

EAGLE MOUNTAIN CITY  
PLANNING COMMISSION MEETING MINUTES  
TUESDAY, SEPTEMBER 14, 2010 AT 6:00 P.M.  
Eagle Mountain City Council Chambers, 1650 E. Stagecoach Run, Eagle Mountain, UT 84005

**Eagle Mountain City Planning Commission Policy Session – 6:00 p.m.**

COMMISSION MEMBERS PRESENT: Karleen Bechtel, Preston Dean, Bonnie ElHalta, John Linton and Tom Maher.

ELECTED OFFICIAL PRESENT: Donna Burnham

CITY STAFF PRESENT: Steve Mumford, Mike Hadley, Jerry Kinghorn, Melanie Lahman.

Planning Commission Chair Tom Maher opened the meeting at 6:00 p.m.

1. Pledge of Allegiance
2. Declaration of Conflicts of Interest

None.

3. Approval of Minutes

A. February 9, 2010 Planning Commission Meeting Minutes

**MOTION:** *Karleen Bechtel moved to approve the February 9, 2010, meeting minutes. Bonnie ElHalta seconded the motion. Those voting aye: Karleen Bechtel, Preston Dean, Bonnie ElHalta, John Linton and Tom Maher. The motion passed with a unanimous vote.*

B. June 15, 2010 Planning Commission Meeting Minutes

**MOTION:** *Karleen Bechtel moved to approve the June 15, 2010, meeting minutes. Preston Dean seconded the motion. Those voting aye: Karleen Bechtel, Preston Dean, Bonnie ElHalta, John Linton and Tom Maher. The motion passed with a unanimous vote.*

C. July 13, 2010 Planning Commission Meeting Minutes

**MOTION:** *Karleen Bechtel moved to approve the July 13, 2010, meeting minutes. Bonnie ElHalta seconded the motion. Those voting aye: Karleen Bechtel, Preston Dean, Bonnie ElHalta, John Linton and Tom Maher. The motion passed with a unanimous vote.*

4. Development Items

A. Harmony Preliminary Plat – Consideration of tabled Harmony Project application and vote to set prospective Harmony Class II permit application hearing.

City Attorney Jerry Kinghorn has reviewed the status of the Harmony application and sent a letter to the applicant and their counsel, Craig Call. Mr. Kinghorn recommended that the development be processed under the 1997 Development Code. The 1997 Code requires a Class II permit. An application will be given to the applicant this evening. Mr. Kinghorn believed that all of the submittals required for a scoring hearing have been submitted, but Mr. Mumford will confirm that. The application should go through a scoring hearing and then go to the City Council. A preliminary plat application could be processed concurrently.

Mr. Kinghorn recommended that the tabling of the Harmony development, approved on June 15, 2010, be continued pending results of the scoring hearing. The conditions agreed to at the June 15 meeting can be incorporated into a development agreement, if it's appropriate to do so.

Craig Call, attorney for Eagle Mountain Properties, referred to a letter he sent in June, which Mr. Kinghorn responded to last week. He said the goal wasn't to alter the substance of the process. He read five things that he believed Mr. Kinghorn and the Commission assume: 1) that the applicants have not already filed a Class II permit application, 2) that there's been no initial plan review, 3) that there's been no review by the City Engineer, Fire Dept, etc., 4) that the City hasn't waived its right to require this process, and 5) that the application is not deemed approved. These assumptions need to be entered on the record if they are decisions. Without a land use decision, the applicant has no vehicle for contesting them, which they may or may not do. He proposed that those issues be scheduled for consideration.

He didn't think there was very much difference between what the developer wants and what the City requires.

Mr. Kinghorn said that the City hasn't received a Class II application, but does have all the submittals required for a scoring hearing. He recommended that Mr. Call provide him the information he just referred to in writing. Mr. Kinghorn could then furnish Mr. Call with the submittal materials, followed by a discussion about the issues.

Mr. Maher asked if a Class II application could be given to Mr. Wren tonight.

Mr. Kinghorn said that the Planning Dept. would have to prepare a staff report before the scoring hearing. The clearer the City can make the record, the more options the city can provide to the applicant. Mr. Call gave copies of his concerns to Mr. Kinghorn, Mr. Mumford and the Planning Commission, which are attached to these minutes.

Mike Wren of Eagle Mountain Properties said he has been working on this submittal for over a year and a half. At one point the City wouldn't even meet with him for five months. He was very frustrated and felt that an unnecessary burden has been placed on him two years after the process started.

**MOTION:**

*John Linton moved to continue the tabling of the Harmony Project, pending counsel's review of the assumptions as noted and response to them and the providing of a Class II application and preparation for the scoring, and that a review of these matters be set as soon as those things can be considered and responded to. Karleen Bechtel seconded the motion. Those voting aye: Karleen Bechtel, Preston Dean, Bonnie ElHalta, John Linton and Tom Maher. The motion passed with a unanimous vote.*

**B. Development Code Amendment – Chapter 16.35.090 Privacy Fencing – Public Hearing, Action Item.**

This amendment is to clarify the timing requirements of installation of required privacy fencing for residential subdivisions. The current code requires developments with rear lots facing an arterial or collector road to install fencing. At times, builders and developers try to make each other responsible for installing fencing. This amendment specifies that developers must install fencing before building permits are issued for that phase.

Jerry Kinghorn, City Attorney, said that the City shouldn't be involved in enforcing CC&Rs. They should be dealt with among the homeowners. His opinion was that the City should make the fencing requirements, including style, color, timing and who is responsible for installation, part of the development agreement. Then it can be enforced by the city as a matter of agreement.

Mr. Linton asked if the City could require a sign-off sheet showing that the HOA approved of the fencing the developer planned to install. Mr. Kinghorn said there used to be a similar requirement as part of submittals, but it sometimes wasn't filled out and the City got into battles with homeowners and HOAs.

*Commission Chair Tom Maher opened the public hearing at 6:39 p.m. As no comments were made, he closed the hearing.*

**MOTION:**

*John Linton moved to accept the findings of the staff report, with the correction under 16.35.090 Privacy Fencing, that there be a period placed instead of the comma on the last sentence, and that the wording be "to require a specific material and color for the fencing," deleting the words "and the fencing should comply with the existing CC&Rs." Karleen Bechtel seconded the motion. Those voting aye: Karleen Bechtel, Preston Dean, Bonnie ElHalta, John Linton and Tom Maher. The motion passed with a unanimous vote.*

**C. Development Code Amendments – Chapters 16.10, 16.20, 16.25, and 17.100 Expirations of Development Approvals – Public Hearing, Action Item.**

Expirations for plat approvals have been discussed in the past. Recently, both the City Council and the Planning Commission asked that the issue be revisited. This Development Code amendment adds expirations of approvals for preliminary plats, final

plats, master site plans, site plans, and master development plans. Staff suggests the following amendments:

Preliminary Plats – Expire 2 years from date of approval by the Planning Commission if a final plat application has not been approved by the City Council within that time.

Final Plats – Expire 1 year from date of approval if not recorded at the County.

Master Site Plans – Expire 2 years from date of approval if a site plan application has not been approved by the Council.

Site Plans – Expire 1 year from the date of City Council approval if a building permit has not been obtained for the project.

Master Development Plans – Expire 2 years from the date of approval by City Council if a Master Development Agreement has not yet been approved. Expiration of MDA would be as included in the specific MDA.

Under the terms of the amendment, developers would be able to request an extension prior to the expiration of a plat approval, subject to specified conditions. The Planning Director would decide whether to grant the extension. A denial could be appealed to the Planning Commission and then to the City Council. Expired projects could be resubmitted.

Discussion ensued as to whether an expired, resubmitted plan would fall under the Code in place at the original submittal or when the plan is resubmitted. Mr. Kinghorn said it depends on what changes have been made. Normally, it would fall under the current code.

This amendment would not apply to projects that have already been approved.

Mr. Kinghorn recommended that the phrase “bond amounts” should be changed to “improvement collateral requirements.”

Mr. Maher asked about water rights. Mr. Kinghorn said that water rights are dedicated to the City just before recordation, so they are not an issue for expiration of approvals.

*Commission Chair Tom Maher opened the public hearing at 7:03 p.m. As no comments were made, he closed the hearing.*

**MOTION:**

*John Linton moved to recommend that the City Council approve amendments to sections 16.10, 16.20, 16.25, and 17.100 of the Development Code, as proposed in the staff report, with the following changes: the applicant must be compliant with the current Development Code; the applicant must provide written supporting documents; the Planning Director may grant up to a single year extension; and improvement collateral requirements shall be calculated, rather than bond amounts. Bonnie ElHalta seconded the motion. Those voting aye: Karleen Bechtel, Preston Dean, Bonnie ElHalta, John Linton and Tom Maher. The motion passed with a unanimous vote.*

5. Other Items

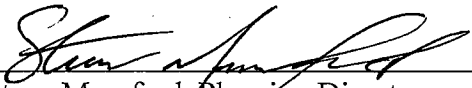
John Linton requested reconsideration of the Commission's decision on hobby breeders. As approved, the requirement doesn't specify how much property should be required per animal. It should be based on size of available space per animal, not on lot size. Mr. Mumford said that staff will research how other cities regulate hobby breeders and kennels and bring the issue to the Commission as soon as possible.

The next meeting is expected to be held on September 28.

6. Adjournment

The meeting was adjourned at 7:14 p.m.

APPROVED BY THE PLANNING COMMISSION ON OCTOBER 12, 2010

  
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Steve Mumford, Planning Director

THE LAW OFFICES OF  
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September 14, 2010

Tom Maher, Chair  
Eagle Mountain Planning Commission  
1650 East Stagecoach Run  
Eagle Mountain, UT 84043

RE: Status of Approval – Harmony – A Planned Community

This office represents Eagle Mountain Properties, LC, which is the applicant submitting an application for preliminary approval for Harmony, a 25 year project for Eagle Mountain Development. That application is the subject of correspondence between our firm and the City of Eagle Mountain and Gerald Kinghorn, legal counsel for the City. Copies of this correspondence is attached to this letter.

As we understand the current status of that application, the Planning Commission has placed it on the agenda for tonight's meeting under the heading "Harmony Preliminary Plat – Consideration of tabled Harmony Project application and vote to set prospective Harmony Class II Permit application hearing."

We received general notice of this pending agenda item in a letter from Gerald Kinghorn, delivered to our office by US Mail on September 7, the day after the Labor Day Weekend. It was also sent electronically to Mike Wren, a representative of Eagle Mountain Properties, LC. No staff report was provided with those communications.

According to Mr. Kinghorn's letter, he was advising the commission to place the project plan review on the agenda for a future meeting, entertain a motion to set the application for a hearing to score the application in compliance with the Class I Permit requirements and procedure of the 1997 Code, and rescind instructions given to staff in the motion made on June 15, 2010. We do not know if the City considers Mr. Kinghorn's advice to constitute a "land use decision" for

purposes of the provisions of Utah Code Ann. 10-9a-701 through 10-9a-801, or not. We also do not know if the City considers Mr. Kinghorn to be a "land use authority" as defined in statute or if the following assurances made in his letters are "land use decisions":

1. That the Developer has not filed a Class II Permit application – that the materials and documents provided do not constitute such an application.
2. That there has been no initial plan review as required prior to filing a Class II Permit application.
3. That there has been no review of the application by the Mayor, City Engineer, Fire Department, and other officials.
4. That the City has not waived its right to require this process and procedure through the operation of the development agreement entered into between the City and Eagle Mountain Development LC and its predecessors in interest or because of principles of fairness and equity or some other legal basis.
5. That the application is not "deemed approved" under the terms of the development agreement because of the time that has passed since it was filed and for the other reasons explained in my attached correspondence.

This leaves us in a dilemma as to how to respond. We respectfully request that the Planning Commission take no official action on this matter tonight and that the Commission or the Administrator designated as a land use authority by the City for purposes of dealing with this type of development approval conduct a fair process, in harmony with considerations of due process and the fairness requirements of the development agreement, to determine what land use decisions are needed and what those decisions should be. We will participate in that process and are confident that as we work together we can achieve a result that is both legal and fair.

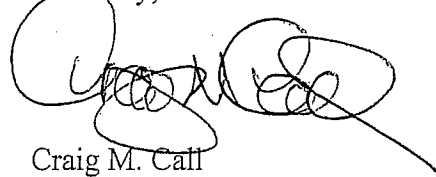
If the Commission is considering taking action tonight, we object to such action because of the short time allowed for our response to the issues raised and the difficulty posed by our not knowing what issues are before you and the status of the matters outlined in Mr. Kinghorn's letters without the benefit of any decision by a land use authority. We request that this letter and the attachments to this letter become a part of the record of any decision that you may make tonight.

We are also eager to determine if there is any other method of proceeding that makes sense to all involved. The City officials, including your commission and the City Council, can together with the applicants, put together some process that would advance all of our goals without being

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locked into either existing codes, the 1997 code, or past agreements. We would be willing to discuss whatever options you may prefer to review instead of a more formal and perhaps adversarial process.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig M. Call". The signature is stylized with large, overlapping loops and a long horizontal stroke extending to the right.

Craig M. Call  
Anderson Call & Wilkinson, PC

cc: Gerald Kinghorn  
Mike Wren



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June 25, 2010

Mayor Heather Jackson  
City of Eagle Mountain  
1650 East Stagecoach Run  
Eagle Mountain, Utah 84043

Fionnuala Kofoed, City Recorder  
Gina Peterson, City Recorder  
City of Eagle Mountain  
1650 East Stagecoach Run  
Eagle Mountain, Utah 84043

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

RE: Development Approval – Harmony – A Planned Community

Dear Mayor Jackson and Ms. Kofoed;

This office represents Eagle Mountain Properties, LC, (“EMP”) which is party to the Amended and Restated Development Agreement between the Town of Eagle Mountain, Utah, Monte Vista Ranch and Eagle Mountain Properties dated December 22, 1997 (the “Agreement”).

This letter is directed to you, Mayor Jackson, as the logical person who has succeeded to the office held by Mayor Debbie Hooge in December of 1997, and also to you, Ms. Kofoed, as the successor in office to Gina Peterson. Mayor Hooge is named as the person to be served notice under the Agreement. Ms. Peterson’s name is currently listed on the official database at the Utah Department of Commerce as the designated person by the City of Eagle Mountain under the provisions of the Utah Governmental Immunity Act for purposes of providing notice of pending legal issues with the City. Please advise me immediately if, for any reason, you do not consider yourself as the appropriate person to receive this letter under the terms of the Agreement or for any other reason.

The Agreement remains in full force and effect today, and both the Town, which is now a City, and the developers involved in the Agreement have benefitted from its terms and the opportunities it provides for long term visioning and careful, thoughtful, planning for a beneficial mutual future.

In the Agreement, at page 2, the parties express their intention to assure fair and equitable treatment for the developers and the community in the process of realizing its anticipated mutual benefits. The Agreement also clearly states on that page that the Owner/Developer is relying

upon the execution and continuing validity of the Agreement and the municipality's faithful performance of its obligations to justify the developers' investment of substantial funds into the community. In an extraordinary gesture to that mutual desire to work toward fair and efficient development, as you know, the developers also guaranteed bonds and notes for the Town and otherwise incurred substantial expense and risk toward your and their mutual goals.

An essential part of the Agreement is articulated in item 2.8.2 of the Agreement, which reads:

Deemed Approved. Any development application, subdivision plat or amendment, certificate of compliance, conditional use, variance, building permit or other approval required from the Town which is requested by Owner/Developer and which is not denied by the Town within ninety (90) days after the submission of a completed application shall be deemed approved by the Town.

This provision is to be considered in the context of the entire Agreement, which also states at item 4.5:

Non-Waiver. Failure of any 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 date any such right or any other right it may have.

In February, 2009 EMP delivered to the City an application for preliminary plat approval of Harmony, a 25 year project for Eagle Mountain Development. Prior to submittal, EMP had prepared extensive documentation and exhibits that demonstrate that the proposal is complete and suitable for review by the City. Representatives of EMP also had extended discussions with City staff about the project and its characteristics and the advantages posed by such a comprehensive, long-term vision for the future of both the development and the community.

Under the provisions of the applicable code (the September, 1997 Eagle Mountain Interim Development Code), at item III-B-2-a, a subdivision application is deemed an application for a "Class II Permit". On page 6, at item II-E-4, the code explains that it is the duty of the Town Council to review and approve applications for Class II permits. Now that Eagle Mountain is a City, it would follow that only the City Council can deny an application for a Class II permit.

Under the current code (which the Developer under the Agreement can elect to use in lieu of the 1997 Code) at Section 16.20.050 E, the Planning Commission is designated as the entity that approves or disapproves preliminary plat applications.

On May 19, 2009, Steve Mumford, acting on behalf of the City, sent a letter to Michael Wren of EMP outlining some issues that the City had raised about the application. The letter stated that the application was "rejected". With Mumford's letter was a letter from Gerald Kinghorn, legal counsel for the City, also raising issues and stating that the application "fails to conform" to the applicable ordinance. Neither letter states on its face that it is an official action by the city, and

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neither letter is a denial or approval of the application under the provisions of the relevant municipal ordinances. This means that the EMP application was not "denied" for purposes of the Agreement within 90 days of its submission.

Since this correspondence, those representing EMP have attempted to work with the City to discuss the project in great detail, and point out how the conclusions expressed by the correspondence referred to above and in other settings during the review process are incorrect and unreasonable. During this effort to accommodate the City's concerns, many days more than 90 days have passed without an official denial by the City.

During that entire time, both officials of the City and of EMP have consistently and repeatedly reminded those involved that the Agreement calls for action by the City within 90 days of the submission of development applications.

In March, 2010 EMP again submitted additional materials for the City's review. These new submittals addressed issues raised and significantly modified the application to conform to concerns expressed by those involved in the review process. More than 90 days have also now passed from this additional submittal without any official action by the City. That renewed submission has also not been "denied".

At this time, we can only conclude that the application for Harmony is thus deemed approved. This conclusion is based on the clear language of the Development Agreement, including a reference to the relevant codes which provides a means by which either the City Council or the Planning Commission alone can approve or deny a project; by the provisions of the Agreement stating clearly that EMP does not waive the right to assert the 90 day deemed approved language because it may or may not have asserted it before, and by the simple fact that more than ninety days has run, not only since the first submittal but also from the most recent submittals provided in an effort to work with the City.

The application was a subdivision application which is the type of application governed by the deemed approved language of the Agreement. It was submitted by a party to the Agreement who is entitled to rely on and indeed has relied on the provisions of the Agreement. The application was submitted more than 90 days ago and has not been denied. No waiver of the applicant's rights to assert the deemed approved language has occurred.

This letter is, therefore, provided to advise the City officially that EMP considers its application for preliminary plat approval to be "deemed approved". Our clients will consider the last plat provided in March of 2010 as the approved plat, and will now proceed to work with the City staff and leadership to refine the plans and prepare final documents to be reviewed under the provisions of the appropriate code. EMP certainly wants to make accommodations to reflect your and their mutual concerns about parts of the code that have become impractical in the context of this proposal, and will look forward to a fair and equitable review of its additional submittals as they are provided.

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Any meeting that EMP representatives attend after the date of this letter considering the Harmony development, any correspondence that is exchanged, and any other process involved in preparing for the project will be considered by EMP as relating to final plat approval, and not the preliminary plat, which is deemed approved.

If, for any reason, you or your legal counsel disagrees with this conclusion, please advise me immediately of that conclusion. If this position seems inappropriate, we would certainly want to discuss another option, but would remind those working with you that the Agreement is clear – there was to be no circumstance under the Agreement when an application for land use approval was to take longer than 90 days to be reviewed. Both parties to the Agreement were represented by competent counsel in the matter and the spirit and letter of the Agreement should be respected for the mutual benefit of all concerned.

Thank you for your assistance with these matters. Our clients appreciate your common efforts to enhance the future of Eagle Mountain.

Sincerely yours

Craig M. Call  
Attorney at Law

cc: Gerald H. Kinghorn  
Parsons, Davies, Kinghorn & Peters  
185 South State Street, Suite 700  
Salt Lake City, UT 84111



COURTESY  
COPY

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September 3, 2010

Craig M. Call  
ANDERSON CALL & WILKINSON, P.C.  
2400 University Club Building  
136 East South Temple Street  
Salt Lake City, UT 84111

**Re: Harmony Project Application / Your Correspondence of  
June 25, 2010**

Dear Craig:

We have been asked to respond to your June 25, 2010 correspondence addressed to Mayor Jackson and to the City Recorder of Eagle Mountain City. We have taken the time to review a very detailed history of communication with the Applicant and consideration of the Project by the City staff. We also reviewed minutes of meetings of the City Planning Commission concerning the Harmony Project going back to the first concept application. In addition, we have studied the provisions of the "1997 Development Code" of the Town of Eagle Mountain, which is the default Development Code applicable to the Harmony Project under the "Amended and Restated Development Agreement" (December 22, 1997) between the City, Monte Vista Ranch, L.C. and Eagle Mountain Properties, L.C. We understand that the Harmony Project owner is a successor-in-interest to Monte Vista Ranch or Eagle Mountain Properties.

Under the 1997 Development Code, a Class II Permit and Development Agreement are required for the Harmony Project before preliminary subdivision plat approval can be valid. We are aware that the Harmony Project proponents have verbally requested waivers of some of the provisions of the 1997 Code or tried to request approval of the Project under the current City Development Code while picking and choosing those sections of the 1997 Code which they believe are favorable to the Project.

Our recommendation has been universally and is now to reject this "pick and choose" Code to Code approach because it does not legally protect the City or the Applicant and does not clearly identify the rules which apply to any particular land-use decision or development process and can result in bypassing important provisions of both Codes.

Based on our review of the 1997 Code and the Harmony Project history, we disagree with your claim that the Harmony Project preliminary plat has been "deemed approved". We believe the Project is best characterized as being in the "pre-permit application plan review phase" defined in Chapter 3. H.1. of the 1997 Code. We have recommended to the City that the approval process continue under the 1997 Code to consider a Class II Permit application and Development Agreement and the preliminary plat Application. A copy of our recommendation is enclosed for your information.

We understand that Steve Mumford is prepared to provide a Class II Permit Application to the Harmony Project development representative and to go through the Class II Permit Application requirements checklist. The City will give credit to the Harmony Project Applicant for prior submissions where the submissions meet the requirements of the 97 Code. We do not intend to require duplicate filings. We understand that the City will work with the Applicant to give the process priority.

Under the 1997 Code, the City can concurrently process a preliminary plat application and we understand that the City is prepared to treat the preliminary plat application submitted by the Harmony Project Applicant as a concurrent application which can be considered in conjunction with the Class II Permit Application. There are additional preliminary plat requirements in the 1997 Code which need attention. The City will work with the Project developer's agent to identify those items.

We understand that the Planning Commission will set the matter for its agenda at its next regularly scheduled time and will consider vacating the prior motion and scheduling a "scoring hearing" which is required under the procedures of the 1997 Code to score the Class II Permit application under the Absolute and Relative Performance Standards requirements of the 1997 Code. We will prepare a Class II Development Permit Development Agreement which will eventually be considered by the City Council if the Project receives a positive score at the Planning Commission scoring hearing. A Class II Development Permit may be issued by the City Council upon a recommendation from the Planning Commission, but the process requires a Development Agreement. We will provide a draft of that Development Agreement to the Harmony Project Applicants.

Please let us know if you will continue to represent the Harmony Project

Craig M. Call  
ANDERSON CALL & WILKINSON, P.C.  
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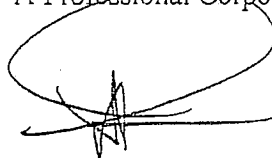
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Applicants during this process and we will furnish you with the documents we draft as the process goes forward.

Please call me if you have any questions.

Very truly yours,

PARSONS KINGHORN HARRIS  
A Professional Corporation

A handwritten signature in black ink, appearing to read 'Gerald H. Kinghorn', is written over a horizontal line. The signature is stylized with a large, sweeping loop at the top.

Gerald H. Kinghorn

GHK/jld  
Enclosure

Cc: Heather Anne Jackson, Mayor  
John F. Hendrickson, City Administrator  
Fionnuala B. Kofoed, City Recorder  
Stephen Munford, Planning Director

P | K | H

FILE COPY

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July 30, 2010

Eagle Mountain City  
Planning Commission  
Attn: Tom Maher, Chair  
1650 E. Stagecoach Run  
Eagle Mountain, UT 84005

Re: Harmony Project Application

Dear Chair Maher and Members of the Planning Commission:

This is provided to you to confirm our verbal recommendation to the Planning Commission at the recent closed *Executive Session* and to incorporate additional detail which we believe is necessary, in light of the unusual circumstances here, and which you requested that we provide.

#### SUMMARY OF RECOMMENDATION

The Applicant elected to not use the current City Development Code and to have the Harmony Application considered by the City under the terms of the "Town of Eagle Mountain 1997 Interim Development Code" (the "1997 Code"). The Applicant has the legal right under the "Amended and Restated Master Development Agreement" between the City, Eagle Mountain Properties, and Monte Vista Ranches to require the City to process development in the Eagle Mountain Properties Master Development Plan Area under the 1997 Code.

The Planning Commission should place the project plan review on the agenda for a future meeting, entertain a motion to set the application for a hearing to score the application in compliance with the Class II Permit requirements and procedure of the 1997 Code (See: Chapter III, Sec. H.) and rescind instructions given to staff in the motion made on June 15, 2010. The City should not mix provisions of the 1997 Code with the



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current Code; only the 1997 Code should apply to the review and processing of the application.

### ANALYSIS AND DISCUSSION OF ISSUES

In December of 1997, the Town Council of the Town of Eagle Mountain entered into an "Amended and Restated Master Development Agreement" between the Town and Developer entities known as "Eagle Mountain Properties and Monte Vista Ranches, L.C.". The Agreement incorporated a Master Development Plan which permits a total of 22,930 residential units to be developed on the Master Development property. The Development Agreement vests the Developer with the entitlement to use the provisions of the Town of Eagle Mountain 1997 Interim Development Code in the development of the properties in the Master Development Plan and certain after acquired properties. The Harmony applicant is the Developer applicant under the Amended and Restated Development Agreement and is entitled to have the Harmony project application considered as a Class II Permit and preliminary plat application under the 1997 Eagle Mountain Interim Development Code.

A copy of the 1997 Interim Development Code is provided to you to assist you in the future in the review of this project and others proposed by Eagle Mountain Properties, Monte Vista Ranch or its successors in interest. Under Chapter III, B. 2. of the 1997 Code, the Harmony project requires a Class II Permit for the subdivision since it is not specifically exempted by other provisions of III, C in the 1997 Code. The Class II Permit procedure is found under III, H of the 1997 Code and requires an initial plan review before filing an application for a Class II Permit. Because the Developer has not filed a Class II Permit application, we believe the project is in the allowed plan review stage at this date.

We believe the staff should work with the Developer applicant to incorporate all of the submittals prior to this date by the Developer applicant and consider the submittals as the request for a Class II Permit plan review under Chapter III H.1. (1997 Code). Plan review is intended as a pre-application review by the Planning Commission similar to the concept review process in the current Code.

After the plan review, the Code allows the Developer to file a properly completed Class II Permit application with all required supporting materials. We will work with the staff to develop the permit application form for the Developer to use anticipating that the

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Developer intends to go forward with the Harmony project and that the Developer does not have a Class II Permit application form.

Under the 1997 Code, the application and all accompanying materials must be submitted for review by the Mayor, the City Engineer, the Fire Department, and all other professionals responsible to the Town and the "Superintendent of the Alpine School District." Upon receipt of reports from all of the parties reviewing the application, the staff must prepare a written report explaining how the development complies or fails to comply with the requirements of the 1997 Code.

The Planning Commission is required to receive the report of the staff and conduct a hearing under Chapter III, H. 7, on the application and "take testimony" to determine whether the development complies with the requirements of the 1997 Code. Under the 1997 Code, the project is scored by the Planning Commission based on absolute and relative performance standards. A recommendation for approval is forwarded to the City Council if the project complies with all absolute performance standards and has a score of zero or more on relative performance standards under the 1997 Code.

If the proposed development fails to comply with any applicable absolute performance standard or has a score of less than zero on the relative performance standards, the application for the permit should be disapproved by the Planning Commission.

If the matter is forwarded to the City Council for approval, the 1997 Code requires that the City Council approve the application for the permit, but may do so under conditions attached as permitted by the 1997 Code. In addition, each Class II Permit is required to be accompanied by a Development Agreement which is required to be in a standard format for Class II Permit approvals. We will prepare a standard format Development Agreement for Class II Permit use concurrent with the additional proceedings required under the 1997 Code. Under the terms of Appendix B to the 1997 Interim Code, the Developer may elect to submit a preliminary plat as part of the Class II Permit process.

The requirements for preliminary plats are found in Appendix B, in Chapter IV and Chapter XII and other parts of the 1997 Code. We will work with staff to develop a checklist which incorporates the requirements of the various Chapters of the 1997 Code with respect to preliminary plats and review the Developer's submittal as both a Class II Permit and concurrent preliminary plat application to avoid redundant submittals.

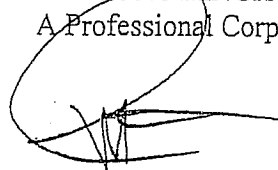
Eagle Mountain City  
Planning Commission  
Attn: Tom Maher, Chair  
July 30, 2010  
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I will be present at your future meetings where the Harmony applications are considered by the Planning Commission to assist the Commission, if necessary.

Very truly yours,

PARSONS KINGHORN HARRIS  
A Professional Corporation

A handwritten signature in black ink, appearing to read 'G. Kinghorn', is written over the company name. The signature is stylized and somewhat illegible.

Gerald H. Kinghorn

GHK/jld

Cc: Heather Anne Jackson, Mayor  
John F. Hendrickson, City Administrator  
Stephen Mumford, Planning Director