

Provo City Planning Commission  
**Report of Action**

October 8, 2014

ITEM 2\* Gardner & Associates requests a General Plan Amendment from (R) Residential to (I) Industrial to allow for a rezoning request to PIC (Planned Industrial Commercial) required for the expansion of the Novatek facilities into the rear portion of four lots, totaling approximately 1.6 acres, located generally between 2106 S and 2206 S Mountain Vista Lane. *Spring Creek Neighborhood* 14-0004GPA

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The following action was taken by the Planning Commission on the above described item at its regular meeting of October 8, 2014:

## RECOMMEND DENIAL

On a vote of 5:0, the Planning Commission recommended that the Municipal Council deny the above noted application.

Motion By: Ross Flom

Second By: Ed Jones

Votes in Favor of Motion: Ed Jones; Fred Bandle; Jamin Rowan; Ross Flom; Diane Christensen

*Diane Christensen was present as Chair.*

- New findings stated as basis of action taken by the Planning Commission or recommendation to the Municipal Council; Planning Commission determination is not generally consistent with the Staff analysis and determination.

### STAFF PRESENTATION

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

- The General Plan Amendment would be an encroachment of an industrial designation into the rear portion of four (4) existing residential lots owned by Novatek.
- The remaining portion of the affected residential lots would continue to meet the current lot standards of the present R1.10 zoning.
- The zoning and General Plan currently provides for a potentially incompatible adjacency.
- The neighborhood did hold a meeting after the Staff report had been published

### NEIGHBORHOOD MEETING DATE

- A neighborhood meeting was held on October 2, 2014.

### NEIGHBORHOOD AND PUBLIC COMMENT

- The Neighborhood Chair addressed the Planning Commission during the public hearing.
- Neighbors or other interested parties were present or addressed the Planning Commission.

### CONCERNS RAISED BY PUBLIC

No comments were received prior to completion of the Staff Report. Key issues raised in written comments received subsequent to the Staff Report or public comment during the public hearing included the following:

- A Planning Commission Report of Action dated September 29, 1976 required a buffer of poplar trees which has since been demolished by the applicant. It also required a masonry fence which other industrial "neighbors" have complied with, while Novatek has only provided a chain link fence with fillers.
- The equipment used at the present facility is noisy and difficult to live by. There is equipment both indoors and outdoors. Sound levels have exceeded allowable levels according to city code, however Novatek has ignored

requests by the city to reduce those levels.

- Industrial encroachment would degrade the unique character of the neighborhood.
- Novatek has violated city zoning ordinances by housing multiple families in the houses they have already purchased on Mountain Vista Lane. The city has taken Novatek to court but Novatek has still not complied with existing ordinances.
- Novatek has been unresponsive to neighborhood concerns and the CEO of the company has voiced his intent to buy all the houses on Mountain Vista Lane in order to house employees. The majority of the neighbors do not wish to sell their homes and would like to be able to enjoy their homes and their neighborhood in peace.
- Neighbors understand that there is a light industrial zone next to them. Every other industrial "neighbor" has been fine to live next to, but they feel Novatek has not been a good "neighbor."

#### **APPLICANT RESPONSE**

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

- The applicant is willing to provide any appropriate screening and sound mitigation found to be necessary above and beyond the requirements of the zoning ordinance.
- The majority of the manufacturing noise comes from the diamond press coolers. The proposed new building would buffer the coolers from the home.
- The location of the new expansion has to be near the existing diamond presses for efficiency.

#### **PLANNING COMMISSION DISCUSSION**

Key points discussed by the Planning Commission included the following:

- Ed Jones (who is a sound engineer) commented that insufficient evidence exists to guarantee that appropriate screening and sound mitigation would indeed occur if the additional building were to be built. He would like to see further study provided by the applicant that they could actually reduce the current noise that is occurring at the site.
- Ross Flom indicated that past disregard for zoning ordinance requirements is a high risk for future disregard of necessary buffering and consideration of adjacent neighbors. He would be leery of recommending approval if the existing owner is already violating current zoning ordinance.
- Diane Christensen stated that although the remaining lots would meet the minimum R1.10 zoning requirements, the additional length of rear yard presently provides a larger, more desirable buffer from the incompatible industrial use. This unique condition could be a reason for keeping the lots as they are. She stated that where incompatible uses exist side by side in this unusual neighborhood paradigm, boundaries have to be respected. It appears that Novatek has not respected boundaries up until now, and allowing the company to encroach into the neighborhood, placing industrial uses even closer to residential homes, is not justified.

#### **FINDINGS / BASIS OF PLANNING COMMISSION DETERMINATION**

The Planning Commission identified the following findings as the basis of this decision or recommendation:

- A recommendation for approval would be premature based on concerns raised during the discussion.
- No benefit to the city or the neighborhood, or any entity except Novatek, was identified as a potential positive outcome to the proposed General Plan Amendment.



Planning Commission Chair



Director of Community Development

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

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

Administrative decisions of the Planning Commission (items not marked with an asterisk) **may be appealed** by submitting an application/notice of appeal, with the required application and noticing fees, to the Community Development Department, 330 West 100 South, Provo, Utah, **within fourteen (14) calendar days of the Planning Commission's decision** (Provo City office hours are Monday through Thursday, 7:00 a.m. to 6:00 p.m.).

**BUILDING PERMITS MUST BE OBTAINED BEFORE CONSTRUCTION BEGINS**



**Planning Commission  
Staff Report  
General Plan Amendment  
Hearing Date: October 8, 2014**

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<p>Applicant: Gardner and Associates Staff Coordinator: Austin Corry</p> <p>Property Owner: Novatek Parcel ID#: 35:064:0030; 35:064:0031; 35:064:0032; 35:064:0029</p> <p>Current General Plan Designation: R Proposed General Plan Designation: I Current Zone: R1.10 Acreage: 1.6 Number of Properties: 4</p> <p>*Council Action Required: Yes</p> <p><b><u>ALTERNATIVE ACTIONS</u></b></p> <p>1. <b>Continue</b> to a future date to obtain additional information or to further consider information presented. <i>The next available meeting date is November 12, 2014 5:00 p.m.</i></p> <p>2. <b>Recommend Denial</b> of the proposed General Plan Map and text amendments. <i>This would be a <u>change from the Staff recommendation</u>; the Planning Commission should <u>state new findings</u>.</i></p>	<p><b><u>Current Legal Use:</u></b> Area is currently in the rear yard area of existing one-family residential homes</p> <p><b><u>Neighborhood Issues:</u></b> No issues have been reported to staff regarding this application</p> <p><b><u>Summary of Key Issues:</u></b></p> <ul style="list-style-type: none"> <li>• Only the rear portion of four lots is proposed to be amended</li> <li>• The remaining portion of the four lots still meet the minimum lot standards of the current zoning (R1.10) and will be able to continue as residential uses</li> </ul> <p><b><u>Staff Recommendation:</u></b></p> <p><b><u>Recommend Approval</u></b> of the proposed General Plan Map amendment, as presented in the Staff Report or with changes. <i>This action <u>would be consistent with the recommendation of the Staff Report</u>. Any changes should be stated with the motion.</i></p>
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## **OVERVIEW**

A General Plan Map Amendment from (R) Residential to (I) Industrial designation is needed for the desired rezoning of the underlying zone to Planned Industrial Commercial.

The area identified to be amended is the rear portion of four currently existing residential lots in the R1.10 zone owned by Novatek. The proposed amendment would reduce the lot size and encroach the new rear lot line closer to the home, however, the remaining portions of the lots would all still meet the minimum lot standards of the R1.10 zone and be capable of remaining as residential uses.

## **STAFF ANALYSIS**

1. Provo City Code Section 14.02.020(2) sets forth the following guidelines for consideration of general plan amendments:

*Before recommending an amendment to this Title, the Planning Commission shall determine whether such amendment is in the interest of the public, and is consistent with the goals and policies of the Provo City General Plan. The following guidelines shall be used to determine consistency with the General Plan:*

- (a) *Public purpose for the amendment in question.*

**(Amending the General Plan Map will establish an area for the Novatek campus to expand, creating new jobs and income)**

- (b) *Confirmation that the public purpose is best served by the amendment in question.*

**(Expansion of the Novatek campus on-site will prevent the need for Novatek to find a new parcel of land less central to the existing facilities)**

- (c) *Compatibility of the proposed amendment with General Plan policies, goals, and objectives.*

**(The proposed amendment is a small adjustment to adjacencies that already exist)**

- (d) *Consistency of the proposed amendment with the General Plan's "timing and sequencing" provisions on changes of use, insofar as they are articulated.*

**(There are no timing or sequencing issues)**

- (e) *Potential of the proposed amendment to hinder or obstruct attainment of the General Plan's articulated policies.*

**(No conflicts have been found)**

- (f) *Adverse impacts on adjacent land owners.*

**(The existing legal use of the adjacent properties will be unaltered. Furthermore, the remaining portion of the lots affected will still meet the minimum standards of the underlying zone.)**

- (g) *Verification of correctness in the original zoning or General Plan for the area in question.*

**(The zoning and General Plan have created a potentially incompatible condition that should be considered more in-depth during the next General Plan update)**

- (h) *In cases where a conflict arises between the General Plan Map and General Plan Policies, precedence shall be given to the Plan Policies.*

**(Policies of the General Plan promote the development of industrial and commercial uses in the area)**

## **CONCLUSIONS**

The proposed amendment is a small-scale adjustment to currently existing adjacencies. Staff finds that the proposed General Plan Map amendment adheres to the policies and guidelines specified in the General Plan and is an acceptable solution that does not create a hinderance for adjacent land owners to continue using their property under the existing legal use.

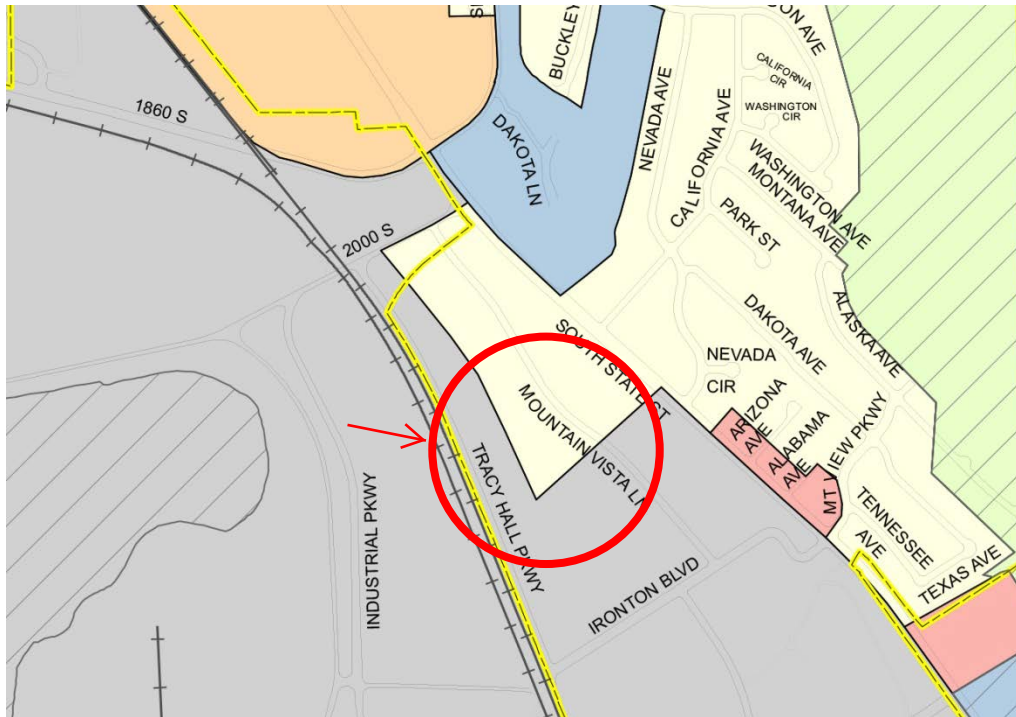
### **STAFF RECOMMENDATION**

Forward a recommendation to the Municipal Council in favor of the proposed General Plan Map amendment, as presented in the Staff Report. Any changes to this recommendation should be stated with the motion.

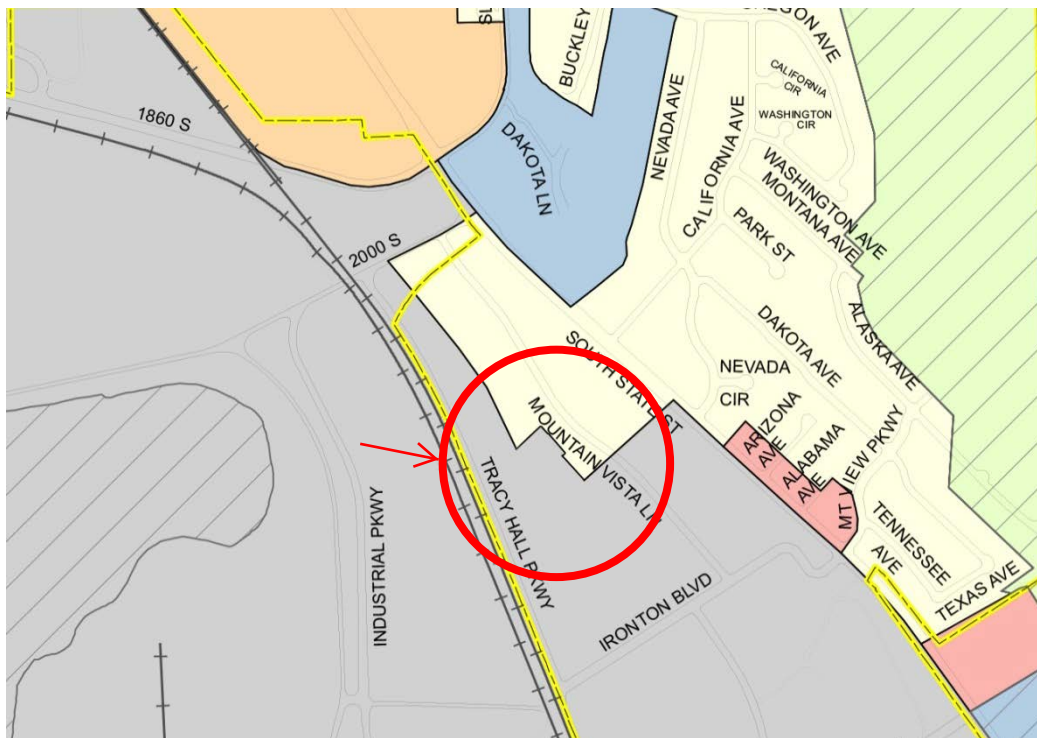
### **ATTACHMENTS**

1. General Plan Map Amendment Exhibit
2. Novatek Property Exhibit

ATTACHMENT 1 – GENERAL PLAN MAP AMENDMENT EXHIBIT



Current General Plan Map



Proposed General Plan Map



ATTACHMENT 2 – NOVATEK PROPERTY EXHIBIT

