

*Approved April 7, 2020*

**MINUTES OF THE DRAPER CITY SPECIAL COUNCIL MEETING HELD ON TUESDAY, MARCH 19, 2020, IN THE DRAPER CITY ADMINISTRATION CONFERENCE ROOM, 1020 EAST PIONEER ROAD, DRAPER, UTAH**

PRESENT: Mayor Troy K. Walker

**PARTICIPATING**

ELECTRONICALLY: Councilmembers Mike Green, Tasha Lowery, Fred Lowry, Cal Roberts, and Marsha Vawdrey

STAFF PRESENT: David Dobbins, City Manager; Mike Barker, City Attorney; Laura Oscarson, City Recorder; Russ Fox, Assistant City Manager; Jennifer Jastremsky, Planner; Christiana Oliver, Community Development Director, Jake Sorensen, Network Administrator

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This meeting was held electronically. Councilmembers, staff, and residents were able to participate through Zoom.us.

**Business Meeting**

**1.0 Call to Order: Mayor Troy K. Walker**

Mayor Troy K. Walker explained that this meeting was held electronically, pursuant to Draper City Resolution #14-5A. He explained that as restrictions take place across the State for limited public gatherings, Draper City wanted to make sure everyone interested in participating in City Council meetings could do so in a manner that they felt most comfortable.

He said that there were several ways to participate such as listening live through the City's Website or by joining the Zoom meeting. If participants wanted to provide feedback, they could email their comments to [public.comment@draper.ut.us](mailto:public.comment@draper.ut.us) up until 5:00 p.m. the day of the meeting, upon which those comments would be read aloud in the meeting if so indicated and be a part of the public record.

**2.0 Consent Items**

- a. **Approval of Resolution #20-16, appointing Lisa Wilcox to the Tree Commission**
- b. **Approval of Resolution #20-17, appointing Pimmie Lopez as an alternate to the Draper City Arena Advisory Board**
- c. **Approval of Resolution #20-18, appointing Britnee Johnston as Communications Director for Draper City**
- d. **Approval of Ordinance No. 1429, amending Titles 2 and 3 regarding the use of electronic meetings for the City Council and Planning Commission**

e. **Approval of Ordinance No. 1430, establishing Temporary Land Use Regulations Regarding Temporary Signs, approve Ordinance No. 1430 to suspend Sections 9-29-080(D)(3) and (4) of the Draper City Municipal Code for temporary signage.**

**2.1 Councilmember Marsha Vawdrey moved to approve the consent items. Council Member Fred Lowry seconded the motion.**

**2.2 A roll call vote was taken with Councilmembers Green, Lowery, Lowry, Roberts, and Vawdrey, voting in favor. The motion passed unanimously.**

**3.0 Action Item: Approval of Ordinance #1410 and #1411, Offices on 7th Land Use Map Amendment, Zoning Map Amendment, and Development Agreement Request, on the request of Keaton Morton for a land use map amendment from Residential Medium Density to Neighborhood Commercial (CN), a zoning map amendment from RA2 to CN, and a development agreement on 0.99 acres of property located at 681 East Pioneer Rd and 12388 South 700 East.**

3.1 Jennifer Jastremsky, Planner, stated that the Council heard about the item on March 10<sup>th</sup>, 2020 and were interested in potential use restriction as a part of the agreement. Ms. Jastremsky displayed a table that summarized the requested restrictions and said that the applicant had some additional uses, charter and private schools, they wanted to add to the Permitted Use table.

The applicant was present online to be able to answer questions.

Councilmember Tasha Lowery said that she saw the note added to private schools about limiting the number of students to 15 or less. She wanted to know if there was a similar restriction for charter school use.

Ms. Jastremsky said there was not as charter schools were considered public schools and therefore had legal rights as to where they can be located and what the State allows them to have for the number of students.

Councilmember Fred Lowry asked if there was the possibility to include the private school, limited to 15 students, but not include the charter school in the permitted use.

Ms. Jastremsky said she would recommend having that conversation with the applicant directly tonight.

Mike Barker, City Attorney, explained that charter schools are a permitted use in all zones per State law. He said that the ability of an applicant to waive the right for a charter school to be permitted in a development agreement was a legal gray area. He suggested that they allow the charter school so that down the line there was not a question about if the development agreement was within state code. He said to either accept charter schools as a permitted use or to deny the application.

Councilmember Cal Roberts asked Mr. Barker if the Council denied the application if the property owner would still have the right to put a charter school there. Mr. Barker said yes. Councilmember Roberts said given this the charter school question doesn't seem relevant because regardless of if they accept the application or not, a charter school could go there.

Dave Morton, the applicant, thanked the Council and staff for all of their efforts. He said that overall they intend to move forward as they have expressed previously.

Councilmember Marsha Vawdrey asked Mr. Barker if the development agreement states that this will be an office building. Mr. Barker said that it did and that the project was described as an office building. He read the definition of the project in the development agreement, "the total development of an office building to be constructed on the property pursuant to the MDA with associated public and private facilities." He said that they have tried to be clear that the development agreement contemplates the construction of an office building.

Councilmember Fred Lowry wanted to restate that it is clearly stated in the development agreement that the property will be used as an office building. Mr. Barker, City Attorney, said yes. Councilmember Lowry continued that as an office building, some of those commercial uses would consist of The Piano Place for piano instruction, as opposed to being considered a private school.

Christina Oliver, Community Development Director, said that would be one of the uses allowed in the use table proposal.

Ms. Jastremsky said that The Piano Place would be considered a personal instruction service, not a private school.

Councilmember Tasha Lowery asked the applicant why they brought forth the change at this time. She wanted to know why they were only now asking to have private and charter schools included in the Permitted Use table.

Mr. Morton said that they didn't. He felt that this was what was agreed upon before the City Council Meeting. He said that when they received the list from the City about an hour before the meeting, there were 22 items added which were to be restricted uses. The applicant was willing to agree to all of them. The only one he indicated to David Dobbins, City Manager, was that it be restricted it to public schools, but the applicant didn't want there to be a risk that something being interpreted by a tenant or to somehow risk his use so he simply indicated we would limit it to public schools. But the charter and private he felt were fine based on the March 10<sup>th</sup> meeting. He said that to clarify the agreement, the two items were added to the Permitted Use table, but in their minds, they were already a part of the agreement at the March 10<sup>th</sup> meeting.

Councilmember Tasha Lowery asked if there was confusion about if The Piano Place was a school use.

Mr. Morton said that although they think that The Piano Place could be a tenant, they don't know of future tenants who might also be instructional type groups. He did say that it was their

goal to be certain that those uses wouldn't be restricted. He said that the 22 items were added by the City at the last minute, not by them the applicant.

Councilmember Tasha Lowery clarified that the applicant understands that The Piano Place would fall under the designation of personal instructional service.

Mr. Morton said they do understand that. He said that the private and charter schools were being included on the Permitted Use table to ensure that there wasn't a gray area. He said that David Dobbins, City Manager, could vouch for their earlier considerations regarding clarity of use.

Councilmember Marsha Vawdrey recognized that they don't have an option regarding charter schools, but she preferred that they not open the private school option.

Councilmembers Tasha Lowery and Fred Lowry agreed, especially since The Piano Place would be considered a personal instruction service. Councilmember Lowry said he didn't understand why they would need to include the private school, as restricting them would not limit the applicant in the types of uses they have proposed.

Mr. Morton said that it would be important that the Council and staff understand the specific definitions for a private school versus personal instruction. He said that as an applicant he just wanted to make sure that with a different Council or staff that they wouldn't have a problem with this type of tenant.

Councilmember Fred Lowry said that they agreed with the applicant that they didn't want a gray area either and that was the reason why the Council was being so thorough. He asked if the applicant was willing to share other potential tenants that might fall into this gray area so that the Council could better understand.

Mr. Morton said that it would be something like Mathnasium. He asked for the Council and staff to be more specific in how they distinguished between personal instruction and a private school.

Mr. Barker said that both of the terms, personal instruction, and private schools were included in the City Code. He then spoke to the applicant's concern and said that the development agreement locks in the code at the time the development agreement was approved. He said that because of this, future staff would have to refer back to the code that was in place at the time of the agreement.

Ms. Jastremsky said that was correct and worked to pull up the City code with the definitions.

While Ms. Jastremsky did that, Councilmember Fred Lowry asked Mr. Barker if they excluded the private schools now, but later the applicant (or whoever is developing that property) wanted to put in a private school, would they have to submit an amendment to the development agreement. Mr. Barker said that was correct. Councilmember Lowry emphasized that restricting

private schools now didn't shut the door for private schools in the future, but just meant that the Council would have to approve an application for such at a later date.

Jennifer Jastremsky, Planner, read the definitions as outlined in section 9-3-040: DEFINITIONS of the City Code. She said a personal instruction service was defined as:

An establishment primarily engaged in the provision of informational, instructional, personal improvement and similar services of a non-professional nature. Typical uses include art and music schools, driving and computer instruction, gymnastic and dance studios, handicraft or hobby instruction, health and fitness studios, martial arts training, and swimming clubs.

And that private schools were defined as:

A school serving at least two (2) of any of the grades K through 12 which is not part of the public education system, and does not exclusively include any privately owned or run preschool for children, but which may include a privately owned or run preschool as an accessory or secondary use to the school.

She summarized that it serves as a primary K-12 school that is separate from public education.

Mr. Morton asked for clarification about schools such as Sunrise Elementary that include a Chinese immersion program which he would consider additional instruction or tutoring. He asked if, based on Ms. Jastremsky's understanding, that would not fall under a private school.

Ms. Jastremsky said it would fall under a personal instruction service.

There was confusion about how a program that provided tutoring to help students make up work to be able to move onto the next grade would be classified.

Ms. Jastremsky said that typically those programs, such as summer school, were in conjunction with public school systems so they would not typically be offered by a private company or be eligible at this location.

**3.2 Councilmember Mike Green moved to approve Ordinance #1410 and #1411 Offices on 7th Land Use Map Amendment, Zoning Map Amendment, and Development Agreement with the change to exempt private schools as a permitted use. Councilmember Fred Lowry seconded the motion.**

3.3 Councilmember Marsha Vawdrey stated that the nature of Pioneer Road changed when it was determined that it would be an east-west corridor. She said that although she would have preferred it hadn't, that decision did change that area. She said that they need to make decisions based on what exists now and be proactive about how they plan for that area. This could mean creating a special zone to be able to buffer the north side from the commercial area that had begun

to develop on the south side, that would need to be specific, limiting uses, size, scope, architectural features, etc.

Councilmember Tasha Lowery agreed with Councilmember Vawdrey. She added that she felt that height needed to be considered in the area and that the Council needed to be consistent as they moved forward.

Councilmember Fred Lowry also agreed and mentioned previous discussions about where they needed to implement the buffer between the residential and commercial areas. He echoed that the natural buffer would be Pioneer Road and that a special zone could be created to match the town center. He stated that the current proposal submitted by the applicant does demonstrate less impact on residents in the surrounding area. He said that if a private school is something that needs to be addressed in the future, there is an opportunity for the applicant to ask for an amendment in the future.

Councilmember Cal Roberts stated that he stands with the Council for the need to create a buffer zone to distinguish between the residential and commercial zones. He said this case was difficult because there were competing interests: those between the neighbors who are resistant to changes and those of a property owner who would like to get the most from the property.

**3.4 A roll call vote was taken with Councilmembers Green, Lowery, Lowry, Roberts, and Vawdrey, voting in favor. The motion passed unanimously.**

Councilmember Fred Lowery wanted to thank the Fire and Police Chief and staff in that department for their fantastic job at this difficult time. He also wanted to thank David Dobbins, City Manager, as well as administrative staff for their hard work and flexibility. He said that it was important for the applicant to know that it was a rarity in the state and country that a city had found a way to continue to function despite COVID-19.

Mayor Troy K. Walker also acknowledged the administrative team and how well the staff transitioned in this fluid situation. He noted that they had been in the pandemic mode for one week.

**4.0 Adjournment**

**4.1 Councilmember Mike Green moved to adjourn the meeting.**

**4.2 A roll call vote was taken with Councilmembers Green, Lowery, Lowry, Roberts, and Vawdrey, voting in favor. The motion passed unanimously.**

4.3 The meeting was adjourned at 6:06 p.m.