

**MINUTES OF THE CITY OF HOLLADAY  
PLANNING COMMISSION MEETING**

**Tuesday, July 10, 2012  
6:30 p.m.  
Holladay Municipal Center  
4580 South 2300 East**

**ATTENDANCE**

**Planning Commission Members:**

Les Chatelain, Chair  
Lori Khodadad  
Spence Bowthorpe  
John Garver  
Troy Holbrook  
Paula Lowry  
Matt Snow

**City Staff:**

Paul Allred, Community Development Director  
Rick Whiting, City Planner  
Jonathan Teerlink, City Planner

**PRE-MEETING/WORK SESSION**

The work session commenced at 6:35 p.m. The agenda items were reviewed and discussed.

With respect to agenda item number one, Chair Chatelain pointed out that the Commission received information two days ago and there has been no input from the designers. He was not comfortable speaking on the matter and primarily wanted to get input from the public. Commissioner Khodadad remarked that 800 square feet seemed to be enough to house an entire retail store. She thought the goal of the plan was to get as much retail in the City as possible. She did not understand why it was being eliminated. Community Development Director, Paul Allred, stated that he spoke to the applicants earlier in the afternoon and they were very anxious to get an up or down vote. They also were particularly interested in the Commission commenting on the design.

With respect to agenda item number four, Mr. Allred stated that the rezone was granted subject to the following three conditions:

1. A written lease from Black Diamond;
2. Confirmed financing of the project; and
3. An approved site plan.

Mr. Allred reported that the site plan is just a sketch with the intent being to conduct the public hearing. Staff proposed the matter be continued until a more detailed drawing has been completed by the applicant.

City Planner, Rick Whiting, reported that agenda item number 3 involves a licensed massage therapist who wishes to work temporarily out of her home while work on a space for her business is finished. There had been a lot of fervor in the neighborhood based on the fact that this particular house is a rental.

Agenda item number two was described as a home occupation with customers where the applicant wants to be licensed through the Tobacco and Firearms Division of the Federal Government or have a Federal Firearms Permit. His intention is to pursue a part-time venture selling to select customers in the evenings and perhaps on Saturdays. There had been a great deal of public fervor associated with the land use in particular.

Mr. Whiting next addressed the Roots Nursery matter. The three main issues identified at the last meeting were:

1. The stop sign;
2. The debris pile; and
3. Current noncompliance with the City's sign ordinance.

It was noted that City Traffic Engineer, Tosh Kano, did not feel a stop sign was needed at the entrance onto Arbor Lane from the nursery parking lot. He did, however, support a stop sign on the applicant's property when entering Arbor Lane.

*(19:01:10) Commissioner Khodadad moved to adjourn to the Council Chambers for the regularly scheduled meeting. Commissioner Lowry seconded the motion. The motion passed with the unanimous consent of the Commission.*

#### **CONVENE REGULAR MEETING**

Chair Les Chatelain called the Regular Meeting to order at 7:05 p.m.

#### **ACTION ITEMS**

**1. Holladay Village Square – 4664 South 2300 East – Permitted Conceptual Site Plan Review – HV Zone – Planners: Paul Allred, Rick Whiting, and Jonathan Teerlink.**

(19:09:40) Community Development Director, Paul Allred, presented the staff report and stated that this is the first step in the eventual construction of development against the Plaza. The applicants reviewed the City's ordinances in detail and met with staff repeatedly. Staff in turn spent hours reviewing the detailed plans and building elevations. The City's Design Review Board (DRB), which is a recommending body for the Planning Commission, met and forwarded a recommendation to the Planning Commission. He explained that this is part of a three-step approval process. The first step is tonight's meeting consisting of the conceptual site plan, which is the public hearing portion. Although all of the City's Planning Commission Meetings are open to the public, tonight's meeting is the only one where the public will be invited to specifically comment on the layout of the site and the design.

Mr. Allred described the three issues at hand which include:

1. Consideration of the development agreement items contained in the staff report;
2. The conceptual site plan issues; and
3. The design or aesthetic component.

The site plan was displayed showing the proposal, which is the potential approval of the project layout. Four minor items needing correction were set forth in the staff report.

Mr. Allred reported that the City's Design Review Board reviewed the design and proposed specific recommendations. Development in the Village Center, which comprises approximately 50 acres, is reviewed by a separate design review body who looks just at the aesthetic components

and the rules in place. The zone has special rules that other zones do not. For that reason there is a component to tonight's meeting that would not normally be seen with other projects. Notice was sent to property owners within 500 feet of any part of the property. Staff recommended approval subject to the three points listed in the staff report. Conceptual site plan and development agreement issues set forth in the staff report were reviewed and discussed.

(19:18:58) Tom Henroid from Rockworth Company was acting as the applicant's consultant. He reiterated that the developer and architect are flexible and interested in bringing the right project to Holladay. They understand that the character of the building has a great deal to do with its value. He noted that the site is challenging in terms of configuration, topography, and size. With the approval, they hoped the conditions could be limited to something similar to what was described in staff's recommendations.

Chairman Chatelain opened the public hearing.

(19:22:40) Ron Hilton gave his address as 2121 Caleb Way and stated that last year he conducted surveys of Holladay residents. He shared those findings with the RDA, the City Council, and staff. In general, he felt things were moving in a positive direction and he considered the current design to be an improvement over the initial one. Mr. Hilton personally liked the look of the narrower tower with the larger clock face in the upper portion. A suggestion was made that the bridge area between the buildings be converted to a patio-type area. Based on the survey results, he recommended approval.

(19:24:48) Robert Hintze gave his address as 4654 South Locust Lane and expressed his support for what was proposed compared to what was seen previously. He could see that effort was made to make the development look historical, which he supported. The clock tower design he liked best resembled the original tower on the Old Mill.

(19:26:17) Pat Hanson gave her address as 1860 East 3900 South and gave her opinion that with a few exceptions the architecture will work in the Village. She was opposed to the entrance to the parking lot off of Murray Holladay Road and stated that the intent of the Village Center ordinance was to create a street frontage. She indicated that the City made it clear that there cannot be a drive through on any major streets. She considered the proposed driveway entrance to be a drive through. She suggested there be a minimization of the drive through area. Murray Holladay Road was designed to allow for a right turn in and right turn out. She considered the huge entrance with the wall and landscaping to be superfluous for that kind of traffic pattern. If the driveway entrance was minimized the entire extension could be shifted down. If there is a problem with the square footage on the retail space, there would be a perfect opportunity to increase the retail frontage along Murray Holladay Road. Ms. Hanson stated that the intent of the Village Center was to bring traffic down to the mid-block road because the desire is to have frontage on that road as well.

(19:31:55) JoLynn Schutjer identified herself as a member of the Design Review Board. She thought the developer and architect had done a wonderful job on the Village Center and worked incredibly hard. She considered the slender tower to be more in keeping with the timeless design. She also asked the Planning Commission to consider some of the building materials. For example, she preferred a real stone or concrete product to artificial stone, which she thought worked better in a timeless structure. The pros and cons of the two tower types were discussed. It was noted that the DRB was unanimous in recommending the more slender tower.

***(19:41:00) Commissioner Khodadad moved to continue agenda item number one to later in the meeting and move on to address agenda item number two to stay on the set time schedule. Commissioner Bowthorpe seconded the motion. The motion passed with the unanimous consent of the Commission.***

The public hearing remained open with the matter to be discussed again later in the meeting.

There being no further public comment, Chair Chatelain closed the public hearing.

Chair Chatelain stated that the Commission needs a significant amount of time to critically review the issue. Although staff didn't have any specific objections, they had questions and wanted additional information.

(22:47:25) Tom Henroid from Rockworth Company detailed Exhibit C to the development agreement. He addressed Item 4 which states that the building is to include approximately 21,200 square feet of retail space. The developer wants to maximize as much leasable square footage as possible. Mr. Henroid stated that this number was the result of a loose concept plan. The site is challenging and small with serious topography issues. With a 20-foot drop, the solution was to construct a two-level parking structure. Right in and right out access was anticipated rather than a left turn in or out due to its close proximity to the intersection. The developer does not want the slope to exceed the current 8%. Mr. Henroid stated that 400 square feet was lost because of the pass through along with another 400 square feet that was eliminated as a result of the tightness of the site. Mr. Henroid agreed to try to acquire additional square footage. If they cannot, however, they would ask that an amendment to the development agreement be considered.

(22:53:45) Chair Chatelain questioned the square footage of retail on the first level. Mr. Henroid confirmed that they are proposing 20,000 square feet with approximately 10 shops. Four to five were expected to be restaurants with the remainder being and service-oriented or retail businesses.

(22:55:35) Mr. Allred reported that two or three years ago, a study was conducted and calculated the square footage of previously existing businesses. An analysis was provided to the Planning Commission previously with major concern being that there was not commercial being put back into the site.

A Commissioner Holbrook raised concern about parking beneath the wall that runs off the street to the ground floor and the potential to step the building down as it comes off the corner. Mr. Henroid said that as a developer, they believe in retail fundamentals which don't include stepping a building. The building will be all one level and noted that stepping has never been proven to be a productive mechanism. He also stated that they will comply with what the DRB (Design Review Board) recommended, which will create walkable access from the main deck down to Murray Holladay Road. Due to the challenges of the site, having to present it to potential tenants, and because it is typical double-fronted retail, they won't have a front or a back. Mr. Henroid was looking for successful, local tenants with existing stores who are able to adapt to the unique layout.

Item number 6 was discussed. It showed an alternative entrance, which Mr. Henroid agreed to include.

Item 8 was reviewed, which includes an open pedestrian walkway. The DRB suggested a cut be created with a stairway and landing (most likely two directional) that would enable access to Murray Holladay Road.

(23:06:34) A Commission Member next discussed the clock tower and the most recent design change. Mr. Henroid replied that they, as developers, don't have a preference and asked for input from the Commission.

Mr. Allred remarked that the DRB was created to resolve these types of issues. They reviewed the issue and made findings. His opinion was that the Planning Commission should generally go along with the DRB recommendations. Staff also expressed a preference for the more substantial tower corner treatment opposite of the DRB position. The Commission further discussed which group the decision ultimately lies with.

Mr. Henroid stated that they want a footprint so that they can progress and plan for the tightness of the sight. He conveyed Mr. Melby's sentiment that they would like to deliver a project that the City is proud of.

Mr. Allred next addressed the issue of the property line. He explained that due to the layout of the property, it doesn't work well with the building layout. As a result, the developer issued a proposal acknowledging the additional acquisition of about 1,300 square feet, which is an issue for the Council and the RDA. With respect to the site plan, the Planning Commission cannot approve a site plan that does not contain an accurate property line. He urged the Commission to grant the conceptual approval subject to the property line issue being resolved.

(23:18:25) Mr. Henroid detailed their need for slightly more ground along with a use permission that enables the use of the plaza. He further wished to discuss the mid-block road, which has elements that are welcomed, as well as some that are concerning. The mid-block road alignment clips property and parking, and that parking needs to be replaced. Retailers are interested in five to eight stalls per 1,000 square feet. Mr. Henroid remarked that when there are less than five stalls available, retailers lose interest.

Mr. Allred further stated that this is an issue because there is a requirement in the ordinance that does not allow a parking lot at a road intersection in the Village. Buildings are instead desired at intersections not parking lots. If and when the mid-block road is constructed and there is a parking lot there, the result is a grand-fathered parking lot, which doesn't meet the goal of the City of having buildings at intersections. The mid-block road isn't a reality yet, therefore, a building cannot be placed there. Placement of a building in that location results in a loss of parking stalls, which then results in the costly extension of the parking deck.

(23:24:23) In response to a question regarding the City's conceptual Village Master Plan, Mr. Allred stated that the mid-block road is master planned, although it's exact location has not been determined.

Mr. Henroid firmly stated that Rockworth cannot be obligated by an uncertain proposition where if the mid-block road comes through, it will be their obligation to build a building and replace their own parking. He stressed that they will not agree to that. He then clarified to Chair

Chatelain that the second story is all office space and parking is currently proposed with at 3.89 stalls per 1,000 square feet. He stated that office space compliments the restaurants due to the fact that their parking needs are opposite. The peak hours of most restaurants are between 5:00 p.m. and 8:00 p.m. at which time there is more parking.

(23:31:38) Mr. Allred agreed with the proposed traffic circulation and stated that left turn movements will not be allowed onto Murray Holladay Road from the project. He also discussed the issue of the most southern tree grade and the new property line. He was unsure where the last tree stands and the location of the proposed property line and asked the developer to reanalyze the matter.

(23:35:13) In response to a question raised by a Commission Member, Mr. Henroid described the access to the offices. He stated that there is a walkway and those leasing space will park on the lower level with the upper level left open for retail. Office tenants will be encouraged to park on the lower level and use the elevator or the stairs. A walkway will provide access to each individual office space on the west side. Mr. Allred indicated that the DRB suggested the walkway be beautified, and the stairway on the west side has vegetation and sitting areas.

Commissioner Khodadad asked about the exterior building materials with the preference being for real stone. Mr. Henroid stated that they are open to using real stone or other treatments. Because the plan is still conceptual, refinements will take place as the project progresses.

(23:42:48) Mr. Allred discussed the building materials addressed in item number four. The DRB suggested that the doorway systems be addressed in more detail. The recessing of doorways was discussed. Mr. Allred stated that four doors are fairly flush while 21 are not. The DRB considers that acceptable because more than 80% are in compliance. In addition, there needs to be detail discussion regarding the variety of doors to create a unique appearance rather than strip mall uniformity.

Mr. Allred addressed item 3 dealing with the parking deck phase. Staff and the DRB did not object to the developer not including a decorative element on the exposed phase of the parking deck. Although exposed finishes in the Village require some type of treatment, the DRB suggested it remain as designed due to the future prospect of extending the parking deck and providing trees and greenery, which breaks up the plain, concrete surfaces.

Item five was next discussed. Mr. Allred stated that on all four sides of the building there is an arched window, which seems repetitive. He preferred the design be broken up. He noted that the DRB and staff like the overall design, however.

(23:51:15) Mr. Allred next discussed Item 7. The DRB recommended simple, scored concrete between buildings but asked that the drawing be amended so that those viewing it aren't misled into thinking the concrete will be colored, stamped, or pavers.

A Commission Member expressed concern with the amenities and remarked that when a building is larger than 7,000 square feet, certain amenities must be provided. The two chosen by the developer were the plaza and the clock tower. Their focus was on the makeup of the plaza and the pattern or material used. Mr. Allred reported that the DRB suggested amenities such as benches

and trash receptacles be added as well. He further detailed where seating would benefit those who patronize the site.

Mr. Henroid said that the tenants would take part in the decorative aspect of the outdoor environment. For example, a restaurant owner might place tables and chairs outside their business. He was open to Mr. Allred's suggestion regarding heavy outdoor furniture being placed so that tenants and patrons can enjoy the outdoor ambiance.

Chair Chatelain clarified that this is the conceptual phase and expressed approval of the concept, appearance, buildings size, and locations. Subsequent preliminary approval will address additional details.

The advantages and shortcomings of the proposed design were discussed. The tower issues was discussed. Mr. Allred stated that preliminary approval will deal with grading, drainage, and utilities. It primarily addresses the civil engineering aspects of the site and details of what will be built there.

(24:09:49) A Commission Member asked Mr. Teerlink for clarification on Item 3, which is the parking deck face as well as the Item 7, which is the promenade surface. His understanding was that it was proposed as traditional concrete. Mr. Teerlink responded that the parking deck face is required if it is exposed concrete that is architecturally treated. There is no verbiage addressing the material that the Plaza is created from. It states that the Plaza should be designed as an outdoor room for use by people as opposed to serving only as a setting for a building. The Plaza should be accessible from adjacent sidewalks or pedestrian linkages and located in sunny areas providing plenty of seating on benches, steps and/or ledges. Public art and or other amenities are recommended.

A Commission Member then stated that because the parking deck face is on the west side and at some point may need to be extended, flexibility should be maintained should more parking be needed in the future. He next questioned Mr. Henroid with regard to the existence of other concrete color options that would be introduced. Mr. Henroid responded that there are options but he likes concrete and thinks it looks clean is and not distracting. Mr. Henroid conveyed that he prefers a non-distracting, impervious surface that requires low maintenance, and due to the possibility of a future addition, a simple surface is more cost effective. His opinion was that money is better spent on the building itself than the parking surface.

(24:13:00) A Commission Member challenged Mr. Henroid on the surface of the Plaza. His concern had to do with the lay down, removal, and relay of the Plaza. He cautioned about the transition of the specific manner and type of surface to traditional concrete. He was agreeable as to the face of the parking structure, but preferred to discuss the Plaza surface more thoroughly. Due to previous discussions, it was his understanding that the congruency and continuation will spill over from the building into the plaza area showing consistency.

(24:14:40) A Commission Member stated that there should be no competition with the formality of the Plaza design and remain sensitive to the transition, but refrain from mimicking it in a grid-like fashion. The DRB commented that it appeared like a water-downed version that isn't complimentary. They are striving for a distinct quality through the landscape, hardscape, and architecture that will create a smooth transition. Mr. Henroid commented that the consensus of the

DRB was for them to create something that is non-descript. He saw no need to do something new and different and simply complement what already exists.

(24:17:18) Commissioner Khodadad didn't have a specific opinion on the matter and was unsure if the matter will be brought up again.

*Commissioner Khodadad moved to approve the conceptual site plan for Holladay Village Square subject to the following*

**Requirements:**

- 1. The applicant shall address and resolve any remaining red lines prior to preliminary approval;*
- 2. The applicant shall go back to the City Council to review the development agreement and resolve any discrepancies pertaining to the square footage and property lines; and*
- 3. Design requirements will be defined at a later date and be improved upon. The Commission agreed, however, with the basic conceptual site plan as presented.*

*Commissioner Hollbrook seconded the motion. Vote on motion: Spence Bowthorpe-Aye, Troy Holbrook-Aye, Paula Lowry-Aye, John Garver-Aye, Lori Khodadad-Aye, Matt Snow-Abstain Chair Les Chatelain-Abstain. The motion passed unanimously with two abstentions.*

**2. Nedco – 2979 Valley View Avenue – Conditional Use Permit for Home Occupation with Customers – Sales of Firearms – R-1-10 Zone – Planner: Rick Whiting.**

(19:41:35) Mr. Whiting presented the staff report and stated that the applicant, Mr. Nelson Gardner, wishes to establish a part-time business in his home selling rifles and pistols. The operation would take place on a limited basis in the evenings and possibly on Saturdays. Mr. Gardner planned to sell to a select clientele consisting largely of individuals with a concealed weapons permit. Mr. Gardner would not advertise in a traditional sense and simply promote sales of his product through personal references from customers. Mr. Whiting stated that in order for Mr. Gardner to proceed, he needs approval from the Planning Commission to allow the Division of Alcohol, Tobacco, and Firearms to move forward with their due process. Mr. Gardner anticipates four to eight customers per month. His client base would be a known quantity and he would adhere strictly to all ATF requirements. Mr. Whiting stated that the focus of the request is to review the land use proposed at the location and specifics that the Commission determines are appropriate for a conditional use permit.

Staff received several communications, which were provided to the Commission Members. Staff recommended the Commission carefully consider the request, hear the public comment, and make a determination as to whether the Commission is comfortable issuing the conditional use permit with appropriate findings and requirements. Chair Chatelain clarified that a home business anywhere in the City is permitted. This matter is before the Commission because Mr. Gardner intends to have customers coming to his residence. The Commission was to consider the use and not the type of business.

(19:46:10) The applicant, Mr. Gardner, realized that this is a very volatile issue and appreciated the opportunity to explain what is proposed. He stated that it is not easy to obtain a federal firearms license from ATF and it takes time. Photos, background checks, and fingerprinting are required. It is also necessary for the Chief Law Enforcement Officer in the County to sign off on

the request, which in this case is Sherriff Winder. That has occurred. Mr. Gardner stated that the process requires him to work with an ATF agent and a business license has to be obtained as part of the process. Mr. Gardner stated that he sees a lot of people who are able to buy wholesale firearms. He discovered that ATF does not allow that and a business must be established. His motivation was to be able to purchase firearms wholesale for relatives, close acquaintances, and people he comes in contact with.

Mr. Gardner stated that he will not have a storefront in his home and will not advertise in traditional ways. Traffic will not be an issue. He expected to have four to eight customers per month. He also would not have an inventory of firearms and his business would involve customers ordering specific items. Mr. Gardner had every intention of obeying all laws and had made every effort to comply with all requirements. His intention was not to upset his neighbors. Mr. Gardner stressed that he will not sell to anyone he doesn't know. He had in his possession a list of neighbors who support the proposal, which he offered to provide to the Commission.

(19:52:45) Chair Chatelain asked Mr. Gardner about the gun inventory that will be kept on the site. Mr. Gardner responded that his personal inventory currently is six and consists of two handguns and four rifles. With respect to for sale items in his possession at any given time, he will have an inventory of less than 10.

Commissioner Khodadad asked how firearms will be delivered. Mr. Gardner stated that ATF requirements are that items that are shipped have to be picked up and signed for at a delivery station. Home delivery of firearms is not permitted.

Chair Chatelain opened the public hearing.

(19:54:30) Mark Gasser gave his address as 4624 South Mount Springs Court and expressed his opposition to Mr. Gardner's proposal. He was not in favor of his neighbors becoming weapons dealers or being issued use permits. Mr. Gasser stated that he moved to Holladay to live in peace and not to worry about this type of use.

(19:55:40) Bernard Lasalle gave his address as 2880 East Naniloa Circle and stated that most of his concerns are relative to the question of retail businesses in the community. He saw no compelling commercial reason for what is proposed and was concerned about the precedent it will set. He questioned how the use can be regulated after it's approved. Mr. Lasalle believed Mr. Gardner's claims about his inventory and clientele but regardless of the actual number of firearms that will be on hand at any one time, there was some chance that the wrong element will hear about the operation and potentially there could be a criminal element introduced into the neighborhood. He asked what recourse the City would have if the request is approved. Chair Chatelain explained that the Commission's responsibility is to determine if there are hazards that need to be mitigated. If so, conditions should be established to mitigate them. A business license would then be issued based on following those conditions. If the conditions are broken, the business license could be revoked. Mr. Lasalle suggested a condition be imposed that if there is any criminal activity, the use must cease.

Commissioner Khodadad asked Mr. Gardner how ATF regulates the criminal element and how he would prevent a criminal from breaking into his home, stealing guns, and committing a crime. Mr. Gardner stated that part of the application process requires a two plus hour interview on the

premises with an ATF agent who inspects the home, the location, and meets their ATF security requirements.

Commissioner Lowry asked how Mr. Gardner could prevent people he doesn't know from finding out about his business. Mr. Gardner stated that he will do his part to protect his neighborhood and sell only to people he knows. He noted that this is very different from other home business firearms dealerships across the state. He stressed that his motivation is not to establish a new career and noted that he expects to make very little income.

(20:02:50) Pamela Urry stated that she has a law office in Holladay and gave her address as 2940 East Valley View Avenue. She stated that the petition received was signed by 18 people representing about 12 homeowners on Valley View Avenue who are requesting denial of the conditional use permit request. She claimed that it should be denied based solely on the fact that this and any residential neighborhood in Holladay is an inappropriate place for the retail sale of anything resembling firearms. Ms. Urry's understanding was that Mr. Gardner intends to sell firearms at wholesale prices to a select group of customers including himself, family, and friends. She questioned why Mr. Gardner would want to subject his neighbors to a retail business that has only a marginal markup of 3 to 10 percent. She was concerned about how Mr. Gardner's clientele would be selected and questioned whether the conditional use permit should be granted since if the property is sold it would be difficult to prohibit others from wanting to run a retail business of any type. It would also set a precedent for the sale of firearms in other Holladay neighborhoods. Most other home businesses in the City do not have nearly as many restrictions as the one proposed.

Ms. Urry provided the Commission with a letter from David Nyberg, a previous resident, who sells firearms in an area sporting goods store. In his letter Mr. Nyberg described the frequency of hostile potential customers who have not been allowed to purchase a firearm. At a residence there would be no personnel to monitor the transaction. Ms. Urry was also concerned about the crime component and someone seeking to obtain firearms in an illegal manner. Ms. Urry stated that Mr. Gardner moved into the neighborhood less than one year ago while most of those who signed the petition have lived there for an average of 20 years. They do not want their peace and security decimated and feel that the proposed use threatens that security and the value of their homes. She did not feel there would be any way to mitigate the reasonably anticipated detrimental effects. Ms. Urry suggested the Planning Commission recommend a land use ordinance be implemented prohibiting the sale of firearms in residential areas of the community.

(20:13:20) William R. Lang gave his address as 2545 Valley View Avenue and indicated that he owns a second home and commercial and office buildings in the City. He thought the idea of having the business in the home was an attractive nuisance and the potential target of an assault and/or robbery.

(20:15:34) Doug Pehrson gave his address as 2896 Jennie Lane, one street north of Mr. Gardner's home. It seemed to him like a lot of effort to sell to four to eight customers per month with very little return. It also presents a huge detriment to the neighborhood. Mr. Pehrson stated that there is a criminal element in the neighborhood. He thought the enterprise could take place in a less invasive way and Mr. Gardner could instead go to customers' homes and have the firearms delivered there. What is proposed will only exacerbate a problem that already exists. Mr. Pehrson expressed his opposition to the granting of the conditional use permit.

(20:17:10) Chris Kinsel gave his address as 2654 Lincoln Lane and expressed support for Mr. Gardner's efforts. One issue was that Mr. Gardner has the right to have a business in his home. The other was that Mr. Gardner is not the only resident who owns firearms. If a criminal element realizes he is selling guns, they will assume Mr. Gardner keeps them locked up and knows how to use them.

(20:18:40) Scott Fisher gave his address as 1898 Innsbrook and was of the opinion that there are enough guns already and an increase will only induce a spirit of violence. He noted that guns are not limited to sportsmanship and hunting and are intended to kill people. He also stated that when a gun is exposed, it dramatically increases the danger to the person who possesses it. He wanted to minimize the potential danger.

(20:21:05) Jennifer Pack gave her address as 2613 East Wren Road. She had never been opposed to home businesses and believed that the sale of firearms in the neighborhood should be banned. She thought the home's location on a cul-de-sac also presents additional dangers. She thought the proposed business was putting the neighborhood at risk and urged the Commission to deny it.

(20:23:10) Phil Blomquist gave his address as 1896 Longview Drive. He found it interesting that many have painted Mr. Gardner as a criminal while he had found the opposite to be true. He did not consider guns to be bad and instead thought they will protect the neighborhood.

(20:25:10) Blaine Young gave his address as 2979 Branch Drive. He did not object to what Mr. Gardner was proposing and suggested that all home business licenses be revoked if this one is denied.

There were no further public comments. The public hearing was closed.

Mr. Gardner addressed some of the concerns raised. One involved the security of the firearms, which is an ATF issue. He stated that the ATF is very strict with respect to how they are stored. Mr. Gardner reported that studies show that the more homeowners that own a firearm in a neighborhood, the lower the crime rate. He stated that the number of firearm dealerships that become targets must be very low since a criminal would be unwise to expect someone with a federal firearms license to not be astute in the keeping and use of firearms. He did not think the "what ifs" raised were germane to the conversation. Mr. Gardner stated that whenever a firearm is purchased, a background check is performed. The same would occur in this instance. With respect to delivering firearms to customers, that was Mr. Gardner's initial idea, however, ATF requires there be a location where customers can meet. In response to a question raised, Mr. Gardner stated that the background check is conducted prior to the firearm being ordered.

Mr. Gardner appreciated the fervor of the neighborhood and responded to the question of why he was going through such a difficult process for minimal gain. He stated that he didn't anticipate so much opposition, however, he is now in the process, it is his right to do so, and he is obeying the law. He stated that his motivation will be to save money on guns he purchases and pass that on to his family and friends. Although it will be ongoing, he did not expect to spend much time on the business since he currently works 50 to 65 hours per week and has five busy children.

(20:33:25) In response to a question raised by Chair Chatelain, Mr. Allred stated that there has been a wide variety of home based-businesses that have come before the Planning Commission in

years past such as an interior design business with one employee, a Pilates studio, a musical instrument repair service, and a taxidermy business. Virtually all were approved. Mr. Whiting stated that there are currently several hundred home-based businesses in the City of Holladay. He was not personally aware, however, of any other home-based business that sells firearms. Former employee, Pat Hanson, recalled that there was an application submitted approximately three years ago for a similar business. Eventually the application was withdrawn because the applicant could not meet the ATF requirements. Mr. Allred stated that most home-based businesses involve office work where customers don't typically come to the home. Most of the time the main issue with home-based businesses is parking and traffic.

It appeared to Chair Chatelain that the proposed business is well within the regulations established for home-based businesses with minimal traffic impact and customers coming to the home. The primary objection had to do with the fact that the product may be undesirable. Commissioner Holbrook considered it to be outside of the scope of the Planning Commission to question the product if the applicant is meeting all other requirements of the conditional use. He noted that the ATF and the County Sheriff would regulate the product itself.

(20:40:20) Commissioner Khodadad asked if would be appropriate to get an opinion from legal counsel on the matter. Mr. Whiting reported that the City Attorney recommended the request be approved subject to appropriate requirements and findings. He stressed that the focus is the land use and not the product. Mr. Allred stated that earlier in the day the City Attorney indicated that the Planning Commission and staff needs to keep in mind that conditional uses are permitted. Reasonable requirements or conditions can be attached to the use to mitigate any potential negative impacts. If it is determined that conditions cannot be imposed to mitigate the negative impacts, the request can be denied. Mr. Allred stated that any time a business does not adhere to the rules of operation it can be brought back to the City for review and potential permit revocation.

Commissioner Lowry understood the concerns of the neighbors and wanted them to feel confident and safe in their neighborhood. She also understood that Mr. Gardner has rights as well.

Commissioner Khodadad commended Mr. Gardner for taking the proper steps to be as safe as possible. She acknowledged that the decision is a difficult one.

A question was raised with respect to issues outside the scope of land use issues. Mr. Whiting stated that regardless of tonight's decision, either party has the option to appeal it to the City Council. In this case, if the matter were appealed, the City Council would only be able to address the nature of what is appealed.

***(20:55:35) Chair Chatelain moved to award the conditional use permit for a home-based business at 2979 East Valley View Avenue in the R-1-10 Zone subject to the following:***

**Findings:**

- 1. Based upon the assurance that ATF strictly controls the licensing and operation of this business activity, approval would pose no clear detriment to the health, safety, or general welfare of the people living in the neighborhood.***
- 2. The applicant can accommodate off-street parking of his customers; and***
- 3. The applicant will not be able to pursue a Federal Firearms License from the ATF without approval of the local land use authority.***

**Requirements:**

1. *A maximum of 10 clients per month will be allowed.*
2. *Traffic shall not be an issue.*
3. *Parking shall be off-street.*
4. *The applicant must maintain a valid ATF license. If there is any loss of license through ATF, the business license and conditional use permit would be lost as well.*
5. *No larger inventory larger than eight weapons shall be allowed at any time.*
6. *There shall be no visible advertisement of the home-based business.*
7. *There shall be no internet sales relative to the home-based business occupation.*
8. *Mr. Gardner shall report back to the Commission in six months on the status of the ATF approval and the business.*

*Commissioner Lowry seconded the motion. Vote on motion: Matt Snow-Aye, Lori Khodadad-Aye, John Garver-Aye, Paula Lowry-Aye, Spence Bowthorpe-Aye, Troy Holbrook-Aye, Chair Les Chatelain-Aye. The motion passed unanimously.*

It was suggested that the neighbors be notified when the applicant reports back in six months so that they can get the perspective of the neighborhood and not just the applicant. Chair Chatelain directed staff to send notice to the neighbors at that time using the same list used when sending out the notice of tonight's meeting.

3. **A Touch of Destiny Massage Therapy – 5111 South Loredell Drive – Conditional Use Permit for Home Occupation with Customers – Massage Therapy – R-1-10 Zone – Planner: Rick Whiting.**

(21:05:35) Mr. Whiting presented the staff report and stated that the applicant, Destiny King, wishes to establish a conditional use permit for a home-based massage therapy business with customers. Ms. King is a licensed massage therapist with the State of Utah. She anticipates two to three clients per day between the hours of 10:00 a.m. and 7:00 p.m. The focus of the request was to deliberate the appropriateness of the land use at the proposed location.

Ms. King gave her address as 5111 S. Loredell Drive and stated that she has been a licensed massage therapist for about two years. She has worked at several spas and has her own clientele. She expected the maximum number of clients she would serve would be 10 per week. Ms. King stated that she is in the process of opening her own spa in Holladay.

Chair Chatelain opened the public hearing.

(21:10:25) Earl Middlemiss gave his address as 2787 Loredell Drive and stated that a petition was submitted that contained just over 30 signatures in opposition to a business at the proposed location. He submitted the petition on behalf of someone who was unable to be present and noted that he personally did not sign the petition. The street goes through and there is a walkway to the elementary school which caused safety concerns for many. He stated that the vast majority of the residents were opposed to the proposed business. Mr. Middlemiss thought it would be better for Ms. King to operate her business from a commercial space rather than from her home. The neighbors who signed the petition were not informed that the home occupation is temporary in nature.

With regard to a potential problem with noticing, Mr. Whiting stated that the situation was assessed and the error was believed to be fairly minor.

With respect to traffic and the school, one Commission Member did not expect Ms. King's use to make a difference.

(21:16:25) Mark Greer, a Rainbow Point Drive resident, commended Ms. King and had no objection, particularly since the use is temporary.

There were no further public comments. The public hearing was closed.

Ms. King stated that her appointments are typically one hour in duration and should not conflict with the school schedule.

In response to a question raised, Chair Chatelain explained that while the conditional use would run with the property, a future owner could operate a similar type of business. They would, however, have to obtain a business license. City Planner, Jonathan Teerlink, reminded the Commission that there is a non-conforming section of the Code that says that if the use has been abandoned for more than six months it goes away.

(21:23:40) *Commissioner Holbrook moved to approve the conditional use permit for a home occupation with customers for A Touch of Destiny Massage Therapy at 5111 South Loredell Drive subject to the following:*

**Findings:**

1. *The proposed conditional use permit provides a service to citizens in the community;*
2. *Approval would pose no measurable detriment to the health, safety, or general welfare of the people living in the neighborhood.*
3. *The applicant is licensed by the State of Utah;*
4. *The applicant can accommodate off-street parking of her customers, specifically driveway parking specifically during the hours of pickup of students at the elementary school; and*
5. *The applicant will work alone and not employ others.*

**Requirements:**

1. *Parking for all customers shall be accommodated in the applicant's driveway;*
2. *Appointments shall be based such that no client is ever required to park on the street and they don't overlap; and*
3. *There shall be a maximum of 10 customers per week.*

*Commissioner Snow seconded the motion. Vote on motion: Matt Snow-Aye, Lori Khodadad-Aye, John Garver-Aye, Paula Lowry-Aye, Spence Bowthorpe-Aye, Troy Holbrook-Aye, Chair Les Chatelain-Aye. The motion passed unanimously.*

4. **Dempster/Black Diamond – Permitted Site Plan Review – 2084 East 3900 South – C-1- Zone – Planner: Jonathan Teerlink.**

(21:26:41) Mr. Teerlink presented the staff report and stated that the applicant has named his coffee shop Higher Ground Coffee. He appeared before the Planning Commission previously to request a rezone. A recommendation for approval was forwarded on to the Council with the request ultimately being approved. The rezone was to expand the C-1 Zone on 3900 South on the Black Diamond campus into an RM Zone, which was a buffer zone around Black Diamond to include an area of approximately 9,700 square feet. Three conditions were imposed which were in the process of being completed. Staff met with the applicant on site to review the placement of the building and came to the conclusion that the placement of the 704 square-foot building pad would be established with a 20-foot setback, which provides for a small patio area on the front between the building and the sidewalk. It also provides three dedicated parking stalls to the west of the patio. Mr. Teerlink explained that approving the permitted use site plan will necessitate an amendment to the site plan granted by Salt Lake County. The purpose of tonight's meeting was to conduct a public hearing. He reported that the applicant is out of the country and will meet with staff next week for additional negotiations and discussion.

Dennis Barrella identified himself as the Facility Manager for Black Diamond Equipment and was present on behalf of the applicant. He stated that Black Diamond is supportive and wants to work to ensure that the coffee shop adheres to all requirements. Their preference would be to have a variance of the setback and place it close to 3900 South. If that can't take place, it could have a negative effect on their business. He commented that access is a more significant issue than parking. Mr. Barrella stated that they want the proposed use to fit in with the rest of the site with the final design ultimately being approved by Black Diamond.

(21:36:00) A question was raised on the current status of the setbacks. Mr. Teerlink stated that the applicant has presented a design of the building he wants to use. The City's Traffic Coordinator, Tosh Kano, determined that there is an aisle width of about 28 feet to the back of the buildings. The next parking stalls are for Rockcreation, which includes a 20-foot setback.

Chair Chatelain opened the public hearing.

(21:37:20) Mark Greer gave his address as 2115 Rainbow Point Drive and asked if there were any photographs or renderings available. Chair Chatelain stated that the plan is rough at this point although the applicant has submitted some conceptual ideas. The intent was for the business to be operated out of a modified shipping container. Mr. Allred explained that because this is not a conditional use, the City would not have concerns about the hours of operation. The business was expected, however, to be open for business early in the day. With respect to architectural standards, the applicants provided information on the use of shipping containers placed one on top of another or side-by-side with the inside redone. Currently, there were no architectural standards in that zone. The City's main concerns pertained to how the site is laid out, where it is located, and how it operates.

(21:39:45) Hal Hanson a Rainbow Point Drive resident, was concerned about the appearance of the proposed coffee shop. He described the proposed structure as "ugly". He thought a permanent structure would be more complimentary to the property. Before the neighbors give feedback he expected they would want to see what the finished product will look like. He was aware of no objections to a coffee house specifically in that location. Mr. Hanson suggested more desirable alternatives such as locating the business in the space formerly occupied by Café Madrid or building a permanent structure on the corner of 3900 South 2000 East.

Mr. Allred stated that another zone in the City allows a closer setback to the street; however, this one does not. In order for the applicants to move the building closer to the street, they would have to go through a variance process, and meet a strict five-part test. Staff strongly recommended the applicant not apply for a variance as they did not expect it to be approved under the law.

It was mentioned that a permanent addition to the Black Diamond campus would require an amendment to the site plan.

There were no further public comments. The public hearing was closed.

Chair Chatelain felt more detail was needed from the applicant before moving forward. The Commission agreed.

*(21:47:47) Commissioner Bowthorpe moved to continue the matter until the applicant has an opportunity to finalize in more detail the conceptual site plan and address the following items:*

- 1. Traffic;*
- 2. The number of employees;*
- 3. The number of tables proposed on the patio area;*
- 4. Proposed landscaping;*
- 5. Lighting;*
- 6. Parking;*
- 7. Hours of operation; and*
- 8. Utility requirements.*

*Commissioner Garver seconded the motion. Vote on motion: Matt Snow-Aye, Lori Khodadad-Aye, John Garver-Aye, Paula Lowry-Aye, Spence Bowthorpe-Aye, Troy Holbrook-Aye, Chair Les Chatelain-Aye. The motion passed unanimously.*

The Council took a short recess.

**5. Alder Driveway Exception – 4145 S. Morningstar Drive – R-1-10 Zone – Planner: Jonathan Teerlink.**

(21:54:13) Mr. Teerlink presented the staff report and stated that the subject property is located on the corner of Morningstar and Cecil Drive. The applicant was granted permission to reconstruct a new home in May of 2012; however, the setback for the garage was set at 20 feet with a maximum of 17 feet. The design of the garage requires the applicant have a driveway that runs straight out to the street. As with a previous property, the maximum driveway approach width is 25 feet per OSHA standards. The applicant was requesting that the driveway approach be increased from 25 to 45 feet.

In response to a question raised by Chair Chatelain, Mr. Teerlink stated that there was not a definition of exceptional conditions. Mr. Teerlink discussed the recommendation set forth in the packet from Mr. Kano who reviewed the applicant's request for a wider driveway approach. Mr. Kano had no safety concerns and recommended approval. Mr. Teerlink stated that after reviewing the information and Mr. Kano's recommendation, it was staff's opinion that 45 feet is excessive. He noted that 50 feet is the width for a commercial driveway approach on higher speed

streets. Based on the standards, the need for a driveway of this width was not warranted. Residential street speeds are slower and result in a slower turn approach to a residential use, which is predictable for both pedestrian use as well as traffic. Wider driveway approaches are conducive to higher speeds, which move traffic off of roads with higher use. Consequently, a wider driveway approach creates faster speeds.

Chair Chatelain reiterated that the higher the speed, the wider the driveway. Mr. Teerlink clarified the two options for a residential zone for a driveway. The first was one driveway with a maximum of 25 feet. The second was a circular drive with a minimum width of 35 feet.

(21:59:49) The applicant, Corey Alder, described his house as having a four-car garage that faces both Morningstar and Cecil Drive. Mr. Alder raised concerns about the aesthetics of a 45-foot driveway spanning the garage, narrowing to 25 feet at the property setback, and then flaring back to 45 feet at the street. He provided his site plan and a neighborhood map to the Commission which showed residential homes with driveways as wide as 60 feet.

Chair Chatelain opened the public hearing.

(22:09:03) Rhonda Harrison gave her address as 4165 Morningstar Drive, directly across from Mr. Alder. Mrs. Harrison stated that the previous occupants of Mr. Alder's property backed into her property on three different occasions. Each one resulted in property damage. Her concern was with the traffic that may result from having a four-car garage.

Chris Kinsel gave his address as 2654 Lincoln Lane and voice his approval for Mr. Alder's proposal. He believed that with the aesthetics of the property, the home will be a welcome addition to the neighborhood.

(22:11:58) JoLynn Schutjer, who lives one-half block from Mr. Alder, believed aesthetically that the straight driveway would be much more pleasing than the hourglass shape. She believed speed would not be an issue and was in favor of the driveway exception.

There were no further public comments. Chair Chatelain closed the public hearing.

A Commission Member expressed concern about how the property got to this point without having addressed previous concerns. It was felt that the applicant has taken the approach of asking for forgiveness rather than permission. Another Commission Member stated that the building permit was not issued with this driveway approach and that it was issued with the 25-foot driveway approach. Mr. Alder applied for the exception just after the original permit was issued in May 2012.

In response to a question raised by Chair Chatelain, Mr. Teerlink confirmed that the four-car garage was included in the original permit. He also raised a question about the 25-foot regulation, which would eliminate excess exceptions in the future.

(22:16:51) A Commission Member referred to Section 14.12 and stated that there are special circumstances with the lot layout. He agreed with Mr. Teerlink and did want to establish a precedent. He asked the applicant to explain how the 45-foot requirement was determined and

whether it is a best case scenario or if there is something between 25 feet and 45 feet that would be acceptable.

Mr. Alder confirmed the door spacing totaling 44 feet and stated that with an additional few inches, there would be a need for 45 feet. He further stated that with only 16 feet to angle the driveway from the street to the garage, construction is difficult. His goal was to make it aesthetically acceptable to the neighborhood and limit the number of cars on the street.

(22:23:53) Commissioner Lowry asked Mr. Teerlink if the minimum requirement for two driveways changes due to the corner location. Mr. Teerlink explained that the requirement doesn't change, but if it was used as a condition to gain approval it would be considered. Mr. Alder agreed to consider that option.

Chair Chatelain asked if there would be a potential compromise. A Commission Member stated that the two-driveway option is not a viable alternative, and narrowing would make garage access difficult. Optional design layouts were discussed.

(22:30:42) *Commissioner Holbrook moved to recommend to the City Council approval of the exception to the driveway per Holladay Ordinance 14.12.150 for 4145 South Morningstar Drive subject to the following:*

**Findings:**

1. *The driveway approach is located on a corner with the setbacks; and*
2. *The driveway exits out onto a quieter street than a main thoroughfare.*

*Commissioner Khodadad seconded the motion. Vote on motion: Matt Snow-Nay, Lori Khodadad-Aye, John Garver-Nay, Paula Lowry-Aye, Spence Bowthorpe-Aye, Troy Holbrook-Aye, Chair Les Chatelain-Aye. The motion passed 5-to-2.*

Staff was directed to look into whether the ordinance needs to be changed. It was suggested that it be addressed at the same time as the building corridor, which will address front yard setbacks.

**6. Roots Nursery Conditional Use Permit (Continued) – 5025 South Highland Drive – Conditional Use Permit Review – NC Zone – Planner: Rick Whiting.**

(22:34:08) Mr. Whiting presented the staff report and stated that the applicant is pursuing a conditional use permit in order to conduct a retail business at 5025 South Highland Drive. A conditional use is required by the NC Zoning, with a rezone having been obtained late last year.

The following three issues remained outstanding:

1. Vehicular movement from the parking lot onto Arbor Lane. Placement of a stop sign was proposed to control traffic;
2. A pile of debris exists in the rear of the lot which the applicant agreed to mitigate; and
3. There is excess signage on the site, which exceeds City ordinance. The applicant agreed to address the issue.

Staff recommended approval of the conditional use permit given appropriate mitigation of the above three issues.

Commissioner Khodadad asked for clarification regarding the excess signage. Mr. Teerlink explained that commercial properties with frontage on a street are allowed only one monument sign. The Roots Nursery has three.

The applicant, Jeff Willardson, agreed to comply with the stop sign exiting the nursery and requested a second stop sign for west bound traffic on Arbor Lane just east of the nursery. The Commission agreed with the need for the second stop sign. Mr. Willardson stated that the debris will be removed in October as it is needed for grading of the lot. He indicated that the excess signage will be removed.

*(22:41:50) Commissioner Khodadad moved to approve the request for a conditional use permit for the Roots Nursery at 5025 South Highland Drive subject to the following:*

**Findings:**

- 1. The proposed conditional use permit provides a service to citizens in the community by providing landscaping and nursery products for sale;*
- 2. Approval would propose no detriment to the health, safety, or general welfare of people living in the neighborhood due to the inherent nature of the retail business;*
- 3. The applicant should be able to conduct business without causing a nuisance to neighboring properties given placement of buildings, fences, trees and shrubs; and*
- 4. This property is designated as Community Commercial by the General Plan.*

**Requirements:**

- 1. Parking for all customers must be accommodated in the applicant's parking lot;*
- 2. The applicant is required to install a stop sign and paint a stop line at their own expense in their parking lot as cars exit to the north so that they enter Arbor Lane with maximum safety per the specifications of the City of Public Works Director;*
- 3. The pile of debris in the rear of the property must be removed by October 31, 2012, and all of weeds and other debris on top of the pile of dirt must be removed immediately;*
- 4. The applicant must bring all signage on the property into compliance with City ordinance; and*
- 5. The applicant must be cognizant of and reduce any impact upon residential neighbors with regard to hours of operation, noise from delivery trucks, dust, unpleasant smells, light overshooting, etc.*

*Commissioner Garver seconded the motion. Vote on motion: John Garver-Aye, Lori Khodadad-Aye, Matt Snow-Aye, Paula Lowry-Aye, Spence Bowthorpe-Aye, Troy Holbrook-Aye, Chair Les Chatelain-Aye. The motion passed unanimously.*

The Commission next continued their discussion of agenda item number 1.

**DISCUSSION ITEMS**

- 7. Residential Building Corridor and Front Setback Code Amendment (Continued) – Planner Jonathan Teerlink.**

**OTHER BUSINESS**

8. Updates or Follow-Up on Items Currently in the Development Review Process.
9. Report from Staff on Upcoming Applications.
10. Discussion of Possible Future Amendments to Code.

*Commissioner Lowry moved to adjourn. Commissioner Bowthorpe seconded the motion. The motion passed with the unanimous consent of the Commission.*

The Planning Commission Meeting adjourned at 12:23 a.m.

*I hereby certify that the foregoing represents a true, accurate and complete record of the City of Holladay Planning Commission Meeting held Tuesday, July 10, 2012.*



Teri Forbes, Minutes Secretary  
T Forbes Group

Minutes approved: August 21, 2012