

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is made and entered into on August 22, 2006, by and between the Provo City Corporation, a Utah municipal corporation, hereinafter referred to as "City", and Carl A. Jacobson, an individual, and Jenny L. Jacobson, an individual, hereinafter collectively referred to as "Developer".

Recitals

A. Developer is the developer of certain property located generally at 2275 West 600 South, in Provo, Utah (the "Property"), which is more fully described in Exhibit "A". As part of the development of the Property, Developer desires to have the Property placed in the One Family Residential ("R1") zone, as provided in Title 14 of the Provo City Code, as amended (the "Rezoning Request").

B. Developer has indicated a desire and intent to develop a subdivision on the Property which meets the development standards of the R1 zone (the "Project").

C. To assist City in its review of the Rezoning Request and to assure development of the Project in accordance with Developer's representations to City, Developer and City each desire to enter voluntarily into this Agreement which sets forth the process and standards whereby Developer may develop the Project.

D. Acting pursuant to its authority under Utah Code Annotated, §§ 10-9a-101, et seq., and after all required public notice and hearings, City, in the exercise of its legislative discretion, (i) has elected to process the proposed Project in a manner resulting in the negotiation, consideration, and approval of this Development Agreement and (ii) has concluded that the terms and conditions set forth herein serve a public purpose and promote the health, safety, prosperity, security, and general welfare of the inhabitants and taxpayers of City.

E. On November 9, 2004, City adopted a comprehensive update to its General Plan pursuant to Utah Code Annotated § 10-9a-401. A portion of the General Plan establishes development policies for the Property. Such development policies are consistent with the proposed development on the Property.

F. On May 10, 2006, after a duly noticed public hearing, the Provo City Planning Commission recommended approval of Developer's application to rezone the Property subject to certain findings and conditions as set forth in Exhibit "B", attached hereto and incorporated herein, and forwarded such application to the Municipal Council for its consideration.

G. On May 10, 2006, after a duly noticed public hearing, the Provo City Planning Commission approved Developer's application for a preliminary subdivision on the Property subject to certain findings and conditions as set forth in Exhibit "B", attached hereto and incorporated herein

H. On July 11, 2006, the Municipal Council held a duly noticed public hearing to

consider Developer's application to rezone the subject property to the R1 zone and duly considered (i) comments from the public, neighborhood representatives, Developer, and City officials and (ii) recommendations of the General Plan regarding the Property.

I. On July 11, 2006, the Municipal Council reviewed the preliminary subdivision plan for the Property, attached hereto as Exhibit "C", and found that such plan meets the policy and intent of the General Plan as it pertains to the Property.

J. To allow development of the Property for the benefit of Developer, to ensure City that the development of the Property will conform to applicable policies set forth in the General Plan, and address concerns of property owners in proximity to the Property, Developer and City desire to enter into this Agreement and are each willing to abide by the terms and conditions set forth herein.

K. Acting pursuant to its legislative authority under Utah Code Annotated § 10-9a-101, et seq., and after (i) all required public notice and hearings and (ii) execution of this Agreement by Developer, the Municipal Council of City, in exercising its legislative discretion, has determined that entering into this Agreement furthers the purposes of the (i) Utah Municipal Land Development and Management Act, (ii) City's General Plan, and (iii) Titles 14 and 15 of the Provo City Code (collectively, the "Public Purposes"). As a result of such determination, the City has elected to process the Rezoning Request and the subsequent development authorized thereunder in accordance with the provisions of this Agreement and 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 inhabitants and taxpayers of Provo City.

Agreement:

Now, therefore, in consideration of the premises recited 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, City and Developer hereby agree as follows:

1. Development. In the event City approves Developer's Rezoning Request, development of the Property shall be subject to the terms and conditions of this Agreement. In the event City does not approve Developer's Rezoning Request this Agreement shall be null and void.

2. Zone Change and Permitted Uses. Subject to the terms of this Agreement, the zoning classification on the Property shall be the One Family Residential zone. Land uses allowed pursuant to such zoning designation shall be governed by Title 14 of the Provo City Code as constituted on the effective date of this Agreement, except to the extent this Agreement is more restrictive.

3. Applicable Code Provisions. All provisions of the Provo City Code as constituted on the effective date of this Agreement shall be applicable to the Project proposed on the Property 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, Titles 14 and 15 of the Provo City Code, and other requirements generally applicable to development in Provo City. In particular, and not by way of limitation, Developer shall conform

to the requirements of Chapter 14.10 (One Family Residential zone) and the project plan approval process therein.

4. 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 which 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 application to all development activity in Provo 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.

5. Final Project or Development Plan Approval. In the event City approves the Rezoning Request, Developer shall cause final subdivision plans and specifications (including site design plans) (the "Plans") to be prepared for the Project.

A. In particular, such Plans shall meet the following requirements:

(1) Be in sufficient detail, as reasonably determined by City, to enable City to ascertain whether the Project will be of high quality design (including on- and off-site vehicular and pedestrian access, and general Project design) and in accordance with the terms and conditions of this Agreement.

(2) Comply with all City standards and requirements applicable to drainage, site and traffic engineering and utilities.

(3) Comply with the standards and requirements of Titles 14 and 15 of the Provo City Code.

(4) Comply with Chapter 14.37 of the Provo City Code (Off-Street Parking Requirements) except as otherwise provided in the R1 zone and this Agreement.

B. Developer shall:

(1) Comply with the conditions of preliminary subdivision plan approval as set forth in the Planning Commission Report of Action dated May 10, 2006.

(2) Comply with the special conditions (the "Special Conditions") shown on Exhibit "D" attached hereto and made a part hereof.

(3) Provide other information as City may reasonably request.

6. Standard for Approval. City, on recommendation of its Planning Commission, shall approve the Plans if such Plans meet the standards and requirements enumerated in Paragraph 3 and if, as determined by City, the Plans are consistent with commitments made to City that the Project will be a high quality development that will be designed in a manner to minimize adverse impacts to the neighborhood and, in particular, conforms to the Special Conditions set forth in Exhibit "D" attached to this Agreement.

7. 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.

8. Project Phasing and Timing. Upon approval of the Plans, Developer may proceed by constructing the entire Project at one time or in approved phases.

9. 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 may determine 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 Property by more than ten (10) percent, (ii) substantially changes the exterior appearance of the Project, or (iii) changes the functional design of the Project in such a way that materially 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 standard for approval set forth in Paragraph 6 hereof.

10. 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 R1 zone.

11. Term. The term of this Agreement shall commence on, and the effective date of this Agreement shall be, the effective date of the ordinance approving the Rezoning Request. This Agreement shall expire when certificates of occupancy have been issued for all buildings and/or dwelling units in the Project; provided, however, that any covenant included in this Agreement which is intended to run with the land shall survive this Agreement as provided in the covenant.

12. Successors and Assigns. This Agreement shall be binding on the successors and assigns of Developer. Notwithstanding the foregoing, a purchaser of the Project or any portion thereof shall be responsible for performance of Developer's obligations hereunder as to any portion of the Project so transferred. In the event of a sale or transfer of the Project, or any portion thereof, the seller or transferor and the buyer or transferee shall be jointly and severally liable for the performance of each of the obligations contained in this Agreement unless prior to such transfer an agreement satisfactory to City, delineating and allocating between Developer and transferee the

various rights and obligations of Developer under this Agreement, has been approved by City. Alternatively, prior to such sale or transfer, Developer shall obtain from the buyer or transferee a letter (i) acknowledging the existence of this Agreement and (ii) agreeing to be bound thereby. Said letter shall be signed by the buyer or transferee, notarized, and delivered to City prior to the transfer or sale. In such event, the buyer or transferee of the parcel so transferred shall be fully substituted as Developer under this Agreement and Developer executing this Agreement shall be released from any further obligations under this Agreement as to the parcel so transferred.

13. 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:

(1) 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.

(2) A determination by City made upon the basis of substantial evidence that Developer has not complied in good faith with one or more of the material terms or conditions of this Agreement.

(3) Any other event, condition, act or omission, either by City or Developer, (i) violates the terms of, or (ii) materially interferes with the intent and objectives of this Agreement.

B. Procedure Upon Default.

(1) Upon the occurrence of Default, the non-defaulting party shall give the other party thirty (30) 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 that the Default cannot reasonably be cured within thirty (30) days, the defaulting party shall have such additional time as may be necessary to cure such Default so long as the defaulting party takes action to begin curing such Default with such thirty (30) day period and thereafter proceeds diligently to cure the Default. After proper notice and expiration of said thirty (30) 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 Paragraph 13(C) herein. Failure or delay in giving notice of Default shall not constitute a waiver of any Default.

(2) Any Default or inability to cure a Default caused by strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other similar causes beyond the reasonable control of the party

obligated to perform, shall excuse the performance by such party for a period equal to the period during which any such event prevented, delayed or stopped any required performance or effort to cure a Default.

C. Breach of Agreement. Upon Default as set forth in Paragraphs A and B above, City may declare Developer to be in breach of this Agreement and City (i) may withhold approval of any or all building permits or certificates of occupancy applied for in the Project, but not yet issued; and (ii) shall be under no obligation to approve or to issue any additional building permits or certificates of occupancy for any building within the Project until the breach has been corrected by Developer. In addition to such remedies, either City or Developer (in the case of a Default by City) may pursue whatever additional remedies it may have at law or in equity, including injunctive and other equitable relief.

14. General Terms and Conditions.

A. Recording of Agreement. In the event City approves the Rezoning Request, an ordinance rezoning the Property shall not be finally executed until Developer executes this development agreement. Thereafter, the ordinance rezoning the Property shall be finally executed and this Agreement shall be recorded to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof.

B. Severability. Each and every provision of this Agreement shall be separate, several 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.

C. 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.

D. 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 health, safety, and welfare of the citizens of City.

E. 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.

F. 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 by

seeking an injunction to compel compliance. In the event Developer violates the rules, policies, regulations or ordinances of City or violates the terms of this Agreement, City may, without declaring a Default hereunder or electing to seek an injunction, and after thirty (30) days written notice to correct the violation (or such longer period as may be established in the discretion of City or a court of competent jurisdiction if Developer has used its reasonable best efforts to cure such violation within such thirty (30) 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 Developer. City shall be free from any liability arising out of the exercise of its rights under this paragraph.

G. 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 Municipal 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.

H. Entire Agreement. This Agreement shall supersede all prior agreements with respect to the subject matter hereof, not incorporated herein, and all prior agreements and understandings are merged 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 special condition set forth in Exhibit "D" hereof unless this Agreement is amended pursuant to a vote of the Municipal Council taken with the same formality as the vote approving this Agreement.

J. Attorneys 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.

K. Notices. Any notices required or permitted to be given pursuant to this Agreement shall be deemed to have been sufficiently given or served for all purposes when presented personally, or four days after being sent by registered or certified mail, properly addressed to the parties as follows (or to such other address as the receiving party shall have notified the sending party in accordance with the provisions hereof):

To the Developer: Carl A. Jacobson
P.O. Box 1043
Castle Dale, Utah 84513

To the City: Community Development Director
P.O. Box 1849
Provo, Utah 84603

With copy to: Municipal Council Attorney
P.O. Box 1849
Provo, Utah 84603

L. Applicable Law. This Agreement and the construction thereof, and the rights, remedies, duties, and obligations of the parties which arise hereunder are to be construed and enforced in accordance with the laws of the State of Utah.

M. Execution of Agreement. This Agreement may be executed in multiple parts as originals or by facsimile copies of executed originals; provided, however, if executed and evidence of execution is made by facsimile copy, then an original shall be provided to the other party within seven (7) days of receipt of said facsimile copy.

N. Hold Harmless. Developer agrees to and shall hold City, its officers, agents, employees, consultants, special counsel, and representatives harmless from liability for damages, just compensation restitution, or judicial or equitable relief which may arise from or are related to any activity connected with the Project, including approval of the Project; the direct or indirect operations of Developer or its contractors, subcontractors, agents, employees or other persons acting on its behalf which relates to the Project; or which arises out of claims for personal injury, including health, and claims for property damage.

(1) The agreements of Developer in this Paragraph 14(N) shall not be applicable to (i) any claim arising by reason of the negligence or intentional tort actions of City, or (ii) attorneys fees under Paragraph 14(J) herein.

(2) City shall give written notice of any claim, demand, action or proceeding which is the subject of Developer's hold harmless agreement as soon as practicable but not later than thirty (30) days after the assertion or commencement of the claim, demand, action or proceeding. If any such notice is given, Developer shall be entitled to participate in the defense of such claim. Each party agrees to cooperate with the other in the defense of any claim and to minimize duplicative costs and expenses.

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 (12) 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 Paragraph 13 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 District Court, State of Utah, or in the Federal District Court for the District 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 individual has 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.

[signature page follows]

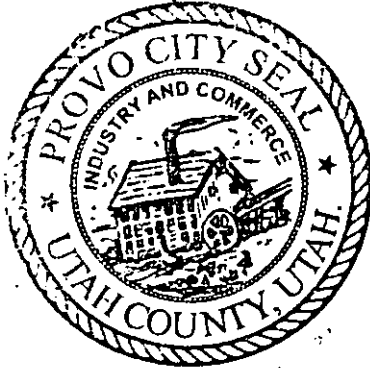
IN WITNESS WHEREOF, this Agreement has been executed by City and by a duly authorized representative of Developer as of the date first written above.

Attest:

PROVO CITY, a political subdivision of the State of Utah

Kate G. Grosbeck
City Recorder

By: *[Signature]*
Mayor



DEVELOPER

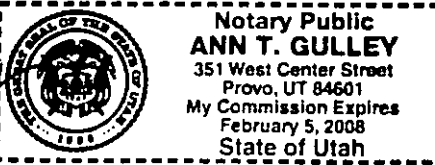
By: *Carl A. Jacobson*
Carl A. Jacobson

By: *Jenny L. Jacobson*
Jenny L. Jacobson

State of Utah
County of Utah

On this 20 day of Nov in the year 2006, before me *Ann T. Gulley* a notary public, personally appeared Carl A. Jacobson, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged he executed the same. Witness my hand and official seal.

Ann T. Gulley
Notary Public



State of Utah
County of Utah

On this 20 day of Nov in the year 2006, before me *Ann T. Gulley* a notary public, personally appeared Jenny L. Jacobson, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged he executed the same. Witness my hand and official seal.

Ann T. Gulley
Notary Public

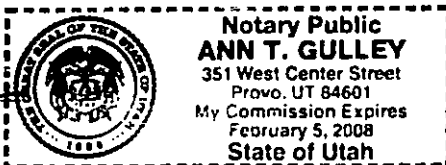


Exhibit "A"
Legal Description of Property
Clydesdale Bend Subdivision
2275 West 600 South, Provo, Utah

Commencing at a point located South 00° 28' 08" East along the section line 1189.11 feet and West 971.51 feet from the northeast corner of Section 10, Township 7 South, Range 2 East, Salt Lake Base & Meridian; thence South 00° 58' 52" West 617.90 feet; thence West 113.46 feet; thence South 224.76 feet thence North 89° 52' 57" West 153.28 feet; thence along the arc of a 200.00 foot radius curve to the right 175.91 feet (chord bears North 64° 41' 09" West 170.29 feet); thence along the arc of a 260.00 foot radius curve to the left 224.68 feet (chord bears North 64° 14' 41" West 217.75 feet); thence North 89° 00' 00" west 30.49 feet; thence North 00° 28' 25" West 538.14 feet; thence North 00° 04' 23" west 134.53 feet along Plat "A", Bullock Subdivision; thence North 89° 51' 29" East 662.48 feet to the point of the beginning.

Area = 11.2285 acres

Exhibit "B"
Planning Commission Reports of Action
Preliminary Subdivision and Rezoning - May 10, 2006
Clydesdale Bend Subdivision
2275 West 600 South, Provo, Utah

Provo City Planning Commission
Report of Action
 May 10, 2006

REQUEST FOR COUNCIL ACTION

Type of Action Requested: **X**
 Resolution _____
 Ordinance _____
 Formal Action/Motion _____
 Review at Study Session _____
 Administrative; No Action **X**

ITEM 4 Armando Alvarez requests preliminary approval of Westside Meadows Subdivision, a thirty three-lot development proposed for 11.22 acres, located approximately 2274 West 600 South within a proposed R1.10 (One-Family Residential) Zone. The property is currently zoned A1.5 (Agricultural). *Provo Bay Neighborhood* 05-0007SP

The following action was taken by the Planning Commission on the above described item at its regular meeting of May 10, 2006.

**CONDITIONALLY APPROVED
 PRELIMINARY SUBDIVISION**

On a vote of 4:0, the Planning Commission approved the above noted application, with conditions and subject to the rezoning of the property to R1.10 (One-Family Residential).

Conditions of Approval:

1. That the property be rezoned to R1.10;
2. That any remaining minor technical requirements of the Public Works Department be addressed prior to final plat approval;
3. Consider the possibility of connecting the sidewalks between the improved areas on 600 South.

Motion By: Roy Peterman

Second By: Leonard Mackay

Votes in Favor of Motion: Roy Peterman, Leonard Mackay, Pam Boshard, Mirian Monnahan

Votes Opposed to Motion: None

Ron Madsen was present as Chair. Todd Roach was excused from the meeting prior to this item.

- Includes facts of the case, analysis, conclusions and recommendations outlined in the Staff Report, with any changes noted; Planning Commission determination is generally consistent with the Staff analysis and determination.

RELATED ACTIONS

05-0010R: A request to rezone the subject property to R1.10 (One-Family Residential) to facilitate the proposed subdivision is addressed in the Report of Action for Item 5* of this agenda (May 10, 2006).

DEVELOPMENT AGREEMENT

A development agreement may be considered in association with the related application to rezone property for this proposed subdivision (05-0010 R).

STAFF PRESENTATION

The Staff Report to the Planning Commission provides details of the facts of the case and the Staff's analysis, conclusions, and recommendations. Key points addressed in the Staff's presentation to the Planning Commission included the following:

- Reviewed relationship to surrounding properties;
- Traffic impacts do not exceed the allowable environmental thresholds;
- The subdivision design and improvements meet Provo City Code.

CITY DEPARTMENTAL ISSUES

- Environmental thresholds or physical capacities of impacted roadway(s) exceeded.
- Traffic study required and reviewed at this stage of project review or approval.
 - Preliminary traffic study submitted.
 - Traffic study may be required with future stages of approval.
- Important issues raised by other departments – addressed in Staff Report to Planning Commission.

NEIGHBORHOOD MEETING DATE

- A neighborhood meeting was held in September, 2005.
- The Neighborhood Chair determined that a neighborhood meeting would not be required.
- No information was received from the Neighborhood Chair.
- City-wide application; all Neighborhood Chairs received notification.

NEIGHBORHOOD AND PUBLIC COMMENT

- The Neighborhood Chair was present / addressed the Planning Commission during the public hearing.
- The Neighborhood Chair was not present or did not address the Planning Commission during the hearing.
- This item was City-wide or affected multiple neighborhoods.
 - Multiple Neighborhood Chair(s) were present or addressed the Planning Commission.
- Neighbors or other interested parties were present or addressed the Planning Commission.

CONCERNS RAISED BY PUBLIC

Any comments received prior to completion of the Staff Report are addressed in the Staff Report to the Planning Commission. Key issues raised in written comments received subsequent to the Staff Report or public comment during the public hearing included the following:

- Harry McCoard (Neighborhood Chair) - In September, roughly 30-35 people attended a neighborhood meeting to discuss this project. The lot sizes seem appropriate. Neighbors desired larger homes to provide step-up residences to people in the community. There was very little opposition to the project, and neighbors seemed resigned to impending development. Individuals expressed concern with how this development will allow them (or others in the neighborhood) to develop their lots in conjunction with this and other developments occurring on neighboring properties. Mr. McCoard noted the applicant sought to acquire property to the southeast; the current owners were unwilling to sell at this time, but were not opposed to this project.
- Kay Ivie (daughter of land owner to the north) - Has talked with the applicant about providing a fence along the north property line of this development. The traffic study addresses her property as well, and she wants to note for the record that her property will also not put existing intersections over capacity. She has concerns with who bears the cost for future street improvements, such as sections of sidewalk that would not be completed with this subdivision, and wanted to know about the possibilities for getting the interval sections completed in conjunction with this project.
- Area property owner - Referenced the Report of Action from the November, 2004, Planning Commission meeting in relation to an earlier proposal on this property and wanted to know how the traffic impacts have changed in relation to streets that had been determined to be over environmental capacities. He also stated that the previous West Sandalwood subdivision was denied for not addressing open space and that this project also does not address having public park space established before creating an impact with new homes.
- Dianne McCoard - Desires a sidewalk connection on 600 South.

APPLICANT RESPONSE

Key points addressed in the applicant's presentation to the Planning Commission included the following:

- Matt Judd (Project Engineer) - Lot 16 is an odd-shaped lot due to a shallow stretch of land remaining after aligning streets. The project was denied a variance that would have facilitated the creation of two lots; the applicant has worked with City Staff to resolve layout issues.
- Armando Alvarez (Applicant) - Seeking to find a balance between home size and a profitable development. Hopes that this Commission will not stipulate the size of the homes until after additional studies can be done with regard to the financial aspects of the project.
- Carl Jacobsen (Property Owner) - New streets will provide a good pedestrian connection between neighborhoods and to the school; the applicant will build a fence on the north property line to secure the farm from residents who may otherwise cut through the farm land.

PLANNING COMMISSION DISCUSSION

Key points discussed by the Planning Commission included the following:

- Roy Peterman- desired a sidewalk connection between improvements on 600 South
- Leonard Mackay- notes that the address 2275 West as stated in the noticing is for the south side of the street. An address of 2274 West is more appropriate for this project.
- Pam Boshard- feels that this is a good R1.10 subdivision, but still zoned agricultural and isn't sure if the timing is appropriate.



Planning Commission Chair

See Key Land Use Policies of the Provo City General Plan, applicable Titles of the Provo City Code, and the Staff Report to the Planning Commission for further detailed information. The Staff Report is a part of the record of the decision of this item. Where findings of the Planning Commission differ from findings of Staff, those will be noted in this Report of Action.

Legislative items are noted with an asterisk (*) and require legislative action by the Municipal Council following a public hearing; the Planning Commission provides an advisory recommendation to the Municipal Council following a public hearing.

Administrative decisions of the Planning Commission (items not marked with an asterisk) **may be appealed** by submitting an application/notice of appeal, with the required application and noticing fees, to the Community Development Department, 351 W. Center Street, Provo, Utah, **within fourteen (14) calendar days of the Planning Commission's decision** (Provo City office hours are Monday through Thursday, 7:00 a.m. to 6:00 p.m.).

BUILDING PERMITS MUST BE OBTAINED BEFORE CONSTRUCTION BEGINS

Provo City Planning Commission
Report of Action
May 10, 2006

REQUEST FOR COUNCIL ACTION	
Type of Action Requested: X	
Resolution	_____
Ordinance	<u> X </u>
Formal Action/Motion	_____
Review at Study Session	_____
Administrative; No Action	_____

ITEM 5* Armando Alvarez requests rezoning of 11.22 acres, located approximately 2274 West 600 South, from the A1.5 (Agricultural) Zone to R1.10 (One-Family Residential) Zone to facilitate the development of the proposed thirty three-lot Westside Meadows Subdivision. *Provo Bay Neighborhood* 05-0010R

The following action was taken by the Planning Commission on the above described item at its regular meeting of May 10, 2006.

RECOMMEND APPROVAL AS R1.10

On a vote of 3:1, the Planning Commission recommended that the Municipal Council approve the above noted request to facilitate the thirty-three-lot preliminary subdivision (05-0007 SP) approved for the same property in the related Item 4 of this Planning Commission agenda.

Motion By: Roy Peterman
Second By: Marian Monnahan
Votes in Favor of Motion: Roy Peterman, Marian Monnahan, Leonard Mackay
Votes Opposed to Motion: Pam Boshard

Ron Madsen was present as Chair. Todd Roach was excused from the meeting prior to this item.

- Includes facts of the case, analysis, conclusions and recommendations outlined in the Staff Report, with any changes noted; Planning Commission determination is generally consistent with the Staff analysis and determination.

LEGAL DESCRIPTION FOR PROPERTY TO BE REZONED

The property to be rezoned to the R1.10 (One-Family Residential) Zone is described in the attached Exhibit A.

RELATED ACTIONS

05-0007SP: A preliminary three-lot subdivision was approved, with conditions, as described in the Report of Action for Item 4 of this agenda (May 10, 2006) and subject to rezoning of the property to R1.10.

DEVELOPMENT AGREEMENT

- Applies - referred applicant to Council Attorney.
- Does not apply at this stage of review or approval.
- May apply with future approvals.

The applicant stated a willingness to work with the Municipal Council on a development agreement, but did not commit to specific provisions. These comments were made during discussion of issues identified with the related subdivision approval in Item 4 of this agenda, but more appropriate to rezoning of the property, such as home size, completion of off-site sidewalks, and fencing of the north property line adjacent to a neighboring farm.

STAFF PRESENTATION

The Staff Report to the Planning Commission provides details of the facts of the case and the Staff's analysis, conclusions, and recommendations. Key points addressed in the Staff's presentation to the Planning Commission included the following:

- The related preliminary subdivision was approved pending a finding that the subject property is suitable for the requested rezone to R1.10. The subdivision approval is an indication that it would meet City requirements for property zoned R1.10, but does not necessarily indicate that rezoning of the property is appropriate.
- The General Plan recommends that this area be developed with one-family residential use.
- Although not "infill," the proposed subdivision of this land would provide logical sequencing of development, can be served by available infrastructure, and is not "leap-frog" development, as it is contiguous to, and integrated with, adjoining subdivisions.
- Previous approvals on adjacent property, along with the applicant's street connections to existing development and street stubs to neighboring property to support future connections, are factors, considered in the recommendation to approve this request, that are consistent with the intent of the SDP policy for the west side.
- Tracts that are more suitable for an SDP as prescribed by the General Plan policies were shown as comparisons to the subject property proposed for rezoning to facilitate subdivision of the land.

CITY DEPARTMENTAL ISSUES

- Environmental thresholds or physical capacities of impacted roadway(s) exceeded.
- Traffic study required and reviewed at this stage of project review or approval.
 - Preliminary traffic study submitted.
 - Traffic study may be required with future stages of approval.
- Important issues raised by other departments – addressed in Staff Report to Planning Commission.

NEIGHBORHOOD MEETING DATE

- A neighborhood meeting was held in September, 2005.
- The Neighborhood Chair determined that a neighborhood meeting would not be required.
- No information was received from the Neighborhood Chair.
- City-wide application; all Neighborhood Chairs received notification.

NEIGHBORHOOD AND PUBLIC COMMENT

- The Neighborhood Chair was present / addressed the Planning Commission during the public hearing.
- The Neighborhood Chair was not present or did not address the Planning Commission during the hearing.

CONCERNS RAISED BY PUBLIC

Any comments received prior to completion of the Staff Report are addressed in the Staff Report to the Planning Commission. Comments were received during discussion of the related subdivision in Item 4 of this agenda; no new comments were received on the subject of rezoning the property. Some comments during the subdivision discussion would, however, relate to a possible development agreement that could be approved in relation to the rezoning of this property. Issues noted included connection of a sidewalk across two lots that would otherwise remain undeveloped for an undetermined period of time and size of homes to be built.

APPLICANT RESPONSE

Key points addressed in the applicant's presentation to the Planning Commission included the following:

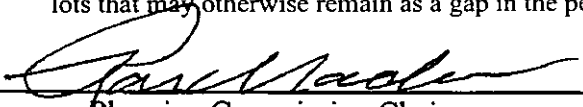
- Felt that there has been a tug-o-war for some time about the appropriate uses for this property.
- Feels like he is following guidance the Planning Commission gave when the West Sandalwood Development was denied.

- The developer discussed his willingness to work with the Municipal Council's Attorney to provide a development agreement, but did not commit to specific conditions that may be included in a development agreement.

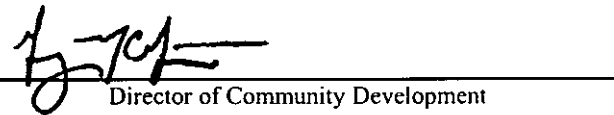
PLANNING COMMISSION DISCUSSION

Key points discussed by the Planning Commission included the following:

- Pam Boshard: Feels enough property is zoned for development on the west side for now and prefers to keep remaining land open until we can take a look at a bigger area.
- Ron Madsen: Noted a comment made as related to the subdivision that 2274 West is a more accurate address than 2275 West due to even/odd address and side of road.
- The Planning Commission recommended that the developer work to connect sidewalk access to two unimproved lots that may otherwise remain as a gap in the pedestrian system for an undetermined period of time.



Planning Commission Chair



Director of Community Development

See Key Land Use Policies of the Provo City General Plan, applicable Titles of the Provo City Code, and the Staff Report to the Planning Commission for further detailed information. The Staff Report is a part of the record of the decision of this item. Where findings of the Planning Commission differ from findings of Staff, those will be noted in this Report of Action.

Legislative items are noted with an asterisk (*) and require legislative action by the Municipal Council following a public hearing; the Planning Commission provides an advisory recommendation to the Municipal Council following a public hearing.

Administrative decisions of the Planning Commission (items not marked with an asterisk) **may be appealed** by submitting an application/notice of appeal, with the required application and noticing fees, to the Community Development Department, 351 W. Center Street, Provo, Utah, **within fourteen (14) calendar days of the Planning Commission's decision** (Provo City office hours are Monday through Thursday, 7:00 a.m. to 6:00 p.m.).

BUILDING PERMITS MUST BE OBTAINED BEFORE CONSTRUCTION BEGINS

Exhibit "C"
Preliminary Subdivision Plan
Clydesdale Bend Subdivision
2275 West 600 South, Provo, Utah

Exhibit "D"
Special Conditions
Clydesdale Bend Subdivision
2275 West 600 South, Provo, Utah

The following special conditions 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. All final plats for the Project shall note these conditions on the body of the plat along with all other notes required by Provo City; provided, however, that a condition need not be placed on a final plat as a note if such plats clearly illustrate the substance and requirements of the condition, except as otherwise provided in the special conditions below.

1. Not more than one (1) dwelling unit shall be constructed on each lot shown on the preliminary subdivision plan set forth in Exhibit "C" herein for a total of thirty-three (33) dwelling units in the Project.
2. Each dwelling unit shall have at least a two (2) car garage. Carports shall be prohibited.
3. Sixteen (16) dwelling units shall have a finished floor area of at least two thousand two hundred fifty (2,250) square feet. The remaining seventeen (17) dwelling units shall have a finished floor area of at least eighteen hundred (1,800) square feet. A two story dwelling shall have at least eight hundred (800) square feet of finished floor area on the main floor. The area within a garage or a basement shall not be included in the calculation of finished floor area, even if the area is finished.
4. The exterior of each single family dwelling shall consist of brick, rock, stucco, hardiboard, or a combination thereof.
5. The exterior elevations of a particular dwelling shall not be repeated within a distance of two lots beyond the dwelling. Where a dwellings are separated by a subdivision street, the street shall count as one lot.
6. Each single family dwelling shall have a roof pitch of at least 6:12 or greater. Each two story dwelling shall have a roof pitch of 4:12 or greater.
7. Each lot owner shall install landscaping in the front yard and street side yard of the lot prior to the issuance of a certificate of occupancy; provided, however, that installation of landscaping may be reasonably delayed due to weather conditions so long as:
 - a. landscaping is completed within six (6) months after issuance of an occupancy permit;
 - b. the lot owner escrows funds sufficient to install landscaping as reasonably determined by City; and
 - c. City and the lot owner execute an escrow and landscaping improvement agreement consistent with this special condition.