

**MINUTES OF THE
WASATCH COUNTY PLANNING COMMISSION
JULY 13, 2023**

PRESENT: Chair Chuck Zuercher, Commissioner Mark Hendricks, Commissioner Doug Grandquis, Commissioner Doug Hronek, Commissioner Kimberly Cook, Commissioner Scott Brubaker *(via Zoom)*, Commissioner Wendell Rigby.

STAFF: Doug Smith, Wasatch County Planner; Austin Corry, Assistant Wasatch County Planner; Nathan Rosvall, Assistant Wasatch County Planner; Jon Woodard, Assistant Wasatch County Attorney *(via Zoom)*; Rick Tatton, Court Reporter *(via Zoom)*

PRAYER: Commissioner Wendell Rigby

PLEDGE OF ALLEGIANCE: Led by Commissioner Kimberly Cook and repeated by everyone

Chair Chuck Zuercher called the meeting to order at 6:00 p.m. on Thursday, July 13, 2023. Chuck Zuercher also indicated that all the Planning Commission Members are present except Commissioner Scott Brubaker, who is attending online by Zoom. Also the Wasatch County Planning Commission is meeting in the Wasatch County Council Chambers in the Wasatch County Administration Building located at 25 North Main, Heber City, Utah 84032.

Chair Chuck Zuercher then read the following:

“As indicated on the screen, a required public hearing will be held for certain agenda items prior to Planning Commission action. After each such item has been presented, time to comment will be provided for all those who wish to speak. Public hearings and citizen comments are a legitimate source of information for the County to consider in making legislative decisions.

For items that do not require a public hearing, public comment may still be taken following presentation of the item, however, please keep in mind the following if public comment is accepted during these items: When making land use decisions, the Planning Commission can only rely on substantial evidence on the record, which is that amount and quality of evidence relevant to proving or disproving a specific requirement of the applicable law.

During any public comment period, each speaker will generally be limited to three minutes. Additional time may be given to individuals specifically invited to speak by the Planning Commission.”

Chair Chuck Zuercher then called the first agenda item.

APPROVAL OF THE MINUTES FROM THE JUNE 8, 2023 MEETING

Commissioner Mark Hendricks made a motion that we approve the minutes for June 8, 2023 as written.

Commissioner Kimberly Cook seconded the motion.

The motion carries with the following vote:

AYE: Chair Chuck Zuercher, Mark Hendricks, Kimberly Cook, Doug Hronek, Scott Brubaker

NAY: None.

ABSTAIN: Commissioner Doug Grandquis (absent)

ABSTAIN: Commissioner Wendell Rigby (absent)

CONSENT AGENDA

Chair Chuck Zuercher indicated that all matters listed here are considered routine by the Planning Commission and will be enacted by one motion with no separate discussion of the items unless any member of the Commission or public requests the item to be moved to the public hearing agenda for discussion. There are two items on the consent agenda this evening and is anyone here wanting to comment regarding the consent items listed below. The Planning Commissioners and the public in attendance indicated that they have no problem with these two items being on the consent agenda.

- ITEM 1 RUSSELL SKUSE, REPRESENTING PRIVATE CAPITAL DIVERSIFIED FUND, REQUESTS A 90 DAY EXTENSION UNDER THE PROVISIONS OF WCC §16.01.16 TO THE FINAL PLAT APPROVAL OF BENLOCH RANCH PHASE 3 (DEV-4466) WHICH WAS GRANTED BY THE PLANNING COMMISSION ON MARCH 10, 2022 AND SET TO EXPIRE JUNE 8, 2023. IF APPROVED, THE NEW EXPIRATION DATE OF THE APPROVAL WILL BE SEPTEMBER 6, 2023. (DEV-8025; DOUG SMITH)**
- ITEM 2 ALAN JOHNSON REQUESTS A MINOR PLAT AMENDMENT TO STRAWBERRY LAKEVIEW PHASE B IN ORDER TO COMBINE LOTS 1 AND 2 INTO ONE LOT LOCATED AT 5612 SOUTH RIDGECREST IN SECTION 31, TOWNSHIP 3 SOUTH, RANGE 10 WEST IN THE PRESERVATION (P-160) ZONE. (DEV-7326; NATHAN ROSVALL)**

Motion

Commissioner Wendell Rigby made a motion to approve these two consent items with all the conditions and findings listed by staff for each one of the two items.

Commissioner Scott Brubaker seconded the motion.

The motion carries with the following vote:

AYE: Chair Chuck Zuercher, Mark Hendricks, Kimberly Cook, Doug Grandquis, Doug Hronek, Scott Brubaker, Wendell Rigby

NAY: None.

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- ITEM 3 MARGO FRANCE REQUESTS THE CREATION OF AN AGRICULTURAL PROTECTION AREA CONSISTING OF APPROXIMATELY 20 ACRES OF HORSE BOARDING AND HUSBANDRY OPERATIONS LOCATED ON PARCEL 12-8566 IN THE NORTH FIELDS AREA IN THE AGRICULTURE 20 (A-20) ZONE. **IF FORWARDED, THE RECOMMENDATIONS BY THE PLANNING COMMISSION AND THE AGRICULTURE PROTECTION AREA ADVISORY BOARD ON THIS ITEM WILL BE CONSIDERED BY THE COUNTY COUNCIL AS THE LEGISLATIVE BODY, AT A PUBLIC HEARING ON JULY 19, 2023.* (AGPRO-7954; NATHAN ROSVALL)**

Staff

Nathan Rosvall, Assistant Wasatch County Planner, presented a Power Point presentation and then addressed the Wasatch County Planning Commission and indicated that the applicant, Margo France, is requesting an Agriculture Protection Area for property located in the Agriculture A-20 zone at 1800 North and 1750 West in the north fields. The property contains 20.07 acres. This is a lot of record in Wasatch County. Two properties have been included in the Agricultural Protection Area.

Commissioner Mark Hendricks indicated that when you say it is nonconforming and in what way is it nonconforming? Nathan Rosvall replied that it is a legal lot of record in Wasatch County. It is not in an established subdivision and so when something is not in the established subdivision and platted my understanding is that it needs to have a lot of record in order to have the building rights.

Jon Woodard, assistant Wasatch County Attorney, indicated that there could be additional issues like not having a road built to County standards and there could be various things that if it went through the current subdivision process they would need to figure out how to come into conformity before we would allow that subdivision plat. It also is not required. Also how does this

property relate to the transmission line? Nathan Rosvall replied that this property is located on the northwest side of it so it has nothing to do with the transmission line or future roads or anything. We did not receive a letter from UDOT.

The proposed Agriculture Protection Area includes 10 structures, all utilized for agricultural purposes. All buildings are located near the west and rear of the property and centrally located on the parcel. The property is a legal nonconforming lot of record. The agricultural use on the property includes horse boarding and husbandry with a pasture for grazing. The adjacent property owners currently use their properties primarily for residential and agricultural purposes.

Utah State Code Section 17-41-201 and the recently adopted County Code 16.29 Agricultural Protection Area has allowed this application to be made. The intent of these codes is to protect agricultural areas from encroachment of urban development and the impacts that come with it including nuisance complaints, future road expansion, changes in zoning regulations, eminent domain, etc.

Wasatch County Code 16.29.04 requires the following noticing methods: sending notice to all property owners within 1,000 feet of the requested agricultural protection area, posting notices on the Utah Public Notice website, and posting notice at five places within or near the proposed Agriculture Protection Area.

The process for obtaining the designation of an Agricultural Protection Area is review and recommendation by the Agricultural Advisory Board and the Planning Commission prior to the approval by the County Council. At the time of the staff report no objections had been received in response to the notices sent.

If the proposal is approved by the legislative body the County will need to do the following:

1. Designate the property as an Agricultural Preservation Area on the County zoning map.
2. Give constructive notice of the existence of the Agriculture Protection Area to all persons who have, may acquire, or may seek to acquire an interest in land in or adjacent to the Agriculture Protection Area, within ten days of the creation of an Agriculture Protection Area, the County Planning Department shall file an executed document containing a legal description of the Agriculture Protection Area with the County Recorder and the Planning Commission.
3. Within 10 days of the recording of the Agriculture Protection Area, the County Council Chair shall submit notification to the Utah Commissioner of Agriculture and Food that the Agriculture Protection Area has been created. The notification needs to provide the following information.
 - a. The number of landowners owning land within the Agriculture Protection Area;
 - b. The total acreage of the area;
 - c. The date of approval of the area; and
 - d. The date of recording

Nathan Rosvall then went through the proposed findings:

1. The request is to create an Agriculture Protection Area to maintain the agricultural use and the rural environment.
2. The subject property is located in the Agricultural (A-20) zone off 1800 North and 1750 West.
3. The parcel is 20.07 acres.
4. The property is a legal nonconforming parcel.
5. The current use of the property proposed for protection status is for horse boarding and husbandry with pasture for grazing.
6. The proposed area includes ten existing structures on the parcel.
7. The existing use is compliant with the purpose and intent of the A-20 code and the goals of the General Plan for the area.
8. Wasatch County Code Section 16.29.08 outlines the evaluation criteria for granting the Agriculture Protection Area, and the proposal is consistent with the evaluation criteria of the code and the current agricultural uses on the property satisfy the evaluation criteria for the preservation status.
9. Surrounding properties are zoned A-20 and are used for similar agricultural pursuits.
10. No objections have been received in response to the notices sent or signs posted on the property.
11. If the Agricultural Protection Area is approved, the approval will be in effect until the 20th calendar review year.

Nathan Rosvall then listed the proposed modifications:

Section 16.29.06 allows for the review of the proposal with the options that include accepting the proposal, rejecting the proposal or modifying the proposal.

As a modification of the proposal and recommendation to the County Council, staff recommends that the applicant be required to maintain historic irrigation channels and that the irrigation company would have the right to maintain and clean the canal/ditch to ensure downstream flows.

Applicant

Chair Chuck Zuercher then asked if the applicant was here and the applicant was not present.

Public Comment

Chair Chuck Zuercher then opened the hearing up for public comment and there was none so the public comment period was closed.

Motion

Commissioner Doug Grandquis made a motion that we recommend to the Wasatch County Council for approval of the Agricultural Protection Area for 20 acres for Margo France with the Staff's modifications in light of the findings as listed in the Staff Report.

Commissioner Scott Brubaker seconded the motion.

The motion carries with the following vote:

AYE: Chair Chuck Zuercher, Mark Hendricks, Kimberly Cook, Wendell Rigby, Doug Grandquis, Doug Hronek, Scott Brubaker.

NAY: None.

ITEM 4 DEBORAH KNIES, REPRESENTING MARY E SCHWARTZ, REQUESTS THE CREATION OF AN AGRICULTURAL PROTECTION AREA OF 42.29 ACRES IN THE NORTH FIELDS ENCOMPASSING PARCELS 12-7402 (23.42 ACRES), 07-7946 (12.03 ACRES), 07-7953 (1 ACRE), 07-8316 (5 ACRES), AND 07-7979 (.84 ACRES). THESE PARCELS ARE ALL LOCATED OFF WEST POTTER LANE IN THE AGRICULTURAL 20 (A-20) ZONE. **IF FORWARDED, THE RECOMMENDATIONS BY THE PLANNING COMMISSION AND THE AGRICULTURE PROTECTION AREA ADVISORY BOARD ON THIS ITEM WILL BE CONSIDERED BY THE COUNTY COUNCIL AS THE LEGISLATIVE BODY, AT A PUBLIC HEARING ON JULY 19, 2023. (AGPRO-8001; NATHAN ROSVALL)*

Staff

Nathan Rosvall, Assistant Wasatch County Planner, presented a Power Point presentation and then addressed the Wasatch County Planning Commission and indicated that Deborah Knies, representing Mary E. Schwartz, is requesting an Agriculture Protection Area for properties located in the Agriculture 20 A-20 zone of Wasatch County. There are a total of five properties with 42.29 combined acres. The land is devoted to agriculture, including growing hay crops in the spring and summer using flood irrigation techniques, including canvas dams to divert the water in the ditches for irrigating the pastures. Grazing of livestock during the spring, summer and fall in various pastures and during the winter months and into calving season the feeding of livestock. According to the applicant, more than 50 percent of the properties are used for agricultural purposes. The adjacent property owners currently use their properties primarily for residential and agricultural purposes. The process for obtaining the designation of an Agricultural Protection Area includes review and recommendation by the Agriculture Advisory Board and the Planning Commission prior to the consideration of approval or denial by the County Council.

Wasatch County Code Section 16.29.06 requires that the Planning Commission and the Agriculture Advisory Board shall report their analysis to the County Council, who shall:

1. Analyze and evaluate the effects of the creation of the proposed area on the County's planning policies and objectives;
2. Analyze and evaluate the proposal by applying the criteria contained in Section 16 29.08;
3. Recommend any modifications to the land be included in the proposed Agriculture Protection Area;
4. Analyze and evaluate any objections to the proposal; and

5. Include a recommendation to the County legislative body to either accept, accept and modify, or reject the proposal.

At the time the staff report was written, no objections had been received in response to the notices sent.

Nathan Rosvall then indicated that this noticing language in your staff report is the correct noticing language. The only difference is this says that it is a parcel and we are including the entirety which will be 42.29 as opposed to the 26.61.

Nathan Rosvall then went through the proposed findings:

1. The request is to create an Agriculture Protection Area to maintain the agricultural use and the rural environment.
2. The subject properties are located in the Agricultural (A-20) zone of Wasatch County (North Fields).
3. The combined acreage of the Agricultural Protection Area is 42.29 acres.
4. The current use of the property proposed for protection status is greater than 50 percent of the land is devoted to agriculture, including growing hay crops utilizing flood irrigation techniques, grazing livestock and the feeding of livestock in the winter months going into calving season.
5. The proposed area includes two existing single-family structures and two outbuildings located on parcels 12-7402 and 07-7593. The remaining three parcels have no structures: 07-7946, 07-8316 and 07-7979.
6. The five parcels do not have a Lot of Record associated with the parcels.
7. Rock Creek runs through parcels 12-7402, 07-7946 and 07-7979.
8. The existing use is compliant with the purpose and intent of the A-20 code and the goals of the General Plan for the area.
9. Commonly found soils in the North Fields are: Fluventic Haploborol, this soil is common for tall grasses; Kovich, this soil occurs on broad valley floors and is a slow permeable soil; Logan, this soil is common for meadow hay and pasture.
10. Wasatch County Code Section 16.29.08 outlines the evaluation criteria for granting the Agriculture Protection Area, and the proposal is consistent with the evaluation criteria of the code, and the current agricultural uses on the property satisfy the evaluation criteria for the preservation status.
11. Surrounding properties are zoned A-20 and are used for similar agricultural pursuits.
12. No objections have been received in response to the notices sent or signs posted on the property.
13. If the Agricultural Protection Area is approved, the approval will be in effect until its 20th calendar review year.

Nathan Rosvall then went through the proposed modifications:

Section 16.29.06 allows for the review of the proposal with the options that include accepting the proposal, rejecting the proposal or modifying the proposal.

As a modification of the proposal and recommendation to the County Council, staff recommends that the applicant be required to maintain historic irrigation channels and that the irrigation company would have the right to maintain and clean the canal to ensure downstream flows.

Commissioner Doug Grandquis asked if there are any kind of easements along that creek. Nathan Rosvall replied that he doesn't know the answer to that, but I will find out and let you know.

Applicant

Chair Chuck Zuercher then asked if the applicant was present and the applicant was not present.

Public Comment

Chair Chuck Zuercher then opened the hearing up for public comment and there was none so the public comment period was closed.

Motion

Commissioner Doug Grandquis made a motion to recommend to the Wasatch County Council approval of the Agricultural Protection Area for 42.29 acres for Mary Schwartz with the staff's modification and in light of the findings as outlined in the staff report.

Commissioner Kimberly Cook seconded the motion.

The motion carries with the following vote:

AYE: Chair Chuck Zuercher, Mark Hendricks, Kimberly Cook, Wendell Rigby, Doug Grandquis, Scott Brubaker, Doug Hronek.

NAY: None.

ITEM 5 LINDZI BISHOP, REPRESENTING SIGNATURE DEVELOPERS, REQUESTS FINAL SUBDIVISION APPROVAL FOR MEADOW VIEWS SUBDIVISION, A PROPOSED RESIDENTIAL SUBDIVISION CONSISTING OF 21 LOTS ON 28.28 ACRES LOCATED AT APPROXIMATELY 2000 SOUTH 4000 EAST (PARCEL 09-3679) IN THE RESIDENTIAL AGRICULTURE 1 (RA-1) ZONE. (DEV-7857; AUSTIN CORRY)

Staff

Austin Corry, Assistant Wasatch County Planner, presented a Power Point presentation and then addressed the Wasatch County Planning Commission and indicated that preliminary approval for this proposal was granted in May 2023 with a few conditions. This proposal seeks to resolve those conditions and does not deviate in layout from what was reviewed at the preliminary stage. They have resolved the conditions that were named. This is a straight forward RA-1 Subdivision and have two open space areas on the west that are detention ponds that they will also be landscaping as an entry into the subdivision. The DRC reviewed the final plans and you have one comment from the DRC that says the plat looks good. Austin Corry also indicated that this is one that is maybe a little more unique in that you are used to seeing conditions and the staff is just recommending a straight approval because there are no conditions for them to resolve but still have some code compliance things that they will adhere to as they go through engineering permitting and things but in terms of the Planning Commission approval this is recommending approval without conditions being necessary.

Austin Corry then went through the proposed findings:

1. The subject property is 28.28 acres located between the recent Center Creek Meadows and Sahale subdivisions.
2. The proposal is to develop 21 lots resulting in a density of 1.35 acres per unit.
3. The RA-1 zone is a 5 acre minimum lot size zone unless public water and sewer infrastructure is provided by the development.
4. The property will be serviced by Center Creek Water and Irrigation Company and Twin Creeks SSD.
5. The density being proposed is consistent with Wasatch County Code 16.08.04(C) and the preliminary approval granted in May 2023.
6. The Development Review Committee has reviewed the project and has indicated the proposal complies with current applicable laws.

Austin Corry then indicated that there was one DRC comment:

RECORDER comments: Plat looks good

Applicant

Chair Chuck Zuercher then asked if the applicant is present. Lindzi Bishop, representing Signature Developers, indicated this is pretty straight forward. I am the civil engineer on the project.

Public Comment

Chair Chuck Zuercher then opened the hearing up for public comment and there was none so the public comment period was closed.

Motion

Commissioner Wendell Rigby made a motion to approve Item No. 5, final subdivision of Meadow Views Subdivision, that being in light of the findings and subject to the conditions in the Staff report.

Commissioner Kimberly Cook seconded the motion.

The motion carries with the following vote:

AYE: Chair Chuck Zuercher, Mark Hendricks, Kimberly Cook, Wendell Rigby, Doug Hronek, Doug Grandquis, Scott Brubaker.

NAY: None.

ITEM 6 RAY QUINNEY & NEBEKER P.C. REQUESTS AN AMENDMENT TO WASATCH COUNTY CODE §16.23 AND §16.27 AND TO ADD A SECTION §16.43, PUBLIC IMPACT DISCUSSIONS, AND OTHER TECHNICAL UPDATES TO TITLE 16 SECTIONS IN ORDER TO ADD REQUIREMENTS FOR ADDITIONAL NOTICING AND PUBLIC MEETINGS FOR PROPOSALS TO AMEND COUNTY CODE, ZONING MAPS, THE GENERAL PLAN, CONDITIONAL USE PERMITS, SUBDIVISIONS AND OTHER LAND USE DEVELOPMENT APPLICATIONS. THE PROPOSAL ALSO INCLUDES ADDITIONAL REQUIREMENTS TO THE CONDITIONAL USE CRITERIA INCLUDING SPECIFIC STANDARDS FOR HEIGHT AS RELATED TO A CONDITIONAL USE PERMIT. **IF FORWARDED, THE RECOMMENDATION BY THE PLANNING COMMISSION ON THIS ITEM WILL BE CONSIDERED BY THE COUNTY COUNCIL AS THE LEGISLATIVE BODY, AT A PUBLIC HEARING ON JULY 19, 2023. (DEV-7699; AUSTIN CORRY)*

Staff

Austin Corry, Assistant Wasatch County Planner, presented a lengthy Power Point presentation including why this matter should be denied and addressed the Wasatch County Planning Commission and indicated that what is in front of the Planning Commission now is a request to amend our Wasatch County Code Section 16.23 and 16.27 and also to add a chapter 16.43 primarily related to processing of development applications and requirements for certain application types. The Planning Commission, staff, and the Council should be aware that Ray Quinney and Nebeker has filed a Petition for Review regarding the recently enacted Ordinance 23-01 in Case #230500048. Ray Quinney and Nebeker is representing Laurie Brown, Richard Getz, Julie Levinson, Randy Schroder and the Save Wasatch Back Dark Skies, an alleged citizen group, in that case. The County Attorney office gives this warning because of the possibility that Ray Quinney and Nebeker could try to use discussion of this application against the County in the pending lawsuit, or in another lawsuit. On March 23, 2023, the applicant filed a proposed amendment to Wasatch County Code primarily for the purpose of establishing additional requirements for noticing and public meetings for certain land use applications and to add conditional use criteria. The primary addition made by the proposed language is to create a new meeting type in addition to the currently required meetings, called a Public Impact Discussion. This meeting, according to the applicant, is to “provide for sufficient public engagement on certain issues that have an outsized public impact on County residents and/or County policy”. The DRC reviewed the proposal and noted some significant concerns at the onset of the review.

Wasatch County Code 16.02.05 requires that amendments to Title 16 “shall not be made except to promote more fully the objectives and purposes of the General Plan and this title.” Staff analysis will focus on an analysis of conformance with existing established policies or goals, and also, an analysis of technical/practical aspects of the proposal. A code amendment proposal of this nature involves a significant policy decision which is ultimately at the discretion of the County legislative body.

There are three major parts to the text that they are giving:

- The first is that they are creating a category of project type that they are calling a localized impact project.
- They are also establishing criteria for those localized impact projects, and then
- The third is that they are adding additional criteria into the conditional use permit section.

Those are the three main aspects that they are addressing with the code amendment proposal.

Austin Corry then went through the three of those one at a time before the Planning Commission. In the list of what they classify as localized impact projects they have included General Plan amendments, zoning code text amendments, zoning map amendments, and then every subdivision application in the County with the exception of minor agricultural subdivisions. So this would include even that final subdivision that you just saw would be in there. Basically, any application that you as a Planning Commission see is included in there and some that right now are staff level approvals that you as a Planning Commission don't

see, some of those are included in their list as well. They have a list of conditional use permits and then Cannabis production and pharmacy uses. Let me list them again for you.

1. Any amendment to Title 16 or the County's zoning map.
2. Any amendment to the General Plan.
3. All subdivisions except Minor Agricultural Subdivisions.
4. Conditional Use Permits except for utility uses and accessory buildings.
5. The construction or approval of Cannabis Production Establishments or Medical Cannabis Pharmacies.

Also, the distinction between legislative actions and administrative actions is fairly important to understand from the land use law perspective and what we can do and can't do with whatever the type of decision is.

With legislative action that is where policy and regulation are being established. That is the creation of laws. Administrative actions are land use decision. So when you as a Planning Commission act as the land use authority and you are actually approving or denying something and not making a recommendation when you are approving or denying you are making a land use decision and that is the application of law. The laws have been established and you are making a determination of whether they follow the law or not. The reason why that is important is by state statute the standard of legal review between those two different application types are very different. With legislative actions there is a higher level of discretion. The land use regulation when it is enacted, if it is enacted and it doesn't violate state or federal laws and that is not done in an illegal way, then those are determined to be acceptable. Land use decisions are much tighter. The concerns that we have raised as staff focus primarily on those administrative decisions because of the legal risk involved with the implementation of such a proposal could do to the County.

The next section is this public impact discussion is what they are calling it. There is an acronym of PID. If the County wanted to pass this it is a strong recommendation from staff they are not named PID's. Under state code PID means a public infrastructure district which is a taxing entity so we have got some conflicts there but that is minor. One of the main concerns that we have raised as staff is that although there was an adjustment made after the first round of DRC reviews had the County establishing this meeting and setting it up. They adjusted to have the applicant setting this up but as staff we still feel that would be viewed as a public hearing.

Commissioner Mark Hendricks indicated that he just needs to be clear. This would really require an applicant to do it? Austin Corry replied yes, that is correct, as it is written that is what they are saying an applicant would have to do.

Commissioner Wendell Rigby asked, who determines whether it is a localized impact project? Austin Corry replied that it would be this ordinance if it is one of those application types then they have to do. Commissioner Wendell Rigby indicated then that the Planning Department wouldn't do that. Austin Corry replied that is a good question. The reason I say that is a good question is that this section is requiring the applicant to do this meeting before they apply to the County. That would presume that the County hasn't seen this application yet. If I had to venture a guess it would probably be the applicant would come to the County asking what am I supposed to do with this and we would ask what kind of application it is, what are you doing and then we would have to help them decide that. Obviously, the ordinance really dictates it, but whether they recognize that they have that requirement or not is unclear.

Commissioner Doug Grandquis asked, what authority do they have? Because what it looks like what they are trying to do is supersede the Planning Commission. What do we do if they have power to recommend to the County Council the legislative body actions that we may not want to recommend? Austin Corry replied that there is not, at least to my understanding of the way this is written, there is not a body that this is getting presented to. This is a meeting that the applicant organizes, people come and then the applicant kind of runs it. Commissioner Doug Grandquis asked, why then can't they just do that as private citizens, it is a democracy, and you go ahead and hold your public meetings and then they can be publicized whatever their findings are and then can legitimately come to either the Planning Commission or the legislative body, the County Council, and state what occurred at that particular meeting. Why do we have to create almost another level of government here? I am sure part of this reason is the belief that we are a democracy. Well, in reality we are not. We are a republic. You elect representatives and the panel here was appointed by those representatives and given certain powers. This seems like what it wants to do is go around that process.

Jon Woodard, Assistant Wasatch County Attorney, replied that he appreciated Doug Grandquis's comments and I thought they were right on. Ultimately, the body that approved either the regulation or the land use decision would have to determine, at least in the context of a land use decision, would have to determine if all of the requirements of the code had been met including determining whether this code had been met. That would be difficult where the County wasn't a party to that process as it was being gone through.

Commissioner Wendell Rigby asked, would the public impact discussion replace any public hearing that would be held here? Austin Corry replied that is the concern. The applicant organizes the meeting. They record the meeting. They provide that twenty-one day notice. Currently, our state code requires ten day notice for public hearings. Our longest noticing period is the one we just passed actually that ends up to being about thirteen or fourteen days. At this meeting the applicant would have to present the project. They are required to take public comment at the meeting. Then they are required to submit to the County responses to every public comment that was given during that meeting. The way that this code is written is that is a requirement in order for them to submit a development application. That would mean when a development application comes in to us we would be doing our review to determine whether an application was complete or not. If this were passed as written, if somebody had not done this we would be rejecting their application and determining it as incomplete. Telling them they couldn't apply.

The most prevalent concern is the passing of Senate Bill 174. This bill was passed just this last year 2023 by the State Legislature and it made significant changes to what a county or city can and cannot do when reviewing subdivision applications. It implemented a number of criteria. Right now, we comply with the requirements that Senate Bill 174 is asking for. Austin Corry then discussed this bill in a little bit more detail. The primary concern is that this Bill precludes certain subdivision applications from having more than one public hearing. If this ordinance were passed as is, we would not be able to have a Planning Commission hearing for preliminary subdivisions like we traditionally do because we would violate state law.

Commissioner Doug Grandquis asked, wouldn't this, following what Bill 174 has done, further incentivize developers to take more power away from the local government and in turn you the citizens of this County? I think this needs to be seriously discussed amongst this group who are proposing these changes because I can assure you what has happened in that legislature the last few years is that developers have taken over and they will continue to do this lobby in the State. If you go for another layer and another time frame that further delays the process they will be right back in the next legislative session to again take the powers away from local government.

Austin Corry replied that I think the risk that you are suggesting there is very real. State law clearly states that if it complies with applicable laws we have to approve it. We don't have discretion to say no if they are complying with the law. That is on a land use decision and not on a legislative action, a land use decision. Also is the substantial evidence on the record question. If the County is not involved in the public impact discussion we are not there, we can't substantiate what is presented and the other aspect being what is the public comment that is given. If we are asking to respond to it if the public comment is not based on applicable law in an administrative land use decision do we face a legal risk for forcing an applicant to respond to that?

Austin Corry indicated that this was noted in the initial DRC review. The revision that came back from the applicant and I included in the staff report, their e-mail response back as well as discussing this kind of a little more in depth. The applicant's position that they stated so far to us is that it is not a public meeting because the public entity is not the one actually organizing it. There are some questions that will be posed from a policy making process and Austin went through those. Austin then went through a case that he had with the seventeen to eighteen years of experience that he had when we are talking about public engagement and public policy making. It is so much more valuable and critical in the policy making step, General Plan, zoning ordinance, where things are established that actually guide the development of the community. Public comment, public engagement is great and the County loves it and we encourage it.

Commissioner Doug Grandquis asked, is there an example in the State of Utah of what they are proposing here? Has any other municipality, city or county gone as far as they are asking us to go? Austin Corry replied that he is not aware of any.

Austin Corry then discussed the conditions that they are making to the conditional use permit requirements. Under this there are three or four additional requirements that they are adding. The first of those is that with a conditional use permit, if it is in an RA Zone, Mountain Zone, A-20 or preservation zone, the applicant has to provide a benefit analysis. The benefit analysis that the applicant provides has to show why the use requested will provide a material benefit to the surrounding properties that such properties do not already enjoy. In this case a conditional use permit is only going to be allowed if you give them something more than what they already have and how it would materially benefit the county to allow it in that zone rather than in another zone where the conditional use is already permitted. Conditional uses are an administrative land use decision and not a legislative action. They must be tied to objective standards set forth in an applicable ordinance. If they comply with the applicable law we have to approve it. Also under the conditional use criteria that it requires the FAA, the Federal Aviation Administration, to produce a letter detailing all of the negotiations they have between an applicant and themselves. We cannot, as a County, require the FAA to negotiate shielding requirements on our behalf. The biggest concern probably with this section is that it is attempting to compel the FAA to do things on behalf of the County. The applicant responded to the DRC that the intent of the section is that if lighting is required then the structure is not in the right location for proximity to the airport or the applicant needs to reconsider their application for further mitigation so that the FAA lighting is not required or will be shielded. The DRC noted that is not what the

proposed language is doing. The language says that the FAA has to produce this letter and it doesn't say anything about what we actually do with that letter or what the requirements are and doesn't say it is precluding structures from doing that. If that is the intent then there is significant re-work that needs to happen to that.

There is another criteria which is a requirement for a visual impact analysis. The County already has a ridgeline and viewshed regulation in our County code. That follows what our General Plan talks about which primarily the views in the County that are noted in that are focusing on the homes that get built up on the ridges. There is also a criteria which is a study of all of the properties within two miles of a proposal. Austin Corry then finished his Power Point presentation and then read the thirty-two findings which explains what Austin Corry said in his Power Point presentation which are found in the Planning Staff report.

Austin Corry then indicated that, in conclusion, Wasatch County has policies and history of seeking and respecting public comment and engagement. The County complies with state law in their noticing requirements and provides additional notification beyond what the state requires. Staff recommends the County should continue to seek valuable ways to implement public participation throughout policy making decisions. However, staff recommends that while the original stated intent of the applicant may be worth consideration and may be inherent in the Wasatch County value statement, the proposal as written poses legal risks due to recently adopted state laws, the impact it could have on the Utah Property Rights Coalition and the Utah Legislature, and the financial costs that are not balanced with the currently known values of the community. Also, the County does value and respect public comment and engagement.

The staff analysis was noted in the DRC comments that with zoning code text amendments where a document is submitted we usually make comments in the word document and send it back and go through dialogue that way. The applicant went through two DRC reviews and then the applicant asked to come before the Planning Commission and that is why we are here. The Staff is recommending that you forward this to the Council with a recommendation for denial and adopt these findings that I have stated.

Austin Corry then went through the proposed findings:

1. The application is for a code text amendment to amend Wasatch County Code 16.02.05, 16.03.04, 16.04, 16.23, 16.27.05, and to add a new chapter 16.43.
2. The proposed amendment seeks to classify certain land use development applications as Localized Impact Projects.
3. As classified, Localized Impact Projects would be the majority of land use development applications currently processed by the County.
4. The proposed amendment adds a new chapter 16.43 that would subject Localized Impact Projects to additional criteria such as a requirement to hold Public Impact Discussions (PIDs) as part of the application requirements.
5. The proposal requires an applicant to organize a PID meeting, provide public notice, present their development proposal, take public comment, record meetings, and host a record of the meeting in perpetuity. The County would not participate in the meeting, but would be requiring the meeting as part of the application. As the PID is a requirement to develop land, the requirement would be considered a land use regulation that must be complied with to make a land use application. Utah Code 17-27a-103.
6. The proposal requires an applicant to also submit a response to each public comment presented at the PID meeting, regardless of whether the comment relates to an applicable law, policy, or standard. This requires an applicant to consider standards or requirements not expressed in the Utah Code or the Wasatch County Land Use and Development Code, in violation of UCA 17-27a-508(e).
7. Per the applicant statement, the purpose of the amendment is to "provide for sufficient public engagement on certain issues that have an outsized public impact on County residents and/or County policy."
8. Based on the proposed language, the applicant considers the majority of land use applications in the County to have an "outsized public impact" as defined in the applicant code text amendment application.
9. State Law mandates procedures for public meetings through the Open and Public Meetings Act (UCA Section 52-4).
10. The proposal seeks to avoid OPMA requirements by placing the burden of the meeting on the applicant.
11. Since the County development application would require the applicant to hold this meeting, it is believed by the County that such a requirement would be viewed as a public meeting subject to OPMA.
12. Senate Bill 174 (2023) precludes more than one public hearing for preliminary subdivision applications. Inclusion of a public hearing before any DRC reviews and subsequent application modifications would likely become problematic by precluding the Planning Commission from holding a hearing after DRC review as the current process dictates. This could result in a lack of transparency and a frustration to the public as projects tend to adjust through the review process.
13. The proposal requires a conditional use permit applicant to prove a positive benefit of the project and requires the County to deny a conditional use permit if the applicant cannot demonstrate positive benefit.

14. UCA Section 17-27a-506(2) states “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.”
15. The DRC review listed a number of concerns with the imposition of requirements to administrative land use decisions that become “potentially unfruitful for everyone involved. Requiring the meetings would encourage consideration of public clamor that would violate state law, and could create liabilities for the County from a risk management perspective.”
16. The applicant states that a positive impact of the proposal is to add public scrutiny to projects that will aid the applicant in mitigating such impacts.
17. The applicant states that a negative impact of the proposed change could be reduced growth due to “additional hurdles to developers and other applicants.”
18. The applicant acknowledges that holding additional meetings and administrative duties will increase the burden on County staff.
19. No analysis was provided in the application to clearly support the ability to add the proposed regulations to Cannabis Production Establishments. As such, it is uncertain at this time whether federal or state laws preclude the County’s ability to add such requirements. See UCA 17-27a-525(2).
20. The proposal includes different noticing requirements (timeline, distance, and method) than other areas of the County code and, as written, presents a number of challenges for procedural issues and conflicts with other sections of County code which were written to more currently align with State code requirements.
21. The implementation and management of public impact discussions and impact assessment criteria being required of the applicant are unclear.
22. Based on staff’s training and experience, the proposed requirements are out of line with what most local land use authorities throughout Utah require. If enacted, this creates a greater probability of the Utah legislature creating new regulations that more clearly prohibit the PID because the unique burdens on development this regulation would impose. Enacting the proposal could also negatively affect the Utah legislature’s perception of the County for issues that are not essential to the County welfare.
23. It is unclear who the appeal authority would be if a party to the PID were aggrieved. UCA Section 17-27a-701 requires the County to have an appeal authority available.
24. The application seeks to require the FAA to produce documentation outside of their designated process.
25. The County has no jurisdiction over a federal or state agency and cannot require actions on their part, unless specifically allowed by federal law. U.S. Const. art. VI.
26. The proposal establishes a visual impact analysis for conditional uses that is undetermined what conflict or consistency such requirements would have with the currently existing regulations in the County for ridgeline and viewshed analysis and other sections of code regarding building height provisions.
27. The Wasatch County Council, as the legislative body, has broad discretion for amendments to the Wasatch County Code.
28. The proposal, as written, raises numerous concerns and potential conflicts that have not been resolved by the applicant. Without supporting information, the legal risks to the County are uncertain.
29. The County determines that the interest of the public is best served by clear standards and processes so that all parties can have clear expectations as to rights and responsibilities related to land use and development.
30. The County encourages public engagement and interaction throughout all stages of the process, as permissible by applicable laws. Specifically, public engagement during the early planning stages such as review and implementation of the general plan and other legislative actions where the County holds a higher level of discretion under the jurisdictional authority granted by the State. It is during these actions that a greater influence on the growth and development of the County can be achieved.
31. The additional burdens of the PID would raise the costs of development activity in the County without sufficient benefit to the general welfare.
32. The County Planning Commission and the County Council conducted properly noticed public hearings and public meetings as required under applicable law.

Jon Woodard indicated that Austin Corry brought up a very black and white view of legislative versus administrative and in typical matters that summary is correct but there are grey areas that do happen. One example is subdivision amendment applications and it is unclear whether that is administrative or legislative and exactly what standards they go to. While Austin’s summary is generally correct there are additional things that don’t always fall right into some of these categories.

Commissioner Wendell Rigby replied that there is another thing that should be added to the record, in the staff report under conclusions says that the proposal as written poses legal risks due to recently adopted state laws, the impact it could have on the Utah Property Rights Coalition and the Utah Legislature, and those should be mentioned as well.

Chair Chuck Zuercher then asked the applicant to come forward and present their presentation.

Applicant

Alissa Haynes, a land use consultant, representing the applicant, indicated that we are here tonight to establish procedures between the applicant and potentially impacted residents in advance of certain land use applications and requirements for the granting of conditional use permits. Alissa Haynes then presented a Power Point presentation.

Alissa Haynes indicated that recently Wasatch County conducted a survey of residents called "CountyBrand" that was completed between June 13th and June 30th, 2023 and that survey is showing why we are here tonight, because Wasatch County is growing at a rapid pace. The citizens have responded that they want the County to control that growth and the congestion. Also the citizens need to be heard about development suggestions and people apparently feel that they are not being heard. Citizens believe that the County is headed in the wrong direction with the development and growth and that it has changed negatively since they first moved to the County. The citizens want the County to better regulate that growth and congestion and act upon the suggestions from your citizens to improve that development and we are here tonight to talk about that and how can we do that. Currently, Title 16, Land Use and Development Code, does not provide sufficient public engagement. The code for the public engagement processes would apply to amendments to the code, the County zoning map, our General Plan, certain conditional use permits, certain types of developments and approval of certain uses that relate to cannabis. The code also does not contain sufficient stringent requirements for the granting of conditional use permits in some zones, nor does it have a height restriction or sufficient stringent requirements for height for the conditional permit process. Also the current land use code is outdated. The purpose of this proposed land use amendment is to improve our planning, zoning and development processes as the County grows; to promote the objectives and characteristics of the respective zones; and provide public engagement by interaction of the applicant with the community before staff review of the development application.

Also members of our community don't have sufficient time to digest and prepare thoughts relating to agenda items. Also to have protective zones will continue to have that open space to the residents.

Alissa then went through Bill 174 to land use and development revision. It seeks to enact a new state wide process for subdivision review and approval. It is only subject to subdividing land.

Alissa Haynes indicated that in conclusion the County is experiencing rapid growth and the number of development applications will continue to increase. The growth and development for our community is good but it has to be done with community citizens in mind and in a way that administers and executes the policies of the General Plan. We will see an increase in requests for larger and taller structures as the County grows. The proposed code amendments address their regulation. The proposed code amendment addresses citizen's primary concerns as stated in the County survey. The proposed code will assist the community in developing and administering a land use and development code to assure quality life styles for current residents and future generations. The request here tonight and we respectfully request that the Planning Commission would recommend a motion for approval as all of our planning staff concerns have been addressed in this presentation or that you tonight continue with a motion to create a subcommittee to work with the applicant to refine the proposed code amendment so that we can work together to have a great code amendment that works for all of our community.

Commissioner Doug Grandquis replied that the growth that is occurring is not necessarily directly County related. Are you proposing that the cities of Midway, Heber, and Daniel all adopt this same standard? Alissa replied that no we are here discussing the County code. These are proposed amendments to the County that affect certain projects for some proposed amendments, then there are other code amendments that we are requesting that are to protect everyone. This is not picking on anybody or towards any one particular project. Commissioner Doug Grandquis indicated that he is not in support of this at all.

Commissioner Mark Hendricks indicated that he is going to jump to the punchline, for me in my view which is on your slide there, and it is still up, I think it is number two. Alissa Haynes asked, for the subcommittee? Commissioner Mark Hendricks replied yes and whether it is a subcommittee or the process needs to continue. I am going to speak for myself, but I think I am right okay. I have known this valley for decades. I have lived all over the world in really nice places and chose to bring my family here, and call it ten years ago, for the same reasons that all of us love this place. It is rural and it is beautiful and I like looking at the stars at night. I have land here. We are an end. We have got Wallsburg. We have got Heber farmers. I am a clumsy micro-farmer and we love this place. I hope people don't think that at least from my perspective that somehow we are not on the same team in terms of wanting to manage growth, hating the traffic, being surprised by rising property values, wondering where it is all going to lead. All

of this stuff and in fact that is why I do this. I have got a lot of other things that I like to do. For several years I care enough about the growth that I am doing this okay. That is the lens and the set of filters through which I look at this.

Commissioner Mark Hendricks indicated that I think nobody, nobody including Commissioner Doug Grandquis is opposed to more enthusiastic public involvement and more involvement. In fact I have given a speech over and over and you have heard some allusion to it tonight. We understand, but this is what the law is and this is what we have got to do and unless we have a reason to say that you can't create a subdivision where you used to hike as a child with your grandparents, we have got to go ahead with it. You know this very well I assume. That is why, thematically, the idea of getting the public more involved, giving more notice, getting more input and getting that to the parties that have to make decisions; that is noble. That is democracy. I support it. I have spent time on the east coast. I know that area. I am a west coast native. So that is a worthy goal. Now here is a question. Is there anything in the County Code that prevents somebody from organizing a public impact discussion and recording it and sending out notice and developing all that data? Is there anything in the code that stops anybody from doing that now?

Alissa Haynes replied that there is nothing that stops that now. The concern is that the developers coming into the community don't understand the General Plan and the policies and the heritage of our County. So there is a lot of that. That is why it is important to make that part of the process for the community engagement. So the developers understand what the community wants and they will be a respected developer to see and work with the community for that growth. That preserves our heritage.

Commissioner Mark Hendricks replied, again that is noble. That is a worthy objective. Because of my concerns, and I have been through this and we were given materials a while ago, I have been through it and I am a lawyer so I worry about stuff like this. Frankly, I think Austin Corry missed his calling, he should be a lawyer. In his analysis, even if it is not perfect and even if it has flaws in it, it is really good. There are elements in there that will remain with me that say this isn't going forward with my recommending vote at this point. That doesn't mean that there is not support for some of the objectives here in one form or another. Alissa Haynes replied absolutely.

Commissioner Mark Hendricks indicated that I am not sure I understand. I don't think any of us are qualified. I am certainly not. I probably have more legal training than most and experience. I don't feel comfortable amending our County code to change how we deal with the FAA currently. Now you may say that, oh no we are not changing that, we are just clarifying it. But I am not comfortable relying on that. You are not a lawyer representing it. You may be super experienced with it. We have got to get farther. Your job and those who support you including your law firm, I have more questions that I would probably save for your law firm. Nobody from Ray Quinney is here, right? Alissa Haynes replied no. Commissioner Mark Hendricks indicated that it is not a problem, but there are some really important discussions that need to be had at that kind of level that most people don't want to get down in the weeds that far. Before you are going to get, in my opinion, our County Council to agree with you. Alissa Haynes replied that is why I think the subcommittee is a great opportunity. Commissioner Mark Hendricks replied, it could be a subcommittee and I am not sure how that plays out, but it is not this volunteer appointed citizens group of commissioners to do that. Now elected county officials are in a different boat. They are elected and they have a lot more authority and ultimately they will make the decision. But they are going to need help. They are going to rely on counsel, because the minute you see exposure, and this is private parties or governments that we could get sued if we don't do this right. Everybody freezes up. Everybody gets nervous and wonders, what will our lawyers say. That is the process that this is going to take. There are going to be lofty goals and there is going to be how we get there and then there is going to be words, commas, sentences that people who get paid by the word will hash out.

Commissioner Mark Hendricks indicated that I have a question. Let's say, Austin is there a scale on any of those maps behind you (indicating). Let's say there is an interesting project coming up in the County and it is going to land somewhere right about here. If the Church wanted to build a temple where would it be? It is here okay. I am looking for a scale that tells me where two miles is. I would have a whole set of questions which I don't think we will be able to hash through tonight. How does what you are proposing differ from the County's existing visual impact things. If we need to improve it, let's improve it. Alissa Haynes replied that from what I have seen of the visual impact analysis there has not been a lot and most projects do not require that because they are less than and within the height allowance of the County Code. Commissioner Mark Hendricks replied, no because I have done this for a while in other parts of the county. Alissa Haynes replied there have been very few of them. So that is a concern of course as we grow that we are going to see more apartment complexes, commercial buildings, and so this is important to have for tall structures. Commissioner Mark Hendricks replied that I am not comfortable that what has been drafted and proposed satisfies clarity on all of that. If I think of a mile radius versus the five hundred foot rule that we have for notice in County things, if I draw a mile radius around that, it is a lot of notices. I wonder about that and it is probably a good idea but if I live 1.25 miles away and it is a big structure and big impact I want to know about it.

Commissioner Mark Hendricks indicated that there are a lot of things. There is the one meeting rule and we don't have clarity on whether we are violating Bill 174. I know that the proposal is this is not a legislative authority that is being done and I think what we have here isn't going to make anybody on the County Council comfortable. I am sure of it. I don't mean to speak for them, they are their own people. I am very sure of that. I am just going to get everything out on my part and be done with it. I don't think we need to get bogged down because I think that the concerns, again even if the staff analysis isn't perfect, you are seeing what needs to be addressed. I have friends, law school classmates, who are at your firm and I have hired Ray Quinney and I know them well. They are smart, and there are many very extremely capable lawyers there. They are going to see this and may say stuff like what does Austin Corry know. But he is raising concerns that are the exact same thing as a group of citizen who say that I have got concerns about lighting and I have got concerns about tall structures and concerns about this. The concerns need to be addressed and we will all live more happily together.

Alissa Haynes replied that unfortunately many of those concerns were not in the DRC report so we did not have the opportunity to work on those. Commissioner Mark Hendricks replied, if the goal is to really make the County a better place through better regulation and that is really the honest goal, which I will accept that it is, we need more time. There needs to be more discussion between the parties. I believe that things can be resolved with policy. Alissa Haynes replied I agree. Commissioner Mark Hendricks replied that I will leave it and won't get into all of my little notes and timing and all that. Nobody is going to argue with better public engagement. Alissa Haynes replied thank you.

Commissioner Mark Hendricks replied that something that would be helpful I am sure in going forward if you can point to any other jurisdictions in Utah that has done this. I would suggest that you outline that and say this is how Salt Lake County handles it. Your object is to motivate Wasatch County Council to change the code. Make it easy for them. You are going to need not only the citizen input but you are going to need legal counsel to get comfortable, the legal counsel that advises the Council on language. It is helpful in my experience when one county see other counties do it and they have adopted, for example, a model code that exists somewhere out there but we like their language but we ought to tweak a little bit of who we are. Those are all things that you need and I suspect you already know this. There is a way to get things done and may not get everything you want and may not get it exactly as you want. We disagree that is what is great about our country. We disagree but we carry on and we get to something. I would look at other jurisdictions and show what they have done that is similar.

Another big area that you need to look is the shifting of burdens on the conditional use permit. I don't think the County will ever be comfortable saying that you have to tell us why it is good as opposed to complying with the laws and regulations that are designed to say that we have property rights and you should be able to do what you want with your property and your land. If you do things that are outside of a certain area you can still do it and explain to us in a public hearing and in front of some body what we are going to do to mitigate the problems that they are worried about. Alissa Haynes replied like size and height and that is why the benefit analysis is so important. Commissioner Mark Hendricks but shifting the legal burden to a party that wants to do something that you have to prove to me why this is beneficial. Maybe our County will go along with that but it is a totally different game than coming at rights from the other angle saying that you have a bunch of rights. Alissa Haynes replied it is a great addition because it is specific to the code and what the General Plan policies are. We will be happy to provide that when we come back. Commissioner Mark Hendricks replied that are some things that I would focus on in my suggestion.

Chair Chuck Zuercher indicated that as I originally looked at this I said it is kind of what we try to do here. We have issues that come up and we would expect twice as many people that are here tonight on certain issues and we may get nobody or one or two people. They are noticed and they are told and you want to go two miles out and contact everybody. As Mark said that there is probably a combination of what Austin has to deal with and what you have brought up and these points to make it a better system all around. Getting people to come out and make their wishes known is difficult.

Alissa Haynes replied especially difficult when you only have an eight day notice. Chair Zuercher replied true. We could notice it a month in advance and things would come up where people would show or wouldn't show. It is frustrating. We notice people in the Wave which now is over and above what we are required to do. Everything now is online. I don't know what people are looking at online but do they see it. What apps should we be noticing people in? I don't know. It boggles the mind how we are going to notice people to come to this meeting tonight for instance. I mean I sympathize with everything that you brought up and everything we sit here and have to deal with. If we go around and around and we finally have to make decisions one way or the other. I think that you are right on. I think there needs to be a group to look at this. Maybe we need to look at the General Plan again. How often do you do your General Plan? I don't know is it five years. I don't control that and I am asked to come here and deal with these things that come up on individual developments. It is great to see this group here tonight and wish it was twice as big and wish there were people downstairs filling that room because that would show real caring on these issues. We do the best we can with the ordinances and the codes that we are given. This is the turn out that we got and it is great.

Alissa Haynes replied and I think that there a lot more online too. Chair Zuercher replied I am all for Zoom meetings and much rather would see people in person than people online because they are probably watching something on T.V. or on the Zoom meeting. I just wanted to let everybody know that we try as best we can with what we are given and it is great to see the turn out that we have but on this issue and on that building I assume, we would like to see a lot more people. Alissa Haynes said a lot of people here tonight are in support of this. You see more people come out when they are opposed to a plan rather than in support. So we have a great turn out this evening for support.

Chair Zuercher replied absolutely. I think there is a combination of what the County has to live with in some suggestions in your proposal. Alissa Haynes replied that I have four hundred hours of my time put into this with research, review land use codes over the last several months of writing this as well as the attorneys input and community input and so it does not include any of their time. This is just my time of over four hundred hours and we considered this heavily and this is not just been something that was thrown together. Chair Zuercher replied absolutely not.

Public Comment

Chair Chuck Zuercher then opened the hearing up for public comment.

Lisa Bahash, one of the presenters, addressed the Wasatch County Planning Commission and indicated that we have representative government. The public is crying out. We need to protect our County. The public is frustrated. We need more time to consider what is taking place so that we can make public comment. Chair Chuck Zuercher replied, it is difficult there are many things that you can do to have your comments heard. We do the best that we can do to inform people. Commissioner Doug Grandquis replied that all of us here on the Planning Commission are volunteers and when a vacancy occurs they have a hard time getting somebody to take that vacancy. Lisa Bahash replied that we had a meeting with the LDS Church and had a question and answer session and it was very clearly stated that we don't care what the residents think or want. We only care what the County is going to make us do and this is how this issue all got started. We are more than willing to meet with the County, with the applicant or anybody. We just want to be heard and want to share our concerns.

John Johnson, County resident, addressed the Wasatch County Planning Commission and indicated that this amendment is for all projects in the County and not just for one project. We need to sit down and talk together because this one project is dividing the community. We need to get three people from this Planning Commission and three people from the Church in a room and talk it over and reach an agreement. If we can do that this will all go away. Commissioner Mark Hendricks replied that everyone cares about the impact on the community. I also feel comfortable in saying that the Church has no interest in alienating its neighbors.

Jeff Weiss, County resident, addressed the Wasatch County Planning Commission and indicated that when we got the staff report, what I have read into it is that the County is looking for any excuse to knock this down. The County needs to take the time to work with Alissa and the other folks that put the time into this to make this something that could benefit the County. What I get from social media is that people don't believe the process of engagement of the public, in relation to development, is working. They feel completely left out of the process. They feel like there is no point in engaging and that the County is just in bed with the developers and there is nothing that can be done about that.

Chair Chuck Zuercher indicated that all of the development going in on Highway 40 is actually Heber City. The densest Wasatch County gets is one house per 1.3 acres. One of these days on Highway 40 there are going to be probably five or six story buildings that are going to have a lot of people living in them. But that kind of density is hopefully staying in the city as much as possible. The County doesn't have anything like that. Jon Woodard indicated that most of the applications you see that is true with the one acre, but Commissioner Mark Hendricks is on the JSPA Planning Commission so he sees a lot of our denser developments and there are certain areas with overlay zones that do have denser development and typically you don't see those, just to make that clear. Chair Chuck Zuercher also added that, I think what Alissa said is right. We need to get together, because you have some great ideas that we could probably work with, but they have to go through the County Council for approval. But you are right, we need to work through stuff.

David Speer, County resident, addressed the Wasatch County Planning Commission and asked what options are available to County residents aside from a three minute public comment session. Chair Chuck Zuercher indicated that we get every letter that goes to the planning department, every e-mail we get and we read all of this and everything else that is sent in we get copies of that. Could we sit down with somebody and have matters explained to us that would help in getting more public engagement.

Doug Smith, the Wasatch County Planner, indicated that the best time to get involved is when the General Plan is being changed. The General Plan guides us and says that these areas are intended to be rural and these areas are intended to be developed and this

is what our lighting code should accomplish. Once a development application is made, when certain steps are followed we cannot deny an application because we have got an ordinance and a General Plan that says this area should have this type of development and this is what is allowed and they have accomplished that. Things like this need to take place at the General Plan stage.

Sandy Hindy, County resident, addressed the Wasatch County Planning Commission and indicated that I did send you an e-mail. She expressed appreciation in what the Planning Commission does. I do a lot of things that helps Wasatch County and I am not an appointed official or elected official but I volunteer my time. This is how I give back to the community. We need to have a discussion regarding this matter. I would like to see you make a motion to have an ad hoc committee or subcommittee and start this process where we can sit down and maybe this will all clear out, I don't know, but you have got to give it a try.

Chair Chuck Zuercher asked, can we send this to the Wasatch County Council with a recommendation to that affect? Austin Corry replied that you are a recommending body and you are not approving or denying, and you can send it to the Council with your recommendations of what you think they should do.

Commissioner Doug Grandquis indicated that he wanted to clear up something about the Church, I think the temple is not appropriate there and there are other places for it. I do not agree with the idea of the concept, the height, size of the building, parking scale, all those conditions, but it didn't affect my thoughts on this because I thought this was the wrong approach to take and that is why I am voting denial. This probably won't solve the issues. Also, I hope that you will all participate in the future discussions that are with regard to that specific project. Also, I am not a member of that particular church either.

Chair Chuck Zuercher then closed the public comment.

Jon Woodard said that this is kind of a unique application compared to the vast majority of applications that we get and this is an application that is done by a law firm and is also done by a law firm that is representing a group that is currently litigating against the County. We also have heard a lot of comments that are related to other matters that this law firm seems to be taking an interest in and that is evidenced by how a neighbor approached me and others regarding the temple and the lighting ordinance. I am concerned about the ability of the County to process an application under threat of litigation the way that this is. For a land use application we just apply the rules to it and go through the process. For a land use regulation it is a strange scenario where we have got a law firm that seems to be attempting to litigate their way to the outcome that I assume their clients are aiming for. That is part of why the staff recommendation is what it is to make a recommendation to the Council for denial because even if some of the ideas that are in this application are good and are things that the Council would support, I am concerned that reviewing these sorts of changes when the immediate proposal I think would take us in a direction that is either illegal immediately or would result in legislative changes from the state legislature that would quickly make it illegal, that with that sort of an immediate response to it and then the overarching issues being this trying to drive a regulation through the threat of litigation, I don't think that is a healthy way to come out with the right outcome for the County for what is in the interests of the public. So I just wanted to give that support for the staff recommendation because it is a unique application that is being made by a law firm that is currently representing people in litigation against the County, if that makes sense.

Commissioner Mark Hendricks asked, does the litigation touch or concern the issues that are being raised in this application? Jon Woodard replied, a lot of the comments regarding the lighting ordinance is on the temple. A lot of the comments associated with this application has been focused on the temple so even though they don't directly bear on the temple alone it is turning into a situation where a lot of the policy that is being recommended and that sort of thing in these applications and in this lawsuit seem to be hyper focused on a particular project and a particular application, does that make sense?

Commissioner Mark Hendricks replied that it does in a way, but anybody could come in and ask the County to change legislation and when the rules are changed they may apply to any project coming down the pipeline and they will apply into the future regardless of what the project is. Now the lighting ordinance was changed because we had discussions about changing it anyway it was outdated. This project precipitated an effort to change it and it was changed. I am trying to understand the nexus between a request which I am going to summarize as we would like the County to change their regulations to have this public impact discussion and to change how they do conditional use permits and may have been one or two other high level topics. That is what we are asking for and not hard to see what projects it might impact but it is not really directed at that. I guess the lighting curfew question might directly relate if there is litigation now related to the lighting ordinance and the lighting curfew issue and I see a very strong nexus between them. I am just wondering about the other two topics, public impact discussion and conditional use. We are venturing into an area that gets very delicate from a legal perspective and that really isn't about the merits of the application. It is now becoming procedural meaning that this is all related to ongoing litigation, how does that impact our ability as a Commission? Well, it starts with the County as a whole and us as an appointed committee and even the County Council to act in

light of pending litigation. You are all familiar with “I can’t comment because there is a lawsuit”. There are reasons for that and good old American law reasons. Jon, do you understand my thoughts and is there anything further that you can add to that?

Jon Woodard replied that there is one thing to be aware of, Mark Hendricks, and we are getting into some fairly complex issues of law, but from a black letter perspective of what Utah Code 17-27a-508 says this is a project that is vested when a complete application is received. As you and I know there is a lot of complexities. The temple application is vested under the law.

Commissioner Wendell Rigby asked, what are our options as far as going forward with a motion? Is there really a motion to be made about recommending denial but doing the subcommittee that they are talking about, or do we say we recommend to the Council to continue the item? Jon Woodard replied that under the code you really have four options, a recommendation to approve to the County Council, a recommendation for denial, a continuance of the matter which keeps it from going to the Council at least temporarily and then you can do a recommendation that it is ready for consideration by the Council and there is nothing that would prevent you from recommending a subcommittee be set up and you could continue it and determine to meet with the applicant to discuss some things if you feel that would be appropriate but that would fall under continuation. If you wanted to recommend the Council set up a subcommittee to consider it you could, but part of why I am concerned about that with this particular application is because we are in an application where the application has been made by a law firm that is in active litigation with the County regarding a land use application on matters that are on some level related. I am concerned that everything that we are doing is being analyzed by minds to try to find ways of successfully either forcing the County to go up a particular direction or litigating against the County to prevent this from going a particular direction. I worry with this threat of litigation that is inherent as a result of the applicant being a law firm that this isn’t a healthy way to avoid litigation by engaging a subcommittee, discussion with a subcommittee again where everything that is said may be used in subsequent litigation against the County, does that make sense?

Commissioner Mark Hendricks replied, to clarify for myself and maybe others is that, if the applicant was not a law firm the discussion would be slightly different? Jon Woodard replied that I would be less concerned about being so careful. We try to do everything legal but you know how it is Mark when you’ve got a team of attorneys looking over a transcript and they are looking for everything that they can do to try and find something that supports whatever their cause is which their clients are paying them to advocate for.

Commissioner Mark Hendricks indicated my feeling is that I don’t think we need to deny this at this point, but I don’t think we should do anything more than continue it and that would include a request that we get guidance from the County’s legal department about whether we can even act on this at all because I am concerned about the procedure and precisely what you have mentioned. It is complicated and many people won’t like it but it is just the way it is. When you have a law firm and you have got a lawsuit and you have to be very careful and just the way it is. I am in favor of whether it is a subcommittee, whether it is a subcommittee of the Planning Commission or a subcommittee of the Council or some other group meeting with the citizen’s group to understand more. I think the issues are fairly well understood, but to me it is more technical than just hearing why and worried about development and what we are worried about with the size of buildings and all that and everybody is on board with that and everybody gets that. Unless anybody thinks that people are up here and not sitting here saying we will do whatever the church says. I think we don’t need to hear that we are worried that this building is too big and too bright all that stuff. Everybody gets it and it is more of a question of how do we, if really all we are worried about is agnostic of any project then how do we get the County code to be better, that could be worked out by people but it is going to take some sophisticated discussion and not that my grandfather would hate this if you guys did this here. My view is that we should continue it and that is all we can do or we could deny it.

Commissioner Mark Hendricks asked Jon Woodard, does denial mean you can’t bring it again in a new form? Jon Woodard replied that you are a recommending body right now so you can continue it so that you can further deliberate before you make a recommendation for the Council, but ultimately it is the Council who will make the decision to approve, deny, modify it or they can continue it indefinitely if they wish. Commissioner Mark Hendricks replied that my question is, if this body were to deny it is it dead? Can they come back and say oh we know why it got denied and we tweaked it a little bit and bringing this new application. Jon Woodard replied that no you are acting outside of the code if you were to deny the application. You are a recommending body in this. Commissioner Mark Hendricks replied that I understand what you are saying now, I got it. My view is that in the interest of giving everybody as much a chance as possible to work it out I am favoring continuing this.

Commissioner Doug Grandquis replied that we should deny it. I don’t think it is appropriate for this body to really discuss issues that are public policy because this document basically is changing the policy for procedures and the whole planning perspective of this County. That is really up to the elected officials to decide how they want to put the planning structure of this County together.

Commissioner Mark Hendricks replied that we can't deny it. Jon Woodard corrected me and I spoke incorrectly. We can only send it on with a recommendation that they deny or approve it. Commissioner Doug Grandquis replied, that is what I am saying is that we can just recommend to the County Council that based on the findings and conditions that we deny it but it doesn't mean necessarily that they can't bring it up and discuss it because it is really in their purview to do it. I just think it is beyond us to make a decision about the future of the planning department for this County.

Commissioner Wendell Rigby replied that in my mind I don't know that we have much of a choice. We have a legal opinion from the County attorney and if I remember when we first started this discussion Austin Corry mentioned the fact that a decision needs to be based upon the evidence that is provided. I haven't heard anything that would make me decide this is something that is to go forward. It is just the opposite I think that based on these legal risks and potential impacts that it could have I feel that it needs to be denied. Commissioner Mark Hendricks replied that is forwarded with a recommendation.

Motion

Commissioner Doug Grandquis made a motion to recommend to the County Council denial of the request for an amendment to the Wasatch County Code 16.23 and 16.27 and to add a section 16.43, Public Impact Discussions, in light of staff's findings and recommendations.

Commissioner Wendell Rigby seconded the motion.

The motion fails based on the following vote:

NAY: Chair Chuck Zuercher, Mark Hendricks, Kimberly Cook, Doug Hronek

AYE: Wendell Rigby, Doug Grandquis, Scott Brubaker

Doug Smith, the Wasatch County Planner, indicated that if you do make a motion to continue it we have got to know what you intend to have done between now and the time that you see it again. I would also say that if the idea is to put a committee together I worry about that because we could meet for months on this and it is ultimately a Council decision they may say that you are way off track or whatever so.

Commissioner Mark Hendricks replied that my view is that the subcommittee, if there is one appointed, can't be of the Planning Commission. It doesn't do any good for us to chew on it to pass something on to the County Council. Doug Smith replied just let us know what we need to be doing.

Motion

Commissioner Mark Hendricks made a motion that we continue Item No. 6, the amendment to Wasatch County Code Section 16.23 and Section 16.27 and to add a Section 16.43 by the law firm of Ray Quinney & Nebeker, be continued, in order to get an opinion from the county attorney whether we can even act on this or not.

Commissioner Kimberly Cook seconded the motion.

The motion carries with the following vote:

AYE: Chair Chuck Zuercher, Mark Hendricks, Kimberly Cook, Wendell Rigby, Doug Hronek, Scott Brubaker.

NAY: Doug Grandquis

Austin Corry replied that just out of an abundance of caution this item is on your agenda at the applicant's request. So I know that they presented that they were favorable to approval or continuing with a subcommittee I know that they presented that, just in over caution it probably would be worth asking the applicant if they are comfortable with you continuing the item. Commissioner Mark Hendricks replied yes I will do that. Is the applicant okay with this being continued? Alissa Haynes replied yes we are okay with the item being continued with the opportunity to have a subcommittee created. Commissioner Mark Hendricks indicated that is not my motion. My motion is I don't even know if we should be talking about it. So in light of other litigation. My motion is only to continue it to get an opinion as to whether this is something appropriate for us to be dealing with. Doug Smith asked for clarification, did you mean the County Council or the Attorney's Office? Commissioner Mark Hendricks replied that we want an opinion from the County Attorney's office that it is appropriate for the County Planning Commission to even consider this in light of concerns that have been expressed tonight.

ITEM 7 RAY QUINNEY & NEBEKER REQUESTS AN AMENDMENT TO WASATCH COUNTY CODE 16.21.16, OUTDOOR LIGHTING REGULATIONS, AND 16.15.25, JBOZ SIGN STANDARDS, REGARDING HOW OUTDOOR LIGHTING IS REGULATED BY THE COUNTY. THE AMENDMENT AS PROPOSED CONTAINS, AMONG OTHER THINGS: LIGHTING ZONES WITH VARYING DEGREES OF REGULATION, ENFORCEMENT OF LIGHTING STANDARDS IN RESIDENTIAL ZONES, LOWER KELVIN LEVELS, PROHIBITS UPLIGHTING, REGULATES HOLIDAY LIGHTING, LOWERS THE AMOUNT OF LIGHTING ALLOWED ON BUILDINGS AND LOWERS THE ALLOWABLE LEVELS OF LUMENS PER IMPROVED ACRE. **IF FORWARDED, THE RECOMMENDATION BY THE PLANNING COMMISSION ON THIS ITEM WILL BE CONSIDERED BY THE COUNTY COUNCIL AS THE LEGISLATIVE BODY, AT A PUBLIC HEARING ON JULY 19, 2023.* (DEV-7830; DOUG SMITH)

Chair Chuck Zuercher indicated that for Item No. 7, Ray Quinney & Nebeker matter, will the results be the same? Jon Woodard replied that is up to the Planning Commission and based on what the last motion was I wouldn't be surprised if it was the same, but I would recommend that we move forward with the staff presentation and the public comment unless the applicant would like to stay the item. The applicant indicated that they would like to go forward.

Staff

Doug Smith, the Wasatch County Planner, presented a Power Point presentation and then addressed the Wasatch County Planning Commission and went through a timeline of what has taken place with this matter thus far. This matter is to amend the lighting code. All of the major issues contained in the proposed code were debated on April 5th and 19th. The specific issues that were brought up in this proposal are contrary to what got adopted. The major items proposed to be changed in the lighting code will need to be either affirmed or opened up for more discussion by the Wasatch County Council. If the Council would like to open some or all of the items up for further discussion staff would need to do a more in depth analysis of the proposed language and make recommendations and look at impacts and put that in ordinance form. What I intended to do with the staff report is to provide you a history of the adopted lighting code after it left you on March 30, 2023. I know that you were aware because we presented in your next meeting that it got approved. I don't know if you are aware of what got approved in it. In this Power Point presentation I am going to talk about the history and provide the minutes of the meetings and motions that were made and compare the proposed changes side by side with what is being proposed and what has been approved and then provide some findings.

Doug Smith then went forward with a discussion of what he just explained to the Planning Commission. Doug Smith indicated that these are the main issues that are proposed to be amended in the lighting code that is in front of us tonight. Lighting zones were discussed, up-lighting was discussed, enforcement of code on residential zones was discussed, CCT or color correlated temperature kelvin levels were discussed, lumens per improved acre and what is included in that cap was discussed. If you recall there was total lumens per improved acre with a set amount and listed those things included and those items excluded from those lumens per improved acres was the IBC requirements, the International Building Code requires you to have lighting from the exit of the building to a public way. That was excluded. FAA requirements were excluded. IES, International Engineering Society's requirement for lowest levels of parking lot lighting was excluded as well. Candelas per square meter were discussed. FAA, IBC, IES lighting standards were discussed. Holiday lighting and curfew times were all discussed.

Doug Smith then went through a side by side comparison of the proposed code amendments and the current county code that was adopted on April 19, 2023.

(Referring to the power point) There at the very top on the left the applicant is proposing a 2700 Kelvin level and the Council approved at 3,000 Kelvin level. The applicant is proposing a 10 candela per square meter for down lit architectural lighting and the Council approved a 27 candela per square meter and allows up-lighting.

The applicant proposes four lighting zones: LZ-0 has a five thousand lumen cap, LZ-1 with a ten thousand lumen cap, LZ-2 with fifteen thousand lumen cap and LZ-3 with a 25,000 lumen cap and counts all lighting including FAA, IBC and parking lot lighting. There is a big difference between what was approved and what is proposed. What was approved, as I mentioned, was no lighting zones, 25,000 lumens per improved acre and as I mentioned it did not include IBC, IES or FAA lighting. The applicant is proposing .5 foot-candle at the property line for non-residential and .1 foot-candle for residential. That is lighting trespass at the property line. The County code that was adopted was strict adherence to the definition, a specific threshold at the property line.

The applicant is proposing Signs allowed to be lit depending on lighting zone. The one that was approved was sign lighting extinguished after regular business hours and remain unlit until one hour before sunrise. It also lowered the lumen level or I am sorry the candela level lighting. I guess that is at the bottom of the column on the left.

The proposed code enforces the lighting code on new and remodeled residential construction in residential zones. So it is enforcing at building permit lighting cut off in residential zones. As I mentioned in the County code that was approved there was not enforcement on residential lighting. Amortization of non-conforming lighting for all zones. That is phasing it out. Let's say that they do a substantial remodel or something like that, we make them conform. No amortization in the County adopted code except for commercial lighting. No amortization for residential zones.

No up-lighting allowed in the proposal. Up-lighting allowed in the approved code as long as it is full cut off provided by the building.

The proposal lowers the height of pole mounted luminaries to eight feet in the LZ-1 and LZ-0 lighting zones. The approved code allows for twenty foot high pole mounted luminaries in commercial zones and fifteen foot high in residential zones. The proposal would only allow for wall mounted luminaries that are directed down. You could not have any up-lighting for architectural lighting. Those wall mounted luminaries would be limited to a sixteen foot height on the wall. If there was soffit lighting that would be visible from the ground. The adopted code allows for building up-lighting, allows for down-lighting attached to a structure or soffit lighting provided it complies with the other applicable standards of trespass, candela, lumen and cutoff regulations.

The proposed code adds a requirement for low lumen bulbs, not exceeding 7 watts each, for holiday lighting and specifies from Thanksgiving to January 15th. The adopted code allows for sixty days in one calendar year consecutive or non-consecutive for non-residential only.

The proposal is for curfew hours that get stricter depending on the lighting zone and in the adopted code it is specific hours general for all commercial.

The proposal adds more strict sections for enforcement. The adopted code relies on the existing sections of the code that we have to enforce our codes as well as an enforcement of a development agreement.

This last one as I mentioned the lighting standards has ten candelas for signs and curfew times. The adopted code allows for forty candelas per square meter for signs.

Doug Smith then went through the findings.

1. The current lighting code was adopted on April 19, 2023, subject to the requirements for the ordinance to go into effect, which were complied with.
2. The amended lighting ordinance replaced a code that was in place in a substantially similar form since 2003.
3. The code allows for uplighting with cutoff provided by the building but also limits the amount of lighting allowed on a site.
4. The 2003 code allowed any amount of light on a site or building without limits as long as it is directed down.
5. A public hearing was held by the Planning Commission on March 30, 2023.
6. A public hearing was held by the County Council on April 5, 2023.
7. This application to amend the lighting code was submitted on April 17, 2023.
8. The amended lighting ordinance was approved on April 19, 2023.
9. Ray Quinney & Nebeker filed a Petition for Review, in district court, regarding the recently enacted Ordinance 23-01 in Case # 230500048 on May 19.
10. The LDS church submitted a complete application for the temple project after the date the amended lighting ordinance went into effect, and the application is therefore vested under the amended lighting code as applicable.
11. During the public hearing, Council deliberation, and in presentation by Dr. Barentine, there was significant discussion on the major issues proposed to be amended by this application.
12. The code approved on April 19th is contrary to many of the changes proposed in this lighting code, however there was discussion by the legislative body that some of the aspects of the code may be looked at further at a future date.
13. A consultant was used for technical guidance, maintaining working drafts and doing the bulk of the writing of the amended lighting ordinance.

14. The County uses consultants regularly to provide guidance and advice on various projects, though the consultants are not the land use authority or the legislative body who have certain powers under CLUDMA. --This is the County Land Use Development Management Act.
15. The guidance from the consultant was discussed, debated and considered by staff, the Planning Commission, the lighting sub-committee and the legislative body in public hearings and in public meetings.
16. The County consultant and staff provided detailed information for the County Council to make an informed decision on enacting a land use regulation.
17. State code does not require the County to have a lighting code or follow the recommendations of a consultant.
18. The County Council, staff, lighting sub-committee and consultant has recently put many hours into the substantial update to the lighting ordinance. It will take some time for planning staff, the Council, and the development community to utilize the new standards, and learn areas where it appears the standards and procedures are working well, and where they could use adjustments. The Council may want to consider allowing additional time to pass before enacting significant revisions to the new lighting ordinance unless urgent problems or deficiencies are apparent.
19. The staff report is not a review of the proposed language or a critique of the acceptability of the proposal. Due to the recent in depth review during the code approval process provided by the staff and Dr. Barentine, the substantial public input recently considered by the Planning Commission and Council, and the extensive discussion of the Council on dark sky issues, staff does not see the need to state objections or support for various aspects of the proposal beyond what was presented to the Council in previous staff reports. All of these major issues were debated on March 30th, April 5th and April 19th.
20. If the County Council decides to entertain some or all of the proposed amendments staff would encourage the Council to direct staff to do an in depth review of the proposed language, make recommendations for the changes and provide in ordinance form.
21. It was determined by the Council that the adopted code met the intent of the General Plan to: "Preserve the views of the night sky and reduce the health impacts of artificial light by requiring all development to have dark sky compliant lighting" (Policy 1.1.7).
22. It was determined by the Council that the adopted code complied with the purpose and intent statements of the former code and new code to; "not unreasonably interfere with the reasonable use and enjoyment of property and astronomical observations within the County. It is the intent of this section to encourage, through regulation of types, kinds, constructions, installation and uses of outdoor electricity, lighting practices and systems which will reduce light pollution, conserve energy, provide consistent lighting standards, reduce maintenance and replacement costs while increasing nighttime safety, utility, security and productivity". --I am saying this because these were included in the findings when the Council approved this. They felt that whatever they approved, what they approved was in compliance with the General Plan policies and the purpose and intent language of the code.
23. It was determined that the adopted code brought the County closer to compliance with the best management practices (BMP's) as required of municipalities by the International Dark Sky Association requirements for accreditation as International Dark Sky Communities.
24. It was determined, and the legislative body again determines, if they in fact do this, that the recently adopted amended lighting ordinance balances the health, safety, welfare interests of adequate lighting required under the IBC, FAA and recommendations of the IES with the welfare interests in reducing light pollution.
25. The staff report is adopted except as modified by, respectively, the Council or the Planning Commission.
26. All public hearings and noticing requirements under the Wasatch County Code and the Utah Code for adopting or modifying a land use regulation were followed by the County.
27. Written comments were considered by the Planning Commission and forwarded to the Council.
28. It was determined, and the legislative body again determines, that the recently adopted amended lighting ordinance was in the interest of the public, and is consistent with the goals and policies of the Wasatch County General Plan.
29. The Wasatch County Council, as the legislative body, had broad discretion in approving the recently adopted amended lighting ordinance and has broad discretion in determining if amendments should be made to the newly adopted code.

Doug Smith indicated that one thing this Planning Commission could do is forward this to the Wasatch County Council and make a recommendation that there should be consideration of the changes to the lighting code and possibly specifically include what changes those might be. That said, there could be recommendations for approval or denial or could be a recommendation to approve with conditions or there could be a continuance of the item or there could be a recommendation for approval and there are a number of options there.

Chair Chuck Zuercher then asked if the applicant is present.

Applicant

Lisa Bahash, the presenter, presented a Power Point presentation and then addressed the Wasatch County Planning Commission and indicated that she is here with her team in presenting this to you by Shawn Savarino and part of the co-founders of Save Wasatch Back Dark Skies. Dave Speer is also a Save Wasatch Back Dark Skies member and he is a local resident and he is an illumination engineer for about forty something years. We also have Michael Colligan and Greg Ehrich who are industry professionals in the lighting realm as well for more than twenty years each. We are here on behalf of local residents and not connected with any specific projects or developments and we look at this as an opportunity for the County to consider dark skies as a stand-alone initiative.

Our mission is to save Wasatch Back dark skies and preserve the night skies for all of us and for everybody in the future to help educate the community and we are seeing there is a very large gap in even understanding what we are talking about. We want to make a difference for generations to come. We should be a dark sky community. The community wants it and it is a benefit for us to have. To become a dark sky community one must declare it and declare it proudly and let's adopt a code that is eligible for dark sky international certification and our proposed amendment is key features aligned with all of the outdoor lighting authorities and John Barentine's original recommendations. We want to make this less subjective and really make it progressive for the County and for the whole valley. We still have time to make this a dark sky community. We think there is a big difference in how the County may work with residents as opposed to a developer working on a specific project.

Lisa Bahash indicated there was twenty years of a code in place with no up-lighting. Up-lighting is one of the issues in trying to be a dark sky community or maintaining a dark sky position. We actually sent two requests for postponements to try and slow the process down. We sent a very direct and detailed rebuttal to the staff's proposed amendment. We corrected and expanded the city or other jurisdiction matrix that the County had shown and put quite a bit of hours and effort into each of the hearings all of our documents in elevating our understanding what it means to be a dark sky community. We also conducted a survey that we shared the results on in a very good way. We were told to get a seat at the table, we were told to put in our own amendment and so we did that.

The General Plan, in more than one area, dictates in three specific areas of the General Plan, it talks very specifically about preserving the night skies, about reducing light pollution and caring for the general well being of the residents of the County. We should go to shielded lighting. The most persuasive arguments for dark sky lighting controls are economic and electricity is wasted. Human health officials have recommended shielded street lights lower than 3000 kelvin. Also not having dark skies affects a lot of areas, human health, insect population, birds, wildlife, etc. We would really love to see a commitment from the County that is trying to pull together an alliance of the entire Wasatch Back area. We would love to be a part of that commitment. We would want you to approve and forward our proposed amendments and commit to an intermediate initiative to better these codes.

Lisa Bahash indicated we have two requests, approve and forward our amendments or at a minimum continue with a motion to create a subcommittee and continue to discuss certification and what is the right direction for the County. We could accomplish a lot in working together with the other jurisdictions. This isn't about the temple and we are doing this for the good of all the citizens of Wasatch County.

Greg Ehrich, not a resident of Wasatch County, addressed the Wasatch County Planning Commission, he is a lighting professional with over twenty years experience and representing the industry and best practices that can support and enable a dark sky certification. Lighting needs to have a clear purpose, be useful, be targeted, only directed where needed, low light levels, no brighter than necessary, controlled only used when it is useful and color use warmer color lights whenever possible. Light pollution is pollution so it needs to be treated that way. You should have lighting zones. Curfew should be considered and based on sunrise and sunset. The lights should have a clear purpose before installing or replacing a light and determine first whether the light is needed. Lights should be pointed downward. Be a good neighbor when it comes to lighting. Up-lighting should be controlled, lighting should be no brighter than necessary use the lowest level required. Snow can make things a lot brighter than any plan could show. The color limit should be a 2700 kelvin. These are all facts taken from the IES and IDA and take that into consideration when you look at this.

Michael Colligan, Executive Director of the Lighting and Darkness Foundation, and also a volunteer, addressed the Wasatch County Council and indicated that instead of dark skies, it should be a term of Darkness Restoration and night preservation. Darkness restoration is for our light polluted environments which is very difficult to make right. Wasatch County is a situation where you can preserve night and night preservation is a different thing. It is time for us to see light pollution as a grotesque example of human over consumption and finally the word useful has been used over and over again. What is useful about up-light and can't think of any practical use for it whatsoever. Michael then thanked the committee for the work that you are doing.

Lisa Bahash then thanked the Planning Commission for hearing us. Just remember we are doing this on behalf of the whole County and on behalf of the whole valley and if we can pull more communities to our efforts we will absolutely do that. The future is based on our actions today and in the near future. We want to have everything that Doug Smith has mentioned that we want on the left of the diagram but honestly what we would love to have is conversation before it is too late and to get the conversation we had put the ordinance forward to get it.

Public Comment

Chair Chuck Zuercher then opened the hearing up for public comment.

David Speers, local resident, addressed the Wasatch County Planning Commission and indicated that there are two parts of the ordinance. The first one is the luminance limit of the building surface and that is what the eye sees. What is the basis of that 2700 candelas per square meter what is the basis of that number and I don't think that is the right numbers. We should re-evaluate that number. I do believe that you have been misled slightly and maybe a lot by the concept that a building can capture one hundred percent of the light when you shine a light upwards. It is extremely difficult to do that in standard practice. Only about two percent of the projects have a lighting designer that actually works on them. Most of the lighting projects are designed by a manufacturer or by a manufacturer's representative. Typically the electrical engineer doesn't have that in his budget to do all the nitty-gritty lighting work. Very few projects will have a dedicated lighting designer and you don't, at the County, have the ability to police these projects and say man you have violated our ordinance. My point is that this is really hard to achieve in standard practice and by putting something in an ordinance that says as long as it is captured by the building it is really going to be water under the bridge and I don't think you can ever get this back. That needs to be tightened up in this ordinance and best way to do it is obviously if you want to be a dark sky community to take away the up-lighting capability because it really is a can of worms.

Chair Chuck Zuercher then closed public comment.

Commissioner Doug Grandquis indicated that he really likes the concept because the night sky is very important. We need to progress together both the government and the public in trying to work out a program that everyone can live with. Could we say to the County that there needs to be some group come together and work this out? You need to talk and get together, along with Doug Smith and others in the County to get together and discuss these things would be great. I don't know how you would make a motion to that right now.

Commission Comments

Commissioner Mark Hendricks indicated that the temple project has submitted enough to be vested under the current code dated April 2023. Doug Smith replied that they submitted a complete application and are vested under the current code. Commissioner Mark Hendricks replied that it is important that we all understand what we are talking about isn't going to change that. There is a separate process going on which leads me to point number two that the April 2023 code is, as I understand it, is the subject of a review lawsuit in the District Court brought by the applicant. So now we are unfortunately right back where we were with the previous item and actually more of a concern for this one. The applicant is party to ongoing litigation with the County and I believe is related since its review of the ordinances which are proposed to be amended under this application and little bit problematic and leading me down that same path to recommend and probably end up moving for some sort of continuance. Having said that, the continuance may be useful for everybody because I think that we all want this for Christmas and I don't know maybe you will. I know that I will admit and I care about lighting from my professional life with hotel development and probably the only one here that has been in the middle of the Pacific Ocean on a war ship with no lights on and see what the sky looks like in the middle of the Pacific Ocean which is moving. So none of these people are like conspiring to hold back those dark sky people because everybody wants this to look beautiful but there is some education that has to happen. You are in a good position with expertise and passion to do so. I think it is very helpful for amateurs like myself to have visualized and when you see something, what would be really awesome is say that let's hold a meeting at night and we are going to pick a stucco wall and let me show what 2700 kelvin looks like versus 5,000. You need to educate though and that would help the County Council to move along.

The County Council has expressed an interest in this and they are open and expect that could evolve more. It is a worthy fight and it may take time and would be inclined to continue this and I still think that we need an opinion from the County Attorney's Office as to whether we can even address it in detail given the pending litigation, but there may be ways to work through that. I would be inclined that the Council, not this Commission, to create or reconvene a subcommittee and work through it and see as between the two columns what can move and get political or legislative support for it.

Continue it and wait for an opinion on how much we can talk about it and at some point ask the County Council if they can talk about it and do it through a dedicated committee that have the resources to do it and possibly somebody from the Planning Commission be on that committee.

If you do present it again don't spend so much time talking about the benefits and economic impact and focus on the County and what does it mean to the County or spend a lot less on why dark skies are good.

Jon Woodard replied that I would be comfortable either with the motion kind of like Mark Hendricks outlined or with the motions recommended in the staff report. Doug Smith replied that I think it would be with a recommendation that whatever you want to see or whether there is a subcommittee set up and more discussion of this that you agree with some of the principles they have outlined or not.

Commissioner Mark Hendricks replied that I agree with all the findings that you have outlined starting on page 12 of the staff report. I don't want to close the door on this discussion. If the Council is ready for it and they can express an idea but it is sensitive, it is a new issue and there is litigation. If we continue a matter at this level does the County Council ever hear about it? Can we move something up because that may require us to deny it or to send it forward with a recommendation one way or the other just so they look at it? Doug Smith replied if you are continuing it for the question about the litigation that is one thing. If you are continuing it to have further discussion well it is the legislative body or their decision entirely. They know the issues and I think they need to see this presentation and decide what they want to do. I guess your comment about the litigation if you want to wait for that and if it is anything else other than that it should be moved forward so that discussion can happen with the decision makers.

Commissioner Doug Grandquis replied that we passed a motion and I can't recall that either to deny or approve. Commissioner Mark Hendricks replied we sent it to the Council without a recommendation but outlined a bunch of issues that we wanted them to look at. Commissioner Doug Grandquis replied couldn't we do the same thing here and the main issues to be discussed? Commissioner Mark Hendricks replied that I am hung up on the litigation matter. Jon Woodard replied that the thought of doing a legal opinion on that issue is something that encouraged me and it is an interesting question and would be happy to explore it further.

Commissioner Mark Hendricks replied that I would feel much more comfortable and it is only procedural. Once again it is not about the merits about whether this should be discussed it is about whether we can at this point. I am going to stick to my guns and am kicking the can squarely down the road and into your office (Jon). What I am saying is I would make the same motion that I did on the last item that we are continuing it, meaning that we are not taking any action until we know that we can take an action.

Commissioner Doug Grandquis replied can you ask the people here how they would feel about doing something like that? The party indicated that they would like to talk about it. Commissioner Mark Hendricks indicated that if we can talk about it and remember the litigation is that we don't like what you passed and for whatever set of reasons and I haven't read the petition. The applicant indicated that it wasn't reasonably debated. Commissioner Mark Hendricks replied that I think Doug Smith is exactly correct. If you as the applicant collectively and Ray Quinney & Nebeker is the applicant and actually they would be speaking but we are going to recognize that because you are paying them. If you are comfortable with the continuance that means we are all in agreement and that is progress. The parties indicated that they are comfortable with that.

Motion

Commissioner Mark Hendricks made a motion that we continue Item No. 7, the proposed amendment to the Wasatch County Code 16.21.16 Outdoor Lighting Regulations and 16.15.25 for the JBOZ Sign Standards, the applications by Ray Quinney & Nebeker, and on behalf of interested parties who have agreed I propose that we continue it, pending to no particular date but pending an opinion from the County Attorney's Office that we can act on it.

Commissioner Wendell Rigby seconded the motion.

The motion carries with the following vote:

AYE: Chair Chuck Zuercher, Kimberly Cook, Mark Hendricks, Wendell Rigby, Doug Hronek, Doug Grandquis, Scott Brubaker.

NAY: None.

ADJOURNMENT

Motion

Chair Chuck Zuercher made a motion to adjourn.

Commissioner Kimberly Cook seconded the motion.

The motion carries with the following vote:

AYE: Chair Chuck Zuercher, Kimberly Cook, Mark Hendricks, Wendell Rigby, Douglas Grandquis, Doug Hronek, Scott Brubaker.

NAY: None.

Meeting ended at 12:00 Midnight


CHUCK ZUERCHER/ CHAIR

