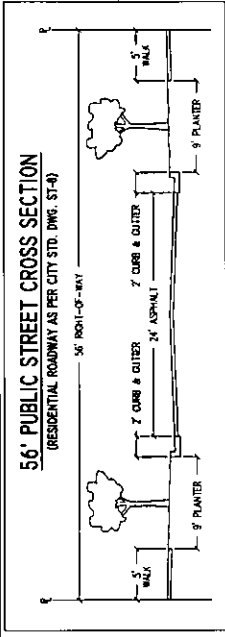
REVISED SENIOR HOUSING PLAN R-6 ZONE



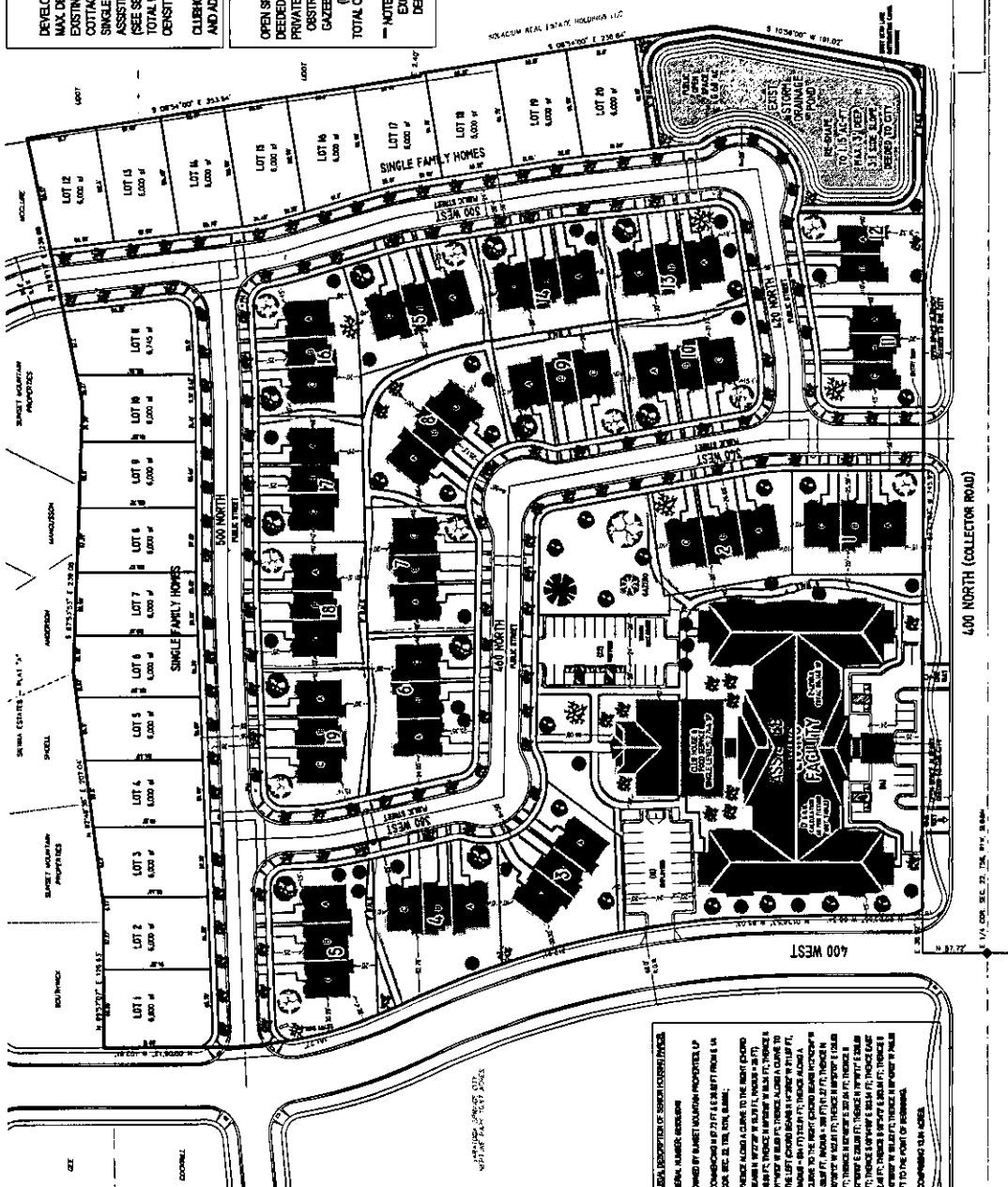
TABULATIONS	
DEVELOPMENT AREA	13.04 AC
MAX. DENSITY = 6 DWG/AC	65 UNITS
EXISTING ZONING	R-6
COTTAGE UNITS	56
SINGLE FAMILY HOMES	-20
ASSISTED LIVING FACILITY (SEE SEPARATE F.U. CALC)	-7 ERU
TOTAL UNITS	83
DENSITY	= 6 DWG/AC

OPEN SPACE TABULATIONS	
OPEN SPACE REQUIRED = 0.34 X 20%	= 2.77 ACRES
DEEDED HEREON FOR STORM DRAIN POND	= 0.08 ACRES
PRIVATE, USABLE, CONTIGUOUS, NON-GATED OPEN SPACE WITH WALLS, GRASS, BENCHES, LANDSCAPING, ETC. (REFER TO SEPARATE OPEN SPACE MAP)	= 2.06 ACRES
TOTAL OPEN SPACE PROVIDED	= 3.08 ACRES

NOTE: AN ADDITIONAL 1.33 ACRES OF OPEN SPACE IN EXCESS OF R-6 ZONE REQUIREMENTS EXISTS IN ADJACENT DEDICATED NEPTUNE PARK.



- ### GENERAL NOTES
- THIS IS A REVISED CONCEPT PLAN FROM ORIGINAL APPROVAL GRANTED IN 2010 WITH R-6 ZONE AND WITH MASTER DEVELOPMENT PLAN IN 2008. THIS SITE BEING DEVELOPED AS A RESIDENTIAL FACILITY FOR ELDERLY PERSONS - CONDITIONAL USE.
 - THIS SENIOR HOUSING PROJECT FILLS THE AGING-IN-PLACE CONCEPT AND PROVIDES FACILITIES AND OPPORTUNITIES FOR SENIORS OF ALL AGES AND ACTIVITY LEVELS.
 - ALL STREETS ARE PUBLIC AND ARE TO BE MAINTAINED BY THE CITY.
 - ALL OPEN SPACE EXCEPT FOR THE STORM DRAIN POND IS PRIVATE AND IS TO BE MAINTAINED BY THE HOA.
 - PLUMBING ARE TO BE GRANTED FOR POWER, GAS, TELEPHONE AND CABLE AS PER CITY STANDARD PLAN.
 - MINIMUM SETBACKS FOR THE R-6 ZONE ARE AS FOLLOWS: FRONT - 25', SIDE YARDS - 10', REAR - 20', SEE CORNER LOTS - 45'.
 - ALL UNITS HAVE AT LEAST ONE SINGLE GARAGE PLUS ONE PARKING SPACE IN DRIVEWAY.
 - SINGLE FAMILY LOTS ARE FOR SALE. COTTAGES ARE FOR LEASE/RENT AND ARE A PART OF THE ASSISTED LIVING FACILITY.
 - FOOTPRINTS AND SHAPES OF COTTAGES MAY CHANGE SLIGHTLY WITH FINAL PLAN.
 - ALL STORM DRAINAGE TO ENTER ALREADY CONSTRUCTED DETENTION POND IN SOUTHEAST CORNER. PRESENT CONFIGURATION OF POND TO BE REVISED SLIGHTLY.
 - PARKING REQUIRED - VISITOR 60 / 1 = 14, ASSISTED LIVING - 4 UNITS / 1 PER 3 ROOMS = 14, EMPLOYEES = 14, TOTAL = 40
 - ALL ROAD CENTERLINE CURVES = 200'
 - AREA OF THE ASSISTED LIVING AND CLUBHOUSE BUILDING LOT = 186 ACRES.



DESIGN BY: SES SCALE: 1" = 100'

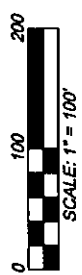
DRAWN BY: RC DATE: 27 JANUARY 2014

SHEET 1

TWIN PEAKS ENGINEERING & DESIGN
1199 S. 170 E. AMERICAN FORK, UT 84003
PHONE: (435) 754-2243
STEPHEN SUMBY, P.E. 801-657-1156

SIERRA ESTATES SENIOR HOUSING R-6 CONCEPT

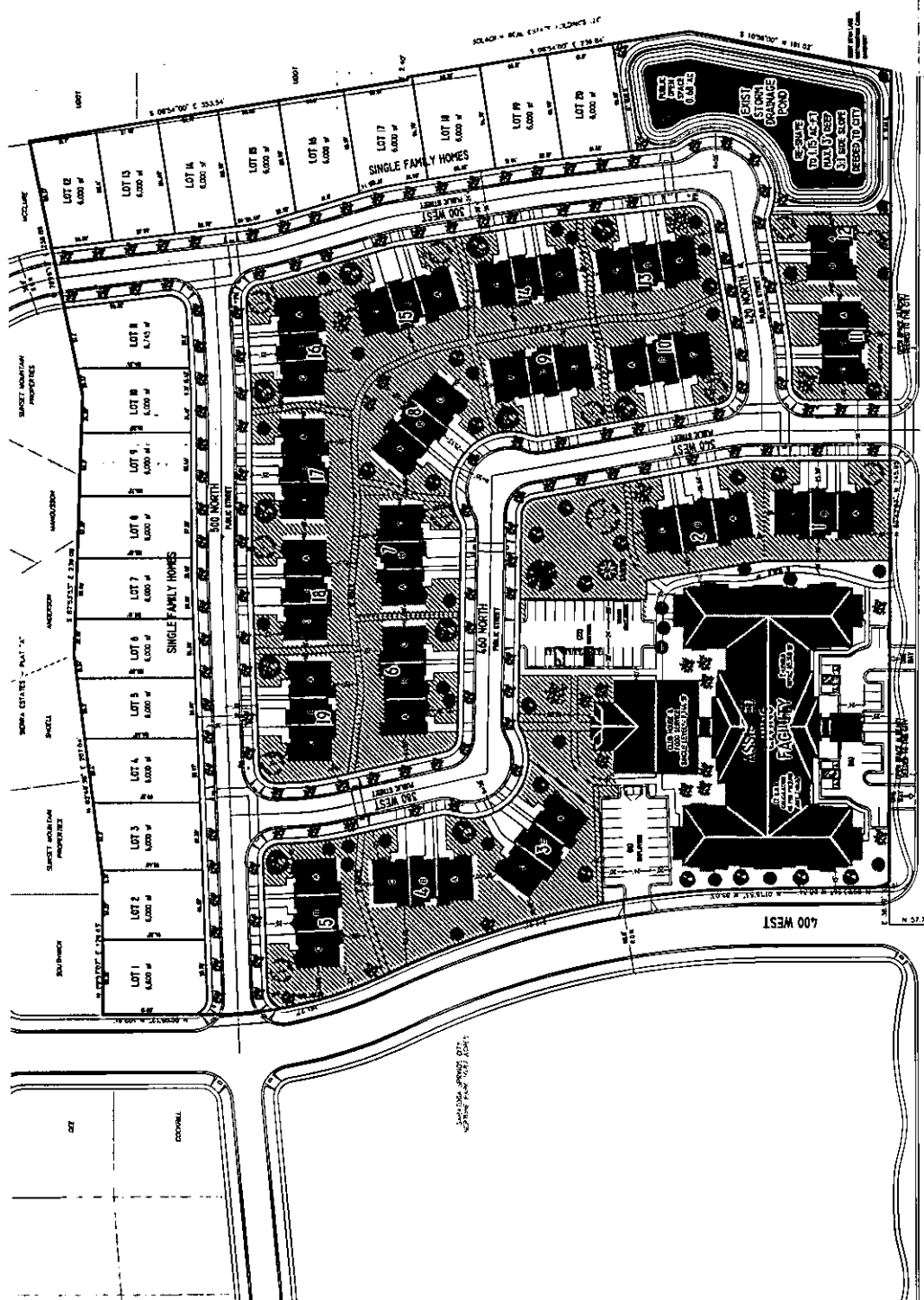
SIERRA ESTATES OPEN SPACE MAP



TABULATIONS	
DEVELOPMENT AREA	13.84 AC
MAX DENSITY = 0 DU/AC	86 UNITS
EXISTING ZONING	R-6
COTTAGE UNITS	56
SINGLE FAMILY HOMES	20
ASSISTED LIVING FACILITY (SEE SEPARATE P.L. CALC)	7 ERU
TOTAL UNITS	83
DENSITY	6.0 DU/AC
CLUBHOUSE, MAIN FACILITY PARKING, AND ADDITIONAL VISITOR PARKING 96 STALLS	

OPEN SPACE TABULATIONS	
OPEN SPACE REQUIRED - 0.34 AC	2.27 ACRES
DESIGN HEREON FOR STORM DRAIN POND	- 0.68 ACRES
PRIVATE USABLE CONTIGUOUS WALK	
RESTRICTED OPEN SPACES WITH WALLS, GRASS, BENCHES, LANDSCAPING, ETC.	+ 2.86 ACRES
(REFER TO SEPARATE OPEN SPACE MAP)	+ 3.83 ACRES
TOTAL OPEN SPACE PROVIDED	

NOTE: AN ADDITIONAL 1.33 ACRES OF OPEN SPACE IN EXCESS OF PCS ZONE REQUIREMENTS EXISTS IN ADJACENT DEDICATED NEPTUNE PARK.



Building	Private Open Space	SF	AC
1		5290	0.12
2		5365	0.12
Club House		18417	0.42
3		7146	0.16
4		7783	0.18
5		7205	0.17
6		7018	0.16
7		4763	0.11
8		9345	0.21
9		4930	0.11
10		5501	0.13
11		5089	0.12
12		4403	0.10
13		5434	0.12
14		4621	0.11
15		5565	0.13
16		5496	0.13
17		4749	0.11
18		4870	0.11
19		5512	0.13
Total =		128499	2.95

Exhibit 3

Open Space

The original MDA and MDP allowed open space credit for:

- the large park (10.92 acres)
- the additional park strip along 400 North (0.43 acres)
- the additional roadway width on 400 North (1.09 acres)
- the additional roadway width on 400 West (0.35 acres)
- the City Park/Storm Drain Pond (1.18 acres)

Because the original agreement allowed these credits and because the majority of these items have been dedicated to the City and completed by the developer or the City, the current approval allows the previously agreed to open space credits to continue (with revised acreages) as follows:

- the large park (10.87 acres)
- the additional park strip along 400 North (0.18 acres)
- the additional roadway width on 400 North (1.12 acres)
- the additional roadway width on 400 West (0.35 acres)

In addition, the R-6 zoned property requires 20% (2.768 acres) open space when it is developed. The proposed concept plan exceeds this requirement as shown on Exhibit 2 “Undeveloped R-6 Zone Open Space Concept Plan” but Developer is voluntarily installing this additional open space in return for the consideration given by the City in this Amended Master Development Agreement.

Exhibit 4

~~Page 20~~

**Planning Commission Staff Report and Written
Minutes with Adopted Findings of Fact and Conditions**



Planning Commission Staff Report

Master Development Plan Amendment Sierra Estates February 27, 2014 Public Hearing

Report Date:	February 24, 2014
Applicant/Owner:	Stephen Sowby/ Sunset Mountain Properties, LP
Location:	Approximately 350-600 West and 400 North
Major Street Access:	400 North
Parcel Number(s) & Size:	580350048, 580340496, approximately 90.15 acres
Parcel Zoning:	R-3, Low Density Residential and R-6, Medium Density Residential
Adjacent Zoning:	R-3, PC, RR, MU, R-10, A
Current Use of Parcel:	Undeveloped
Adjacent Uses:	Single Family Residential, schools, New Haven girls school
Previous Meetings:	This is the first meeting for the MDA Amendment
Previous Approvals:	Sierra Estates MDA and Annexation approval occurred in 2005 Final plat approval for Plat A and B occurred in 2006 Rezoning from R-3 to R-6 for the Senior Housing project occurred in 2007 The original MDA was extended in 2013 for one year, until October 2014 Final Plat approval for Plat C occurred in 2013
Land Use Authority:	City Council
Future Routing:	Public hearing with City Council
Author:	Sarah Carroll, Senior Planner

- A. Executive Summary:** This is a request to amend and extend the Sierra Estates Master Development Agreement (MDA) and clarify densities and previous approvals. The project is comprised of 90.15 acres. 1.72 acres is being set aside for Mountain View Corridor, 74.59 acres is zoned R-3, and 13.84 acres is zoned R-6.

Recommendation:

Staff recommends that the Planning Commission conduct a public hearing, take public comment, discuss the application, and vote to recommend approval with the Findings of Fact, Conclusions of Law, and Conditions based upon the analysis in this report and as stated in Section H of this report. Section I of this report includes alternative motions for the Planning Commission to consider.

- B. Background:** The original Sierra MDA was approved in 2005, was signed and effective on October 10, 2006 and is valid for 7 years, until October 10, 2013. The agreement was extended for one year in October 2013 to work out the details of the proposed amendment and extension request.

The original agreement contemplated that a senior living component could be considered for a portion of the property. This portion (13.84 acres in the southwest corner) was rezoned from R-3 to R-6 in 2007 and the concept plan indicated Senior Housing and an assisted living facility. At that time the developers anticipated that they would be able to apply the PUD standards. Since that time, the Code has been amended (July 2013) and the PUD section may not be applied to properties that have not previously been granted the PUD Overlay. The developers expressed concern over this change as it reduces the number of units that may be considered. However, they have adjusted their concept plan to meet the current R-6 Zone requirements.

The final plat for Phase A was recorded in 2007, the final plat for Phase B was recorded in 2012 and the final plat for Phase C was recently approved.

Development Agreement Background:

The original development agreement states that the approval is for 184 single family units and a 10.87 acre park (Neptune Park) on 90.15 acres. However, the number of units stated in the agreement appears to be in error. The staff report and the concept layout of the subdivision indicate 232 single family lots and a statement that the developer may pursue a senior housing development on a portion of the property.

The staff report and associated exhibits, along with the exhibit attached to the original MDA provide additional information that was not included in the body of development agreement. These documents explain that a request for lot size reductions is supported because of the configuration of the park. The park was laid out so that no building lots are adjacent to the park and it is surrounded by public roads; thus, a minimum lot size of 9,000 square feet was approved.

The applicant also received open space credit for the oversize park strip along 400 North, upsizing of the 400 North and 400 West roadways, and the detention pond in the southeast corner of the development. The table below was taken from the concept plan that was attached to the original MDA.

SIERRA ESTATES SUBDIVISION OPEN SPACE TABULATIONS	
PROJECT AREA	= 90.14 ACRES
REQUIRED 15% OPEN SPACE	= 13.52 ACRES
OPEN SPACE PROVIDED	
PARK PARCEL	= 10.92 ACRES
11' OPEN SPACE	= 0.43 ACRES
ROADWAY OVERSIZE	= 1.44 ACRES
STORM DRAIN POND	= 1.18 ACRES
TOTAL	= 13.97 ACRES
PERCENTAGE	= 15.50%
# OF UNITS	= 232
DENSITY	= 2.57 DU/AC

When the original MDA was approved 400 North was planned to be an arterial roadway with a 96 foot wide cross section. Plat A includes a 48 foot wide half-width for 400 North and an additional 11 feet for a wider park strip. Plat A also includes a 68 foot wide cross section for Carlton Avenue (400 West).

C. Specific Request: This request has several components to consider, as outlined below.

Term of agreement: the applicant is requesting that the amended agreement be valid for 7 years.

Lot size reductions: The applicant is requesting a minimum lot size of 9,000 square feet. There are two reasons of justification for this request: 1) based on the current agreement, the lots are allowed to be a minimum of 9,000 square feet because of the configuration of the park. The developer surrounded the park with public roads rather than private lots, and 2) The City has asked the developer to preserve

approximately 1.72 acres of property on the northwest corner of the development for the future extension of Mountain View Corridor.

Density: the Original MDA stated that they were approved for 184 single family lots and had the option to pursue a senior living development. However, the staff reports and exhibits indicated 232 single family lots. The current plan indicates 188 units on 74.58 acres within the R-3 zone and 76 units and an assisted living facility on 13.84 acres within the R-6 zone. This results in a density of 2.52 units per acre in the R-3 zone and 5.49 units per acre and an assisted living facility in the R-6 zone. The assisted living facility does not count towards the overall density and is a conditional use in this zone. The applicant would like these densities and uses to be vested with the amended agreement. They have taken into consideration the recent changes to the general plan and the proposed duplex and triplex buildings are only one story in height. Refer to Section H of this report for review of the code requirements related to this request.

Open Space: The applicant would like the open space credits that were previously allowed to continue to count for the remaining phases of development. However, because of changes to the 400 North right of way cross section, the City's policies regarding the acceptance of open space, and the rezone of a portion of the project to R-6, some changes will need to be considered.

If the project is separated into the R-3 portion and the R-6 portion, the open space is applied as follows:

	ORIGINAL PLAN APPROVED IN 2005	REVISED PLAN PROPOSED IN 2014
OPEN SPACE REQUIRED		
Required R-3 Zone = 15%	13.52 ac	11.19 ac
Required R-6 Zone = 20%	<u>0.00 ac</u>	<u>2.77 ac</u>
Total Open space required	13.52 ac	13.96 ac
OPEN SPACE PROVIDED		
R-3 ZONE		
Large park	10.92 ac	10.87 ac
Additional park strip on 400 North	0.43 ac	0.18 ac
Additional roadway width on 400 N	1.09 ac	1.12 ac
Additional roadway width on 400 W	0.35 ac	0.35 ac
City Park/Storm Drain Pond	<u>1.18 ac</u>	<u>0.00 ac</u>
TOTAL OPEN SPACE IN R-3 ZONE	13.97 ac	12.52 ac
R-6 ZONE AREA		
	Did not exist	
City Park/Storm Drain Pond	0.00	0.68 ac
Open space within Sr. Housing area	<u>0.00</u>	<u>2.95 ac</u>
TOATAL OPEN SPACE IN R-6 ZONE	0.00	3.63 ac
TOTAL OPEN SPACE PROVIDED	13.97 ac	16.15 ac
Percent open space of total project =	15.5%	18.3%

D. Process: Section 19.13.08 regulates Master Development Agreements and requires the Planning Commission to hold a public hearing and make a recommendation to the City Council. The City Council, after receiving a recommendation from the Planning Commission, shall review the application and shall approve, approve with conditions, or deny the application.

E. Community Review: This item has been noticed as a public hearing in the *Daily Herald*, and mailed notice sent to all property owners within the Sierra Estates Master Development Agreement and within 300

feet of the subject property. As of the date of this report, no public input has been received as a result of the notices.

- F. Legislative Discretion:** The City Council is given wide latitude to make legislative land use decisions. Approval of a development agreement is a legislative land use decision and great deference is given to the Council when exercising its legislative discretion. Under Utah law, a court will presume that a land use decision is valid unless it is found to be arbitrary, capricious, or otherwise illegal. A legislative land use decision will not be found to be arbitrary or capricious provided it is "reasonably debatable" the decision promotes the general welfare. Simply put, the "reasonably debatable" standard means that the City Council merely needs to show that a reasonable basis exists for its decision to grant or deny the application.

A reasonable basis exists for the Council's decision to grant or deny the application. The reasonable basis is listed in the proposed findings in Section H or the alternatives in Section I.

- G. General Plan:** This project contains R-3, Low Density Residential, and R-6, Medium Density Residential, zoning.

The Land Use Element of the General Plan describes Low Density Residential as "residential subdivisions with an overall density of 1 to 4 units per acre" and states "This area is to be characterized by neighborhoods with streets designed to the City's urban standards, single-family detached dwellings and open spaces".

For Medium Density Residential, the Land Use Element of the General Plan states: "This area is to be characterized by density ranging from 4 to 14 units per acre that may include a mixture of attached and detached dwellings."

Staff Finding: *The proposed densities are consistent with the descriptions within the Land Use Element of the General Plan for Low and Medium Density Residential developments.*

- H. Code Criteria:** Section 19.13.08 outlines the process and requirements for Master Development Agreements. Section 19.04.13 outlines the requirements for the R-3 zone and Section 19.04.16 outlines the requirements for the R-6 zone. Relevant segments of these Chapters and Sections are evaluated below.

19.13.08

7. **Effect of the Master Development Agreement.** The Master Development Agreement, as approved, will constitute the applicant's right to develop the property in essentially the same manner as outlined in the Master Development Agreement.
- a. Generally, the Master Development Agreement shall include a request to amend the City's Land Use Element of the General Plan and Zoning Map, if necessary.
 - b. The Master Development Agreement shall not grant the applicant the right to circumvent any City ordinances, policies, City Council directives, or any other procedure that is approved and practiced by the City.
 - c. The applicant shall still be required to apply for subdivision approval, Site Plan review, Conditional Use approval, or other appropriate procedures as required by this Code.

Staff findings:

- a. *The zoning map already reflects the R-3 and R-6 zoning respectively. The general plan indicates Low Density Residential for these properties. This application does not involve a request to amend the City's Land Use Element of the General Plan or the Zoning Map.*
- b. *This request does not involve any requests to circumvent any City ordinances, policies, City Council directives, or any other procedure that is approved and practiced by the City.*

c. *Approval of the MDA amendment will constitute Concept Plan Review. Site Plan and/or Preliminary and Final Plat applications will be required for the undeveloped portions of property.*

8. **Additional Requirements.** A Master Development Agreement shall generally conform to the requirements found in this Chapter pertaining to the contents of a development agreement, as appropriate, as well as the following requirements:
- a. The Master Development Agreement shall establish the general land uses in the project, the total number of residential dwellings, the estimated square footage of structures used for non-residential purposes, the general off-site utility and public infrastructure required, and any general phasing for the development of the Master Development Plan area.
 - b. The Master Development Agreement shall include provisions for phasing of improvements and the timing of the construction of public infrastructure.
 - c. The City may enter into performance-based reimbursement arrangements, shared funding mechanisms, or other methods if and when the City's long-term capital facility needs are served by such methods in accordance with the requirements of Section 19.13.07.

Staff Findings:

The amendment to the Master Development Agreement establishes the general land uses in the project as low and medium density residential uses and an assisted living facility. Plats A and B of have been recorded. Plat C has been approved and will be recorded soon. The plans indicate the proposed lot sizes for the remaining development to be 9,000 square feet in the R-3 zone and 6,000 square feet in the R-6 zone. The plans also indicate a 65,148 square foot assisted living facility and a 7,744 square foot clubhouse, 56 single story units for senior living, 20 single family lots in the R-6 zone and 94 remaining lots in the R-3 zone (188 lots total in the R-3 zone). The off-site utilities have already been installed, except for the master planned storm drain line along the undeveloped 400 North frontage and an off-site secondary water line.

- a. *The applicant would like to complete the development over the next seven years and has requested that the amended MDA have a term of seven years.*
- b. *The Master Development Agreement outlines the requirements for improvements of public infrastructure. As the project develops, the associated infrastructure will be required with each phase of development.*
- c. *This amendment may result in the need for reimbursements or shared funding mechanisms. However, these details can be worked out with the Preliminary Plat applications.*

19.04.13

Section 19.04.13 outlines the requirements within the R-3 zone.

Staff finding: *The applicant is requesting variations to the lot size requirements. All other requirements of the base zone will be met.*

Section 19.04.13(4)(b) allows the City Council to consider lot size reductions and outlines criteria for such, as stated below.

- b. Residential lots may be proposed that are less than 10,000 square feet as indicated in this Subsection.
 - i. The City Council may approve a reduction in the lot size if it finds that such a reduction serves a public or neighborhood purpose such as:
 - 1. a significant increase in the amount or number of parks and recreation facilities proposed by the developer of property in this zone;
 - 2. the creation of significant amenities that may be enjoyed by all residents of the neighborhood;

3. the preservation of sensitive lands (these areas may or may not be eligible to be counted towards the open space requirements in this zone – see the definition of “open space” in § 19.02.02); or
 4. any other public or neighborhood purpose that the City Council deems appropriate.
- ii. In no case shall the overall density in any approved project be increased as a result of an approved decrease in lot size pursuant to these regulations.
 - iii. In making its determination, the City Council shall have sole discretion to make judgments, interpretations, and expressions of opinion with respect to the implementation of the above criteria. In no case shall reductions in lot sizes be considered a development right or a guarantee of approval.
 - iv. In no case shall the City Council approve a residential lot size reduction greater than ten percent notwithstanding the amenities that are proposed.

Staff finding: *The applicant is requesting a minimum lot size of 9,000 square feet because of the original configuration of the park which has the park surrounded by public streets and does not have any building lots adjacent to the park. The applicant is also requesting approval of a minimum lot size of 9,000 square feet because they are preserving 1.72 acres for Mountain View Corridor. The reduction in lot sizes serves a public purpose because it will allow the dedication of the right-of-way for the future Mountain View Corridor. Without the reduced lot sizes, the developer is not willing to dedicate this right-of-way. Preserving future rights-of-way is a public purpose and will help meet the future transportation needs of the residents of Saratoga Springs.*

19.04.16

Section 19.04.16 outlines the requirements within the R-6 zone.

Staff finding: *The assisted living facility is a conditional use within this zone and the applicant must apply for a conditional use permit for this use. The proposed concept plan for the property within the R-6 zone has been reviewed against the R-6 zoning requirements and it appears that all requirements of the base zone have been met. The requirements will be reviewed again when a preliminary plat and/or site plan application is submitted.*

H. Recommendation and Alternatives:

Staff recommends that the Planning Commission conduct a public hearing, discuss any public input received, and make the following motion:

I move to recommend approval to the City Council of the proposed Sierra Estates Master Development Plan and Agreement Amendment, approximately located at 350-600 West and 400 North the Findings and Conditions below:

Findings

1. The decision to approve or deny the application for a development agreement is a legislative land use decision. As a result, for the Council’s decision to be valid, it must be reasonably debatable that the development agreement could promote the general welfare. In other words, there must be a reasonable basis for the Council’s decision.
2. The existing development agreement was extended for one year and is in effect until October 2014.
3. The existing development agreement states that the approval is for 184 single family lots and the option to pursue a senior housing development. 184 lots seems to be an error in the text of the agreement since supporting exhibits and staff reports indicate 232 lots and an option to pursue a senior living development on a portion of the property.
4. A portion of the project (13.84 acres) was zoned to R-6 in 2007.
5. The R-3 zoned portion of the development has an overall density of 2.52 units per acre, which is in compliance with the R-3 zone and the Land Use Element of the General Plan, as identified in Section F and G of this report.

6. The R-3 zone requires 10,000 square foot lot minimums. The proposed plans indicated 9,000 square foot lots in the remaining R-3 zoned portion of the development. The City Council may approve a reduction in the lot size if it finds that such a reduction serves a public or neighborhood purpose such as "any other public or neighborhood purpose that the City Council deems appropriate."
7. The developer was previously granted a lot size reduction to 9,000 square feet because of the configuration of the park. Surrounding the park with public streets rather than private lots is an appropriate public or neighborhood purpose.
8. The preservation of 1.72 acres for Mountain View corridor is also an appropriate public or neighborhood purpose that justifies the approval of the lot size reduction.
9. The R-6 zoned portion of the development has an overall density of 5.49 units per acre, which is in compliance with the R-6 zone and the Land Use Element of the General Plan, as identified in Section F and G of this report.
10. The proposed plans indicate 20 single family lots of 6,000 square feet in size in the R-6 zoned portion of the project. The R-6 zone allows 6,000 square foot lots.
11. The proposed plans indicate 76 attached units that are either a duplex or a triplex. These are proposed to be single story units. Duplexes and Triplexes are a permitted use in the R-6 zone. The recent changes to the General Plan that limit housing types have been considered and these units are proposed to be single-story units.
12. The proposed assisted living facility is listed as a conditional use in the R-6 zone. A conditional use permit application may be pursued for this use.
13. The proposal meets the open space requirements for the R-3 and R-6 zones.

Conditions:

1. That all requirements of the City Engineer are met, including those listed in the attached report.
2. That all requirements of the Fire Chief are met.
3. A site plan and/ or preliminary plat and final plat applications will be required for all remaining phases of development.
4. Any other conditions as articulated by the Planning Commission:

I. Alternatives

Alternative Motion A

I move to **continue** the item to another meeting, with direction to the applicant and Staff on information and / or changes needed to render a decision, as follows:

Alternative Motion B

Based upon the analysis in the Staff Report and information received from the public, I move to deny the Stillwater Master Development Agreement Amendment. Specifically, I find the application does not promote the general welfare for the following reasons:

List findings for denial:

J. Exhibits:

1. City Engineer's Report
2. Location & Zone Map
3. Original MDA
4. Staff report supporting original MDA, stating 232 units
5. Original MDA Map, enlarged
6. Plat A, Plat B, Plat C
7. Master Development Amendment Agreement
8. Exhibits for Master Development Amendment Agreement
 - a. Exhibit of Overall Project
 - b. Senior Housing and Assisted Living Facility Concept Plan (R-6 zone)
 - c. Remaining R-3 property Concept Plan

**City Council
Staff Report**

Author: Jeremy D. Lapin, City Engineer
Subject: Sierra Estates Master Development Plan
Date: February 27, 2014
Type of Item: Master Development Plan Amendment



Description:

A. Topic: The applicant has submitted a Master Development Plan application. Staff has reviewed the submittal and provides the following recommendations.

B. Background:

Applicant: Stephen Sowby- Sunset Mountain Properties, LP
Request: Master Development Plan Amendment
Location: 400 North between 350 and 600 West
Acreage: 188 units on 74.58 acres within the R-3 zone and 76 units and an assisted living facility on 13.84 acres within the R-6 zone

C. Recommendation: Staff recommends approval of the amended master development plan subject to the applicant addressing and incorporating the following findings and conditions into the master development agreement and into the construction drawings.

D. Proposed Items for Consideration:

- A. Prepare construction drawings as outlined in the City’s standards and specifications and receive approval from the City Engineer on those drawings prior to receiving Final approval from the City Council.
- B. This project will need to complete all frontage improvements along 400 North per City and AASHTO standards. A minimum of 15:1 taper shall be provided when transitioning from the existing cross section to the new City standard for a collector road (77’).
- C. Consider and accommodate existing utilities, drainage systems, detention systems, and water storage systems into the project design. Access to existing facilities shall be maintained throughout the project. Mitigation shall be provided for the existing flood irrigation that occurs to the west of the project. Tail water must be cleaned to remove suspended solids prior to discharge into the City’s storm drain system.
- D. Incorporate a grading and drainage design that protects homes from upland

flows.

- E. Project must meet the City Ordinance for Storm Water release (0.2 cfs/acre for all developed property) and all UPDES and NPDES project construction requirements. Storm water must be cleaned to remove 80% of the total suspended solids 110 microns and larger.
- F. Project bonding must be completed as approved by the City Engineer prior to recordation of plats.
- G. All review comments and redlines provided by the City Engineer are to be complied with and implemented into the construction drawings.
- H. All work to conform to the City of Saratoga Springs Standard Technical Specifications, most recent edition.
- I. Developer shall prepare and record easements to the City for all public utilities not located in a public right-of-way.
- J. Developer is required to ensure that there are no adverse effects to adjacent property owners and future homeowners due to the grading and construction practices employed during completion of this project.
- K. The MDA document shall identify and label all surrounding property ownership.
- L. The MDA document shall provide an exhibit to accompany the legal description.
- M. The MDA shall remove reference to the off-site irrigation line and instead conform with the City's Secondary Water Master plan showing a future 16" waterline in 400 North.
- N. The developer shall show the dedication to the City of the area preserved for Mountain View Corridor. This area shall be dedicated with the recordation of the adjacent phase.
- O. Road names shall be verified with the City's GIS department as compliant with City standards.
- P. Developer shall ensure all road layouts comply with City road design standards.
- Q. Developer shall ensure access spacing along 400 North complies with the City standards outlined in the Transportation Master Plan. This also includes the spacing of intersections and drive approaches on the Senior Housing property.
- R. Developer shall continue the installation of the 54" storm drain line in 400 North along all developed project frontage.



CITY OF SARATOGA SPRINGS

Planning Commission Meeting

Thursday, February 27, 2014

Meeting held at the Saratoga Springs City Offices
1307 North Commerce Drive, Suite 200, Saratoga Springs

MINUTES

Work Session 6:32 P.M.

Present:

Commission Members: Jeff Cochran, Sandra Steele, Jarred Henline, Kara North, Hayden Williamson and Kirk Wilkins

Absent Members: Eric Reese

Staff: Lori Yates, Kimber Gabryszak, Sarah Carroll, Kevin Thurman, Chante'le Rosson

Others: Aimee Walker, Brett Lowell, Greg Larsen, Henry Barlow, Reed Barlow, Sterling and Sandy Parker, Ben Washer, Josh Tippetts, Stephen Sowby, Steve Larson, Colbey Hawks, Mark Nelson, Emily Shoell, Jen Southwick, Karalyn Becraft, Janette Crump, Keveny Daley, Abby Nielson, Dan McGarry, Brylee Sage, Maddy Butler, Kelsie Lish, Tina LeBaron, Mary Ann Krull, Amy Loveless, Kelsey Dean, Devar Klingensmith, Ross Welch, Danielle Cahoon, Ashley Buhman, Mark Buhman, Ben Dean, Sara Merrell, Maurie Pyle, Brooke Snowball, Ryan Poduska, Kathy Hansen, Chad Hansen, Nina Broadbent, Bret Walker, Anna Henry, Steve Maddox, Heather Cole, Paula Heaton, Carl Whiting

6. Public Hearing: Amendment to Sierra Estates Master Development Plan located between 350-600 West and 400 North, Stephen Sowby, applicant.

Sarah Carroll presented the amendment to the Sierra Estates Master Development Plan which included revisions to the open space and senior living community, and preserving land for the Mountain View Corridor.

Steve Sowby, applicant thanked staff for their help with a successful plan. He briefly touched on the amendments to the plan.

Jeff Cochran opened the public input.

Paula Heaton asked if the fencing would be installed to provide protection to the new residents and the existing resident who are on agriculture property. She would like to see that the agricultural rights remains. She asked that those buying lots in this development be made aware of the agricultural area.

Heather Cole asked if two-story homes will be built on the lots that back along McAllister Lane. Sarah Carroll stated that is possible. Heather asked why the lots are so much smaller and why was the zone changed from an R-3 to R-6 back in 2007.

Henry Barlow feels that chain link fencing doesn't keep the animals from getting out.

Danielle Cahoon asked if fencing would be around the senior center building after being completed and would there be adequate parking available.

Sterling Parker asked if there will be enough water and sewer capacity for these additional homes. Will this potentially increase the rates to the water?

Jeff Cochran closed the public input.

Kevin Thurman indicated that there is a law that requires fencing for farm animals and the applicant would need to comply.

Sarah Carroll stated that she doesn't have the answers as to why the rezone occurred in 2007 without researching that. The lot sizes in an R-G zone are geared towards less maintenance. The developer hasn't discussed types of fencing for the facility at this time. The parking plans for the senior center have been implemented.

Jeremy Lapin at this point there hasn't been any issues with sewer and culinary capacity. The pressure has been a concern but there is no supply concern at this time. The city is planning to install secondary water meters to eliminate the over consumption by residents.

Kevin Thurman indicated that the State Code has laws that protect agricultural area. Staff would need to take more time to research this matter.

Sandra Steele asked if the city could require the developer to sign a prepared document which indicates the type of zoning that they are building next to.

Kimber Gabryszak not sure if we have the ability to require this from the developer but staff could look into this request.

Ross Welch spoke about the rezone that occurred in 2007 R-6 was only for senior living and only for this product

Jarred Henline asked if a notice and or condition could be placed on the plat to make property owners aware of the surrounding agricultural zone.

Kara North appreciates the public's comments. The applicant will need to work with staff regarding fencing. She would like to see that property owners are aware of the surrounding zone. She is pleased with the proposed plan.

Kirk Wilkins asked if chain-link fencing is even allowed in the city's developments. Kimber Gabryszak chain link is only allowed in the agricultural zone. He agrees that language regarding the nuisance be added to the plat. He suggested that shade lighting be used on the properties were permitted.

Hayden Williamson asked if the small lots are single family lots are intended for senior housing. Hayden asked that staff work with the developer on reducing the light from the surrounding property owners.

Sandra Steele asked what area of the open space would the tax payers be responsible for. Sarah Carroll stated that the public open space would be 10.67 acres and additional park strip along 400 north. Sandra asked who would maintain the southeast corner open space. Sarah Carroll the developer would be maintaining it.

Sandra asked if the traffic study that was completed years prior was still a valid study. Jeremy Lapin stated that a traffic study would be conducted during the preliminary plat process.

Sandra how many assisted living units will there be. Steve Sowby stated that there will be 46 units.

Sandra has problems with the number of units; the concept plan doesn't work because you would need to have 2.5 parking stalls available for the cottages. She has several issues with access onto 400 north, the number units, safety, and parking. Will the food service be for all residents? Steve Sowby the services will be for all senior residents.

Sandra asked if the applicant would be fine with a condition that the clubhouse only be used for those residents and not for any other use.

Jeff Cochran asked Sarah Carroll what is the difference between the previous and current concept plan. Sarah Carroll stated that the previous plan was a PUD Overlay and had more units on it. Today there is no PUD option and less density to the plan.

Motion was made by Kara North and seconded Hayden Williamson to forward a positive recommendation to the City Council for the Amendment to Sierra Estates Master Development Plan located between 350-600 West and 400 North, Stephen Sowby, applicant with the findings and conditions listed in the staff report dated February 27, 2014 with the following conditions listed. Aye: Kara North.

Subject to:

- 1. That the neighboring agricultural use be noted on the plat.**
- 2. That the Concept Plan be brought back to the Planning Commission.**

Exhibit 5

**City Council Staff Report and Written
Minutes with Adopted Findings of Fact and Conditions**



**City Council
Staff Report**

**Master Development Plan Amendment
Sierra Estates
March 25, 2014
Public Hearing**

Report Date:	March 18, 2014
Applicant/Owner:	Stephen Sowby/ Sunset Mountain Properties, LP
Location:	Approximately 350-600 West and 400 North
Major Street Access:	400 North
Parcel Number(s) & Size:	580350048, 580340496, approximately 90.15 acres
Parcel Zoning:	R-3, Low Density Residential and R-6, Medium Density Residential
Adjacent Zoning:	R-3, PC, RR, MU, R-10, A
Current Use of Parcel:	Undeveloped
Adjacent Uses:	Single Family Residential, schools, New Haven girls school
Previous Meetings:	This is the first meeting for the MDA Amendment
Previous Approvals:	Sierra Estates MDA and Annexation approval occurred in 2005 Final plat approval for Plat A and B occurred in 2006 Rezoning from R-3 to R-6 for the Senior Housing project occurred in 2007 The original MDA was extended in 2013 for one year, until October 2014 Final Plat approval for Plat C occurred in 2013
Land Use Authority:	City Council
Future Routing:	Preliminary and Final Plat applications will be required
Author:	Sarah Carroll, Senior Planner

A. Executive Summary: This is a request to amend and extend the Sierra Estates Master Development Agreement (MDA) and clarify densities and previous approvals. The project is comprised of 90.15 acres. 1.72 acres is being set aside for Mountain View Corridor, 74.59 acres is zoned R-3, and 13.84 acres is zoned R-6.

Recommendation:

Staff recommends that the City Council conduct a public hearing, take public comment, discuss the application, and vote to recommend approval with the Findings of Fact, Conclusions of Law, and Conditions based upon the analysis in this report and as stated in Section I of this report. Section J of this report includes alternative motions for the City Council to consider.

B. Background: The original Sierra MDA was approved in 2005, was signed and effective on October 10, 2006 and is valid for 7 years, until October 10, 2013. The agreement was extended for one year in October 2013 to work out the details of the proposed amendment and extension request.

The original agreement contemplated that a senior living component could be considered for a portion of the property. This portion (13.84 acres in the southwest corner) was rezoned from R-3 to R-6 in 2007 and the concept plan indicated Senior Housing and an assisted living facility. At that time the developers anticipated that they would be able to apply the PUD standards. Since that time, the Code has been amended (July 2013) and the PUD section may not be applied to properties that have not previously been granted the PUD Overlay. The developers expressed concern over this change as it reduces the number of units that may be considered. However, they have adjusted their concept plan to meet the current R-6 Zone requirements.

The final plat for Phase A was recorded in 2007, the final plat for Phase B was recorded in 2012 and the final plat for Phase C was recently approved.

Development Agreement Background:

The original development agreement states that the approval is for 184 single family units and a 10.87 acre park (Neptune Park) on 90.15 acres. However, the number of units stated in the agreement appears to be in error. The staff report and the concept layout of the subdivision indicate 232 single family lots and a statement that the developer may pursue a senior housing development on a portion of the property.

The staff report and associated exhibits, along with the exhibit attached to the original MDA provide additional information that was not included in the body of development agreement. These documents explain that a request for lot size reductions is supported because of the configuration of the park. The park was laid out so that no building lots are adjacent to the park and it is surrounded by public roads; thus, a minimum lot size of 9,000 square feet was approved.

The applicant also received open space credit for the oversize park strip along 400 North, upsizing of the 400 North and 400 West roadways, and the detention pond in the southeast corner of the development. The table below was taken from the concept plan that was attached to the original MDA.

SIERRA ESTATES SUBDIVISION OPEN SPACE TABULATIONS	
PROJECT AREA	= 90.14 ACRES
REQUIRED 15% OPEN SPACE	= 13.52 ACRES
OPEN SPACE PROVIDED	
PARK PARCEL	= 10.92 ACRES
11' OPEN SPACE	= 0.43 ACRES
ROADWAY OVERSIZE	= 1.44 ACRES
STORM DRAIN POND	= 1.18 ACRES
TOTAL	= 13.97 ACRES
PERCENTAGE	= 15.50%
# OF UNITS	= 232
DENSITY	= 2.57 DU/AC

When the original MDA was approved 400 North was planned to be an arterial roadway with a 96 foot wide cross section. Plat A includes a 48 foot wide half-width for 400 North and an additional 11 feet for a wider park strip. Plat A also includes a 68 foot wide cross section for Carlton Avenue (400 West).

C. Specific Request: This request has several components to consider, as outlined below.

Term of agreement: the applicant is requesting that the amended agreement be valid for 7 years.

Lot size reductions: The applicant is requesting a minimum lot size of 9,000 square feet. There are two reasons of justification for this request: 1) based on the current agreement, the lots are allowed to be a minimum of 9,000 square feet because of the configuration of the park. The developer surrounded the park with public roads rather than private lots, and 2) The City has asked the developer to preserve

approximately 1.72 acres of property on the northwest corner of the development for the future extension of Mountain View Corridor.

Density: the Original MDA stated that they were approved for 184 single family lots and had the option to pursue a senior living development. However, the staff reports and exhibits indicated 232 single family lots. The current plan indicates 188 units on 74.58 acres within the R-3 zone and 76 units and an assisted living facility on 13.84 acres within the R-6 zone. This results in a density of 2.52 units per acre in the R-3 zone and 5.49 units per acre and an assisted living facility in the R-6 zone. The assisted living facility does not count towards the overall density and is a conditional use in this zone. The applicant would like these densities and uses to be vested with the amended agreement. They have taken into consideration the recent changes to the general plan and the proposed duplex and triplex buildings are only one story in height. Refer to Section H of this report for review of the code requirements related to this request.

Open Space: The applicant would like the open space credits that were previously allowed to continue to count for the remaining phases of development. However, because of changes to the 400 North right of way cross section, the City's policies regarding the acceptance of open space, and the rezone of a portion of the project to R-6, some changes will need to be considered.

If the project is separated into the R-3 portion and the R-6 portion, the open space is applied as follows:

	ORIGINAL PLAN APPROVED IN 2005	REVISED PLAN PROPOSED IN 2014
OPEN SPACE REQUIRED		
Required R-3 Zone = 15%	13.52 ac	11.19 ac
Required R-6 Zone = 20%	<u>0.00 ac</u>	<u>2.77 ac</u>
Total Open space required	13.52 ac	13.96 ac
OPEN SPACE PROVIDED		
R-3 ZONE		
Large park	10.92 ac	10.87 ac
Additional park strip on 400 North	0.43 ac	0.18 ac
Additional roadway width on 400 N	1.09 ac	1.12 ac
Additional roadway width on 400 W	0.35 ac	0.35 ac
City Park/Storm Drain Pond	<u>1.18 ac</u>	<u>0.00 ac</u>
TOTAL OPEN SPACE IN R-3 ZONE	13.97 ac	12.52 ac
R-6 ZONE AREA		
	Did not exist	
City Park/Storm Drain Pond	0.00	0.68 ac
Open space within Sr. Housing area	<u>0.00</u>	<u>2.95 ac</u>
TOATAL OPEN SPACE IN R-6 ZONE	0.00	3.63 ac
TOTAL OPEN SPACE PROVIDED	13.97 ac	16.15 ac
Percent open space of total project =	15.5%	18.3%

D. Process: Section 19.13.08 regulates Master Development Agreements and requires the Planning Commission to hold a public hearing and make a recommendation to the City Council. The City Council, after receiving a recommendation from the Planning Commission, shall review the application and shall approve, approve with conditions, or deny the application.

E. Community Review: This item has been noticed as a public hearing in the *Daily Herald*, and mailed notice sent to all property owners within the Sierra Estates Master Development Agreement and within 300

feet of the subject property. At the Planning Commission public hearing five residents commented on this application. They requested that future buyers be given notification that there are abutting agricultural uses with existing rights such as large animals, arena lights until 11:00 p.m., animal waste used for fertilizer which creates odor and flies. There was concern that the homes on the 6,000 square foot lots would be two-story homes. There was concern about whether or not there is adequate water and sewer for additional development.

- F. Planning Commission Review:** The Planning Commission held a public hearing on February 27, 2014 and recommended approval as proposed with the findings and conditions in the staff report and also recommended that the neighboring agricultural uses be noted on the plat and that the concept plan for the Senior Housing come back to them at a future date for further review.
- G. Legislative Discretion:** The City Council is given wide latitude to make legislative land use decisions. Approval of a development agreement is a legislative land use decision and great deference is given to the Council when exercising its legislative discretion. Under Utah law, a court will presume that a land use decision is valid unless it is found to be arbitrary, capricious, or otherwise illegal. A legislative land use decision will not be found to be arbitrary or capricious provided it is "reasonably debatable" the decision promotes the general welfare. Simply put, the "reasonably debatable" standard means that the City Council merely needs to show that a reasonable basis exists for its decision to grant or deny the application.

A reasonable basis exists for the Council's decision to grant or deny the application. The reasonable basis is listed in the proposed findings in Section I or the alternatives in Section J.

- H. General Plan:** This project contains R-3, Low Density Residential, and R-6, Medium Density Residential, zoning.

The Land Use Element of the General Plan describes Low Density Residential as "residential subdivisions with an overall density of 1 to 4 units per acre" and states "This area is to be characterized by neighborhoods with streets designed to the City's urban standards, single-family detached dwellings and open spaces".

For Medium Density Residential, the Land Use Element of the General Plan states: "This area is to be characterized by density ranging from 4 to 14 units per acre that may include a mixture of attached and detached dwellings."

Staff Finding: *The proposed densities are consistent with the descriptions within the Land Use Element of the General Plan for Low and Medium Density Residential developments.*

- H. Code Criteria:** Section 19.13.08 outlines the process and requirements for Master Development Agreements. Section 19.04.13 outlines the requirements for the R-3 zone and Section 19.04.16 outlines the requirements for the R-6 zone. Relevant segments of these Chapters and Sections are evaluated below.

19.13.08

- 7. Effect of the Master Development Agreement.** The Master Development Agreement, as approved, will constitute the applicant's right to develop the property in essentially the same manner as outlined in the Master Development Agreement.
- a. Generally, the Master Development Agreement shall include a request to amend the City's Land Use Element of the General Plan and Zoning Map, if necessary.
 - b. The Master Development Agreement shall not grant the applicant the right to circumvent any City ordinances, policies, City Council directives, or any other procedure that is approved and practiced by the City.

- c. The applicant shall still be required to apply for subdivision approval, Site Plan review, Conditional Use approval, or other appropriate procedures as required by this Code.

Staff findings:

- a. *The zoning map already reflects the R-3 and R-6 zoning respectively. The general plan indicates Low Density Residential for these properties. This application does not involve a request to amend the City's Land Use Element of the General Plan or the Zoning Map.*
- b. *This request does not involve any requests to circumvent any City ordinances, policies, City Council directives, or any other procedure that is approved and practiced by the City.*
- c. *Approval of the MDA amendment will constitute Concept Plan Review. Site Plan and/or Preliminary and Final Plat applications will be required for the undeveloped portions of property.*

8. **Additional Requirements.** A Master Development Agreement shall generally conform to the requirements found in this Chapter pertaining to the contents of a development agreement, as appropriate, as well as the following requirements:
- a. The Master Development Agreement shall establish the general land uses in the project, the total number of residential dwellings, the estimated square footage of structures used for non-residential purposes, the general off-site utility and public infrastructure required, and any general phasing for the development of the Master Development Plan area.
 - b. The Master Development Agreement shall include provisions for phasing of improvements and the timing of the construction of public infrastructure.
 - c. The City may enter into performance-based reimbursement arrangements, shared funding mechanisms, or other methods if and when the City's long-term capital facility needs are served by such methods in accordance with the requirements of Section 19.13.07.

Staff Findings:

The amendment to the Master Development Agreement establishes the general land uses in the project as low and medium density residential uses and an assisted living facility. Plats A and B of have been recorded. Plat C has been approved and will be recorded soon. The plans indicate the proposed lot sizes for the remaining development to be 9,000 square feet in the R-3 zone and 6,000 square feet in the R-6 zone. The plans also indicate a 65,148 square foot assisted living facility and a 7,744 square foot clubhouse, 56 single story units for senior living, 20 single family lots in the R-6 zone and 94 remaining lots in the R-3 zone (188 lots total in the R-3 zone). The off-site utilities have already been installed, except for the master planned storm drain line along the undeveloped 400 North frontage and an off-site secondary water line.

- a. *The applicant would like to complete the development over the next seven years and has requested that the amended MDA have a term of seven years.*
- b. *The Master Development Agreement outlines the requirements for improvements of public infrastructure. As the project develops, the associated infrastructure will be required with each phase of development.*
- c. *This amendment may result in the need for reimbursements or shared funding mechanisms. However, these details can be worked out with the Preliminary Plat applications.*

19.04.13

Section 19.04.13 outlines the requirements within the R-3 zone.

Staff finding: *The applicant is requesting variations to the lot size requirements. All other requirements of the base zone will be met.*

Section 19.04.13(4)(b) allows the City Council to consider lot size reductions and outlines criteria for such, as stated below.

- b. Residential lots may be proposed that are less than 10,000 square feet as indicated in this Subsection.
 - i. The City Council may approve a reduction in the lot size if it finds that such a reduction serves a public or neighborhood purpose such as:
 - 1. a significant increase in the amount or number of parks and recreation facilities proposed by the developer of property in this zone;
 - 2. the creation of significant amenities that may be enjoyed by all residents of the neighborhood;
 - 3. the preservation of sensitive lands (these areas may or may not be eligible to be counted towards the open space requirements in this zone – see the definition of “open space” in § 19.02.02); or
 - 4. any other public or neighborhood purpose that the City Council deems appropriate.
 - ii. In no case shall the overall density in any approved project be increased as a result of an approved decrease in lot size pursuant to these regulations.
 - iii. In making its determination, the City Council shall have sole discretion to make judgments, interpretations, and expressions of opinion with respect to the implementation of the above criteria. In no case shall reductions in lot sizes be considered a development right or a guarantee of approval.
 - iv. In no case shall the City Council approve a residential lot size reduction greater than ten percent notwithstanding the amenities that are proposed.

Staff finding: *The applicant is requesting a minimum lot size of 9,000 square feet because of the original configuration of the park which has the park surrounded by public streets and does not have any building lots adjacent to the park. The applicant is also requesting approval of a minimum lot size of 9,000 square feet because they are preserving 1.72 acres for Mountain View Corridor. The reduction in lot sizes serves a public purpose because it will allow the dedication of the right-of-way for the future Mountain View Corridor. Without the reduced lot sizes, the developer is not willing to dedicate this right-of-way. Preserving future rights-of-way is a public purpose and will help meet the future transportation needs of the residents of Saratoga Springs.*

19.04.16

Section 19.04.16 outlines the requirements within the R-6 zone.

Staff finding: *The assisted living facility is a conditional use within this zone and the applicant must apply for a conditional use permit for this use. The proposed concept plan for the property within the R-6 zone has been reviewed against the R-6 zoning requirements and it appears that all requirements of the base zone have been met. The requirements will be reviewed again when a preliminary plat and/or site plan application is submitted.*

I. Recommendation and Alternatives:

Staff recommends that the City Council conduct a public hearing, discuss any public input received, and make the following motion:

I move to that the City Council approve the proposed Sierra Estates Master Development Plan and Agreement Amendment, approximately located at 350-600 West and 400 North, based on the findings listed below and subject to the conditions listed below:

Findings

1. The decision to approve or deny the application for a development agreement is a legislative land use decision. As a result, for the Council’s decision to be valid, it must be reasonably debatable that the development agreement could promote the general welfare. In other words, there must be a reasonable basis for the Council’s decision.
2. The existing development agreement was extended for one year and is in effect until October 2014.

3. The existing development agreement states that the approval is for 184 single family lots and the option to pursue a senior housing development. 184 lots seems to be an error in the text of the agreement since supporting exhibits and staff reports indicate 232 lots and an option to pursue a senior living development on a portion of the property.
4. A portion of the project (13.84 acres) was zoned to R-6 in 2007.
5. The R-3 zoned portion of the development has an overall density of 2.52 units per acre, which is in compliance with the R-3 zone and the Land Use Element of the General Plan, as identified in Section F and G of this report.
6. The R-3 zone requires 10,000 square foot lot minimums. The proposed plans indicated 9,000 square foot lots in the remaining R-3 zoned portion of the development. The City Council may approve a reduction in the lot size if it finds that such a reduction serves a public or neighborhood purpose such as "any other public or neighborhood purpose that the City Council deems appropriate."
7. The developer was previously granted a lot size reduction to 9,000 square feet because of the configuration of the park. Surrounding the park with public streets rather than private lots is an appropriate public or neighborhood purpose.
8. The preservation of 1.72 acres for Mountain View corridor is also an appropriate public or neighborhood purpose that justifies the approval of the lot size reduction.
9. The R-6 zoned portion of the development has an overall density of 5.49 units per acre, which is in compliance with the R-6 zone and the Land Use Element of the General Plan, as identified in Section F and G of this report.
10. The proposed plans indicate 20 single family lots of 6,000 square feet in size in the R-6 zoned portion of the project. The R-6 zone allows 6,000 square foot lots.
11. The proposed plans indicate 76 attached units that are either a duplex or a triplex. These are proposed to be single story units. Duplexes and Triplexes are a permitted use in the R-6 zone. The recent changes to the General Plan that limit housing types have been considered and these units are proposed to be single-story units.
12. The proposed assisted living facility is listed as a conditional use in the R-6 zone. A conditional use permit application may be pursued for this use.
13. The proposal meets the open space requirements for the R-3 and R-6 zones.

Conditions:

1. That all requirements of the City Engineer are met, including those listed in the attached report.
2. That all requirements of the Fire Chief are met.
3. A site plan and/ or preliminary plat and final plat applications will be required for all remaining phases of development.
4. That the neighboring agricultural uses and rights be stated on the future plats.
5. That the Concept Plan for the Senior Housing project come back at a future date for additional review.
6. Any other conditions as articulated by the City Council:

J. Alternatives

Alternative Motion A

I move to **continue** the item to another meeting, with direction to the applicant and Staff on information and / or changes needed to render a decision, as follows:

Alternative Motion B

Based upon the analysis in the Staff Report and information received from the public, I move to deny the Stillwater Master Development Agreement Amendment. Specifically, I find the application does not promote the general welfare for the following reasons:

List findings for denial:

K. Exhibits:

1. City Engineer's Report
2. Location & Zone Map
3. Original MDA
4. Staff report supporting original MDA, stating 232 units
5. Original MDA Map, enlarged
6. Plat A, Plat B, Plat C
7. Master Development Amendment Agreement
8. Exhibits for Master Development Amendment Agreement
 - a. Exhibit of Overall Project
 - b. Senior Housing and Assisted Living Facility Concept Plan (R-6 zone)
 - c. Remaining R-3 property Concept Plan

City Council Staff Report

Author: Jeremy D. Lapin, City Engineer
Subject: Sierra Estates Master Development Plan
Date: February 27, 2014
Type of Item: Master Development Plan Amendment



Description:

A. Topic: The applicant has submitted a Master Development Plan application. Staff has reviewed the submittal and provides the following recommendations.

B. Background:

Applicant: Stephen Sowby- Sunset Mountain Properties, LP
Request: Master Development Plan Amendment
Location: 400 North between 350 and 600 West
Acreage: 188 units on 74.58 acres within the R-3 zone and 76 units and an assisted living facility on 13.84 acres within the R-6 zone

C. Recommendation: Staff recommends approval of the amended master development plan subject to the applicant addressing and incorporating the following findings and conditions into the master development agreement and into the construction drawings.

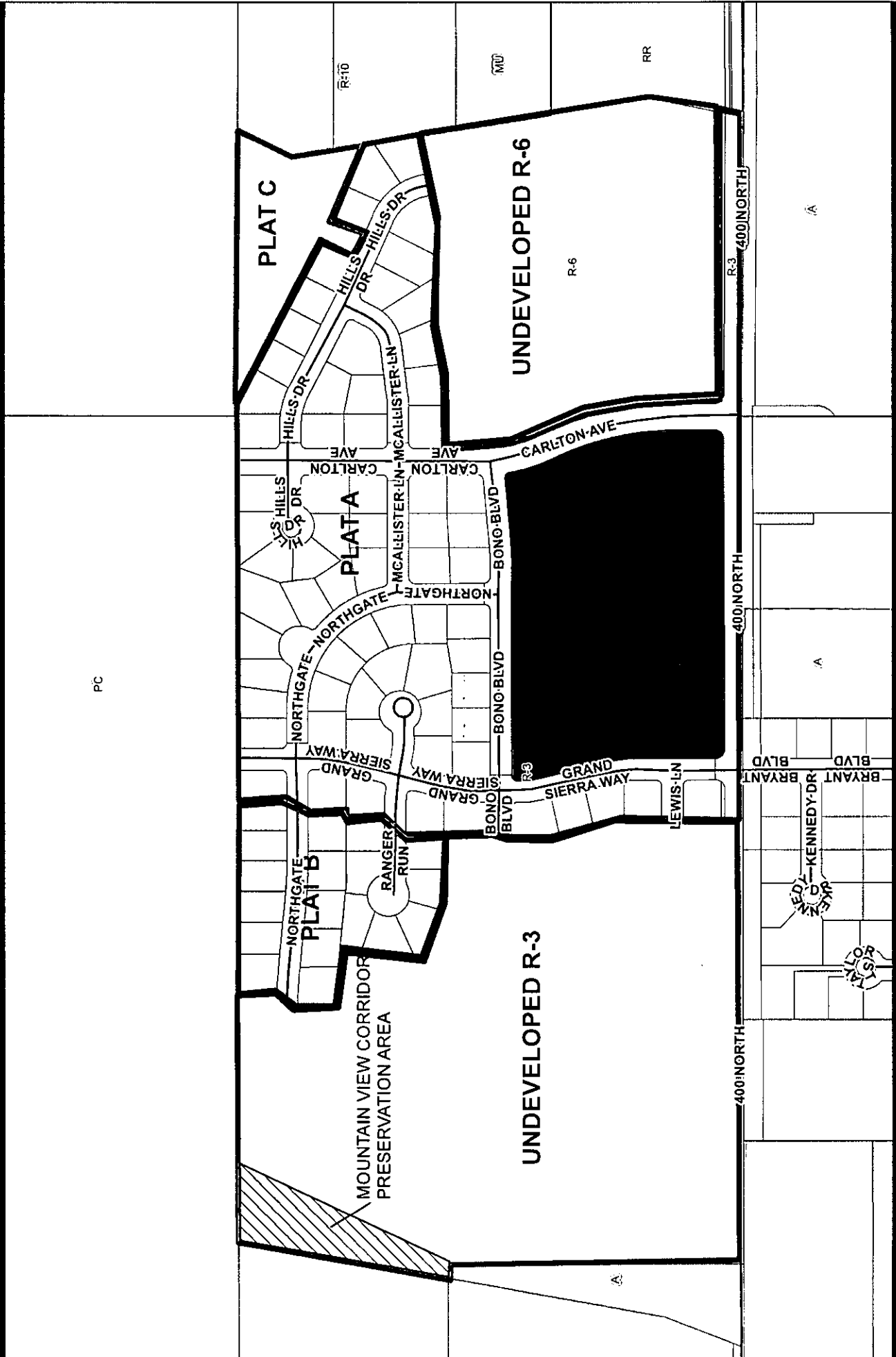
D. Proposed Items for Consideration:

- A. Prepare construction drawings as outlined in the City's standards and specifications and receive approval from the City Engineer on those drawings prior to receiving Final approval from the City Council.
- B. This project will need to complete all frontage improvements along 400 North per City and AASHTO standards. A minimum of 15:1 taper shall be provided when transitioning from the existing cross section to the new City standard for a collector road (77').
- C. Consider and accommodate existing utilities, drainage systems, detention systems, and water storage systems into the project design. Access to existing facilities shall be maintained throughout the project. Mitigation shall be provided for the existing flood irrigation that occurs to the west of the project. Tail water must be cleaned to remove suspended solids prior to discharge into the City's storm drain system.
- D. Incorporate a grading and drainage design that protects homes from upland

flows.

- E. Project must meet the City Ordinance for Storm Water release (0.2 cfs/acre for all developed property) and all UPDES and NPDES project construction requirements. Storm water must be cleaned to remove 80% of the total suspended solids 110 microns and larger.
- F. Project bonding must be completed as approved by the City Engineer prior to recordation of plats.
- G. All review comments and redlines provided by the City Engineer are to be complied with and implemented into the construction drawings.
- H. All work to conform to the City of Saratoga Springs Standard Technical Specifications, most recent edition.
- I. Developer shall prepare and record easements to the City for all public utilities not located in a public right-of-way.
- J. Developer is required to ensure that there are no adverse effects to adjacent property owners and future homeowners due to the grading and construction practices employed during completion of this project.
- K. The MDA document shall identify and label all surrounding property ownership.
- L. The MDA document shall provide an exhibit to accompany the legal description.
- M. The MDA shall remove reference to the off-site irrigation line and instead conform with the City's Secondary Water Master plan showing a future 16" waterline in 400 North.
- N. The developer shall show the dedication to the City of the area preserved for Mountain View Corridor. This area shall be dedicated with the recordation of the adjacent phase.
- O. Road names shall be verified with the City's GIS department as compliant with City standards.
- P. Developer shall ensure all road layouts comply with City road design standards.
- Q. Developer shall ensure access spacing along 400 North complies with the City standards outlined in the Transportation Master Plan. This also includes the spacing of intersections and drive approaches on the Senior Housing property.
- R. Developer shall continue the installation of the 54" storm drain line in 400 North along all developed project frontage.

LOCATION MAP



1 FEET
580

0 145 290

SIERRA ESTATES, MASTER DEVELOPMENT AGREEMENT AMENDMENT

**CITY OF SARATOGA SPRINGS
CITY COUNCIL MEETING**

Tuesday, March 25, 2014

Meeting held at the City of Saratoga Springs City Offices
1307 North Commerce Drive, Suite 200, Saratoga Springs, Utah 84045

POLICY SESSION -Commencing at 7:06 p.m.

Present:

Council Members: Mayor Miller, Councilman Willden, Councilwoman Baertsch, Councilwoman Call, Councilman McOmber and Councilman Poduska

Staff: Lori Yates, Mark Christensen, Spencer Kyle, Kimber Gabryszak, Sarah Carroll, Chief Jess Campbell, Mark Edwards, Owen Jackson

Others: Karalyn Becraft, Ryan Poduska, Jennifer Klingonsmith, Barbara Poduska, James Derisa, William, Andrew, and Daniel Yates, Tina LeBaron, Aimee and Bret Walker, James Doolin, Aaron Evans, Alison Johnson, Jeni Bitter, Suzanne Werner, Robert Werner, Christie Eager, Travis Jordan, Devia Olsen, Lori Sims, Lisa and Matthew Morris, Matt Percy, Jake Smith, Dawson Balzotti, Noah Jordan, Dasan Rohner, Zachary Warren, Huey Kolowich, Eric Anderson, Adam Stout, Gayle Hutching, Joseph Sims, Faye Fackrell, Lcfl Fackrell, Blair Hutchings, Andrew Bargeron, Zach Warren, Michelle Warren, Paula Heaton, , Kelsey Dean, Benjamin Dean, Keveny Daley, Kris Holley, Maurie Pyle, Ashley Buhman, Kathy McGregor, Steve Larson, Janette Crump, Taylor Crump, Stephen Sowby, Henry Barlow, Mark Barlow, Chris Porter

6. Public Hearing: Amendment to Sierra Estates Master Development Plan located between 350-600 West and 400 North, Stephen Sowby, applicant.

Sarah Carroll noted that the MDA is close to expiring. The developer is asking to extend the agreement. One change is the city's request of 1.2 acres for the future Mountain View Corridor alignment. The developer is asking for a lot size reduction.

Steve Sowbie, applicant, said they strictly complied with the code in every case and have complied with the city's request for the Mountain View Corridor. They have worked with staff and will cooperate with the neighbors regarding agricultural concerns. There some slight errors and typos in the MDA and he asked the staff to work with them on correcting those.

Mayor Miller opened the Public Hearing.

Paula Heaton reminded them of agricultural use and rights that were grandfathered in. She asked them to let those coming in know about this.

Mayor Miller closed the Public Hearing.

Sarah Carroll noted that there are minor changes to the MDA. They have complied with all zoning and will dedicate land to the Mountain View Corridor but prefer to do that when the MVC actually comes through.

Russ Welch explained the reason for retaining ownership at this time is because of what happened with Pioneer Crossing. They had a piece dedicated to that and the Pioneer plans changed. If the MVC plans change, they want to retain ownership of their land.

Councilman McOmber said he loves Neptune Park and appreciates the change. He likes the age-in-place senior community. Having three entrances is helpful. He noted that the bungalows located nearest 400 North will be the last to sell because of the noise. He suggested reallocating the bungalows. We need to be sure the needs of the city are being met. He would like to see the MDA tied to the senior living community in the R6 zone and that if the senior community does not happen, it reverts back to R3. Councilwoman Baertsch is okay with the MDA extension and also wants clear language that if not a senior community, it goes back to R3. She has concerns about all the entrances on 400 North and being across from the bus yard. She would like something that notifies buyers about the ag zone and that the Mountain View Corridor will be going right behind their houses. Councilman Willden is fine with R6 being tied to the MDA.

243 Councilman Poduska is also concerned with the traffic. He likes the concept and the city needs something for the senior
244 community.

245 Councilwoman Call would like to see that the parking stalls are located along the facility. Possibly flipping the driveways which
246 is a safety concern at this time.

247
248 Councilwoman Baertsch moved to approve Amendment to Sierra Estates Master Development Plan located between 350-600
249 West and 400 North, Stephen Sowby, applicant, with the amendment that if it isn't assisted living it reverts back to R3 and
250 notifications about ag use and the Mountain View Corridor be on the title and that staff approved changes to the MDA be
251 included and that the property for the Mountain View Corridor does not need to be dedicated to the city at this time and with
252 all finding and conditions. Councilman McOmber seconded. Aye: Councilman Willden, Councilwoman Baertsch,
253 Councilman McOmber, Councilwoman Call, Councilman Poduska. MOTION PASSED

254
255 Ross Welch explained that visibility is very important for assisted living.

Exhibit 6

Special Conditions

The following requirements shall apply to development of the Property which is the subject of the within Agreement. Capitalized terms shall have the meaning set forth in the Agreement.

Development of land in the Project described in the within Agreement shall be subject to the following Special Conditions. All final plans and final plats for the Project shall note these conditions on the body of the plan or plat along with all other notes required by City; provided, however, that a condition need not be placed on a final plan or plat as a note if such plan clearly illustrates the substance and requirements of the condition except as otherwise provided in the Special Conditions below.

- A. No more than 170 dwelling units and one assisted living facility may be constructed in the Project as shown on the Master Plan as submitted and approved by the City Council, which approvals are set forth in Exhibits 3 through 4 of the within Agreement, subject to preliminary and final plat approval by the City Council.
- B. Developer shall prepare a design standards manual which provides coordinated and detailed design standards for construction and improvement of roadways, buildings, parking areas, landscaping, signage, and lighting within the Project as provided in Chapter 19 of the City code and in City regulations.
- C. Developer shall be required to pay a water hook-up fee and may not transfer water rights to City for the Project.
- D. For any property required in this Agreement or City regulations to be regulated by a Homeowners Association, prior to the issuance of any building permits, covenants, conditions, and restrictions ("CCRs") shall be recorded for the portion of the Project required to be governed by a Homeowners Association, which CCRs shall run with the land. City shall approve the CCRs, which approval shall not be unreasonably withheld, to determine compliance with the within Agreement and this Special Condition. The CCRs shall include provisions that:
 - i. establish a property owners association for the Project;
 - ii. require the property owners associations to manage common areas within the Project, including the collection of necessary management fees;
 - iii. limit occupancy in the Project to one family per dwelling unit as such term is defined in Section 19.02.02 of the City code, as amended;

- iv. limit the total number of motor vehicles owned, leased, or otherwise possessed by occupants on property within the Project which are parked on and/or operated therefrom on the subject property by incorporating the same standard for public streets found in Chapter 19.09 of the City's Land Development Code;
 - v. prohibit parking of recreational vehicles within the Project;
 - vi. require Developer, property owners associations, and any subsequent owners of the Property or any portion thereof to notify potential owners and occupants within the Project of the foregoing parking and occupancy limitations prior to any purchase or lease of any portion of the Property, including any dwelling unit within the Project;
 - vii. require adoption of an enforcement policy that:
 - a. requires strict adherence to the occupancy and parking provisions included in these Special Conditions and the policies of the property owners associations, and
 - b. has penalties for non-compliance; and
 - viii. require that the foregoing occupancy and parking policies may not be modified or removed without written approval from City. Any such modification or removal shall be deemed an amendment to the within Agreement and shall accomplished as provided in subsection 26.i. of the within Agreement.
- E. The special conditions set forth in Paragraph D shall run with the land and shall survive the within Agreement, provided, however, that the parties to the within Agreement, or their successors or assigns, may elect to modify or remove the foregoing conditions on the Property. Modification or removal of any special condition set forth in Paragraph D shall be in written form mutually agreed to and executed by each of the parties and shall constitute an amendment to the within Agreement. The amendment shall be undertaken pursuant to a vote of the City Council as provided in subsection 26.i. of the within Agreement.
- F. Conditions iii, iv, and v in Special Condition No. D above shall be included on each recorded plat for Property, including but not limited to any condominium plat.
- G. Developer agrees that any property located within the Project which is acquired by Developer subsequent to execution of this Agreement shall be subject to the within Development Agreement. Developer shall take any action necessary, including amendment of this Agreement, to assure such property is subject to this Agreement.

H. Addresses shall be included on the front and rear elevations of the units to aid in locating units for emergency response personnel.