

SOUTH JORDAN CITY
CITY COUNCIL AND PLANNING COMMISSION
ELECTRONIC STUDY MEETING

April 6, 2021

Present: Mayor Dawn R. Ramsey, Council Member Patrick Harris, Council Member Brad Marlor, Council Member Jason McGuire, Council Member Don Shelton, Council Member Tamara Zander, Planning Commission Chair Michelle Hollist, Planning Commissioner Steve Catmull, Planning Commissioner Vice Chair Nathan Gedge, Planning Commissioner Trevor Darby, Planning Commissioner Mike Peirce, CM Gary Whatcott, ACM Dustin Lewis, City Attorney Ryan Loose, Assistant City Attorney Greg Simonsen, Director of Government Affairs Melinda Seager, Engineering Director Brad Klavano, Deputy Police Chief Jason Knight, Administrative Services Director Spencer Kyle, Associate Director of Parks, Colby Hill, Planning Director Steven Schaefermeyer, City Planner Greg Schindler, Public Works Associate Director Raymond Garrison, CFO Sunil Naidu, City Recorder Anna Crookston, Communications Manager Rachael VanCleave, City Commerce Director Brian Preece, Strategic Services Director Don Tingey, Fire Chief Chris Dawson, IT Director Jon Day, Meeting Transcriptionist Diana Baun

Others: Attendance electronically via Zoom.

4:36 PM
STUDY MEETING

A. Welcome, Roll Call and Introduction: *By Mayor Dawn R. Ramsey*

Mayor Ramsey welcomed everyone present. She introduced the electronic meeting.

B. Invocation: *By Council Member, Patrick Harris*

Council Member Patrick Harris offered the invocation.

Mayor Ramsey asked for a motion to amend the study meeting agenda to switch the order of item E. and F.

Council Member Marlor made a motion to amend the agenda switching the order of item E. and F. Council Member McGuire seconded the motion. The vote was unanimous in favor.

C. Mayor and Council Coordination

Council Member Zander asked if masks would be required in the chambers at the next meeting and Mayor Ramsey noted that would be discussed later in the meeting, but said everyone will be spaced out and those of us on the dais will not need to wear masks. However, those who wish to continue wearing a mask are welcome to.

D. Discussion/Review of Regular Council Meeting

Council Member Shelton asked about the Redwood Road access project, he could not tell what part of the project was in the RDA and what part wasn't and asked for some clarification.

CM Gary Whatcott said the map shows the RDA boundary. He noted it is a new entrance just south of the library, it's next to the new project that's going on.

City Commerce Director Brian Preece said the property just north of the power station is in the RDA, that's the property we sold. The parcel next to it is not in the RDA. North and south of that parcel are in the RDA, just the one parcel in exhibit B is not in the RDA. They needed to use that parcel to create the road as half of the road will be on our old parcel, the one Boyd Brown bought, and the other half will be on the parcel that is outside of the RDA. One of the reasons it was brought to the council is because they have been working on this project for several years and the project area has run out. There is money left in it, but Mr. J. Craig Smith, RDA attorney, felt since the project has been terminated they should bring it to the council and have them authorize that amount.

Council Member Shelton said he presumed spending money outside of the RDA was not a problem.

Mr. Preece said it is not, state law allows it as long as it serves the RDA project area and this road is being used to go into the project area.

Mr. Whatcott noted it will also open up some other development to occur along that roadway and improve the RDA area. The entrance north of the new street will be closed and create a new parcel, so this creates new space for development.

Council Member Shelton asked if the city owns those parcels or if they are owned by other parties?

Mr. Whatcott said they are owned by other parties.

Mr. Preece added they will be dedicated to the city as a city road as we do with other subdivisions.

Mr. Whatcott said the parcels themselves are owned by other parties and will be developed by those other parties as they also participated in some of the road dedication.

Council Member Shelton noted it seems early in the year to be addressing the fire item on the regular meeting agenda. He asked to confirm that this isn't a prohibition for a specific period of time, that this prohibition is indefinite?

Fire Chief Chris Dawson responded yes, this applies year-round as it covers smoky materials in high-risk areas. This has been the case in the past as well. This year they have mirrored the resolution closer to the state language which is found in state law so that we are only covering those areas specifically called out in state law.

Council Member Shelton asked specifically about Item #3 on the resolution, under Section 2 “prohibited acts” – within 200 feet of specific areas, he asked if it is related to where he lives and if someone wanted to smoke a pipe, would they be able to do that on his property?

Chief Dawson said no, this is more related to fall-out zones and the 200-foot rule, is specific to fireworks. Property owners can use their property to do whatever they like within the laws.

Council Member Shelton asked about a fire pit in his backyard, and if that was allowed since he is within 200 feet of the areas described.

Chief Dawson said in the strictest sense that might be the case, however they deal with fire pits specifically in fire code and those are addressed there. There is no prohibition towards using a fire pit on his property as long as it meets the general fire code requirements. In the case of one and two-family dwellings, the code is quite broad and there are very few limitations to being able to use that on private property.

E. Discussion Item: Planning Commission and City Council Discussion.

Mayor Ramsey is grateful to meet with the Planning Commission and for their service to the city. She asked the Planning Commission to introduce themselves, beginning with Chair Michelle Hollist.

Chair Hollist said she has lived in South Jordan since 2004 and has served on the Planning Commission for about 2 years now. She has 4 children whom all attend public school here in South Jordan and they have found this to be a great community to raise a family.

Commissioner Steven Catmull said he has been on the commission for a little over a year. He has been living in South Jordan for 11 years and in the South Valley for 20 years. He and his family love living here and he is happy to serve.

Commissioner Trevor Darby said he and his wife moved to South Jordan in 1999 and have been here for almost 23 years. They love it, have 6 kids and they have all gone through the schooling system in the city and they have been pleased with it.

Commissioner Nathan Gedge said he represents District 1 with Council Member Harris. He has been on the Planning Commission of South Jordan since last year. He currently serves as Vice-Chair to Chairwoman Hollist. He was born and raised in South Jordan over 40 years ago. His family has lived in South Jordan since 1950. He, his wife, and 4 kids returned to South Jordan – some may know his son who is a custodian with the city as well.

Commissioner Mike Peirce said he has lived in South Jordan in many different homes for about 20 years. They just moved a couple of years ago and couldn't leave the city so they will be here for life. He has been on the commission a little over a year now, he is the alternate and Mayor Ramsey's appointee.

Chair Hollist noted they also have Commissioner Morrissey who has served the longest but he was unable to join us today.

Mayor Ramsey believes our residents are in good hands as we have really good people who are serving to try to represent the best interests of this city as we continue to grow at unprecedented rates and work hard to plan well and do all we can to maintain the quality of life we all love so much about this city. She noted it is fun to look back and see how her life has crossed paths with so many here in different ways before the seats they are all in now.

Director of Planning Steven Schaefermeyer said there is a water-efficient landscaping ordinance they will be bringing forward. Some of the principles already exist in our code. Over the years we have enforced them in different ways, but they are now being asked by Jordan Valley to make some changes and adopt some regulations for water-efficient landscaping. There has been a declaration of emergency for drought and Jordan Valley is continually looking at its water supply. Several years ago they came up with a tiered system for water rates and more than a year ago they passed a resolution with an attached “model ordinance” of water-efficient standards, specifically for new construction. Now they are telling cities they need to adopt this otherwise they will impose a different rate system that will increase water prices for the city. So, in an effort to do that and avoid those increases in water rates they have prepared an amendment to our code. It will be coming to the Planning Commission this month and City Council next month. He was going to show a video tonight but in order to leave enough time for the rest of the meeting, he decided he would email that out, along with their proposed ordinance. There will be both a clean version of the ordinance for everyone to read through, as well as one that shows the changes they are making. Before everyone’s respective meetings, if anyone wants to reach out to Public Works Director Jason Rasmussen, Associate Director of Parks Colby Hill, or himself please do so. It has been coordination between departments that deal with park strips and new development and Public Works to figure out how they are going to implement those standards. In the email he will include a link to the video Jordan Valley prepared, it is about four and a half minutes long. It gives their perspective on what they are trying to accomplish as well as our interpretation of their requirements. He said he has asked them how much leeway they have, and we have some leeway but not a lot if we want to stay in the same tier of water rates. Last, he will include a link to Herriman’s efforts. They let out a little bit and have adopted their version of the requirements and he will send those out so everyone can get a sense of what other communities are doing.

Mr. Schaefermeyer moved on to discuss the items with the Planning Commission. The first one he brought up is regarding Daybreak and there is a concern about residents coming to planning meetings. They are wondering how we can improve communication about what Daybreak is and what they are allowed to do, what the purpose of the public hearings are. He thinks it would be good for the City Council to understand their concerns and get their perspective.

Chair Hollist said they had a recent meeting where residents came shocked at what could go in next to single-family homes. They felt they had been misled, that there were materials Daybreak had provided that indicated there might be open space or parks space. She thinks there is a lack of education as far as what a planned community is, but there is also a concern that they were naming specific builders, specific realtors who were making word of mouth promises as to what would or would not be next door. The recent application was that of townhomes that ranged as tall as 45 feet, very close to the homes with a very small offset; an offset that wouldn’t be acceptable in the main part of South Jordan. Chair Hollist is aware the planned community has everything locked up, it was all agreed, and settled back when it was first started. The main concern is citizens coming to the

meetings unaware that this is the case and being verbally promised or shown literature in one form or another that has misled them as to what would be allowed in their area.

Mayor Ramsey added the same thing happened to her when they built their home in 2004 in Sunstone. They are surrounded by Daybreak but the only neighborhood that isn't Daybreak. When they built their home they were told the empty parcel at the end of their street was going to be a park and she asked about that when she first became mayor. Mr. Whatcott told her that was never going to be a park. Her home went in right before anything started in Daybreak so there was nothing around her and she was told there was nothing planned, they didn't even know about Daybreak at the time and it was already being planned behind the scenes. She can appreciate the concern on the part of residents. She asked Mr. Schaefermeyer to address this, to explain what Daybreak can and can't do and noted many times even the city doesn't get advance notice of what they're doing and it comes as a surprise.

Commissioner Catmull added a few times it has happened he feels like, although shocked, some of the participants who come from the public get informed well by city staff and he is appreciative of that "just in time" communication that happens. He thinks in the end a lot of them feel frustrated and he would love to find a way to get in front of that, but he also knows it is very hard to do because people only care when they are immediately impacted.

Mr. Schaefermeyer said they hear that with Daybreak, but also across the city. A realtor said it, or they called the city and spoke with an unnamed person, or a neighbor or someone else said a field would never be developed as a subdivision or would always be housing, etc. Maybe the distinction with Daybreak is such a large zone and there is flexibility, along with a Master Development Agreement (MDA) we cannot change. Maybe it is a bit unique for Daybreak, that you don't have those opportunities for a rezone when these discussions come up. He indicated they had some ideas of how they could better communicate to the public, but as Commissioner Catmull said, a lot of times the public won't engage until it's on their front doorstep. He is curious to what extent as a city we want to try to stay in front of some of these issues, or what the effort that we are looking for is. He agreed if he has the chance to talk through something with a resident they may not be happy by the end of it and may show up to the meeting, but they hopefully understand a bit more the context of why these meetings occur.

Mayor Ramsey asked for everyone's thoughts.

Commissioner Catmull said this is a hard thing to stay ahead of because of Daybreak's unique situation.

Council Member Brad Marlor said unfortunately he thinks it's a case of self-informing about where these residents are going to live. If you don't do it in advance it's a little bit late after you've moved in to find out what's going to go in next to you. He said when he moved here he was very deliberate in making sure nothing was going on in his subdivision. He found out the big open space behind his house in Taylorsville eventually became Bangerter highway, but he was told by a realtor it would never be developed because the Central Utah Water Project was back there. Unfortunately the residents are a little bit behind the times, they are asking questions when they should have been informing themselves to start with. They want someone to blame besides themselves. The question is, how do we inform people who are not asking questions relevant to where they are moving?

Council Member Tamara Zander noted Council Member Marlor said something important, everyone has a responsibility for due diligence, and as a city we can't take on that role, nor should we. When a buyer buys a home and the realtor says "this is going to be a park" they then need to do their homework and make sure that's correct. Some realtors are saying things they shouldn't, but the city can't fix that, that needs to be something you hire a professional for to get that information and then call the city and verify it as that is part of the contractual due diligence deadline. The city can't go in and fix it when someone doesn't do their due diligence. However, she has lived in Daybreak for 16 years, about the 20th family to move into the community, and she has seen things shift. They have an MDA, but since she has lived there she has seen maps have amenities that have changed and that is a reality. Unfortunately, the developer can do that as long as they stay within the guidelines. She added within a month of coming on the City Council it all hit the fan with the townhomes they were putting in where there was supposed to be a pool and it was ugly. What is happening now is minor compared to the past in Daybreak, but it is probably not going to stop. She believes the developer has done a better job of putting signage on areas that are going to be developed. In the past, you would see open spaces in Daybreak and they would just sit open, now you see a white sign that says "future development location." It happened after the issue in Founder's Park when they were supposed to get a pool amenity and they put in townhomes. It was fought for about three years but she thinks we could communicate back to the developer some of the frustrations the Planning Commission is getting and they could ask them to do a better job of communicating. They have all kinds of marketing brochures and they spend a boatload of money on marketing to residents and realtors and future residents, but clarity could be something they could improve on, and they have, but due diligence needs to be done by buyers. Other than encouraging the developer to do a better job of communicating, which they have done, she doesn't know what else the city can do.

Mayor Ramsey said we could make sure if something comes to the council or commission related to Daybreak, we could give our own little disclaimer in the meeting every time it comes up as people are moving in all the time and might not be aware of the history. Some sort of reminder there is an MDA in place with Daybreak and they have quite a bit of latitude, and to recognize if there is open space by you it might not stay open space as they have the flexibility to do that.

Council Member Zander noted we have realtors from all over the state selling homes to people in Daybreak and they don't understand the Home Owners Association (HOA) or the MDA. There is a lot of complexity to Daybreak and a lot of people don't understand it. It would be wise for us to communicate back to the developers, the frustrations the Planning Commission is experiencing and the number of residents coming in confused and frustrated. They should hear the feedback because they could remedy some of this on their side.

Mayor Ramsey said she would hope they could because we don't want people to be frustrated, and as Daybreak she would imagine they don't want people frustrated either. If customer service is as important to them as they claim it is, this might be something they could work on. She agreed with giving this feedback directly to them.

Commissioner Catmull asked if there is some lightweight education that could be in the newsletter to highlight "is there an open space near you? Here's what it could mean." Maybe a series of two to three articles over the course of a month, what residents need to be aware of and how things develop with a note "if you're in Daybreak here is what it also could mean." Maybe six to eight points they

could makeover a course of months to catch the 1 in 1,000 to 1 in 2,000 residents that are engaged, for no other reason than they read the newsletter and they become the people who spread that information as things change around the city.

Council Member Zander said educating the residents is always great, and to Commissioner Catmull's point, if you educate 2,000 residents they will go tell three friends and it's a good effort on our part.

Council Member Harris asked if the information should be in a newsletter that goes to everyone, or is there messaging that could be more tailored to the Daybreak through social media or other avenues possibly.

Mayor Ramsey said the message doesn't impact the entire city the same and she doesn't know if it's the city's responsibility to put it out or if they work with Daybreak and have their HOA put out some educational points about how it works.

Council Member Zander agreed and said there is an email that goes out every month to residents. Many of the newsletters are marketing-driven, but there are informational pieces regarding events, so they already have an avenue that would be easy to tap into. They might be willing to do it and tailor it to their messaging, but be doable since they already have that connection. They may not agree to put it in if it's not going to paint them in a good light.

Council Member McGuire said having the HOA spread the information would be a good start but the problem goes beyond Daybreak. They hear the same complaint when a farmer sells their land and development is put in. All the residents whose property backs up to the farm come and say they were promised when they bought their house this would never be developed. He believes this is a message the rest of the city could benefit from as well.

Mr. Schaefermeyer said to Council Member Zander's experience at Founder's Park, it may not always be obvious to the Planning Commission, but the times they get the most people out are when Daybreak has developed, left the area, and then come back to develop the infill. We are not seeing these complaints when it is out where they are doing a lot of development, it is when they come back to an area to develop that we get most of the issues. The question is, how to address that, knowing it's within their right to leave a piece of ground vacant and then come back to develop later.

Council Member Zander said when we communicate with the developer and express these concerns from the Planning Commission when they have an infill project we have noticed an influx of complaints and frustration, we need them to do a better job communicating to those surrounding residents. She added she doesn't think they go out of their way to do that, in fact, she thinks they try to slip stuff into those infill projects without creating any campaign of information and they do the opposite. However, if they heard from us that it has been a challenge for the commission and frustration for the residents, they might step up and do something different or come up with a different communication plan when there is an infill project. She said she believes Mr. Schaefermeyer is correct, it is the infills that have caused huge frustration.

Council Member Marlor said when these residents complain a farmer told them they would never sell or develop the property, unless it has been developed, is a city park, or some other designation, every acre of property within this city will be developed. No one wants to hear that, but we could just

publish that and say we let everybody know it was all going to be developed at some point. No one wants to hear the beautiful farm next to them is going to be a subdivision, or in Daybreak, there are going to be townhomes or condos where they thought there would be single-family homes, but some of those realities are there and how do we communicate that when these folks are so elated to move into their new home. They have blinders on and just want to move in and experience homeownership.

Mayor Ramsey asked the staff if they could communicate these concerns with Daybreak along with the requests and some of the ideas mentioned. The problem is being presented to the Planning Commission, however, it is not necessarily the city's problem or the city's fault. She thinks the responsibility for better communication lies with Daybreak and would like to see a conversation happen with them regarding this.

Mr. Whatcott said this won't be the first time they've heard this, but he will certainly reiterate it again. They tried to put in place some safeguards after the previous issue Council Member Zander mentioned and they will try to do it again. Strategic Services Director Don Tingey has weekly conversations with Daybreak personnel so he will communicate it to those involved when bringing those parcels forward, and maybe including more signage for these infill areas indicating "this property will be developed" as we have done before. We have all seen it, we have put signs at the end of streets for 20+ years that say "this road will go through" or "this road will connect" and yet when the time comes to connect it no one seems to remember the sign. It's a difficult issue to deal with when they have new growth in their area when they had nothing but a field or a farm.

Mayor Ramsey acknowledged as a body we appreciate Daybreak's improved efforts. They have stepped up and done more, but there seem to be quite a few residents moving in who aren't as familiar.

Commissioner Catmull said another piece of feedback that might be helpful is information about the maximum height that might be developed on that site. It's one thing to say "this might be developed" but it's another thing to say "it could be as tall as..." and that's where they have had issues. Residents are upset when the infill is higher than the development around it.

Council Member Harris said he can see where that could be a concern, the only issue is things can change over time and what height requirements are today may be different than what they are down the road. At one point in time, we were talking about a large office building near I-15, which would have been very different from what Council Member Marlor might have been discussing with the council a number of years ago.

Commissioner Catmull said it could note it could be higher than the development next to it.

Council Member Harris said we are getting pressure from the state to increase density and usually increased density can mean increased height too, so even though we may have certain desires, there are push backs that come from the state.

Council Member Shelton said residents are going to feel more pressure as Daybreak develops its Town Center, which is the most intense density in the whole project, and exactly where they are

headed right now. Also, all of this is happening in District 3 so he'd like to be a part of the conversation with Daybreak whenever it's arranged to share some of the residents' concerns as well.

Mr. Whatcott suggested Council Member Shelton contact them on his own. Sometimes it's better to hear it from staff and sometimes it's better to hear it from him as well in different ways. There might be more power with him speaking as a council member without the staff there. He encouraged him to speak with them on his own. The other complexity with Daybreak isn't seen anywhere else in the city because of the flexibility of building when and what whenever they want and we have taken advantage of that as a city over the years. When the downturn came they were able to shift their product to what was more desirable at the time and kept us all afloat. There are good and bad things and we are hearing one portion of it that is difficult, that's the communication side of those who are moving in around these parts. It is becoming more complicated for them, as well as us, as more and more ground is eaten up by development and we have more residents there that are highly engaged than there were before it all started. It is a difficult problem to help communication when they have so much latitude and so much freedom in their choices of product and product design that we normally wouldn't have anywhere else, so it is challenging.

Council Member Shelton said he would reach out to them.

Chair Hollist said the only other thing that was discussed was possibly the ability to either report to the city or Daybreak "bad players." Builders or realtors or people who are consistently sharing information that is not accurate. The last time this was discussed at length, Mr. Langston was there from Daybreak and when the same builder came up a few times he was going to report to his marketing department and have them contact him to discuss it, asking them to please stop sharing information that wasn't accurate.

Council Member Marlor noted his youngest son is building a home right now in Daybreak and he is building on property designated as an elementary school. They had left the area thinking the school district would use it but it is now filled in with foundations of new homes. Things are going to change, it is difficult even for Daybreak to say what is going to go in somewhere when in fact it could change because of dynamics like the market.

Council Member Zander said it would be a good idea for the Planning Commission to have a statement, so when this comes up again they have something clear, accurate, and referring to what Daybreak is allowed to do. She thinks people don't understand how much latitude they have.

Council Member Marlor added it should say whom they can get in contact with if they have further questions.

Mayor Ramsey said having a designated statement with contact information would be a good idea because the concerns are valid and in most cases, one would think expressing them at the Planning Commission meeting would be the right place to remedy these situations. However, this is a unique arrangement, and turning the complaints back to Daybreak would be a good option.

Commissioner Catmull asked if that info could be on the agenda text.

City Attorney Ryan Loose said information is usually in the notices that go out. We put a staff member's name by each agenda item and we could add if they have questions about an agenda item they could contact the staff member. There is something like that for the City Council to contact the City Manager. We could put it in there somewhere and hope people read it, it could also be put in the staff report.

Mr. Schaefermeyer said he didn't see an issue with that and they send out notices within a radius of a subdivision, usually 300 feet, and those are the people who come into meetings or talk to us. They have discussed revising that but usually, there is contact information for whoever the builder is or Daybreak. If they come up with another statement more general to development in Daybreak or the MDA they can do that, they would just want to make sure it stays to roughly a page otherwise the postage costs creep up.

Mr. Loose said since only certain things are required by state law to be presented at a public hearing or required to go to the Planning Commission we do that for the benefit of the residents. If it is frustrating them it may be worth thinking about what things are beneficial and what things are not versus what we do and do not have to do. He would leave that to the council and commission to decide since they know the residents. There is an argument if you don't have those public hearings it is not transparent and you're hiding stuff, but when you do, sometimes people show up thinking they can say something that would bring about a change but find out to be difficult because of the administrative discretion of the commission.

Council Member Shelton asked if it would be possible to create a list for them of items that have to go through the Planning Commission administrative items. He said he feels if we go out and notify people about this and there is nothing they or the Planning Commission can do, and it's administrative, it seems like we are poking the bear. It's not transparent if we're weighing transparency against aggravation, but do we want to purposefully irritate people.

Mr. Loose noted this is a discussion many councils and commissions have had during his tenure here. Regarding transparency, is there any change that can happen? From a city process, they have learned about ditches and other things on the ground they wouldn't necessarily know about and able to ask the developers to look at. Not so much in Daybreak, but certainly in many infill subdivisions and developments. The shortlist is general plans and any land use map amendment or zone change has to go to the commission for their recommendation, these are all legislative items. Short of that, the other things could be done by staff or another body. In the past, many were done by the City Council. He encourages that at the very least, conditional use permits stay with the commission as they are a unique thing and our commission is very well trained and well versed in handling them, even in difficult situations, and does a great job. As a council however they have the discretion to decide those matters, who hears and makes those determinations on the administrative items.

Assistant City Attorney Greg Simonsen said Mr. Loose is correct. He wanted to point out something from the last meeting and added its one thing to come in and tell the people there's nothing that can be done. It's another thing when the Daybreak representative is callous and has an attitude of "so sad, too bad." They can do what they want and he would have liked to have seen them express something like "this is disappointing that this happened." Up until about eight months ago, he was doing legal work for Daybreak, he knows how they operate. He has reviewed their documents, including the closing paperwork and the disclosures the residents receive. He said what everyone said about people

being able to protect themselves is absolutely true because they do get the documents. The MDA shows up on their title report, they are all aware of the Planned Unit Development (PUD) and the requirements. He has also seen the documents where Daybreak works very hard to screen their builders. You don't just go up to Daybreak and buy a lot, you put on a dog and pony show with your financials, and you sign thick documents. Daybreak considers their way of dealing with builder's proprietary, to the point where he can't disclose it, but it is very carefully done. He is surprised by these problems and believes they should have better control over their builders and representatives, and what those people are saying.

Council Member Marlor said he supports having the Planning Commission hear these items. In his earlier years with the City Council, they heard all of these things and he came from being the Chair of the Planning Commission. He said they needed to have them reviewing these items rather than the City Council. He believes the commission should handle these issues as they are capable and qualified.

Mayor Ramsey said they don't want residents, new or long-term, frustrated. There aren't a lot of easy answers but she believes there have been some good ideas presented that they will try and reach out and work on this.

Mayor Ramsey said on April 10th the Utah Legislature determined the mask mandate for the state will come to an end with provisions for times when it will still be required like large gatherings and schools, but not in all cases as numbers go down and vaccine numbers continue to go up. She would like to know how everyone feels about this. She addressed Chair Hollist in regards to the Planning Commission and gave her recommendation that we move back to in-person meetings as a city. The staff has been working hard on the technology and she would like to see the meeting in person distanced. She added people expect technology to be a part of our meetings from now on, the ability to join electronically, and that leaves them with some decisions to be made in regards to receiving public comment only in person or in writing, or do they accept public comment over Zoom. We want people to be able to join remotely, including council members, commissioners, and staff, in addition to members of the public. Having that electronic element is something we want to incorporate and the staff has worked to make that available. She said one concern she has is sitting up on the dais and trying to run a meeting in person and also watching a Zoom monitor. It is going to make the meetings longer and cumbersome, so rather than having the person conducting the meeting also overseeing all that, having a member of the staff looking at the Zoom. For the City Council, that would be IT Director Jon Day and proceeding with the meetings as usual in person but the presentation would be on the monitor in front of each person on the dais in the meetings. She is still torn about allowing public comment from Zoom after the in-person public comments are done. If they do decide to go with electronic public comment, they would ask for everything from everyone that is in person, then asking Mr. Day if there is anyone on Zoom that would like to comment. With the larger monitors they have in the chambers and the individual monitors that are in front of each council member, they would be able to broadcast the individual speaking easily.

Council Member Harris said he is looking at it from many people's perspectives here and he thinks they might have some people in the city who have different comfort levels, whose health might make being there in person more difficult, and he thinks they should consider that some people might not be able to attend in person but they would be interested in participating. Whatever decision we make he wants to make sure that is factored in.

Mayor Ramsey added they must continue to work on an electronic option for anyone who can't be there in person.

Mr. Loose noted if they didn't want to regularly allow comment via Zoom, but they do want to allow those with disabilities or other issues to do it there is already a section of the opening statement on the agenda that states "persons with disabilities who may need assistance should contact the City Manager" and lists the contact number. This allows for discretion in allowing electronic comment as it's not just any member of the public, but those who have contacted the city beforehand and can be announced during the appropriate time.

Council Member Shelton said he likes the idea of resuming in-person meetings. He also likes the idea of continuing the virtual element to the meetings. As far as the public comment, he feels like they have been taking public comment virtually for over a year and he is not sure what the concern is with continuing it. He assumes Mr. Day could find a way to cut someone off if they needed in the virtual setting, but they have yet to experience someone misbehaving during public comments electronically. He added if the person has their camera on, their full name is on the screen, and they tell us their address, that's all the stuff we require when they come in person and we should give the electronic public comment a try.

Council Member Marlor said he supports in-person meetings. If there is a way Mr. Day can allow people to make public comments he thinks it would be great. People will be able to enjoy seeing it live to a higher degree now, having it electronic is a great step forward for all the residents.

Council McGuire echoed Council Members Marlor and Shelton's comments that having the virtual option is what residents expect now. We've been doing it for a year and it's the new expectation. He believes that applies to people being able to give their public comments. This past year has shown they can handle it and he's sure there will be a transition for us to figure out both, but he is confident it can be overcome easily.

Council Member Zander said at first her reaction was she would like to see people come in person to address the council, as it shows more effort and intention. She is 100% in favor of keeping the meetings on some medium where the public can watch. The engagement part is tricky but as Council Member Shelton said we have been doing it for a year, we don't have a lot of people publically comment through Zoom, and the concern would be to make sure there is a kill switch. She doesn't want anyone to be able to broadcast or say inappropriate things. It hasn't been done yet, but things are getting less peaceful and she wouldn't be surprised if that did happen at some point. She added Mr. Day needs to ensure the name is there, the face is on the screen, and if those happen he could introduce them as public comment to the council. This information could be obtained via chat possibly. She doesn't want people sitting behind the screen bullying, there need to be checkpoints before being allowed to publicly comment.

Mayor Ramsey said whoever is conducting the meeting would have to remind anyone who is speaking in person or electronically their camera needs to be on and they need to give their full name and address for the public record. She said they do not intend to enable the chat feature during the meetings.

Mr. Day said he can give the council the screen like what they see now with the 2 back monitors, so they would know who is on the meeting. Then when it's time for the public comment he can put the person on their screen upfront so the council can see whom is there and who they want to speak. He wants the council to see them and decide ultimately whom they will allow to speak. He can then switch the views so they can see who is next to speak and so on.

Council Member Harris said when we have applicants or residents wishing to speak, that we ask them to be there in person. He wouldn't want people to use the electronic option just as a convenience, it should be a last resort and not the norm.

Mayor Ramsey agreed that the preference is to have them there in person. She then addressed Chair Hollist and asked her opinion on the topic.

Chair Hollist said they have always chosen to follow what City Council does, and she is happy with what she has heard this evening.

Mayor Ramsey noted everyone is in agreement on how to proceed and their next meeting will be noticed that it will be back at City Hall in person with an electronic element.

F. Presentation Item: Land Use and Ethics Training. *(By City Attorney's Office, Ryan Loose and Greg Simonsen)*

Mr. Loose said many planning commissions at the city and council level may meet once a month or every couple of months, maybe six to ten times a year isn't typical for somebodies. We have delegated a lot to the commission here and they have a lot of projects going on. They are commendable for the great job they do. He spent a few months with them being their legal advisor and they do a phenomenal job.

Mayor Ramsey apologized to Assistant City Attorney Mr. Greg Simonsen for shortening the training time but she felt the other discussions needed to be covered while everyone was together today.

Mr. Simonsen noted he has attended every Planning Commission meeting since he was hired last June and in the years before he had attended hundreds of Planning Commission meetings all across the state of Utah. He feels we have as fine of Planning Commission as he has ever seen. Chair Hollist does an impressive job fulfilling the legal requirements and she makes sure no one leaves a Planning Commission meeting without having that opportunity. She does this by writing down each person's concerns so that when we get to the next part of the hearing where the staff addresses it or the applicant addresses it she is prepared to make sure each of those concerns and questions are then addressed. He recognizes in this group we have a lot of very good and experienced land use individuals, so he tried to cover what was relevant but some might seem basic. He invited anyone with questions or comments to bring those up for discussion.

Mr. Simonsen presented a prepared presentation. (Attachment A)

Mr. Schaefermeyer said sometimes we are put in a difficult situation between applicants and neighbors, but we try to make sure we are helping people to understand because many don't understand the process and what they can and can't do under ordinances and give those options.

Sometimes this comes off as playing sides, but we try to follow the rules and help the planners educate the public on what those rules are and be as helpful as we can.

ADJOURNMENT

Council Member Harris made a motion to adjourn. Council Member Zander seconded the motion. The vote was unanimous in favor.

The April 6, 2021 City Council electronic study meeting adjourned at 6:23 p.m.

This is a true and correct copy of the April 6, 2021 City Council Study Meeting Minutes, which were approved on April 20, 2021.

Anna Crookston

South Jordan City Recorder

Land Use Regulation

How to Do it

Constitutional Underpinnings

- ▶ No person shall be “deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.” -Amendment V United States Constitution
- ▶ Private Property shall not be taken or damaged for public use without just compensation. -Article I Section 22 Utah Constitution
- ▶ “Property is surely a right of mankind as real as liberty.” -John Adams

How Projects are Reviewed

What is a Legislative Action?

- ▶ A Legislative Action is a decision made by a public vote of the city council that results in an ordinance, amendment to an ordinance, adoption or amendment of the general plan, or creation of an official policy, rule or code of general community-wide application. Only the city council can make legislative decisions, although the planning commission will often be called upon to recommend land use legislative actions. These actions by the City Council are afforded great deference by the courts. As long as it is “reasonably debatable” that the City Council decision advances the general welfare and does not violate state and federal statutes and constitution it will be upheld.

How Projects are Reviewed

Examples of Legislative Decisions

- ▶ -Adopting or Amending the General Plan
- ▶ -Adopting or Amending the Zoning Ordinance
- ▶ -Rezoning property to a new classification
- ▶ -Adopting a local Subdivision Ordinance
- ▶ -Setting uniform printed development standards, codes and regulations that are applicable generally to land use within the city, as opposed to specific development approval for a specific isolated application

How Projects are Reviewed

What is an Administrative Action?

- ▶ When the council, planning commission, appeals authority or staff enforces a legislatively adopted plan, ordinance, rule, or standard, their decision is administrative, not legislative. These are not entitled to the same deference by the courts as legislative acts. Non-legislative decisions must be supported by substantial and factual evidence that must be included in a formal record of the decisions. Decisions regarding individual subdivision approvals, variances, conditional use permits, and site plans are never legislative. Note the difference between the “reasonably debatable” standard for legislative decisions and the “substantial evidence” standard for administrative decisions.

How are Projects Reviewed

Examples of Administrative Decisions

- ▶ -Subdivision Approvals
- ▶ -Site Plan Approvals
- ▶ -Decisions Interpreting the meaning of ordinances
- ▶ -Appeals from decisions of zoning administrators
- ▶ -Zoning Enforcement
- ▶ -Regulations of non-conforming uses
- ▶ -Any other decision not made by the legislative body
- ▶ -Any decision, even if made by the city council, that does not result in a change to the city limits, the zoning map or the city ordinances.

Challenging a Legislative Decision: Harmon's v. Draper City

- ▶ “It is a legislative body’s prerogative to determine public policy, a judicial body’s job to interpret the policy, and an administrative body’s job to enforce the policy. Establishing zoning classifications reflects a legislative policy decision with which courts will not interfere except in the most extreme cases. Indeed we have found no Utah case, nor a case from any other jurisdiction, in which a zoning classification was reversed on grounds that it was arbitrary and capricious.”
- ▶ In commenting on complaints from neighbors, “In performing their duty it [the council’s] privilege and obligation to take into consideration their own knowledge of such matters and also to gather available pertinent information for all possible sources and give consideration to it in making their determination.”



Challenging an Administrative Decision

Wadsworth v. West Jordan City

- ▶ “there is a significant distinction in the degree of deference owed a municipality’s land use decision depending on whether it is made while the decision making body is acting in a legislative capacity or an administrative/adjudicative capacity.”
- ▶ “In denying Wadsworth’s application, the city council relied on its finding that ‘the city has made a significant investment in bringing Dannon to the area and...outdoor storage is detrimental to the area...and injurious to the goals of the city.’ However, the only evidence in the record supporting this finding is the concerns expressed by neighboring landowners. The record does not reveal whether the commission’s staff actually investigated the concerns raised at the public hearing or why they concluded that outdoor storage on Wadsworth’s property would be adverse to the City’s goals.”

Conditional Use Permits

- ▶ 10-9a-507
- ▶ (2)(a)(i) A land use authority shall approve a conditional use if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards.
- ▶ (ii) The requirement described in Subsection (2)(a)(i) to reasonably mitigate anticipated detrimental effects of the proposed conditional use does not require elimination of the detrimental effects.
- ▶ (b) If a land use authority proposes reasonable conditions on a proposed conditional use, the land use authority shall ensure that the conditions are stated on the record and reasonably relate to mitigating the anticipated detrimental effects of the proposed use.
- ▶ (c) If the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the land use authority may deny the conditional use.

The Players: Planning Staff

- ▶ “Professional planners can be very helpful to others in the process by acting as referees and coaches. While the land use gauntlet can be very complicated, the planners understand better than anyone—even the lawyers—exactly what the local ordinances and standards say. They should be willing to fully inform all those involved in the process about what the issues are and how decisions are made. They should meet with applicants prior to public hearings to maximize the chances that an application will be complete and ready for hearing when it appears on an agenda. They should be equally willing to visit with neighbors and other concerned citizens and provide all the public information available about an issue so the public debate can proceed fairly.”
- ▶ Craig M. Call, J.D. former Utah Private Property Ombudsman

The Players: The Planning Commission

- ▶ 10-9a-302. Planning commission Powers and Duties
- ▶ (1) the planning commission shall review and make a recommendation to the legislative body for:
 - ▶ (a) a general plan and amendments to the general plan;
 - ▶ (b) land use regulations, including:
 - ▶ (i) ordinances regarding the subdivision of land within the municipality; and
 - ▶ (ii) amendments to existing land use regulations;
 - ▶ (c) an appropriate delegation of power to at least one designated land use authority to hear and act on a land use application;
 - ▶ (d) an appropriation of power to at least one appeal authority to hear and act on an appeal from a decision of the lands use authority; and,
 - ▶ (e) application processes that:
 - ▶ (i) may include a designation of routine land use matters that, upon application and proper notice will receive informal streamlined review and action if the application is uncontested;

From the Planning Commissioners Journal: Recommendations from Veteran Planning Commissioners

- ▶ An Obligation to Contribute
- ▶ Ask Questions
- ▶ Think before you respond
- ▶ Put aside your own biases
- ▶ Make the right decision, not the popular one
- ▶ Setting the right tone
- ▶ Preparation