

Approved May 19, 2020

MINUTES OF THE DRAPER CITY COUNCIL MEETING HELD ON TUESDAY, APRIL 21, 2020, IN THE DRAPER CITY COUNCIL CHAMBERS, 1020 EAST PIONEER ROAD, DRAPER, UTAH

PRESENT: Mayor Troy K. Walker, and Councilmembers Mike Green, Tasha Lowery, Fred Lowry, Cal Roberts, and Marsha Vawdrey

EXCUSED:

STAFF PRESENT: David Dobbins, City Manager; Mike Barker, City Attorney; Laura Oscarson, City Recorder; Russ Fox, Assistant City Manager; Britnee Johnston, Communications Director

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

Study Meeting

1.0 Training: Open and Public Meetings and Ethics

1.1 Mike Barker, City Attorney, explained that to meet their compliance with state law in regards to the Open and Public Meetings Act, the state auditor provided a short presentation of the Open and Public Meetings Act that Mr. Barker played for those in attendance. He said he felt the act was pretty self-explanatory and that there were no significant changes to the act by the legislator this year.

Mr. Barker played the eight-minute video and was available for questions.

1.2 Councilmember Fred Lowry asked about emergency meetings and if the City is in a declared state of emergency justified holding emergency meetings when pressing matters needed to be addressed.

Mr. Barker responded that typically an emergency meeting is held to address something that has come up and a City Council cannot give proper notice. He explained that in his discussion with other attorneys, emergency meetings were typically justified in the cases of natural disasters or an instance that was so immediate or needed attention that could not meet the 24-hour notice requirement. He said that there wasn't anything with the pandemic at this point that would necessitate such a meeting.

1.3 Mr. Barker continued his Ethics training that was focused on an incident that occurred in Utah County that he felt provided a solid framework to talk about some of the principles behind the ethics ordinance. The headline that caught Mr. Barker's attention read, "Three Utah County Prosecutors resigned after a defense attorney paid for their Utah Jazz tickets" and was published in the Salt Lake Tribune on March 17, 2020.

He explained that the headline points to the fact that everyone has friends with different means who could have access to tickets or other perks that might want to share them and he felt it was important to address under what circumstances city officials could accompany someone to a Utah Jazz game and if accepting a ticket to a Utah Jazz game was always going to create an ethical quandary.

To better understand the situation, Mr. Barker provided some background information including that the defense attorney and prosecutors were known to be long-time friends. Although those involved did split some of the pre-meal costs, it was clear that the defense attorney covered the bill for the seats, each worth between \$200 and \$300. He noted that although there was no evidence that the defense attorney provided the tickets in return for a favorable plea, that wasn't the reason why the issue was unethical. Rather, the ethical issue was that the action created public mistrust in the justice system.

Mr. Barker then quoted the goals of Draper City's Code of Ethics:

Through this comprehensive ethics code and the related goals, the city will strive to (a) elevate the level of ethics in local government; (b) provide honest and responsible service to the citizens of Draper City, and (c) maintain the confidence and trust of the public that this government deserves.

He emphasized how accepting Jazz tickets could challenge the goals that Draper has outlined for the City.

Returning to statements made by Utah County Attorney David Leavitt, Mr. Barker explained that accepting the tickets puts into question if the attorneys could be impartial moving forward because, as Mr. Leavitt stated, "[we sometimes] decided cases on relationships, not based on fact." This duty of impartiality is reflected in Draper City Code stating the duty, "to treat all citizens the same by not giving special consideration, treatment or advantage to anyone" (DCM 19-1-030 (C)).

In looking more deeply at the case, it was reported that all three of the prosecutors denied that the receipt of the tickets influenced how they did their work. For Mr. Barker, this created the question, "does the acceptance of a gift, irrespective of its cost, have to have a concrete and tangible influence on how one performs their duties for it to be unethical."

In response to his question, he said that no, it doesn't have to have a tangible influence, but the perception of such an action could cause concern. Concerning gifts, he explained that Draper City adopted the state code which reads:

A gift includes: (a) a loan at an interest rate substantially lower than the commercial rate than currently prevailing or (b) compensation received for private services rendered at rates sustainably exceeding fair market value for the services (UCA 10-3-1304).

He emphasized that there are certain times city officials cannot accept gifts, regardless of their value. These times include if the gift (a) would tend to improperly influence a reasonable person to depart from the faithful and impartial discharge of public duties, or (b) ... is primarily a reward for official action taken. He also stated that under no circumstance should officials accept a bribe (UCA 76-8-105). However, there are circumstances that officials can accept gifts. These times include (a) the occasional nonpecuniary gift having a value less than \$50; (b) acceptance of a publicly presented award in recognition of service; (c) acceptance of a bona fide loan made in the ordinary course of business; (d) acceptance of a political campaign contribution; (e) acceptance of any other gift which would have been offered to that person if they were not a city employee.

Next, Mr. Barker talked about conflict of interest. In the case of the Jazz tickets, both the defense attorney and the prosecutors made claims that they not only didn't intend to influence but would not be influenced by the exchange of the tickets. However, conflict of interest goes beyond an actual conflict that may occur (overt acts) but includes the perception the public has of a conflict of interest. This distinction was present in the Draper City Code DCMC 19-1-080:

- (a) Conduct yourself in your official and private affairs so as not to give a reasonable basis for the impression that you can be improperly influenced in the performance of your public duties.
- (b) Conduct yourselves as to maintain public confidence in your performance of the public trust in the government you represent.
- (c) Avoid even the appearance of conflict between your public duties and private interests.

It is this third point that Mr. Barker felt the parties involved in the Jazz tickets incident "missed the boat" by not recognizing the perception of a conflict of interest. Based on this, Mr. Barker recommended that the Council avoid activities that create a **real or perceived** perception that their loyalties were divided between their public responsibilities and private life.

Draper City Code states:

Every city officer who has an "interest," as defined in section 19-1-02 of this title, in any proposed legislation before the city body shall disclose on the record of the city body the nature and extent of such interest. Such officer shall leave the room during the discussion concerning the legislation and not participate in the discussion or vote upon the matter (DCMC 19-2-010)

To define an interest, Mr. Barker also referenced Draper City Code (DCMC 19-1-020) which defines an interest as a direct or indirect pecuniary benefit or a direct or indirect material benefit that accrues to you¹ [the official, relation, or business entity] as a result of

¹ "You" referred to (a) relations by blood or marriage closer than the 4th degree of consanguinity – divorce or separation does not terminate such relationships; (b) any person or business entity with whom a contractual relationship exists

an official act or action by or with the city. Contracts or transactions which by their terms confer the opportunity and right to realize the same benefits to all persons or property similarly situated are excepted.

Mr. Barker also reminded the Council that another aspect of the City Code is that officials should not:

- (a) reacquire an interest in any contract or transaction that requires an official act of the city (DCMC 19-2-020 (A)).
- (b) disclose confidential information regarding a contract or transaction requiring city action or use confidential information to advance your or other financial interests (DCMC 19-2-030).
- (c) accept employment that might impair independence of judgment or otherwise (DCMC 19-1-070).
- (d) appear before the city body on behalf of someone else, other than your spouse or minor children with the exception of a council member appearing before city bodies on behalf of a constituent (DCMC 19-1-070).

With conflict, interest, and you defined, Mr. Barker outlined the disclosure rule as outlined in the city code (DCMC 19-2-010) which states that officials must disclose that they have an interest in any proposed legislation before the city body on the record of that body and leave the room to not participate in the discussion or vote. Also, there are duties under state law. One is obligated to disclose when:

- (a) one has an interest in a business including being an employee, officer, or owner with an interest value of \$2,000 or more to the Mayor. One must include in the disclosure the position held and nature of the interest. There is an ongoing duty to disclose one's interest if one's position or the value of one's interest changes.
- (b) one has an interest in a business entity doing or anticipating doing business with the city (UCA 10-3-1307).
- (c) One has personal interest or investments that may create a conflict of interest between personal interests and public duties (UCA 10-3-1308). Draper City code requires recusal if proposed legislation comes before the City Council.

Mr. Barker explained that as the City Attorney he can make public officers' lives easier by encouraging city officers and employees to act ethically at all times as outlined in DCMC 19-3-020. To do this he said he was able to provide written advisory opinions upon request that is binding and protects the officer/employee who acts in good faith. The resulting opinion becomes a public document, but the person who requested the opinion remains confidential (DCMC 19-3-010).

To conclude, Mr. Barker, City Attorney, stated that in response to violations of city or state code, penalties could include misdemeanor and/or felony criminal charges, the voiding of

with the city officer or employee; (c) any business entity in which the city officer or employee is an officer, director, etc. or who employs the city officer or employees; (d) any business entity which the officer or employee owns more than 5% of the stock or legal or beneficial ownership.

contracts or transactions by the City, and the removal from office if someone is known to have intentionally violated the gift prohibitions or to have entered into a transaction in violation of disclosure requirements (UCA 10-3-1310 & 1312).

1.4 Councilmember Fred Lowry stated that when in doubt he felt that the Council should just ask Mr. Barker to ensure that there is no question that there isn't a conflict.

2.0 Discussion: Potential New Commercial Buffer Zone, a new zone that would act as a buffer between the existing residential and commercial zones.

2.1 Maryann Pickering, Planner, explained that there had been some concerns raised recently about the impact of commercial development on adjacent residential areas. The City Council had requested that staff look into the possible creation of a new zone to help reduce the impact. That was the basis of the new zone that would be discussed.

Ms. Pickering stated that the proposal was largely based on the standards of the Town Center. Residential uses would not be permitted. Staff provided a map of properties in proximity to the Town Center zone that would need to conform to the adopted Town Center design guidelines. The zone would be an option for developers, but the City has no intention to rezone any of the existing properties. Ms. Pickering then outlined the proposed zone highlights:

- (a) Parking requirements in the new zone would stay the same as those outlined in the current code, but the layout of parking would need to be to the side or rear of buildings like in the Town Center area.
- (b) Cross access would be required at the time of development or in the future after securing a recorded easement for the property.
- (c) Lighting standards would also be the same as the current code. There would be some specific requirements for service elements. These include enclosures around trash and mechanical equipment as are already standards in the Town Center that these items must be screened or incorporated into the building architecture.
- (d) Landscaping requirements would also be in alignment with the current code and the standards outlined for the Town Center. Because the zone is intended to provide a buffer, there would be a minimum six-foot-tall fencing requirement next to residential areas that must be decorative masonry. There would be a maximum three-foot fencing height in the front of buildings that would not permit vinyl fencing.
- (e) Signs would comply with existing code, but would not include special standards like in the Town Center.
- (f) Buildings would be permitted to have a maximum height of two stories or 25 feet. Also, the zone would require horizontal and vertical variation that would result in breaking up the building architecture. One entrance must be oriented towards the street as is required in the Town Center zone. Properties adjacent to the Town Center zone would be required to comply with Town Center guidelines, but properties not within the proximity of the Town Center would only be required to comply with the current code design standards.

- (g) Also similar to the Town Center would be the standards for the reuse of historic buildings. The code allows deviations in setbacks and other standards for individuals to redevelop their properties to encourage the preservation of existing structures. Any building on the National, State, or Local historic inventory would be required to be reviewed by the Historic Preservation Commission.
- (h) The permitted and conditional uses in the proposed zone would be similar to the Town Center, however, they would be less intensive.

Ms. Pickering then displayed the map of the suggested properties to be incorporated in the proposed zone. She explained that the area cross-hatched in blue is the current Town Center zone and the properties colored in yellow are those that they proposed would need to maintain the Town Center guidelines as they fell within a 200-foot buffer of the Town Center. This area was slightly extended going south on Fort Street to Willow Springs Lane and going west on Pioneer Road to 600 East.

Finally, Ms. Pickering outlined potential actions that could be taken by the Council. These included (1) the request to make changes to the text or map of properties subject to Town Center guidelines, (2) the directive to staff to move forward to hold public hearings to create the zone, or (3) the directive to wait until a future date to move forward. Ms. Pickering then opened the meeting for questions, opinions, and discussion.

- 2.2 Councilmember Marsha Vawdrey commented that she would like some additional time to look at the proposal given the significance of the change.
- 2.3 Christina Oliver, Community Development Director, said that the intention tonight was to present the proposal to the Council and then give councilmembers time to digest the options. Over the next few weeks, staff intended to come back to councilmembers individually to get their feedback before moving forward with the outcome to the Planning Commission. She wanted to highlight that staff did not include residential commercial development in the new zone which was something that had been requested previously by the Council to be included.
- 2.4 Councilmember Fred Lowry commented that when he looks at the map of properties subject to the Town Center guidelines, there was one area he felt needed addition review along 12300 South and 700 East where the south end of 12300 South was subject to the Town Center guidelines, whereas to the north of 12300 South was not. He felt that both sides of 12300 South should be subject to the same guidelines.

Ms. Pickering explained that the blue cross-hatching represents the current areas under the Town Center guidelines. Over the past five years, the area Councilmember Lowry pointed to had received requests to extend the Town Center zone to the north to allow for residential-commercial properties. Some of these types of structures were already being developed in that area which would be excluded in the proposed buffer zone. Properties within 200-feet were included and squared off. The staff could extend the distance of the buffer area.

Mayor Walker clarified the area that Councilmember Lowry was concerned about.

Councilmember Fred Lowry asked when staff would like to bring the item back to the Council for approval.

Ms. Oliver said that would be directed by the Council, their feedback, and when they would be comfortable with staff providing text to the Planning Commission. She explained that each councilmember would be contacted individually. After receiving each member's feedback, staff would then create a new draft for the proposed zone which would again be looked at by the Council.

3.0 Council/Manager Reports

- 3.1 Councilmember Fred Lowry discussed the Green Clover Park. He stated that a resident had expressed concerns about the fencing that borders the west side of the park. The resident reported that some individuals have cut through the fence to cross the railroad tracks to the west of the park. He stated that the fence had already been repaired several times, but he was concerned about how the City could protect themselves against the hazard created by the railroad tracks. He suggested that the City install a block wall, but was unsure if that was financially feasible. He also pointed out that south of the park at the corner of Vista Station Boulevard there was a property owned by Utah Transit Authority (UTA) that does not have a barrier between the property and the railroad track. He wondered if the City could enter into a partnership with UTA or Union Pacific to better protect this area.

David Dobbins, City Manager, responded that staff has fixed the chain link fence numerous times, including in the past week. He explained that although it is a quiet zone, UTA and Union Pacific will use their horns when they see people in the corridor outside of the fence. He said that the only option to keep people from cutting through the area would be a masonry wall. However, if that wall was installed, people could just go south of the park and access the corridor from the property owned by UTA and the City has no property rights to put up a wall on that property.

- 3.2 Rhett Ogden, Parks and Recreation Director, added that although one of the access points that often gets cut is at the park, there is also City property to the north where the City has a trail. That was another place that often gets cut. Because of this, the fence would need to line not only the park's boundary but also the north boundary through the five or six homes that align the trail.

Mayor Walker wanted to know why this was a City responsibility as opposed to the responsibility of Union Pacific.

Councilmember Fred Lowry said that was his question; did the City have any leverage to help get Union Pacific's attention on the issue.

Mike Barker, City Attorney, said that he could look into the issue of what the City's exposure was in terms of being liable, as well as getting an estimate on the cost of a masonry wall.

Mayor Walker stated that the City could ask Union Pacific if they care that people are on their property. He said that if they do care, it would seem as though they would want to put up the wall.

Mr. Ogden said that if Union Pacific cared was the true question. He said that in his experience working with the railroad, it seems as though their stance tends to be that if a city wants to keep people out, they should fence it. He said that often they take the stance that the railroad was there long before the park, so it wasn't their problem. He said that the City does have this problem in other areas.

Mayor Walker said that it was a lot cheaper to replace chain link fences if that was Union Pacific's attitude. He asked if Union Pacific doesn't care why does the City?

Councilmember Fred Lowry said that he felt it was valuable to have it on record that the City did their due diligence and alerted Union Pacific to the problem.

Mayor Walker said that the City could write Union Pacific a letter to alert them of the trespassing on their property.

Mike Barker, City Attorney, said that Union Pacific and other railroads probably have statutes that give them immunity along their rights-of-way. Because of this, he doubts that the railroad would feel as though they have any liability.

3.3 Councilmember Marsha Vawdrey wanted to talk about the dumpster program. She wanted to know if the dumpster program had been working well, as many people have not been able to get to the landfill. She wanted to know if the program had been successful overall and if there had been any problems with people taking advantage of the program and overfilling the dumpsters.

Scott Cooley, Public Works Director, said that the dumpster program was working. The program was structured such that if someone needed a dumpster a resident could rent one from the City. However, the City had encountered problems with community rentals of dumpsters. For example, in SunCrest, they ordered four dumpsters last weekend and by the time the City got the third dumpster there, the second dumpster was full. He said he was unsure how to resolve that part of the problem as the City didn't want to discourage community efforts to keep neighborhoods clean.

Councilmember Tasha Lowery thanked Scott Cooley and his staff for doing an excellent job cleaning up a big mess. She said that perhaps they need to think about putting a hold on the large community clean-ups during the period of the pandemic. She said that it seems as though the smaller dumpster rentals between two or three neighbors have gone

smoothly, it has just been the larger community efforts that have been more challenging to manage.

Mr. Cooley agreed with Councilmember Lowery's assessment of the situation.

Councilmember Tasha Lowery asked if Mr. Cooley had considered a supervisory position to have someone from the HOA monitor the dropping off of items with the community dumpsters.

Mr. Cooley said they did have someone present to monitor the dumpsters, who received a lot of anger and yelling. He said that he understood that it was a frustrating situation; people are cooped up in their homes and want to clean house resulting in an abundance of trash that doesn't fit in their regular cans. He said that he hopes that the number of vouchers the City has distributed to take items to the landfill will help with the situation.

Councilmember Tasha Lowery said that it was her impression that the landfill vouchers felt like a better and safer option for her.

Mr. Cooley said that the question was more about citizen's access to the landfill: i.e., do they have a vehicle that can transport the trash.

Councilmember Marsha Vawdrey said that the reason why she brought up the issue was that the dumpster rentals seem to be the City's go-to solution in response to requests for community clean-ups. She said that overall, she felt as though the program was working, but that unless staff communicated otherwise, the Council would not know if there was a problem.

Mr. Cooley agreed that he felt the program was working except for the neighborhood dumpster rentals because they don't have enough personnel or dumpster to accommodate neighborhoods of that size.

Councilmember Tasha Lowery said that she felt there was some sort of math to this that outlined the number of households one dumpster could accommodate. She also suggested that they designate community clean up days to specific neighborhoods in SunCrest, as opposed to allowing the whole area access to dumpsters on the same day. Mr. Cooley said that it seems as though a lot of the restrictions the City puts in place are not adhered to.

Councilmember Cal Roberts asked if there was a way to ration out the use of the dumpsters through a voucher program. He wondered if staff could estimate the number of loads that could get thrown in the dumpster and then force the community group or HOA to allocate a limited amount of those to their residences and then self-regulate with the condition that if the renting organization couldn't figure out how to do it in an orderly manner the City would no longer be able to provide the service.

Mr. Cooley said that even when the City takes the dumpsters away, people have still left trash in those areas. He said the rules only work for as long as people adhere to them. He

said that the volume of items they are receiving during these cleanup days suggests the amount of trash and large items that need to be taken care of.

Councilmember Cal Roberts asked if it was just a question of capacity. He asked if expanding the capacity (the number of dumpsters) would solve the problem.

Mr. Cooley said that with the size of the current staff the City can accommodate the number of dumpsters the City has for rent and pick those dumpsters up with the regular trash pick-up. Increasing the number of dumpsters would put a heavier burden on the system. He reiterated that what they are seeing is the indication of a need for a program to dispose of large household items. He said that the only area they have seen issues has been up in SunCrest.

- 3.4 John Eining, Police Chief, wanted to go over some statistics from March and April in comparison to previous years. He said that they have seen a significant increase in the number of cases of domestic violence. Assaults, however, were down 44% compared to this time last year. Residential burglaries were down 86% from previous years. Vehicle burglaries were down 9%. Criminal mischief was down 54%. Drug offenses were down 74%. DUIs were down 42%. Domestic violence incidents were up 180%. This number includes verbal domestic incidents where no physical violence has occurred, but the argument had escalated and gotten out of hand. Fraud cases were down 64%. Sex offenses involving a child were down 33%. Traffic accidents were down 50%. Citations were down 70%. The number of people arrested was down 74%. He said that some of this was by design as officers were asked not to have nonessential contact with people.

Councilmember Tasha Lowery clarified the number Chief Eining reported in the increase of domestic violence cases.

John Eining, Police Chief, explained that this year in March and April they have had 42 domestic violence cases, compared to last year where they had 15 cases. He said that these same statistics are being seen across the country.

- 3.5 Russ Fox, Assistant City Manager, said that staff has started to market the Deer Ridge property and hired CBRE to start looking at the sale of that property. He said those numbers could be reviewed during a closed meeting. However, one of the recommendations they provided was to divide the property into multiple lots as opposed to trying to sell it as a single 10-acre property. They said that there was more value if they sold them as five to seven smaller acre lots than as a single property. He wanted the Council's perspective on if they still wanted to sell the property as a single lot, or if he could go ahead and have a developer come in and do one to two-acre parcels.

Councilmember Tasha Lowery stated that she felt it was unfortunate that the City is moving forward with the sale of the property right now when the market is crashing.

Councilmember Fred Lowry said that he would prefer to try and avoid having the property divided up into smaller lots.

Councilmember Tasha Lowery said that the idea was to have the property be more like estate lots, the part of the market that was being hit the hardest right now.

Russ Fox, Assistant City Manager, said that according to real estate agents, they have had some properties that have still moved recently. He said they might have a longer time frame to market the property, but they could put the sale of the property on hold if that was the Council's preference.

Mayor Walker clarified that the property would only be viable if it was six lots. Mr. Fox said it would carry more value if the property was broken up, but that it could be sold however the City wanted it to be sold.

David Dobbins, City Manager, said that the property could be sold for more if the City allowed the property to be subdivided. However, the property would still have value if sold as an estate lot. He said that for him it was the tradeoff that the City might get more money, but also get more pushback. He said that the City could put the property out as an estate lot and see what bids they received. They would not be obligated to accept any of the offers they received. He said that staff just needed to know if the City was willing to accept less money by selling it as an estate lot.

Councilmember Tasha Lowery said that it was more important to her that the City sell the lot correctly, in the way the Council told residents they would sell the property than to get more money.

Councilmember Cal Roberts said he agreed with Councilmember Lowery's statement. He asked what was the incremental value of the property if it were to be subdivided versus sold as an estate lot. Russ Fox, Assistant City Manager, responded that if the property was broken up into five to seven lots the City could receive \$400,000-\$480,000 a lot. He was unsure of the estimated selling price of the property as a single lot. Councilmember Roberts also asked if there was a sense of how long the property would stay on the market. Mr. Fox said that he had not received any information like that yet, but was expecting more information soon. Councilmember Roberts reiterated that he was more interested in starting by selling the property as a larger estate lot and letting it sit on the market to be able to see what they could get. He said he was more concerned with preserving the quality of life and the open space of that area than making a lot of money.

Councilmember Marsha Vawdrey said she agreed with what had been said previously about the property. She also stated that she doesn't feel as though the bottom is falling out of the real estate market right now as people are still buying and selling. She suggested they just sit with where they were now.

David Dobbins, City Manager, clarified that staff will market the property as one estate lot. They will receive offers, but if they don't find them acceptable, staff will decline the offers to continue to see what they might receive. They don't feel any rush to accept an offer.

Councilmember Tasha Lowery said she was okay with them marketing two five-acre properties, but she didn't want to see it subdivided into small lots.

Russ Fox, Assistant City Manager, clarified that they were not talking about allowing a large subdivision, but creating several one-acre to two-acre lots.

Councilmember Fred Lowry clarified that this would be five to six total parcels. Mr. Fox said that was correct, but that they could proceed to sell the property as one or two parcels.

** *Councilmember Mike Green left the meeting at 7:00 pm.*

Business Meeting

1.0 Call to Order: Mayor Troy K. Walker

3.0 Proclamation: Child Abuse Prevention Month

Mayor Walker stated that it be proclaimed that Draper City supports the proclamation of the Child Abuse Prevention Month.

3.0 Consent Items

- a. **Approval of April 7, 2020, City Council Meeting Minutes**
- b. **Approval of Resolution #20-20, adopting the 2019 Salt Lake County Hazard Mitigation Plan**
- c. **Approval of Resolution #20-21, reappointing Lisa Fowler as an alternate member of the Draper City Planning Commission**

3.1 **Councilmember Marsha Vawdrey moved to approve the consent items. Councilmember Tasha Lowery seconded the motion.**

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

4.0 Action Item: Ordinance #1432, Brooks Lane 1st Development Agreement Amendment (Legislative Action), a request by Steve Johns, representing Kaskade Homes, LLC, for approval of the 1st Amendment to the Development Agreement on approximately 2.223 acres of property in the RM1 (Multi-Family Residential) Zone in order to relocate and widen the pedestrian access easement to open space within the Brooks Lane Subdivision.

4.1 Pete Kane, Planner, explained that the request was for an amendment to the first development agreement for the Brooks Lane subdivision. He explained that the property was located off 300 East located near Bangerter Highway and has a land use designation of residential medium-high density and was zoned RM1. The land use designation and zoning map amendments were approved in November of 2017 when the development agreement was approved. The development agreement sets the requirements for the

development of the property as detached single-family homes, in addition to establishing the lot size. The development agreement required a five-foot-wide pedestrian access easement between lots 107 and 108. The applicant has requested the easement between lots 107 and 108 be widened to eight feet. Mr. Kane showed the existing plat that was approved in May of 2019. The pedestrian access was necessary to provide access between Share Lane, the north-south private lane in the middle of the property, that would connect the area to the open space. He said that the issue was that utilities had already been put in, including utility boxes that were installed within the pedestrian access, making it difficult for pedestrians to utilize the area. To address this, the developer wants to move the easement one block south from being between lots 105 & 106 to being between lots 106 & 107. By approving the amendment, the Council would allow the plot to be revised without requiring a plot amendment. Mr. Kane was available for questions.

4.2 Councilmember Fred Lowry summarized that in passing the amendment, they would essentially narrow lots 106 and 107. Mr. Kane responded that the lots would remain the same, but the use of the lots would change. It essentially creates a four-foot access easement on those properties, but because of the setback requirements, a building would not have been able to be constructed in those areas anyway.

4.3 Steve Johns, applicant, felt that Mr. Kane had explained the situation accurately.

4.3 Councilmember Tasha Lowery moved to approve Ordinance #1432, Brooks Lane 1st Development Agreement Amendment. Councilmember Marsha Vawdrey seconded the motion.

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

5.0 Public Hearing: Ordinance #1433, BL Smith Zoning Map Amendment (Legislative Action), on the request of LaMont Smith for approval of a zoning map amendment to change the zoning on the property located at 999 East 13200 South from RA1 (Residential Agricultural, 40,000 sq. ft. minimum) to RA2 (Residential Agricultural, 20,000 sq. ft. minimum).

** *City Council went into recess at 7:20 p.m. to give time for a technical issue.*

** *The Council reconvened at 7:28 p.m.*

5.1 Jennifer Jastremsky, Planner, oriented the Council. She said that the property was located off of 13200 South just east of Court Street. The property owner has two parcels that exist as is with access off of a private lane. One of the lots is deficient in acreage, so the applicant proposed that the property be rezoned so that the minimum lot size meets that of his property and complies with the code. Both of the properties are current within the RA1 zone and the applicant is requesting the RA2 zone with a minimum lot requirement of 20,000 square feet. Based on the zoning map there are already parcels directly west of the property that was zoned RA2. The property is the residential medium density land use that supports both acre and half-acre lots. Ms. Jastremsky then displayed images of the property

under discussion. She said that if the applicant was successful in their re-zone request, the plan would be to create a minor subdivision to create two lots on the private lane. One of the proposed lots would have the existing house and the second property would be a buildable lot. The Planning Commission recommended approval on a vote of five to zero.

5.2 LaMont Smith, applicant, explained that the piece of property had been in his family before 1980 when he acquired the property and it was zoned as an acre. He said the properties surrounding the property voted at a City Council meeting to rezone to half-acre properties, but he chose to stay at an acre to keep some cattle on the properties back pasture. He said that he no longer uses the property for that purpose and decided that it would be appropriate to eliminate the one-acre island. He said that both his property and the property to the east were both zoned at one acre. He said that in rezoning the property to RA2 he hoped to create to half-acre lots. He said he was available to answer any questions the Council might have.

5.3 Councilmember Tasha Lowery asked if the applicant had an anticipated use for the property.

Mr. Smith said that the use would be to establish a second half-acre lot that could be given to one of his children.

5.4 **Mayor Walker opened the meeting for public comment. No one came forward so Mayor Walker closed the meeting.**

5.6 **Councilmember Vawdrey moved to approve Ordinance #1433, BL Smith Zoning Map Amendment. Councilmember Fred Lowry seconded the motion.**

5.7 Councilmember Marsha Vawdrey stated that she felt that the request was a reasonable zone change.

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

6.0 **Public Hearing: Ordinance #1436, Big Willow Creek 2nd Amendment Development Agreement Request (Legislative Action), on the request of Bryon Prince, representing Ivory Development, LLC, for a development agreement on 20.9 acres of property located approximately at 491 West 11400 South. The amendment will authorize various deviations to the Draper City Municipal Code Title 9, Land Use and Development Standards, in regards to density allocation and minimum lot size.**

6.1 Jennifer Jastremsky, Planner, reminded the Council of the location of the Big Willow Creek development that was approved in 2017 with 115 dwelling units. Since the time of approval, the applicant made two rezone requests some of which were added to the development agreement and some requests that were not added. The areas that were added to the Big Willow Creek development had split land use designations, medium density residential—which allows for two to four units per acre making quarter and third-acre lots—

and residential high density—which allows for up to 12 dwellings per land acre. The zoning on the properties was changed to R4, or quarter-acre lots, and RM2, which is the residential multi-family with up to 12 dwellings per acre. The development agreement that was put on the RM2 area limited density to 9 units per acre.

With the second amendment to the development agreement, the applicant proposed to incorporate all of the subject property outlined on the zoning map into the development agreement for Big Willow Creek. The amendment would also designate how the approved densities would be allocated on the properties. The amendment would not impact the 115 units that were originally proposed. It would impact the 141 dwelling units that were approved in the subject property that would be incorporated into the development. The applicant has not asked for an increase in density but to look at how the density would be spread across the new total area of the development. The development agreement would still require that any development meet the minimum lot requirement sizes in the RM2 zone. For a single-family detached lot, the subject property would be required to have a minimum lot size of 4,000 square feet, as per the RM2 zone. All single-family attached lots in the subject property would be required to have a minimum lot size of 1,000 square feet, as per the RM2 zone.

The applicant also wanted to address phase two of the development agreement. The applicant issued a final subdivision plat application for phase two that had been under review. This phase was not approved due to the subdivision only having one access point. Draper City Municipal Code (DCMC 17-5-030 G) limits developments to 30 lots unless a second access is provided. Big Willow Creek has an access point from 11400 South, with a future connection to the south to the Jensen Farms Subdivision. Phase 1A and 1B contain the 30 allowed lots of this one access point. Jensen Farms had been approved, but the improvements had not been constructed. The second amendment would allow the applicant to begin construction of the subdivision improvements of phase two before the secondary access being provided and before subdivision approval. The applicant acknowledges in the agreement that the plat would not be eligible for recordation until the secondary access is completed and that any installation of improvements is at their economic risks. The staff has concerns about this provision and has outlined the concerns in Exhibit A of the staff report. The Planning Commission also had concerns about the language of this part of the proposed amendment.

Before addressing how the language in the development agreement could be changed, Ms. Jastremsky wanted to make sure everyone on the Council was aware of the location of the project being discussed. She noted the connection point under discussion on the aerial map that would connect the Big Willow and Jensen Farms developments. She explained that with the Big Willow Creek phase 1 development the applicant provided a sub-road to the southern boundary line to be able to create a connection with the Jensen Farms development. The Jensen Farms phase one development also includes that discussed connection to Big Willow within their phase 1B plat. With the approval of the plat, the City acquired a public right of way easement across the future right of way. Ms. Jastremsky presented some images of where the Jensen Farm and Big Willow improvements end. She

added that some of the hold up with the developments was that there needed to be a bridge constructed over Willow Creek.

The Planning Commission recommended approval on a four to one vote with the finding that approval was subject to the City Council amending the language to its satisfaction regarding the timing of the secondary access with the approval and record action of the plat and the issuance of building permits. Ms. Jastremsky noted that since then, the Planning Commission meeting staff had worked with the applicant to amend the language.

Currently, the amendment for secondary access references paragraph 15 that reads:

Developer shall have the right to commence construction of phase two of the project prior to establishing a second access to the project through the Jensen Farms subdivision. Ivory shall not record a final plat or seek building permits for homes in phase two until a secondary access connection is established. The secondary access shall consist of the full public right-of-way improvements, including but not limited to curb, gutter, sidewalk, paved asphalt street, etc. Developer recognizes the economic risk of commencing construction prior to its ability to record a plat and sell lots.

The staff proposed version reads with key changes in the language underlined:

Developer shall, upon final approval of the final plat of phase two of the project and after obtaining the necessary permits, have the right to commence construction of the proposed site improvements of phase two prior to the construction of a second access to the project through the Jensen Farms subdivision. A public right-of-way easement has been dedicated to the City over the land in Jensen Farms for the construction of the second access road to Big Willow. Developer has the right to design and construct a second access road through Jensen Farms at Developer's sole cost. Developer acknowledges that the City cannot control the timing of the construction of the access road from Big Willow (across Jensen Farms) to 700 West. Developer recognizes the economic risk of commencing construction prior to its ability to record a plat and sell lots.

The proposed language stipulates that Ivory would not seek building permits for homes in phase two until the City signs the final plat and that the City will not sign the phase two final plat without one of the following occurring:

- (1) The final drawings for a second access to Big Willow phase two must be approved by the City and a bond must be paid for the second access road improvements, or
- (2) The construction of an approved second access to Big Willow phase two had been completed and accepted by the City.

The proposed language also stipulates that the secondary access shall consist of the full public right of way improvements, including, but not limited to curb, gutter, sidewalk,

pavement, asphalt, street, and other requirements as outlined in Draper City Municipal Code. Furthermore, the City will not:

- (1) Accept a public improvement bond for the improvements in phase two without the payment of a public improvement bond for an approved second access to Big Willow phase two
- (2) Accept the public improvements for phase two until the phase two final plat is recorded and a warranty bond for said improvements has been paid, and
- (3) Issue any building permits for the construction of any homes in phase two until the second access to phase two was completed and accepted by the City

Ms. Jastremsky furthered that the applicant requested some changes to the language proposed by staff and presented that to the Council. This language states that the City will help facilitate a reimbursement agreement between the applicant and Jensen Farms developer if the applicant constructs the secondary access, given that the access is technically part of the Jensen Farms subdivision and consequently the responsibility of the Jensen Farms developer.

David Dobbins, City Manager, added that he has been the person speaking with the applicant about the proposed language changes. He stated that the applicant has agreed on the terms as outlined by Ms. Jastremsky regarding the permits and timelines. What they requested was the additional language in red. He said that there were some vagueness and ambiguity about the applicant's request that the City facilitate a reimbursement agreement between them and the Jensen Farms developers. While Mr. Dobbins understands the intent and feels that it was a fair request if Ivory is building the infrastructure outside of their development, they should be reimbursed. The City, however, doesn't quite have the language to capture this request tonight. What the City staff and the applicant are wrestling with is finding the right language that both protects the City, but also gives the applicant the right to seek reimbursement.

- 6.2 Bryon Prince, applicant, thanked Ms. Jastremsky for her efforts to communicate a complicated situation. He wanted to clarify that as a developer they were not seeking additional density. When they acquired the additional 20 acres last year allowing for 141 additional dwellings they wanted to be able to build more single-family dwellings instead of doing more townhomes. In regards to the access issue, Mr. Prince said that the approval of the Big Willow Creek development in 2017 corresponded with the death of a young child on 700 West. Because of this, the Council was concerned about there being a road connection from 11400 South to 700 West and therefore required both Big Willow Creek and Jensen Farms to construct roads connecting the two subdivisions in the first phase. Ivory developers agreed to this and built the road, where the original developers of Jensen Farms found a way to get out of that obligation through the sale of land to the school district and the LDS Church, leaving Big Willow Creek in a tough spot when they didn't develop the connection. Because of this, Ivory wants to be able to start the site improvements so that they can have lots going into next year with the hope that the Jensen Farm developers follow through with building the connection later this year. In regards to the reimbursement

agreement, Ivory is willing to work with staff to develop that language so that they can move forward with construction and keep contractors busy.

Councilmember Fred Lowry thanked Byron Prince, the applicant, for providing the Council with some additional information and background on the history of the two developments. He said that he appreciated that the developer was not adding to the density, but spreading it out by constructing additional single-family homes. He was concerned, however, that the item should just be continued to ensure that the right language was included in the development agreement concerning reimbursement.

6.3 Mayor Walker stated that this was a public hearing and asked if there was anyone from the public who wanted to address the Council.

6.4 Mayor Walker opened the public hearing.

Russ Fox, Assistant City Manager, stated that he thought there was one person on the line who was interested in making a public comment. He stated that if that was true, could the resident utilize the raise hand function in Zoom so that he could unmute the resident.

6.5 While waiting for the resident to make a public comment, David Dobbins, City Manager, stated that several comments were submitted online regarding this item. These comments were provided to the Council via email but needed to be acknowledged on the public record.

6.6 Craig Holt, resident, explained that he had been around since the Big Willow Creek Development started. He said that Jensen Farms was supposed to put the bridge in during their first phase of development. He said that he has people who want to build homes within the development who are unable to because they cannot get access and he was frustrated because this problem has been going on for a long time.

Mr. Dobbins stated that one of the reasons why there was a delay in development was because the applicant was waiting for approval from the Army Corps of Engineers which took significantly longer than expected. The applicant had been working through that with the City and had a legitimate reason for the delay.

6.6 Mayor Walker acknowledged that Mr. Holt was the first public comment through the online meeting format and thanked Mr. Holt for his participation before he closed the public hearing.

6.7 Councilmember Tasha Lowery asked Mr. Prince if he was able to see the comments that were submitted to the public record.

Mr. Prince stated that he did have the chance to review the comments that were submitted for public record.

Councilmember Tasha Lowery stated that the comments concerned an increase in traffic and an increase in density. She said that it seemed to her that the applicant had already addressed those concerns given that they were not requesting an increase in density.

Mr. Prince said again that they did not intend to increase the density. He added that when Big Willow Creek acquired the additional acreage and the additional 141 dwelling allotment, they did conduct a traffic study that was analyzed by staff. This was considered by the Council when the properties and land use were changed. He said that they simply want to be able to distribute the densities differently to be able to build more single-family dwellings.

Given this, Councilmember Tasha Lowery asked if the claim could be made that they were reducing the densities.

Mr. Prince said that the counter-argument was that if they build larger single-family homes would that result in more people in a single unit versus a townhome that had more cars. He said that ultimately, it would be hard to argue that there would be an increase in the density.

6.8 Councilmember Tasha Lowery moved to continue Ordinance #1436, Big Willow Creek 2nd Amendment Development Agreement Request to the May 5, 2020, City Council meeting. Councilmember Fred Lowry seconded the motion.

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

7.0 Public Hearing: Ordinance #1435, Restaurant Sign Text Amendment (Legislative Action), on the request of Justin Grubb with YESCO LLC to amend Chapter 9-26-070(7)(e) of the Draper City Municipal Code (DCMC) to accommodate electronic message menu boards for restaurant drive-throughs.

7.1 Travis Van Ekelburg, Planner, explained that the applicant was looking to make some more modern upgrades to their restaurant drive-through menus to be able to use electronic message center signs and liquid crystal signs so that they are easier for customers to read. This would allow them to switch their menus throughout the day. On April 2, 2020, the Planning Commission voted five to zero in favor of the applicant's request for a text amendment. In section 9-26-070 of the Draper City Municipal Code on permitted on premises permanent signs, item (7) part (e) would read:

Such signs shall be illuminated internally, backlit or illuminated digitally by means of EMC or LCD subject to requirements in section 9-26-060 (G) and the illumination standards found in section 9-26-090 (D)(1)(f) and section 9-20-040 (B).

Mr. Van Ekelburg was available for questions.

7.2 Councilmember Tasha Lowery asked if these sorts of signs were already in place at some drive-throughs. Mr. Van Ekelenburg said that he did not know.

7.3 Justin Grubb, the applicant, said that he was present to answer questions. He said that they were looking for the text change to support some restaurants that were looking to upgrade and make it easier for them to control their signs and have them look a little cleaner.

7.4 Councilmember Fred Lowry asked if the applicant had encountered the use of backlighting or neon lights with any of the proposed signs.

Mr. Grubb said that most of them are essentially backlit. He said that the signs utilized LED lights and that neon lighting was out the door and had, “become a lost art.” He said that this was proposed to help businesses keep up with advances in technology.

7.5 Mayor Walker opened the public hearing. No one was online to speak so Mayor Walker closed the public hearing.

7.8 Councilmember Fred Lowry moved to approve Ordinance #1435, Restaurant Sign Text Amendment. Councilmember Tasha Lowery seconded the motion.

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

8.0 Public Hearing: Ordinance #1434 Highline CSD Signage Text A (Legislative Action), on the request of Justin Grubb with YESCO LLC for approval of a Text Amendment to the sign area requirements in the Draper City Municipal Code (DCMC) Section 9-18K-070 Signage in the Highline Commercial Special District (CSD) Zone. S

8.1 Travis Van Ekelenburg, Planner, explained that the applicant, Justin Grubb, had requested a text amendment to increase the allowed sign area in the CSD Highline zone which is smaller than what is allowed in the Draper City Municipal Code regarding the regular sign ordinance. Mr. Van Ekelenburg explained that in September of 2016 the City Council approved ordinance #1215 creating the Highline Commercial Special District (CSD). The creation of the district was for a mix of uses including retail, office, and multi-family housing. The site is approximately 70.6 acres in size. The applicant stated that viewing distances from vehicles or traffic on I-15 or surrounding streets make the current sign size maximums incompatible and results in signs that are too small for large buildings such as PluralSight and the Point of View Apartments. The sign area in the text amendment would include the rest of the area of the Highline CSD and proposes a standard that is more compatible with the regular Draper City Municipal Code 9-26-070. The text amendment would also provide a maximum size per building façade for the CSD Highline zone area that will enable size controls ensuring that the proper sign size can be created to fit into particular existing and future developments. On April 2, 2020, the Planning Commission recommended approval of the text amendment with a vote of five to zero. Mr. Van Ekelenburg was available for questions.

- 8.2 Mayor Walker opened the public hearing. No one was online for the public hearing, so Mayor Walker closed the public hearing.**
- 8.3 Councilmember Vawdrey moved to approve Ordinance #1434, Highline CSD Signage Text Amendment. Councilmember Tasha Lowery seconded the motion.**
- 8.4 A roll call vote was taken with Councilmembers Lowery, Lowry, Roberts, and Vawdrey, voting in favor. The motion passed unanimously.**
- 9.0 Adjournment**
- 9.1 Councilmember Fred Lowry moved to adjourn the meeting,**
- 9.2 A roll call vote was taken with Councilmembers Lowery, Lowry, Roberts, and Vawdrey, voting in favor. The motion passed unanimously.**
- 9.3 The meeting adjourned at 8:10 p.m.