

AMERICAN FORK CITY COUNCIL
SEPTEMBER 19, 2023
SPECIAL SESSION & WORK SESSION AGENDA

Members Present:

Bradley J. Frost	Mayor
Kevin Barnes	Council Member
Staci Carroll	Council Member
Ryan Hunter	Council Member

Members Absent:

Clark Taylor	Council Member
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Staff Present:

David Bunker	City Administrator
Camden Bird	Assistant City Administrator
Terilyn Lurker	City Recorder
Derric Rykert	Community Services Director
Patrick O'Brien	Development Services Director
Stephanie Finau	Deputy Recorder
Aaron Brems	Fire Chief
Cameron Paul	Police Chief
Cherylyn Egner	City Attorney
Anna Montoya	Finance Director
Susan Goebel-Canning	Public Works Director
George Schade	IT Director

Also present: Mat Sacco (Fire Marshall), Dan Loveland (Building Inspector), Ernie John (Water Management & Candidate), and Tim Holley (Candidate)

The American Fork City Council met in a special session and work session on Tuesday, September 19, 2023, in the American Fork City Administration Offices, located at 51 East Main Street, commencing at 4:02 p.m.

SPECIAL SESSION

1. Review and action on certifying the results of the September 5, 2023, Municipal Primary Election.

Mayor Frost opened up the special session to review an action on certifying the results of the September 5th, 2023 municipal primary election.

Council Member Carroll moved to convene as the Board of Canvassers for the September 5th, 2023 primary elections. Council Member Hunter seconded the motion. Voting was as follows:

RESULT: APPROVED [UNANIMOUS]

MOVER: Staci Carroll, Council Member

SECONDER: Ryan Hunter, Council Member

YES: Hunter, Barnes, Carroll

ABSENT: Clark Taylor, Council Member

Rob Shelton, Council Member

Mayor Frost commented that Council Member Taylor is out of town and that Council Member Shelton would be arriving shortly. He turned the time over to the City Recorder, Terilyn Lurker.

Ms. Lurker reported on the final tally of the votes with the candidates listed in the order of the vote, noting the results do include the breakdown per precinct as well as the election statistics. The six candidates with the highest votes, therefore moving onto the General Election Ballot are: Clark Taylor, Kenneth Sumsion, Ernie John, Tim Holley, Austin Duke, and Jeff Shorter.

Ms. Lurker stated that in American Fork there are 19,482 active registered voters with 4,050 ballots counted. There were 49 ballots not accepted, with 11 returned unsigned, 14 with signature discrepancies, and 23 returned past the deadline. She added that were 2 provisional ballots issued and both were counted. There were 9 UOCAVA (Uniform and Overseas Citizens Absentee Voting Act) mailed out with none returned. Lastly, there were 2 ballots duplicated due to damage.

Ms. Lurker reminded the Mayor and Council when they make a motion, it will be to accept the resulting canvas as presented and declare the following candidates to be on the November ballot.

Council Member Barnes noted a discrepancy in the numbers on the statistics sheet, to which Ms. Lurker indicated she would make that correction.

Rob Shelton arrived at 4:04 pm

David Bunker arrived at 4:05 pm

Council Member Hunter moved to accept and certify the 2023 municipal results in the canvas presented and declare the following to be placed on the November General Election Ballot, with the correction to the statistic sheet as needed, Clark Preston Taylor, Kenneth W. Sumsion, Ernie John, Tim Holley, Austin Duke and Jeff Shorter. Council Member Barnes seconded the motion. Voting was as follows:

RESULT: APPROVED [UNANIMOUS]

MOVER: Ryan Hunter, Council Member
SECONDER: Kevin Barnes, Council Member
YES: Hunter, Barnes, Carroll, Shelton
ABSENT: Clark Taylor, Council Member

2. Adjourn to work session.

Council Member Carroll moved to adjourn the session as Board of Canvassers. Council Member Shelton seconded the motion. All were in favor. Meeting adjourned at 4:07 pm.

Council Member Hunter moved to adjourn the work session. Council Member Barnes seconded the motion. All were in favor.

WORK SESSION

1. Discussion on the installation of flags on city light poles.

Ms. Egner reported on some legal concerns she had on city light poles.

- Who’s going to be putting up the flags. Is it a city project? Is it the residents? If it is the residents, she stated that there needs to be some kind of lease agreement or something that covers liability intensification, maintenance, and how often flags would be put up and taken down.
- How do you know if it is all the time, is it one month out of the year or is it for special occasions.
- She stated that there is a liability concern that could be remedied with a lease agreement. If a lease agreement is being used, then the city opens itself up to regulating speech. If a resident wants to fly a flag that they wish to on the flagpole, are we limiting it only to the American flag or will it open issues if the city claims it can only be US flags. What if someone wants to fly the state flag and which state flag can be put up.
- Does it become a light pole which people use for advertising purposes of some sort. Does it become an issue we’re flying the *Blue Lives Matter*, *Black Lives Matter*, *LGBTQ*, and all the things that different people take pride in and fly on their own property.

She commented that once you take it out to the public space you then have the issue of how much we are regulating their speech. She stated to the council that this should be something they should keep in mind. She added that it can open the flood gates for others to come in and want a certain flag to be flown and then ask, “*why does this flag get flown and not others*”.

Ms. Egner brought up the location of where the light pole would be. Would it be in one subdivision throughout the city or on any one street. If it is allowed in one subdivision, would it be allowed in another subdivision. She stated that between free speech issues or being accused of regulating any kind of free speech as well as liability concerns, she felt from a legal perspective there is hesitation. She continued to bring up other legal concerns which are minor and mentioned that the accumulation of minor concerns adds up.

Mr. Bunker commented that Susan Gobel-Canning had prepared some things she wanted to go over about the poles themselves and maintenance attachments.

Ms. Gobel-Canning compared the light pole situation to the holiday decoration on Main Street. She discussed the special adapters and lifts it takes for the staff to use to secure décor that is safe and installed correctly. She reiterated what Ms. Egner said about when it's time to replace the décor and flags is the staff going all out at the same time, doing it all at once. She also commented on the maintenance, who will be responsible, the residents or staff. It comes down to the safety of residents.

Ms. Gobel-Canning brought up vandalism and maintenance after that happens. She added that Black & McDonalds are the ones that maintain the lights, so every time they go out, they charge the city a fee. Will they be doing more and charging us more. She was concerned that it was being put in the right place and that a certain standard will be put in place that will work Black & McDonalds

Mayor Frost commented that the standard in his opinion would be 14', the same as the tree and sweeper standard so that the flag doesn't get damaged. Ms. Gobel-Canning replied that there should be a standard on how big the flag is also.

Mr. Bunker commented that they will take the Council's direction and how they want to proceed. He discussed unintended consequences, liability to the city, manpower, and extra cost. One of the biggest issues include the liability of installation of the flags and safety of residents if they are the ones putting it on the pole.

Mayor Frost asked for feedback from the Council.

Council Member Carroll asked about the attachments on Main Street and how they are attached. Mr. Bunker and Mayor Frost replied that they are banded with a special tool. Council Member Shelton reported that he had a meeting with about 25 neighbors and had invited Council Member Taylor to it to discuss this matter. He commented that the desire from that meeting was for more of an adoptable type of strategy and not having to go into a lease agreement but that a resident would donate a certain amount of dollars to be able

to adopt a flagpole and the city would oversee installation and putting up flags that the city felt are warranted.

He commented that if there was an adopt-a-flag program that cost \$200 to \$300 a year (depending on what staff agrees to), a resident could sign up for that and the city staff would do it. There would be signup time, then it gets installed, and that flagpole does not get renewed each year for adoptive flagpoles. The staff then takes the flag down and handles that process and there are no additional costs.

Council Member Carroll would like to see a manufacturer that can show us examples of attachments because she didn't like the idea of drilling into the pole. Council Member Hunter inquired about engineering standards about the poles, whether they are wind resistant with a flag on it. He expressed that he loves seeing fresh flags being utilized for Steel Days.

Ms. Gobel-Canning replied that they had reached out to Black & McDonalds, and they didn't have answer for that, they were more worried about damage to the poles. Council Member Hunter expressed that he would rather have the staff come up with recommendations as to what is needed or what will work compared to the Council tell them what they feel is needed.

Discussion amongst the Council ensued about options for the flag program and what would work. Mr. Bunker suggested that staff put together estimated costs for brackets and maintenance.

2. Discussion on accessory structures.

Patrick O'Brien discussed Sec 17.5.105 Area of Accessory Buildings that relates to accessory structures not being for business use or for habitation and the challenges for planning when proposals are submitted. He stated the main thing they are struggling with as staff in review projects is that there are only three items which they are reviewing before it comes to the Planning Commission and they, being the overall approval body. He explained that the review is triggered once an accessory structure comes in over 1000 square feet and it is reviewed under the three main points.

Mr. O'Brien stated that there were challenges with that, which the Planning Commission brought up because they're seeing partial plans brought before them and from their perspective as an approval body to really get the full picture of someone's proposal to see if it is going to impact their neighbors or the community. He added there is a lack of information when it comes to impact terms on a regular site plan that would usually come through at the level that we deal with.

He went on to state that when something gets approved from Planning it moves forward to Dan Loveland and his team in the Building Division for their review and it also gets sent to different divisions – Fire, Engineer and on to Planning.

Reasons for Thorough Staff Review & Planning Commission Approval

- Drainage
- Materials used.
- Location
- Open Space Impact
- Geotechnical Concerns
- Encroachment

Mr. O'Brien commented that some of the reviews go beyond the historical projects that usually get done in the backyard. Large shops, pool houses, basketball courts, cinemas and indoor basketball courts are what residents want to build. He stated the challenge with that is that it covers a larger surface area including 1,000 square feet plus on someone's site. He added that there is a requirement within the code that states that a certain percentage of the lot of the rear yard needs to remain in open space depending on where people are building there are geotechnical concerns.

Council Member Shelton had concerns regarding a building with a size of 1,000 square foot or larger and the process in which that takes place. He brought up that once a property is subdivided and the lot is recorded at that point it takes it out of the Planning department's hands and it goes to the building department as it states in the code. He felt that back in 2013 it was bypassed, and it went back to Planning for anything over 1,000 square feet and things are being brought up from the subdivision stage and it's on the same lot. Then the Geotech report comes in again when it was already done in the subdivision stage.

Mr. O'Brien replied that when he has geotechnical concerns, he's talking about excavation observations or soils reports. He explained that when he talks about geotechnical, he meant in the broader sense and not geotechnical reports that are approved.

Mr. Bunker asked Mr. O'Brien if they ever had any accessory structures to build outside the original building envelope. In other words, all the lots that get approved with the subdivision have a building envelope that includes setbacks so that their building envelope doesn't go from plot lines to plot lines. He asked are there any accessory structures that get constructed outside the building envelope?

Dan Loveland responded that there is.

Mr. Bunker commented that if there is when it comes to Geotech concerns in this case, but if you're outside the building envelope, then that subdivision plat would not apply because you're not within the building envelope. Mr. O'Brien replied that it comes down to the primary structure building envelope that the rear set back on a primary structure is much larger than the rear set back on an accessory structure. He added that the 30 feet off the rear lot line for the primary structure is 5 feet to 10 feet off the rear lot line for an accessory structure so you're building in an area that isn't necessarily considered and added that maybe they hadn't done the Geotech.

Council Member Shelton brought up Geotech being done in an area with the plot of land and the idea that a separate Geotech needs to be done because you're outside of the building envelope and then some of the city setbacks are only 10 feet, to him he didn't understand the logic in that.

Mr. Bunker replied that other than the person signing off on the Geotech for the subdivision and it is within the building envelope, they're putting their license on the line that the Geotech study covers that but if it's outside the Geotech or that building envelope, then it may not. He shared an example of how this may occur.

Council Member Shelton discussed in detail his concern for a separate Geotech study on the same land plot that was already done and when adding a structure to that plot to say it needs to be done again. Mr. Loveland replied that an excavation observation is done and a Geotech is not required.

Council Member Carroll replied that it probably was a mistake that they said it was required. Mr. Bunker added that in that one case, the person was contacted and told that the Geotech study and perk test were not required.

Mr. Loveland stated that when the subdivision is developed there is a Geotech for that subdivision that's done and that comes into consideration. He added that when an engineer is designing a home, he's considering Geotech to design the footing/foundation of the base of that structure.

Mr. O'Brien commented that they refer back to the original Geotech terms of the design, but they do not require it as an item for submission.

Discussion amongst the Council and staff as to which department should be pulling the Geotech report and making sure what they submit meets code and the Geotech is on good terms with the city and design meets requirements. The Council also discussed the size of what is being built makes a difference and the problems that come with it.

Council Member Shelton brought up the process of an approved lot and to whom and which board it goes through. Differing opinions were discussed between staff and Council Member Shelton on what the code refers to and to whom.

Mat Sacco commented that there are certain permits that are required in the fire code that I have the ability to say you have to submit for a special permit, but when it comes to building stuff, we usually go back to things off one permit, so we are not laying on multiple things.

Mayor Frost stated that we want to provide the tools for staff to do their job and not be a hindrance. Mayor asked Mr. Loveland what his mindset is as the building authority when he signs off on a proposal. Mayor commented that he wants to give him the right tools to do his job.

Mr. Loveland replied that the code is clear. The building code, not the development code, is very clear as far as what is required to build a safe structure. He added that it what they review, from the footing clear up to the whole structure until it's final and everything is done according to the building code. He stated that the biggest challenge is the Development code. There are holes in it. Looking at the Board of Adjustments, if you look at the requirements, it's a land issue not a building code issue. He expressed that it causes some confusion.

Council Member Shelton expressed his disagreement with what Mr. Loveland stated as per his previous discussion pertaining to the Board of Appeals vs Board of Adjustments.

Mr. Bunker commented that what he thinks Mr. Loveland is stating is that our development code contradicts the building code so there are holes in our development code that aren't congruent with the building code and maybe the fire code and so that is what the city needs to work on is updating our Development code, including Sect. 17 to make sure that is it now congruent with the building code and fire code.

Council Member Shelton expressed confidence in Mr. Loveland and his department to handle permits for accessory structures and get rid of the Planning Commission reviewing it. He added it will simplify the process while still protecting it.

Mr. O'Brien replied that the material items most likely used for accessory structures are a much harsher material than on a home or a building of 3,500 square feet. Council Member Shelton replied that Mr. Loveland should have the authority look into that instead of waiting for the Planning Commission to meet and make the client wait and then be told unnecessary conditions that aren't allowed by code to be put on there. Council Member Shelton felt there was an error or mistake the Council made back in

2013 when it was brought before Council to recommend bringing in the Planning Commission into that.

Council Member Shelton went on to discuss certain city codes that were adopted that provide problems for the Engineering department to interpret that he thinks needs clarification and to be able to work with staff to address these city code issues that he has been working with Council Member Barnes on and then be able to come back to the Council to discuss it further.

Mr. Bunker felt that it circumvents the whole process of going to the Council to ask them if they even want to do it. He added that there could be a reason that we want the Planning Commission involved. He referred to Council Member Shelton's opinion that the Planning Commission shouldn't be involved, but there could be reasons that the Planning Commission should be involved. In a subdivision we all expect that homes are going to be built on the lots. But there is no expectation that accessory buildings will be built. In some instances, the Planning Commission is needed because there could be a 3,500 square foot accessory building being built in the backyard.

Council Member Shelton commented that if he and other Council Members who are willing to look at different code sections that needs to be changed or updated and have some type of direction to see some codes changed from the lowest level first and working up towards a collaborative approach.

Mr. Bunker replied that it would be possible to start with code changes, suggestions, and work with Ms. Egner because she is already updating the code and then we can make sure that those who are congruent with Ms. Egner make changes in the code.

Council Member Shelton stated that he wants to see improvements in the process and work on it now versus waiting six months to year for a whole code rewrite and give some clarifications to other aspects.

Council Member Carroll mentioned that a developer that wants to change code doesn't go to staff to ask if it's good or to work on it together, the developer just pays his \$200 fee to vet it through the process.

Mr. O'Brien expressed the issue with the code text amendment fees. The fee is extremely low. He mentioned that staff has done a review of adjacent cities and they have an \$800 to \$1200 range because the time requirements of when someone submits something for review. Staff does not give advice to the developer on what they should do and what they shouldn't do. Staff needs to check how a submission that someone makes will impact other aspect of our code and if we need to bring those issues to Planning Commission and City Councils attention. He added that with the low fee it does not give

the resources needed for staff to be able to put that time into such a review. Several code text amendments have been done through the years without reviewing the existing code for conflicts which is why there are so many holes in the code and contradicting statements. Applicants are rolling the dice because it's so cheap to amend the code and we can't continue to keep up on that. He stated that there is less likelihood that someone is going to take a chance on a code text amendment if the price is a bit more impactful to them. When the fee is lower it doesn't sting as much, but if the fee is higher, it gives the staff the opportunity to cover their time to do these other reviews. With a higher fee applicant, they don't take a chance on the code text amendment.

Council Member Carroll agreed with Mr. O'Brien and stated that what is being proposed is not what we normally do, but then they are accused of doing what they normally do. Council Member Shelton asked what the process is when a developer submits an application.

Mr. O'Brien replied that it takes 2 weeks to review it and then refer it to Ms. Egner to see if there are any major issues and essentially it goes on the next available agenda. This is because we need time to do that if there is a notice requirement. Council Member Shelton asked if there was any feedback from staff to the applicant prior to the meeting to which Mr. O'Brien stated that sometimes they do, it's essentially saying *Here's what you've submitted, this is what we are recommending.*

Council Member Shelton stated that he just wants a discussion that leads to a stronger code at the end of the day. He stated that he didn't want residents to feel unreasonable where things are being put forward and requested and not being able to provide any solution to the issue.

Mr. Sacco commented that there are certain triggers when they see a plan come in. The dwelling or the possibility for people to live in the structure. He stated that what is important to the fire department is safety. If we can't provide protection for that building then it's going to be a problem, especially if we don't have a chance to review it. Council Member Carroll and Mr. Bunker replied that the discussion is about accessory structures not dwelling units.

Mr. O'Brien stated that to Mr. Sacco's statement some of the accessory structures, while not being accessory dwelling units, are being utilized in such a way that they become assembly spaces and used for a large function.

Mr. Sacco commented that if he sees an accessory structure coming in and it has water hookups, sewer hookups, electrical hookups then there is a potential for that accessory structure to be turned into dwelling unit eventually. He added that he wants to be aware of the situation so that they provide adequate staff to protect against risks.

Mr. O'Brien stated that in terms of support on the staff side or similar to a site plan approval process, it does give them more authority when it comes to enforcing instances where projects are built outside of their approved footprint and whether it was approved by Planning Commission or City Council and now you have not met what the permit requires but also not in conformity with your site plan. He explained that it helps to give his department more support in trying to resolve such issues, especially when there is possible encroachment on neighboring properties, city properties or buildings across their lot lines.

Discussions ensued amongst council and staff in regard to efficient ways to go through the process, dealing with engineering matters and knowing what is needed up front rather than it all being brought on at the end.

Mr. Loveland commented that they've been working hard on trying to improve the process and make it easier for applicants to navigate. He stated that they are educating them through the website and that is a work in progress. He mentioned he didn't know where the 1,000 square feet came from. As far as the building code is concerned, if it's a 600 square foot building or larger there are more restrictions and requirements. He added that 1,000 square feet came about because that is larger than a standard accessory structure which is why Planning Commission consideration came into play.

Mr. O'Brien replied that there is a different requirement for items that need to be submitted to the building division for review and occasionally hand drawn projects get submitted. He spoke of one that came in recently and on it was no scale bar, nothing that helps figure out the overall impact of putting a structure over 1,000 square feet on the project where it follows the site plan process, however in terms of neighborhood protection and the responsibility of being a good neighbor, engineered drawings are beneficial to get an understanding of the impact.

Mayor Frost asked how we resolve this. What is the process to fix that.

Mr. O'Brien replied that there's a compromise between Council Member Sheldon's perspective on ours. He stated that he's looking for some additional information that can help us ensure that all the main requirements are met in terms of understanding the items back on the list that we've got an elevation, and the description of what materials are being used. He mentioned a site plan that is to scale so they can take the proper calculations to make sure that they're meeting the overall open space requirements for rear yards and that storm water retention or drainage is being met. He stated that full Geotech reports are excessive and may not be needed when they've already been approved.

Mr. Loveland commented that they don't even ask for that until they do the footing inspection. That's when they ask for the excavation observation and that the soils are suitable for the placement of the concrete in the footing.

Council Member Shelton wanted to come to a compromise and work with staff, collaborate with them, using their knowledge, his experience and Council Member Barnes' experience and take it to the Planning Commission and then to the Council.

Mr. O'Brien felt the frustration with applicants is the frustration due to the lack of a defined process. He added that it's hard to understand everything that we need to ask for because we don't have an actual check list of items and when we have "three" things that we are able to review for and then we ask for more afterwards. It's easier to ask up front so applicants understand going into the project what is expected at some point in time.

Mr. Loveland added that they also receive a lot of incomplete applications. In their mind, they've submitted on a certain date, and we have asked for more information so we can plan to review. He commented that if the applicant just doesn't understand, or information is lacking, then in the applicant's mind, the city is holding them up. Yet we don't have enough information to review the plans or determine if it's going to be a structure that will be safe or whatever the circumstances may be and that causes a lot of time to lapse.

Mayor Frost asked the council and staff if they had any thoughts about what has been shared.

Council Member Barnes felt the code was too nitpicky. He understood why but wanted to know why we have been trying to engineer everything from 30-40 years ago. People have property rights and if they don't interfere with other people and it is not a safety hazard then they can go for it. Mr. Bunker and Mr. O'Brien agreed and said that is what staff is asking for. Council Member Barnes commented that on some of the projects he's been involved in that was not the case.

Mayor Frost agreed with most of what Council Member Barnes said. He brought up that we have to keep in mind what someone does on their own parcel and how it affects their neighbors. There needs to be boundaries. There are some checks and balances that need to be done.

Council Member Shelton mentioned the code in 2013 was to protect the neighborhood. The application has rarely resulted in some of the submittals in the last two years which didn't have material reports going to Planning Commission and then they are putting a condition on there that wasn't there before. He felt like there was intent, but the outcome of the output is so different. He wants to match the intent and make the process more

efficient. Hopefully working with staff, the recommendations of the Planning Commission and the Council, we can come up with a defined way to that will benefit the residents and staff.

Mr. Bunker commented that having Council Member Shelton and staff sit down together and having Ms. Egner involved to aid in understanding the issues and start looking at the code as to what makes sense to adjust, change and define. Mayor Frost agreed with that.

Council Member Hunter expressed that he has a fundamental problem with staff being managed from a Council seat. He felt it was not the Council's job to figure out how. He would expect staff to figure this out without the Council involvement.

Council Member Carroll asked where does policy end and where are we talking about the actual code. Council Member Hunter replied that staff would typically provide that as a recommendation to Council.

Mr. O'Brien asked if it would be better in that instance from Council Member Hunter's perspective to provide a range of options that the Council could consider instead of one specific thing. That way, they could craft the changes based on feedback from a number of perspectives rather than one.

Council Member Hunter replied that staff should be the ones to focus on fixing the gaps in the code and that for him it was more of a governing versus a managing position. He did not want to get in the habit of managing another body.

Council Member Shelton replied that he felt a board position at a corporation is different than an elected office. He mentioned when elected that one of the main reasons you get involved is to be able to write legislation for the legislative body. He agreed with Council Member Hunter up to a certain extent. He felt that when numerous residents complain about what is going on, it is his responsibility to represent their interests.

Council Member Hunter felt that the problem needed to be fixed but it's not the Council's responsibility to bring the solution forward. Council Member Carroll felt like they have been trying to fix the problem. It's been talked about with different issues that Council has been trying to fix and we have been going down that road. She felt that as a Council we need to say *This system isn't working, fix it!*

Council Member Hunter recommended that from his perspective is to tell staff we want a fix to the problem, then hold Mr. Bunker accountable for that to happen.

Council Member Shelton explained that the reason this is up for discussion is not because of his own personal project. The issues have happened repeatedly prior to and after his

project and it led him to call staff and ask what is happening here. He said that he had identified some solutions. He added that if he had something to add to the conversation, let's do it and staff can come back and say no don't do anything and that's their prerogative.

Council Member Carroll added let's see what we can do and where it can go. Mayor Frost counseled them to be respectful of each other, not to dominate one another and make sure this is safe and move forward.

3. Adjourn.

Meeting adjourned at 5:50 p.m.



Stephanie Finau
Deputy Recorder