

**MINUTES OF THE DRAPER CITY PLANNING COMMISSION MEETING HELD ON
THURSDAY, NOVEMBER 16, 2023, IN THE DRAPER CITY COUNCIL CHAMBERS**

PARTICIPATING: Andrew Adams, Chair
Lisa Fowler, Vice-Chair
Commission Member Susan Nixon
Commission Member Mary Squire
Commission Member Gary Ogden

EXCUSED: Commission Member Kendra Shirey
Alternate Commission Member Shivam Shah
Alternate Commission Member Laura Fidler

STAFF PRESENT: Jennifer Jastremsky, Community Development Director
Todd Draper, Planning Manager
Tevai Haunga, City Planner
Mike Barker, City Attorney
Brien Maxfield, Senior Engineer Manager
Amie Salazar, Office Manager
Todd Taylor, City Planner

6:30 PM Business Meeting

Chair Andrew Adams called the meeting to order.

1. Items for Commission Consideration.

A. Public Hearing: Joy's Just Desserts, LLC Home Occupation Conditional Use Permit. (Administrative Action).

On the Request of Rachel Shepherd for a Home Occupation Conditional Use Permit for a Cottage Business Making Freeze Dried Goods. The property is located at approximately 13822 South Tom Shoemaker Circle in the RM zone. Application 2023-4543-USE. Staff contact: Tevai Haunga at 801-576-6522, tevai.haunga@draperutah.gov.

City Planner, Tevai Haunga presented the Staff Report and stated that the request is for a Home Occupation for a cottage business making freeze-dried goods in the home. Vicinity and Aerial Maps were displayed. The land use designation is Residential Medium-Density. The current zoning is Multi-Family Residential ("RM"). The applicant plans to make freeze-dried goods in her basement kitchen. The hours of operation are Monday through Friday from 9:00 a.m. to 4:00 p.m. No customers or employees will come to the home and all products will be sold outside of the home to wholesale venues or online. A floor plan of the kitchen area was presented as well as photos of the production area and the goods made. No public comment was received.

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The applicant, Rachel Shepherd stated that she would like to operate a small business preparing freeze-dried goods such as candy to sell at farmers' markets and online. There are also a couple of stores that may be interested in carrying her products.

Chair Adams opened the public hearing. There were no public comments. The public hearing was closed.

Vice-Chair Fowler commented that no issues were raised by the neighbors.

Motion: Commissioner Fowler moved to APPROVE the Joy's Just Desserts Home Occupation Conditional Use Permit as requested by Rachel Shepherd representing Application 2023-4543-USE based on the following:

Findings:

1. Reasonable mitigation measures can be placed on the conditional use to alleviate anticipated detrimental effects.

Conditions:

1. That all business requirements of the Draper City Engineering, Public Works Building, Business Licensing, Planning, and Fire Divisions are satisfied throughout the operation of the business.
2. A Business License shall be maintained for the life of the business.
3. No customers are allowed to come to the property.
4. Employees who do not reside in the home are not permitted.

Second: Commissioner Ogden.

Vote: A roll call was taken with the Commissioners voting 4-to-0 in favor of the motion. Commissioners Fowler, Squire, Ogden, and Nixon voted "Aye". The motion passed unanimously.

B. Public Hearing: Tunbridge Zoning Map Amendment. (Legislative Action).
On the request of Neil Tunbridge for a Zoning Map Amendment from RA2 (Residential Agricultural, 20,000 ft² min. lot size), to the CC (Community Commercial) on 0.48 acres of property) zone, located at approximately 11853 South 700 East Application TEXTMAP-0065-2023. Staff contact is Tevai Haunga, 801-576-6522, tevai.haunga@draperutah.gov

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Ms. Haunga presented the Staff Report and stated that the applicant is requesting a rezone from the RA2 to CC to allow for future commercial development. Vicinity and Aerial Maps were displayed to show the location of the subject property. No public comment was received by staff.

Commissioner Squire asked for confirmation as to whether RA2 would generally be found in a Community Commercial land use. Planning Manager, Todd Draper confirmed that was the case. This is an area where the land use designation was changed but the zoning was not. The underlying land use designation supports the zoning being requested.

The applicant, Neil Tunbridge, stated that he has owned the property for over 30 years but his family has owned it since the 1920s or 1930s. When he built his home, it was out of place and is even more out of place now. He is in poor health and was not sure he wants to sell; however, if it was to be rezoned he would be able to get the benefit of it.

Commissioner Nixon asked Mr. Tunbridge what the intended use would be if the rezone were approved. Mr. Tunbridge stated that it could be a four-plex or similar. He was pursuing the rezone so that in the event he sold it would attract more attention.

Chair Adams opened the public hearing. There were no public comments. The public hearing was closed.

Motion: Commissioner Ogden moved to forward a **POSITIVE** recommendation to the City Council for the proposed Zoning Map Amendment as requested by Neil Tunbridge for Application No. TEXTMAP-0065-2023 based on the following:

Findings:

1. **The proposed amendment is consistent with the goals, objectives, and policies of the City's General Plan.**
2. **The proposed amendment is harmonious with the overall character of existing development in the vicinity of the subject property**
3. **The proposed amendment is consistent with the standards of any applicable overlay zone.**
4. **The proposed amendment will not adversely affect adjacent property.**
5. **The facilities and services intended to serve the subject property are adequate including, but not limited to, roadways, parks and recreation facilities, police and fire protection, schools, stormwater drainage systems, water supplies, and wastewater and refuse collection.**

Second: Commissioner Squire.

Vote: A roll call was taken with the Commissioners voting 4-to-0 in favor of the motion. Commissioners Fowler, Ogden, Squire, and Nixon voted “Aye”. The motion passed.

C. Public Hearing: Brent Bytendorp Enterprises Landscaping Home Occupation Conditional Use Permit. (Administrative Action).

On the request of Brent Bytendorp for a Home Occupation Conditional Use Permit for a Home Office for a Landscaping Business. The property is located at approximately 11841 South Blue Heron Drive in the R3 (Single Family Residential 13,000 foot minimum lot size) Zone. Application 2023-4507-USE. Staff contact: Tevai Haunga at 801-576-6522, tevai.haunga@draperutah.gov

Ms. Haunga presented the Staff Report and stated that the request is for approval of a Home Occupation Conditional Use Permit of a home office for a landscaping business. Vicinity and Aerial Maps were displayed to show the location of the subject property. The current land use designation is Residential Medium-Density and the current zoning is R3. The conditional use request was to permit a home office use with storage of three work vehicles and a trailer during business hours from 7:00 a.m. to 7:00 p.m. The business will have three non-residential employees with no customers coming to the home. The proposed conditions of approval were reviewed. Ms. Haunga reported that as recommended condition of approval the amount of area within the residence that is used for business would be limited to 25% or less and the amount of area outside the residence that is used for business purposes be limited to not exceed an area equal to 25% of the overall yard area. Staff received several public comments, which were provided to the Commission and the applicant.

Commissioner Nixon asked about the employee parking and was of the understanding that it must be accommodated on the subject property. She counted a total of seven potential vehicles on the site including the employee and company vehicles and a trailer. Mr. Draper confirmed that was the case in terms of the business use. Staff also wanted to ensure that the necessary business parking is not displacing personal vehicles that are being operated from the property. He suggested that there be enough space for all of them. There is a large concrete pad that may need to be expanded and accurate dimensions were not provided. Commissioner Nixon commented that if the lot is one-third acre in size and they get up to 25% of the yard area that would equate to approximately 3,800 square feet. Mr. Draper stated that the Home Occupation Chapter specifies that there should be no outdoor storage. The applicant is asking for conditional use for outdoor storage. As a recommended condition, staff included up to 25% as a general rule. That could be increased or decreased by the Commission as they deem necessary.

Commissioner Square referenced City Code Section 9-34-040, Development Standards, and was concerned that the development standards do not seem to comply due to the use of the word “shall” throughout. City Attorney, Mike Barker, explained that Section 9-34-060 opens up the issue of the Conditional Use Permit if an applicant cannot meet one or more of the standards. Section 9-34-030 specifies that a home office is a permitted use that must comply with the standards set forth in Section 9-34-040. Section 9-34-050 lists uses that can allow for a Home Occupation Conditional Use Permit. He stated that Section 9-34-040 can be used as a guide but the Commission is tasked with identifying the potential detrimental impacts that need to be mitigated.

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Mr. Draper reported that Section 9-34-060 specifies that home occupations listed in those two sections can be established as part of a Conditional Use Permit. The uses listed in Section 9-34-050 are conditional. If there is a use in Section 9-34-030 that does not conform to any of the standards listed, it is a conditional use. In this instance, the applicant is requesting a home office, which is the only allowed use the applicant could request. The additional items they do not meet in the standards make the request a conditional use. Mr. Draper was asked to address the language pertaining to vehicles in Sections 9-34-050 and 9-34-060. The applicant indicated that there is a sign on the trailer, which would be part of the proposal.

The applicant, Brent Bytendorp, indicated that he has had the home Occupation Business License for many years but this year he was asked to apply for a Conditional Use Permit. He stated that the property has been used as a business in the past. Next to the garage and near the neighbor to the west there is currently a six-foot gate that serves as a barrier to the trucks and trailers on the property. The distance from the gate to the back fence is 77 feet and 31 feet across, which leaves room if the vehicles are parked strategically. Most of his employees carpool so there are typically two cars in the back. No employees work on the property and no customers are coming to the home. As they come and go from the site, his employees may park in front of the home for five minutes at a time. He has approached several of his neighbors about the request and none were opposed. He commented that he does a good job of limiting the impacts on the neighborhood. He keeps his yard maintained and there is no signage out front. They typically leave the site in the morning and come back in the evening. Vehicles are simply stored on the property.

Commissioner Fowler asked about other equipment that is stored on the property such as mowers and hand tools. Mr. Bytendorp stated that there is a shed in the back and behind the vehicles there is room.

Commissioner Ogden was concerned about the appearance and creating an eyesore by storing items such as trees on the property that cannot be taken to a job site. He was also concerned about traffic. He did not want the property to become a storage yard for various landscaping items. He asked the applicant what he could do to ensure that the site remains clean and attractive. Mr. Bytendorp stated that a gate blocks the view from the street. His business is primarily landscape maintenance and he does very little landscaping. He does not typically bring or store items on the property. Items such as boulders or trees are delivered directly to the job site. He does not have a bobcat and is limited to equipment such as mowers, edgers, and trimmers. He also performs snow removal during the winter. Last year one truck was stored off-site with an employee taking it to his home after hours. In the winter, Mr. Bytendorp hoped to keep the plow at his home so he could go directly to a job.

Commissioner Fowler referenced one of the written public comments submitted pertaining to an issue with noise in the mornings with employees arriving at 7:00 a.m. and shouting directions to each other. An incident was also noted that occurred at 2:00 a.m. with employees using a truck with a snow plow blade to remove snow from the driveway and RV pad to get equipment out. Mr. Bytendorp stated that they tried to mitigate that but there was an extraordinary circumstance where the lights were not functioning. It was a single incident. There was also a complaint about

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trucks being loud when idling. Mr. Bytendorp stated that if he worked a swing shift, he would still have to start his vehicle, which would make the same sound. He indicated that his employees realize that it is important to keep noise to a minimum in the neighborhood.

Commissioner Nixon asked what the catalyst was for Mr. Bytendorp to apply for a Conditional Use Permit this year since he has been operating at this location for years. Mr. Draper stated that Mr. Bytendorp has had a Business License since at least 2015. The difference was that this year there was a complaint that was investigated. It was determined that the license was for a home office use and the current business does not apply with the standards that are in place for a home office.

Commissioner Squire asked when Mr. Bytendorp started having three employees at the business. Mr. Bytendorp stated that he has had three employees for a long time, which is the number he can handle operating his business from his home. Commissioner Squire asked again how many years a "long time" was. Mr. Bytendorp answered that he did not know how many years, just that it was a long time. If he were to grow any larger, he would have to move the business elsewhere. Commissioner Squire stated that there are red flags that indicate that it may be time to move based on the list of allowances that need to be made. The point of home occupations is that very small and owner-based businesses are allowed in homes. One sign that it is time to move is when numerous allowances have to be made. They indicate that it is no longer appropriate as a home-based business.

Mr. Bytendorp stated that if he were to grow the business, he would have to have additional business to support the growth. At this time, he does not have the business needed to sustain that growth. He has looked at other commercial properties and for the amount he earns it would not be economically feasible to move the business to a commercial location. Commissioner Squire commented that as the conditions are written if the request were to be approved tonight with all of the staff conditions, it would likely not be possible for Mr. Bytendorp's business to grow and remain in his home. She stated that the neighbors carry the burden but the City cannot take that into account when analyzing the situation.

Commissioner Nixon commented that the allowed 2,100 square feet seemed like a reasonable amount of space to park six vehicles, a trailer, and materials. It is still under 25% of the total yard area. Chair Adams commented that one of the nuisances identified was noise.

Commissioner Fowler commented that one letter from a neighbor indicated that the gate had been broken. The photo provided did not show a gate. Mr. Bytendorp confirmed that there is a gate.

Commissioner Ogden commented that the RV stored on the adjoining property stands far taller than the fence. Chair Adams' biggest concern was noise and nuisance. In response to a question raised regarding snow removal, Mr. Bytendorp stated that his crew is dispatched for snow removal when there are two inches or more of snow on the ground. He shared additional photos he brought with the commissioners and also noted that one of the photos showed a number of vehicles parked in front of his neighbor's property who happened to be the person complaining.

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Chair Adams opened the public hearing.

Dan Medina identified himself as the neighbor to the west. He submitted a letter containing all of his concerns. He was generally opposed to the City granting the proposed Conditional Use Permit for the reasons enumerated and the additional considerations. His comments were the result of having lived next door to Mr. Bytendorp for the last 20 years. When the opportunity came for him to obtain a Conditional Use Permit, he suggested that it be done right and resolve the ongoing issues. Over the years, Mr. Medina has reminded Mr. Bytendorp of the Noise Ordinance and asked him not to plow at night and load equipment early in the morning. He asked that the start time be no earlier than 8:00 a.m.

Tracy Bennett lives three doors down from the subject property and her three sons have been employed by Mr. Bytendorp. She described him as a great neighbor. Although there is some noise, she knows that it is only for about 15 minutes in the mornings and evenings. She did not feel it has disrupted the neighborhood significantly. Because the property is located at the end of a cul-de-sac, the traffic issues have been kept to a minimum. Ms. Bennett encouraged the Commission to approve the request.

Dennis Smith stated that he has been a neighbor of Mr. Bytendorp for 18 years and lives about six doors down. As far as the concern about the growth of the business, he thought that was legitimate for the future but in 18 years he has never seen more than a few employees coming up and down the street. This is Mr. Bytendorp's livelihood and the business has been steady. In terms of noise, he lives a few houses further down and does not hear the cars. A neighbor across the street is a plumber with a very large diesel truck that he warms up every morning. Mr. Smith stated that Mr. Bytendorp has been a great neighbor and expressed his support for the request.

Christopher Herzog stated that he lives east of the subject property. Due to the location of his property, Mr. Herzog believed he was qualified to speak about the noise ordinance issues. Mr. Bytendorp has been respectful and comes over regularly to ask for feedback. He was interested in maintaining a good rapport with the neighbors. Mr. Bytendorp is aware that his trucks sometimes have to leave early in the morning to plow. Mr. Herzog was grateful that the plowing was being done. He supported the approval of the permit.

Lani Medina lives to the west of the subject property and has lived next to the Bytendorp Family for more than 20 years. The current issue pertains to zoning and the rules. She made one formal complaint with the City of Draper. Over the years, there have been dozens of polite requests made via text message. She thought that was the best way to address issues in general. Ms. Medina reiterated that the issue at hand is not whether Mr. Bytendorp deserves to have his business but ensuring that the Code requirements are met and the neighbors protected.

Denise Smith identified herself as a former neighbor who lived on the same street as the Bytendorp Family for 19 years. They were wonderful neighbors and their business did not cause any issues. Mr. Bytendorp was exceptionally helpful to those in the neighborhood who needed assistance. She pointed out that the complaint made came from a neighbor who complains about a lot of other

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residents on the street. Some neighbors came out in support of Mr. Bytendorp and she asked that the Planning Commission approve the permit.

There were no further public comments. The public hearing was closed.

Commissioner Fowler pointed out that one of the complaints in the letter from the Medina Family referenced equipment storage. The family did not feel equipment should be stored, as it is inventory. She noted that the Code addresses inventory and equipment separately and different criteria apply to inventory and equipment. The applicant has no inventory, as previously stated, but there is equipment kept on the site. She asked Staff about equipment storage on the property for a Conditional Use. Mr. Barker read language from the Code and explained that the Commission was tasked with identifying detrimental effects and determining appropriate ways to mitigate them.

Commissioner Fowler asked about the issue of noise. The complaint by the neighbors referred to the County Noise Ordinance. She wondered if there was a City Noise Ordinance. This was confirmed. Quiet hours are from 10:00 p.m. to 7:00 a.m. Mr. Barker stated that during those hours there cannot be noise that “annoys, injures, or endangers the comfort, repose, health, or safety of any neighborhood or person residing therein which, under the circumstances, would disturb a person of average and reasonable sensitivities.” That does not mean someone cannot start a diesel engine at 5:00 a.m. as that is a normal neighborhood use. There was discussion about what is considered reasonable and unreasonable in a neighborhood. Commissioner Fowler considered vehicle-related noises to be a normal function in a neighborhood. The snow plow is detachable and on the front of a truck that is still considered a residential vehicle.

Mr. Draper reported that Staff reviewed the application based on what was submitted. The business hours that were submitted were listed from 7:00 a.m. to 7:00 p.m. If the Commission felt that the hours of operation could be used for mitigation, an additional condition of approval could be drafted and included. Commissioner Fowler questioned how a condition could address the necessary snow plowing at 2:00 a.m. Mr. Draper pointed out that that would be outside of regular business hours. It was noted that there can be wider business hours but tasks such as attaching or removing plows can be done during the day. If the plow is already on the truck, it would be less intrusive. It was noted that residents can arrive and leave their properties at 2:00 a.m. As a result, it is difficult to state that a vehicle leaving the property at the same time is in violation. Some felt that as long as there was no business-associated noise, the use should be permitted. Chair Adams believed the differentiation was whether the vehicle was leaving for a business activity, such as plowing. Leaving in a personal vehicle for personal reasons would be considered a personal activity. Although there may be similar characteristics, the Commission was looking at the business activity taking place on the property and discussing what was appropriate for mitigation.

Community Development Director, Jennifer Jastremsky, explained that typically the City does not have conditions of approval for the hours of operation. If the business was operating within the 10:00 p.m. to 7:00 a.m. timeframe, the Planning Commission needs to determine what the detrimental effects are and how to mitigate them. Noise would likely be the most significant detrimental effect. She asked the Commission to think about conditions to address that, such as

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not having as many employees come to the property at night or having the plows added to the front of the vehicle during the day rather than at night or early in the morning. Commissioner Nixon asked what would happen if the Commission was inclined to allow limited business activities outside of business hours. For instance, whether that needs to be added as a condition. This was confirmed. Anything on the list of conditions needs to be something that is enforceable.

Chair Adams believed there should be a condition of approval that specifically addresses the nature of noise complaints. It was determined that the language for such a condition should specifically reference November 1 to April 30. Since the applicant listed the business hours as 7:00 a.m. to 7:00 p.m. it made sense to list them as well as the exception that would allow vehicles to exit the property before 7:00 am during the winter season. Mr. Barker shared information from the City Code related to winter parking. According to Draper City Municipal Code Section 14-5-020, "No person shall park or leave a vehicle or trailer on any highway while snow is on the street from November 1 through April 30." Those dates were fairly accurate for the dates when snow plowing would occur. Chair Adams felt that one condition of approval should be that business hours need to be between 7:00 a.m. and 7:00 p.m. and that there be an exception during the winter months. Some Commissioners wanted a condition requiring snow plow equipment to be attached only during business hours.

Mr. Bytendorp responded to the comments shared by the Planning Commission. He explained that snow removal is normally done between November 1 and April 30. Typically, the plow is already on the front of the truck before he takes it out. He confirmed that the conditions discussed by the Commission could be complied with. Chair Adams explained that the intention was to enforce the regular business hours after which an exclusion would be listed that is specific to winter snow removal. The latter would allow him to start the snow plow truck and take it out of the neighborhood between the dates mentioned in the City Code. It was noted that in one of the letters received, there was a reference to fuel storage and/or chemicals on the property. Mr. Bytendorp clarified that there are gas tanks on the trailer. Fertilizer is normally picked up on the day that he fertilizes a yard and is not stored at his home.

Motion: Commissioner Fowler moved to APPROVE the Home Occupation Conditional Use Permit with the addition of conditions of approval 17 and 18, as requested by Brent Bytendorp, Application 2023-4507-USE subject to the following:

Findings:

1. **Reasonable mitigation measures can be placed on the Conditional Use to alleviate the anticipated detrimental effects.**

Conditions:

1. **That all requirements of the Draper City Engineering, Public Works Building, Business Licensing, Planning, and Fire Divisions are satisfied throughout the operation of the business.**

- 2. That a Business License be obtained and be maintained for the life of the business.**
- 3. That no customers are permitted to come to the property.**
- 4. That the number of employees not exceed three (3) total (not including the business owner) and the number of these employees that do not reside on the property are additionally limited to not exceed the number of available on-site parking spaces designated for personal employee vehicles.**
- 5. That additional paved parking spaces for the use of non-resident employees of the home-based business be added to the property. The applicant shall provide a revised Site Plan to Planning Staff showing the location and number of parking spaces to be added and receive approval for the layout from Staff prior to installation of the pavement and parking stalls.**
- 6. Parking stalls designated for use of employees of the business may not block or impede access to the required parking stalls for the residence located inside the garage.**
- 7. Parking for all personal vehicles owned and operated from the residence shall also be provided and designated on revised Site Plans. Parking stalls for employee vehicles, work vehicles, and the trailer, shall be separate and may not displace on-site parking designated for any personal vehicles owned and operated by residents of the property.**
- 8. That the number of work vehicles associated with the business be limited to three (3) and that they are parked on the site in parking spaces located behind the six foot (6') tall fence.**
- 9. That all parking spaces on the property must be in compliance with the design, location, and access requirements found in Draper City Municipal Code.**
- 10. That only one (1) trailer be associated with the business and that the trailer is parked on the property in a designated space behind the six foot (6') tall fence.**
- 11. That all equipment associated with the business be stored on the concrete pad located behind the six foot (6') tall fence or inside an enclosed building.**
- 12. That no vehicle, trailer, or equipment associated with the business be parked or stored in the street at any time.**

13. **That the applicant provides updated floor plans and a Site Plan that are accurately scaled and dimensioned that indicate the size and location of the areas used for the business relative to the other living space and other yard areas of the property.**
14. **That any inventory associated with the business not occupy more than 250 ft², and that the applicant provide details as to where this inventory will be stored on the revised updated plans.**
15. **That the amount of area within the residence used for the business be limited to twenty-five percent (25%) or less of the floor area of the home.**
16. **That the amount of area outside of the residence that is used for business purposes also be limited to not exceed an area equal to twenty-five percent (25%) of the overall yard areas of the lot (overall lot square footage net the area covered by the residence). With the exception of necessary employee parking, the front yard area shall not be utilized for any business purposes.**
17. **Regular business hours be limited to 7:00 a.m. to 7:00 p.m., with the exception that between November 1 and April 30, snow plows may leave the property outside of the regular business hours.**
18. **The applicant mitigate noise by only repairing or installing snow plow equipment during regular business hours.**

Second: Commissioner Nixon.

Vote: A roll call was taken with the Commissioners voting 4-to-0 in favor of the motion. Commissioners Fowler, Ogden, Squire and Nixon voted "Aye". The motion passed.

D. Public Hearing: City-Initiated 12695 South 1700 East Zoning Map Amendment. (Legislative Action).

On the Request of Draper City for a Zoning Map Amendment from the A5 Zone to the RA2 Zone for 10.87 Acres of Property Located at 12695 South 1700 East. Application 2023-4598-MA. Staff contact is Jennifer Jastremsky, 801-576-6328, jennifer.jastremsky@draperutah.gov.

Ms. Jastremsky presented the Staff Report and stated that the application is for a Zoning Map Amendment for approximately 10.87 acres located on the east side of 1700 East at approximately 12695 South 1700 East. There are two parcels and both are owned by the Canyons School District. The parcels are currently used as pasture land for horses. It was located within Residential Low/Medium Density, which supports one and one-half acre zoning designations. The property is currently zoned A5. The City was the applicant in this case and the request was a rezone to the RA2 Zone. The majority of the surrounding properties are RA2. Ms. Jastremsky shared images

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of the property as well as the use chart from the Staff Report. She noted that the RA2 Zone matches the surrounding neighborhood and the surrounding uses.

The City was interested in the rezone because there is the potential to purchase the property. Ms. Jastremsky clarified that there are still negotiations taking place with the Canyons School District and it was not clear whether the property would be purchased, either in part or in full. As a result, the proposed rezone was for the entire property. For several years, the City has been looking for a place to locate a cemetery as the existing cemetery was at capacity. At this point, she was not sure whether the City would utilize the entire property or a portion of the property but the rezone would allow for a cemetery or for a portion of the property to be sold for development.

There are currently negotiations taking place with the Canyons School District to purchase the property. The school district was aware of the rezoning application. Under State Law, the City was required to send a very specific notice about their rights for the rezone. Ms. Jastremsky explained that the Canyons School District had an opportunity to attend the meeting and provide comments or concerns in writing within 10 days of the hearing to be provided to the Council. The Commissioners asked what kind of feedback was received from the Canyons School District so far. Ms. Jastremsky had not heard but stated that they were aware of the rezone request. She reiterated that the City is in active negotiations to purchase the property. The City Manager has been the point of contact between the City and the Canyons School District.

Ms. Jastremsky reported that a few comments were received from the public. One was emailed earlier in the day and forwarded to Commissioners. The other was attached to the Staff Report. The Commission discussed the comments received. It was noted that there were strong objections as there were concerns about housing being developed on the property. Ms. Jastremsky reported that housing is permitted in the A5 Zone. That zone has a minimum lot size of five acres. Someone could potentially purchase the parcels and place a single-family home on each. The RA2 Zone has a minimum lot size of 20,000 square feet, which is just less than one-half acre. If the whole property was developed as RA2, the result could be 20 homes. However, the surrounding properties are already zoned RA2, so that would not be different than what already exists in the area. Ms. Jastremsky informed the residents who reached out to the City that a potential use was a cemetery. That was also mentioned in the Staff Report.

There are examples in Herriman and American Fork where cemeteries and open space coexist in neighborhoods. Chair Adams asked about the timing, since the rezone was being requested before the purchase of the property. Ms. Jastremsky clarified that the rezone request would be on the December 6, 2023, City Council Meeting agenda. She was not sure if the purchase negotiations would be complete by then. Chair Adams asked if the property would be worth more or less based on the zoning as he believed RA2 would be more valuable than A5. The use chart was further reviewed. Ms. Jastremsky reported that private schools are not allowed in the RA2 zone and it is a conditional use in A5. Public schools are allowed in both zones.

Chair Adams opened the public hearing.

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LaVar Christensen stated that he is a longtime Draper resident. He has driven past the property several times each day for the last 33 years. He loves and cherishes the property as do many others in the neighborhood. Mr. Christensen encouraged the Planning Commission to continue the item to a future meeting to allow time to meet with the City Attorney. This is a unique situation where the City is the applicant but not the property owner. Under the law, the Canyons School District is the owner and the property is now considered surplus. There is the need for a cemetery in the community but there are other options that could be considered. As much as a cemetery is needed, he did not think it made sense in this particular location. He reiterated the unique circumstance here where the City does not own the property in question. Mr. Christensen asked the Planning Commission to have continued discussions at a future meeting.

Victor Sandoval reported that he and his wife submitted comments to the Planning Commission voicing their objection to the rezone. They have lived in Draper for approximately 13 years and he walks past the property every day. The property does not need to be filled in with more houses. In his opinion, Pioneer Road is at capacity. Mr. Sandoval encouraged the Commission to consider the density and existing traffic when considering the rezone. He also encouraged the Commission not to rezone the property. He thought the subject property would be a good location for a park, which would enhance the neighborhood. There were concerns that the end result would be houses.

Nicole Harmer wanted to maintain the view of the horse property that she currently has. Being a homeowner in the area, she takes a lot of walks and spends a lot of time outside. She enjoys the open space. There were concerns about the potential of a cemetery being built in the middle of a neighborhood. It would be out of place and it could result in additional traffic problems. Ms. Harmer wanted to see the property remain as it is currently with the open space.

Steven Sugiyama reported that his property is next to the horse property. He thought there should be more transparency in terms of what is contemplated for the property. The cemetery was a possibility as was housing or mixed-use. More time would be helpful to fully vet the use. It was clear that the City wants to rezone and purchase the property but there was some uncertainty about whether those things will happen. If the desired use is a cemetery, that needs to be looked at carefully. He questioned whether current and future demand would be met with a portion of the property being turned into a cemetery. If the City wants a cemetery that will last more than a few years, it might be best to look at a larger property. Mr. Sugiyama pointed out that more information needs to be heard from the City about this matter.

There were no further public comments. The public hearing was closed.

Chair Adams asked about the timing and stated that some unknowns need to be considered. He noted that during the public hearing, it was suggested that other locations be considered for a cemetery. In the time that he has served on the Planning Commission, he has never seen an application like this. Ms. Jastremsky explained that the City has the right to rezone any property. There are noticing requirements to the owner and the owner has the right to object. In this instance, the City was also looking to purchase the property. The intention was to move the processes forward in tandem. She needed to double-check when there might be an actual purchase contract to make sure everything is timed correctly. If the rezone is not ready to be considered by the City

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Council in December, it could be pushed to January until negotiations are done. Chair Adams believed the City could rezone the property and not purchase it. This was confirmed. In that case, the Canyons School District could sell the property to a developer and some type of development could occur on the property.

Chair Adams asked if a cemetery is allowed in any other zone in the City. Ms. Jastremsky reported that it is allowed in both RA2 and A5. Chair Adams wanted to understand the reason for the rezone request. Ms. Jastremsky explained that the rezone would ensure that there are more uses allowed. Chair Adams asked if the City could purchase the property, put the cemetery on one portion, and sell the other portion. Ms. Jastremsky confirmed that this was a possible scenario but reiterated that nothing is confirmed. Mr. Barker explained that in that case, the school district would have the right to purchase the property back. If the decision was made not to and the City sold it to someone else, the profits would be split. That was done to prevent the City from flipping property using the first right of refusal clause.

It was noted that there was nothing the City could do to prevent development of the property. Although several members of the public want the property to remain horse property, there is nothing that can be done to prevent it from being changed. Commissioner Fowler understood that the property was beautiful and there was desire for it to remain the same. However, certain things are out of the City's control. She noted that the American Fork Cemetery has pathways and people walk there regularly. It is still open and green space, even though there is a cemetery use there as well. In this case, the Canyons School District wants to sell the property as surplus and there are some unknowns about what the land will become. She pointed out that an RA2 Zone is actually more restrictive than the A5 Zone. According to the use table, fewer things could be done in the RA2 Zone than in the A5 Zone.

Chair Adams explained that when a rezone is considered, the Planning Commission needs to consider the worst-case scenario of the rezone. The neighbors believe that additional houses would be the worst-case scenario. It was noted that additional homes could be developed even if the rezone does not occur. The density would be lower but there could still be homes built there. Given the fact that there is so much RA2 surrounding the property, it would be difficult to deny the rezone request. If this was a different scenario, the Commission would vote for approval as it was a reasonable request that is compatible with the surrounding properties.

It was noted again that the Planning Commission was asked to make a recommendation to the City Council on the rezone application. Chair Adams acknowledged that residents during the public hearing asked that the matter be continued to a future meeting. He wanted to know if there was any additional information the Commission needed. Ms. Jastremsky believed a lot of the concerns from neighbors had to do with what the land will be used for in the future. At this point, there was uncertainty about whether the City would purchase the property, so it was not possible to state for certain what will become of the property. If the property is purchased, it would be possible for the City to make some decisions. It was reiterated that the current zone is out of place. The rezone made sense as the RA2 Zone is compatible with the area. As for the objection that could be submitted by the Canyons School District, there were 10 days allowed to do so from the date of

the first public hearing, which means 10 days from the current date. Ms. Jastremsky noted that the City Council would ultimately make the final decision about the rezone.

Motion: Commissioner Squire moved to forward a **POSITIVE** recommendation to the City Council for the Zoning Map Amendment, as requested by Draper City for the City Initiated 12695 South 1700 East Zoning Map Amendment, Application 2023-4598-MA, based on:

Findings:

1. The proposed amendment is consistent with the goals, objectives, and policies of the City's General Plan, including the existing Residential Low/Medium Land Use Designations.
2. The proposed amendment is harmonious with the overall character of existing development in the vicinity of the subject property.
3. The proposed amendment is consistent with the standards of all applicable overlay zones.
4. The proposed amendment will not adversely affect adjacent property as the proposed zoning matches the adjacent property zoning.
5. Facilities and services intended to serve the subject property are adequate, including, but not limited to roadways, parks, and recreation facilities, police and fire protection, schools, stormwater drainage systems, water supplies, and wastewater and refuse collection.

Second: Commissioner Ogden.

Vote: A roll call was taken with the Commissioners voting 4-to-0 in favor of the motion. Commissioners Fowler, Ogden, Squire, and Nixon voted "Aye". The motion passed.

E. **Public Hearing: Town Center Station Area Plan. (Legislative Action).**
On the Request of Draper City for a Station Area Plan for the Town Center TRAX Station, located at approximately 1131 East Pioneer Road. The area covered under the Station Area Plan is approximately 1/2 mile radius around the Town Center TRAX station. Staff contact is Bret Millburn, 801-576-6516, bret.millburn@draperutah.gov. This Item has been continued to the December 7, 2023 Planning Commission meeting.

The above matter was continued to the December 7, 2023, Planning Commission Meeting.

2. Adjournment.

Motion: Commissioner Fowler moved to ADJOURN.

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The meeting adjourned at 8:24 PM.

DRAFT