

Mapleton City Planning Commission Staff Report

Meeting Date: June 23, 2011

Item #: 2

Applicant: Steven Jackson

Prepared by: Cory Branch

Parcel ID #: 43:183:0003

Current Zone: R-2

General Plan Designation:
High Density Residential

Total Acreage: Approximately
0.51 acres

REQUEST:

Steven Jackson requests to rezone approximately 0.51 acres from R-2 to R-3 in order to construct a 4-plex on property located generally at 580 North 300 West.

FINDINGS OF FACT:

1. This item went before the Planning Commission on May 12, 2011. (see Attachment 1 – Planning Commission Staff Report – May 12, 2011)
2. At the May 12th meeting the Commission continued this item requesting that staff meet with the applicant regarding a possible development agreement which would identify what improvements would take place on the property. (see Attachment 2 – Proposed Development Agreement)
3. The applicant will provide a landscaping plan at the night of the Commission meeting.
4. Staff is prepared to discuss the development agreement and history of the property at the night of the meeting.

ATTACHMENTS:

1. Planning Commission Staff Report – May 12, 2011
2. Proposed Development Agreement

Mapleton City Planning Commission Staff Report

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REQUEST:

Steven Jackson requests to rezone approximately 0.51 acres from R-2 to R-3 in order to construct a 4-plex on property located generally at 580 North 300 West.

FINDINGS OF FACT:

1. This rezone request is for Lot 3 of Jackson Hollow Subdivision, Plat "A". The subdivision consists of eight lots which were approved by the Planning Commission on February 22, 2007 and the City Council on March 6, 2007. The subdivision plat was recorded at the Utah County Recorder's office on August 9, 2007.
2. The recorded plat noted that a duplex is allowed on Lot 3 and all of the other lots within the subdivision are only allowed to have a single family dwelling. (see Attachment 3 – Jackson Hollow Subdivision, Plat "A")
3. The subject lot is currently located in the R-2 (Residential) zone.
4. Single Family Dwellings and Duplexes are allowed in the R-2 zone as per Section 18.48.040, Permitted Uses, Mapleton City Code.
5. The subject lot consists of approximately 0.51 acres or 22,222 square feet.
6. The minimum lot size for the R-2 zone shall not be less than 10,000 square feet per unit, as per Section 18.48.050, Lots, Buildings, Yards, and Open Spaces.
7. The existing structure on the subject lot is currently being utilized as a duplex.
8. The applicant is requesting to rezone the subject lot from R-2 to R-3 in order to convert the existing building into a 4-plex.
9. Mapleton City General Plan map designates the subject lot as High Density Residential.
10. The written polices for High Density Residential, read, as follows:
"This designation shall have minimum lot sizes of less than 14,500 square feet. The purpose of this category is to help provide affordable housing and will take place as a result of transfer of development rights, multi-family dwellings, or accessory apartments. It is intended that this category comprise a relatively low percentage of land within Mapleton and that it will occur where and when the need arises. Other uses characteristic of this designation include houses of worship. Areas in this designation shall primarily be located on the west of the General Commercial area on Highway 89, in the southern limits of the city, and in the north-central area of the city. Specific development plans and planned developments may allow for clustered housing and townhomes".
11. The applicant has submitted a statement outlining the purpose of the proposed rezone. (see Attachment 1 – Information submitted by the Applicant)

STAFF ANALYSIS:

1. As stated in the above Findings of Fact #'s 4 and 6 the R-2 zone allows for single family dwellings and duplexes with a minimum lot size of 10,000 square feet per unit. If this rezone request is approved the minimum lot size would be approximately 5,500 square feet per unit.
2. As stated in the above Findings of Fact #'s 1 and 2 the subject lot is located in the Jackson Hollow Subdivision, Plat "A" and a note was placed on the plat stating "Duplex allowed only on Lot 3. All other lots are only allowed a single family dwelling per lot". Staff is concerned that the landowner's within the Jackson Hollow Subdivision purchased property within the subdivision with the assurance that each lot would be a single family home and that Lot 3 would be allowed a duplex.

3. The surrounding zoning to the north is RA-2, to the south is R-2 and CC-1, to the east is R-2 and RA-2, and to the west is A-2. The RA-2 and A-2 zone only allows for single family dwellings. The CC-1 zone is established for retail and business purposes. Staff is concerned with this request based on the fact that the majority of the primary uses surrounding this subject lot are established for single family dwellings. It is the opinion of staff that by having a 4-plex within an area surrounded by single family dwellings may cause an adverse impact on adjacent landowners as to physical appearance and traffic.

STAFF RECOMMENDATION:

Staff recommends denial of the requested rezone, based on the concerns raised in the above staff analysis.

ALTERNATIVE ACTIONS:

1. The Planning Commission may recommend that the City Council approve the requested rezone. This action would be a change from the Staff recommendation. If the Planning Commission recommends approval of the requested rezone, new findings should be stated with the motion.
2. Continue to a Future Meeting Date: This action could be based upon findings that additional information is required prior to rendering a decision or to further consider information.

ATTACHMENTS:

1. Information submitted by the applicant.
2. Information submitted by an adjacent land owner
3. Jackson Hollow Subdivision, Plat "A"

VICINITY MAP:



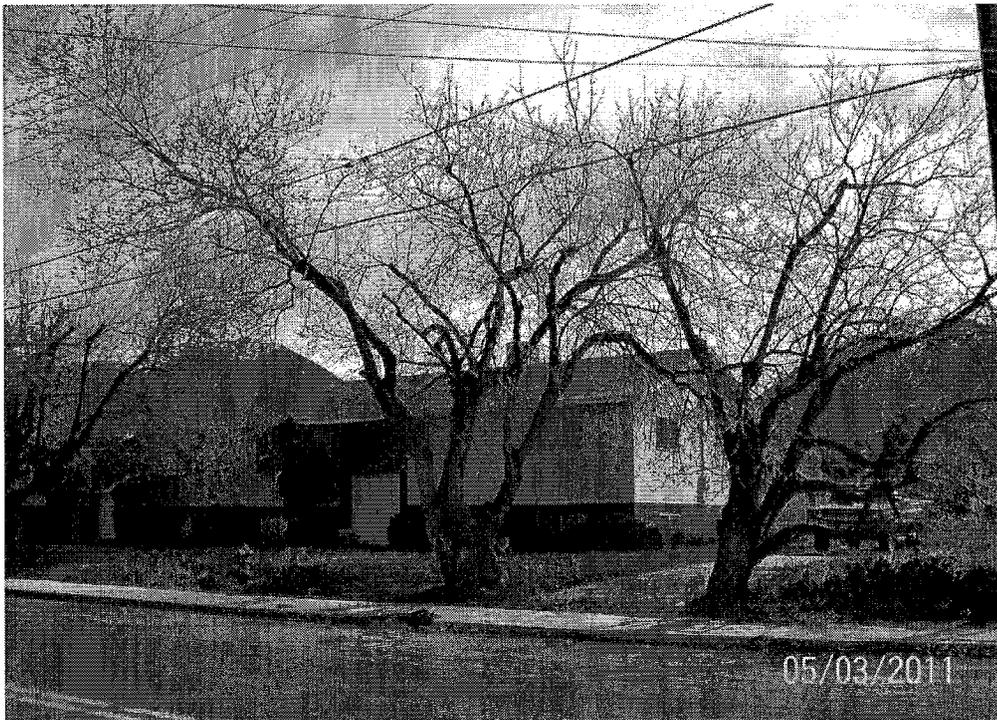
ZONING MAP:



GENERAL PLAN MAP:



SITE PHOTO'S:



Looking northeast at the Jackson property from 300 West Street



Looking south at the Jackson property from 600 North Street

Jackson Hollow LLC
DEVELOPMENT AGREEMENT

Jackson Hollow LLC DEVELOPMENT AGREEMENT

This development agreement (the "Agreement") is made and entered into on _____, 2011, by and between the Mapleton City Corporation, a Utah Municipal Corporation hereinafter referred to as the "City", and Jackson Hollow LLC, hereinafter referred to as the "Developer".

RECITALS

A. Developer owns or controls property located generally at location in Mapleton, Utah, and which is legally described in Exhibit "A" (the "Property") attached hereto and made a part of this Agreement.

B. Developer has submitted an application to rezone the subject Property to R-3.

C. To assist City in its review and approval of the rezone and to assure improvements of the Property in accordance with Developer's representations to City, Developer and City desire to enter into this Agreement which sets forth the conditions, terms, restrictions and requirements whereby Developer may develop the Property.

D. To allow development of the Property for the benefit of Developer, to ensure City that development of the Property will utilize best planning practices, and to ensure conformance with applicable City policies, Developer and City desire to enter into this Agreement and are each willing to abide by the terms and conditions set forth herein. Developer and City each acknowledge that development of the Property will result in significant planning, economic and other benefits to each party.

E. Acting pursuant to its legislative authority under Utah Code Annotated §§ 10-9-101, et seq., and after all required public notice and execution of this Agreement by Developer, the City Council of City, in exercising its legislative discretion, has determined that entering into this Agreement furthers the purposes of the Utah Municipal Land Development and Management Act, City's General Plan, and Title 15, 16, 17, 18 and 19 of the Mapleton City Code (collectively, the "Public Purposes"). As a result of such determination, the City has elected to consider the rezone.

AGREEMENT

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

1. Term. The term of this Agreement shall commence on, and the effective date of this Agreement shall be, the effective date of City action approving this Agreement.

2. Abandonment; Reversion of Zoning. If during any one (1) year period after approval of the rezone, Developer takes no substantial action in good faith to exercise the rights authorized under this Agreement to develop the Property, City may declare the Property to be abandoned. Provided, however, that prior to a declaration of abandonment, City shall give Developer thirty (30) days notice of City's intent to make such declaration. If Developer presents evidence to City of substantial good faith efforts to develop the Property or of economic or other conditions hindering development, City may grant Developer an extension of time for performance. In the event no extension of time is granted, City may elect to rezone the subject property back to R-2 and Developer will be required to convert the existing building into a single family dwelling or duplex.

3. Conditions Precedent. City and Developer's obligations under this Agreement shall be subject to completion of the Specific conditions (the "Conditions Precedent") set forth in Exhibit "C" attached hereto and made a part of this Agreement.

4. Zoning Classification - Allowed Uses - Concept Plan. Subject to the terms of this Agreement, the zoning classification on the Property shall be an R-3 Zone. Refer to Exhibits A & B, which specifies the Legal Description of the land and proposed Concept Plan.

5. Applicable Code Provisions. The parties acknowledge that in order to proceed with development of the Property, Developer shall comply with the requirements of this Agreement and other requirements generally applicable to development in Mapleton City and this Agreement satisfies the legal requirement for the developer's rights to vest.

6. Reserved Legislative Powers. Nothing in this Agreement shall limit the future exercise of the police powers of City in enacting zoning, subdivision, development, growth management, platting, environmental, open space, transportation and other land use plans, policies, ordinances and regulations after the date of this Agreement. Notwithstanding the retained power of City to enact such legislation under its police power, such legislation shall not modify Developer's rights as set forth herein unless facts and circumstances are present which meet the compelling, countervailing public interest exception to the vested rights doctrine as set forth in Utah Code Annotated § 10-9a-509(1)(a)(i) or successor case law. Any such proposed change affecting Developer's rights shall be of general application to all development activity in city. Unless City declares an emergency, Developer shall be entitled to prior written notice and an opportunity to be heard with respect to the proposed change and its applicability to the Project.

7. Time of Approval. Any approval consideration required by this Agreement shall not be unreasonably withheld or delayed and shall be made in accordance with applicable procedures set forth in the Mapleton City Code.

8. Successors and Assigns. This Agreement shall be binding on the successors and assigns of Developer. Notwithstanding the foregoing, a purchaser of the Property or any portion thereof shall be responsible for performance of Developer's obligations. In the event of a sale or transfer of the Property, or any portion thereof, the seller or transferor and the buyer or transferee shall be jointly and severally liable for the performance of each of the obligations contained in this Agreement unless prior to such transfer an agreement satisfactory to City, delineating and allocating between Developer and transferee the various rights and obligations of Developer under this Agreement, has been approved by City.

9. Default.

A. Events of Default. If one or more of the following events or conditions occurs, Developer or City, as applicable, shall be in default ("Default") under this Agreement:

(1) A warranty, representation or statement made or furnished by Developer under this Agreement is intentionally false or misleading in any material respect when it was made.

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

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

B. Procedure Upon Default.

(1) Upon the occurrence of Default, the non-defaulting party shall give the other party thirty (30) days written notice specifying the nature of the alleged default and, when appropriate, the manner in which said Default must be satisfactorily cured. In the event that the Default cannot reasonably be cured within thirty (30) days, the defaulting party shall have such additional time as may be necessary to cure such default so long as the defaulting party takes action to begin curing such default within such thirty (30) day period and thereafter proceeds diligently to cure the default. After proper notice and expiration of said thirty (30) day or other appropriate cure period without cure, the non-defaulting party may declare the other party to be in breach of this Agreement and may take the action specified in Paragraph C herein. Failure or delay in giving notice of default shall not constitute a waiver of any default.

(2) Any Default or inability to cure a Default caused by strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions,

governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other similar causes beyond the reasonable control of the party obligated to perform, shall excuse the performance by such party for a period equal to the period during which any such event prevented, delayed or stopped any required performance or effort to cure a Default.

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

D. Institution of Legal Action. In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any default or breach, to specifically enforce any covenants or agreements set forth in this Agreement or to enjoin any threatened or attempted violation of this Agreement; or to obtain any remedies consistent with the purpose of this Agreement. Legal actions shall be instituted in the Fourth District Court, State of Utah, or in the Federal District Court for the District of Utah. The option to institute legal action, at least in the case of defaults, is available only after the cure provisions are complied with.

10. General Terms and Conditions. The parties agree, intend and understand that the obligations imposed by this Agreement are only such, as are consistent with City of Mapleton, state and federal law. The parties further agree that if any provision of this Agreement becomes, in its performance, inconsistent with local, state or federal law or is declared invalid, this Agreement shall be deemed amended to the extent necessary to make it consistent with local, state or federal law, as the case may be, and the balance of this Agreement shall remain in full force and effect.

A. Recording of Agreement. In the event City approves the rezone and all Conditions Precedent have been met, this Agreement shall be recorded as a covenant running with the Property herein described in order to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof.

B. Severability. Each and every provision of this Agreement shall be separate, several and distinct from each other provision hereof, and the invalidity, unenforceability, or illegality of any such provision shall not affect the enforceability of any other provision hereof.

C. Time of Performance. Time shall be of the essence with respect to the duties imposed on the parties under this Agreement. Unless a time limit is specified for the performance of such duties each party shall commence and perform its duties in a diligent manner in order to complete the same as soon as reasonably practicable.

D. Construction of Agreement. This Agreement shall be construed so as to effectuate its public purpose of ensuring the Property is developed as set forth herein to protect health, safety, and welfare of the citizens of City.

E. State and Federal Law. The parties agree, intend and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. The parties further agree that if any provision of this Agreement becomes, in its performance, inconsistent with state or federal law or is declared invalid, this Agreement shall be deemed amended to the extent necessary to make it consistent with state or federal law, as the case may be, and the balance of the Agreement shall remain in full force and effect. If City's approval of the rezone is held invalid by a court of competent jurisdiction, this agreement shall be null and void.

F. Enforcement. The parties to this Agreement recognize that City has the right to enforce its rules, policies, regulations, ordinances, and the terms of this Agreement by seeking an injunction to compel compliance. In the event Developer violates the rules, policies, regulations or ordinances of City or violates the terms of this Agreement, City may, without declaring a Default hereunder or electing to seek an injunction, and after thirty (30) days written notice to correct the violation (or such longer period as may be established in the discretion of City or a court of competent jurisdiction if Developer has used its reasonable best efforts to cure such violation within such thirty (30) days and is continuing to use its reasonable best efforts to cure such violation), take such actions as shall be deemed appropriate under law until such conditions have been rectified by Developer.

G. No Waiver. Failure of a party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future time said right or any other right it may have hereunder. Unless this Agreement is amended by vote of the City Council of City, taken with the same formality as the vote approving this agreement, no officer, official or agent of City has the power to amend, modify or alter this Agreement or waive any of its conditions as to bind City by making any promise or representation not contained herein.

H. Entire Agreement. This Agreement shall supersede all prior agreements with respect to the subject matter hereof, not incorporated herein, and all prior agreements and understandings are merged herein. This Agreement shall

not be modified or amended except in written form mutually agreed to and signed by each of the parties.

I. Attorneys Fees. Should any party hereto employ an attorney for the purpose of enforcing this Agreement, or any judgment based on this Agreement, for any reason or in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, including appeals or rehearings, and whether or not an action has actually commenced, the prevailing party shall be entitled to receive from the other party thereto reimbursement for all attorneys' fees and all costs and expenses. Should any judgment or final order be issued in any proceeding, said reimbursement shall be specified therein.

J. Notices. Any notices required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when presented personally, or four (4) days after being sent by registered or certified mail, properly addressed to the parties as follows:

To the Developer: Jackson Hollow LLC
P.O. Box 173
Springville, Utah 84663

To the City: Mapleton City
125 West Community Center Way
Mapleton, Utah 84664

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

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

M. Hold Harmless. Developer shall hold City, its officers, agents, employees, consultants, special counsel, and representatives harmless from liability for damages or equitable relief arising out of claims for personal injury or property damage arising from direct or indirect operations of Developer or its contractors, subcontractors, agents, employees or other persons acting on its behalf, in connection with the Project.

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

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

N. Relationship of Parties. This Agreement is not intended to create any partnership, joint venture or other arrangement between City and Developer. This Agreement is not intended to create any third party beneficiary rights for any person or entity not a party to this Agreement. It is specifically understood by the parties that: (i) all rights of action and enforcement of the terms and conditions of this Agreement shall be reserved to City and Developer, (ii) City has no interest in or responsibilities for or duty to third parties concerning any improvements to the Property; and (iii) Developer shall have the full power and exclusive control of the Property subject to the obligations of Developer set forth in this Agreement.

O. Title and Authority. Developer expressly warrants and represents to City that it is a limited liability company in good standing and that such company owns or controls all right, title and interest in and to the Property and that no portion of the Property, or any right, title or interest therein has been sold, assigned or otherwise transferred to any other entity or individual. Developer further warrants and represents that no portion of the Property is subject to any lawsuit or pending legal claim of any kind. Developer warrants that the undersigned individual has full power and authority to enter into this Agreement on behalf of Developer. Developer understands that City is relying on such representations and warranties in executing this Agreement.

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

Q. Exhibits. All exhibits referred to herein are made a part of this Agreement as incorporated by reference date.

[signature page follows]

This Development Agreement has been executed by City, acting by and through its City Council, pursuant to a City Council motion authorizing such execution, and by a duly authorized representative of Developer as of the date first written above.

Attest: Mapleton City, a Utah Municipal Corporation

By: _____
Mayor

By: _____
City Recorder

By: _____

STATE OF UTAH
COUNTY OF UTAH

The foregoing instrument was acknowledged before me on this _____ day of _____
by _____.

NOTARY PUBLIC

My commission expires:

Exhibit "A"
Legal Description

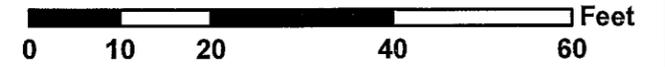
Exhibit "B"
Concept Plan

Exhibit "C"
Conditions Precedent

Developer Responsibilities

1. The Developer agrees to provide a vinyl fence no later than one (1) year from the effective date of this agreement along the south and east perimeters of the project with a six (6) foot vinyl fence within the rear yard and a three (3) foot vinyl fence within the front/side yard, meeting all requirements of Mapleton City Code, Section 18.84.130, Fencing Standards.
2. The Developer agrees to provide landscaping as shown in Exhibit "B" of this agreement no later than one (1) year from the effective date of this agreement. The landscaping will include a sprinkling system and drip system.
3. The Developer agrees to paint the exterior of the existing building no later than one (1) year from the effective date of this agreement.

Exhibit "B" Jackson R-2 to R-3 Rezone Concept Plan



1 inch equals 20 feet (11x17 Paper Size)



MAPLETON CITY CORPORATION