



AMERICAN FORK CITY COUNCIL
AUGUST 20, 2024
WORK SESSION MINUTES

Notice of Electronic Meeting

One or more City Council members may be physically absent from this meeting but may participate electronically.

Members Present:

Bradley J. Frost	Mayor
Ryan Hunter	Council Member
Staci Carroll	Council Member
Ernie John	Council Member <i>*electronically*</i>

Members Absent:

Tim Holley	Council Member
Clark Taylor	Council Member

Staff Present:

David Bunker	City Administrator
Camden Bird	Assistant City Administrator
Stephanie Finau	Deputy Recorder
Patrick O'Brien	Development Services Director
Sam Kelly	Public Works Director
Cherylyn Egner	Legal Counsel
Aaron Brems	Fire Chief
Stuart Fore	Police Lieutenant

Also present: Ben Hunter (City Engineer), Cody Opperman (Development Services), Travis Van Ekelburg (Development Services), Christine Anderson (Planning Commission Chairman), and Matt Saco (Fire Marshall)

The American Fork City Council met in a work session on Tuesday, August 20, 2024, in the American Fork City Administration Conference Room, located at 51 E. Main Street, commencing at 4:00 p.m.

WORK SESSION

1. Discussion on amendments to the city code regarding land use designation, procedure for subdivision approval, and procedure for large scale subdivision approval.

Mayor Frost opened up the work session and had everyone in attendance state their name. He asked Ms. Egner if she could lead the discussion on what the state law is and why changes are being made.

Ms. Egner stated that the legislature passed a law stating cities could no longer use the planning commission (PC) and the council acting as a legislative body for the approvals of subdivision plats. Included in the law was a 20-day timeframe, which did not allow time for

approvals by the planning commission or council. She added that when that statute passed, the city changed their process and instead of doing residential subdivisions the city changed it to ALL subdivisions so that everyone follows the same process with Mr. O'Brien as the Administrative Approval Authority and then any appeals would either go to Planning Commission or they would go to if they were a technical appeal there is a full section of the code that spells out what that would look like and it was approved by the council.

Ms. Egner commented that since that time, several things have happened within the city that have caused some concern amongst staff with just having Mr. O'Brien as the sole person with the responsibility for approval. She mentioned that Mr. O'Brien was being put in the position of having to approve or deny because of the 20-day window and it was putting him in a rather difficult position. If he didn't have all the necessary reviews done in time, if there were still some minor things that needed to be done, or if another employee was out of the office and couldn't be contacted, it was Mr. O'Brien's name on the line for approval.

Ms. Egner stated that after talking with several staff and rather than having Mr. O'Brien create a Development Review Committee (DRC), there was already an informal committee that consists of Mr. O'Brien, Mr. Kelly, Mr. Saco and Mr. Ben Hunter who could act as an actual DRC and they would vote for approvals. With this approach, all departments are represented in those meetings. If the DRC approves the plan, then the plats would be signed. Then Mr. Bunker would be involved in the signing of the plats at that point.

Mr. Bunker mentioned that the DRC would be comprised of the Fire Marshall, City Engineer, Development Services Director, and Public Works Director. Ms. Egner commented about adding a fifth person so there wouldn't be any deadlocks.

Discussion ensued amongst the staff and the Council about who the fifth person might be and from what department.

Mr. Bunker suggested discussing the appeal process and how it may affect those in the DRC.

Ms. Egner commented that the proposal that is coming to the council would be to have a three-person appeal board that would be comprised of the mayor, Mr. Bunker and a council member. She added that there are pros and cons to that, with the pros being that items could move forward quicker than waiting for planning commission. She added that it is up to the council on how they want to approach the appeal process and keeping things out of the planning commission, so it is administrative. She continued that if it is removed from the planning commission and went to a three-person board (which is the intent of the legislature to make things more of an administrative process) there will be less delays.

Mr. Bunker suggested that the fifth person on the Appeal Board could be someone from the planning commission to represent them.

Mr. O'Brien commented that the challenge would be holding the DRC meetings and during regular work hours. Ms. Anderson suggested that maybe a professional planner rather than a citizen planner on the DRC committee.

Discussion ensued about the members that should be represented in the DRC and the number of people on it that would represent their departments.

Ms. Egner explained that she wanted to have a discussion with the council and get feedback

and talk through the idea pushing things toward administrative and keeping up with what legislature throws out with timelines.

Discussion ensued of when the DRC would hold their meetings so a member of the PC can attend. Mr. O'Brien mentioned that he would rather have it earlier in the day so they can prepare notice of action letters to go out rather than later in the day.

Mr. Bunker mentioned that he would like the planning commission and the city council to be aware of what is happening in the city and to know what new plats are coming forward. He added that with the legislature wanting it to be an administrative action, he would still like to include the council and planning commission at some level and suggested a possible liaison. He also mentioned having Mr. O'Brien attend work sessions and go through all the projects and know what is happening with each project.

Mr. O'Brien agreed with Mr. Bunker and stated that the challenge they have is with the software program being used. It's not always possible to do a comprehensive report but stated that they are working with the software providers to change that and give addresses and location type and stated that it can be done in a single meeting or on a weekly basis.

Ms. Anderson agreed also that it would be great to have a planning commission member in the know of the upcoming projects where that representative can fill in the rest of the planning commission of what is happening in the city also.

Council Member Carroll asked what the planning commission would be voting on now and what projects would eventually come to them. Ms. Egner replied that as of right now the only thing going to the planning commission was an appeal. She added that if a member of planning commission is on the DRC, then the planning commission could not be the appeals board. She questioned if the council wanted the commission to be the appeals board or to have it fully administrative and then appeals go to the mayor, Mr. Bunker, and a council member.

Ms. Egner stated that there are pros and cons to having the mayor and Mr. Bunker in the appeal process. The pros are that they'll know more things about what's going on, all the technical issues that arise, and have communication with the staff. The con would be that if a developer has an issue with staff, who would they go to? The same person you've already complained about staff to, so Ms. Egner stated there could be complications with that. She strongly encouraged to remove Mr. O'Brien as the single authority, and it switch it to the DRC.

Ms. Egner stated that any code changes have to go through the two Land Use Authorities, which are the planning commission and the city council. She added that site plans will be going through planning commission but if the changes on approval authorities are being done, she questioned if that meant they make alterations to site plans as well. Currently some approvals stop at planning commission and others stop at the city council. She proposed that all approvals would stop at planning commission because that opens up the council to be the appeal authority on site plans and the appeal is in house instead of the next step being the district court. She explained that part of this is with the continuous trend of litigation trying to make sure there are proper steps so that if any errors are made in-house, it can be corrected without becoming a bigger issue. Ms. Egner stated that if site plans all stop at planning commission, the city still had the ability to keep appeals with the council. She did mention that it would take larger site plans and commercial plans out of the councils hands so it is something that would need to be discussed amongst them before that happens

Ms. Egner did state that if the site plan does not meet code and if there is a gray area, it's a request for a variance or something that would trigger development would go through whichever body is spelled out in the city code to approve it. If it needs an exception to the code it would have to come through as a development agreement and that would come before the council before it ever went to a site plan approval.

Mr. O'Brien commented that in terms of formality, the DRC becomes the recommending body on site plans to the planning commission at which point having someone from the planning commission on the DRC could be a conflict and then there would be two DRC's. Ms. Egner replied that there doesn't need to be a formal action for recommendation, but it helps give weight to the planning commission decision if there is a recommendation coming out of the DRC.

Council Member Carroll commented that it makes sense to have a larger appeal body including Mr. Bunker, Mayor Frost, maybe two council members and planning commission member, and with more people involved with sticky situations, it gives you some nimbleness not having a Planning Commissioner.

Mr. Bunker commented that if he was a developer and came to a DRC where the person doing his review is the one also acting as the legal body and due to that he felt that appeals would skyrocket and that is something that concerns him. Ms. Egner replied that she was more concerned about having a separate appeal authority rather than just keeping it at planning commission as it would be a burden on Mr. Bunker's schedule to try to convene that special appeal authority where appeals only have to be heard in so many days and that can be something that regularly goes to planning commission.

Discussion ensued about how the DRC would vote and the process that takes place in that committee and different scenarios on how it would affect each member on the committee in their separate city positions outside of the DRC. They discussed the appeals process and the 20-day window review process.

Fire Marshall Sacco brought up a project that he's dealing with right now that has an issue with engineering and then something changed with the engineering aspect that created a problem for the fire department. He commented that one way or another it should channel through that committee so any changes that is made regarding fire code is going through engineering that concerns water line connection or anything along those lines so when fire department is on the scene firefighter are safe since there really is no fire code.

Mr. O'Brien discussed the project that Fire Marshall was referring to and how the applicant is trying to go to each of the staff members individually but by having the DRC and letting the applicants know that they vote as a body and to encourage applicants to meet with the committee to get an understanding of how one issue is going to cause the problem elsewhere. He added that sitting down as a group to talk it through all together is a benefit of the DRC because informal information can be given in the concept meetings and the same people helping the applicant all the way through and it can be tracked through the whole process giving the applicant the correct information.

Fire Marshall Sacco was concerned about the time it would take to manage it from their end. He added if they had another fire inspector it would be easier to take more of an administrative role and sit at the computer and do the plans. He reported that it is between him and Jared Hughes that take care of all the inspections, hazardous materials, buildings,

fire investigations and reports. He added he would have to figure out how to work with it one way or another but that it would take up a lot of time which may create a deficiency elsewhere.

Discussion ensued about Fire Marshall Sacco's concerns amongst the council and staff and how the fire department plays an important role in being part of the DRC.

Mr. O'Brien commented that with the new review cycle that it's not the case for commercial or multi-family aspects but if it's for one or two residential projects and there is a five-or-four-member committee meeting and something is brought up for grounds of denial but has not been called out on the review 1 or review 2 and the plans are at review 3 it allows the committee to discuss why it was not called out. He added that will it be voting as group, and someone will be outvoted because of missed information and the state code does require that if you miss it on a review cycle you lose your ability to call it out later.

Fire Marshall Sacco stated that if it's a landscaping issue versus a fire code issue and fire code is compliant then he'll be in a position where he had to approve it. Ms. Egner replied that Mr. Sacco position on the DRC is a different role than being a Fire Marshall. Mr. Bunker commented that it is the applicant's responsibility as the proposal of the development to comply with all city codes and so it behooves the developer to meet all city codes whether it was missed on a review or not.

Discussion ensued in regards to meeting city code requirements and not catching problems in the review process and not able to go back and deny the applicant.

Mr. Bunker stated that the staff would have to be 100% perfect on the 1st review. Ms. Egner commented that public safety is the exception. Chief Brems asked about landscaping. Ms. Egner explained that the applicant can be told what needs to be done but they can't be denied the subdivision plat based on it, so they may still need to something about later to be compliant with city code and they can still be cited for being out of compliance if they don't have the right trees in place that are not in the application. Mr. O'Brien added that there is nothing that states you can't condition it as a part of their approval.

Mayor Frost asked Council Member John (attending electronically) if he had any comments. Council Member John asked Ms. Egner some questions about reviews during the 20-day window period. Ms. Egner replied that it's 20 days, but the clock stops when the comments come back. She commented that generally it would start back at the 20 days, but when they've come back for the re-submittal, every comment needs to be responded to. With every comment, we have to cite a code and be specific when they come back with their responses and changes. They have to identify how they've made the changes specifically to the plan and if they come back and haven't addressed every single comment, then we don't accept the application.

Mr. Ben Hunter mentioned that it's hard as a reviewer to confirm if all the comments are addressed because we may not know right then and there until the review is started but then at that point, we usually don't accept it. Mr. O'Brien replied that it is the reason they ask for the narrative because when it comes to the administrative team, they are looking for the narrative and how to address it and determine if it is a complete submission or not. The staff determines if it is adequate or if it has been addressed adequately.

Mr. Bunker added if the way staff addressed cause a different issue to be looked at. Ms. Egner explained that as a general rule the clock restarts. Mr. O'Brien commented that he's trying to give themselves flexibility within the process where it is a two-week review where plans are accepted on Monday and then sent back out Thursday of the following week, so it is 9-days of a review cycle to do a thorough review and gives them additional time for complicated plans and the ability to push it to the following week and still be within the review window to adequately review it.

Ms. Egner commented that the way the language reads *"unless the change or correction is necessitated by the applicants, adjustment to a subdivision improvement plan or an update to a phasing plan that adjusts the infrastructure needed for the specific development, a change or correction not addressed or referenced in municipalities subdivision Improvement Plan review is waived."* She added that if recommended changes are not brought up in the review, it is waived. Mr. O'Brien stated that applicants are given up to four reviews and Review 4 is denial and the applicant is back to the beginning.

Discussion ensued amongst the Council and staff about the review process, denial process, the 20-day review time, and the appeal board process.

Mayor Frost wanted to discuss the DRC and who will be on it. He mentioned it would be Mr. O'Brien, Engineering, Fire Marshall, Public Works and one more person as a planning staff member that would comprise the committee. He asked the Council how they felt about that. Ms. Anderson asked if that was the minimum amount for a quorum. Mr. Bunker replied that it could be any number size it's set to be.

Mayor Frost suggested that Mr. O'Brien be the chairman of the DRC to put a leadership role on it for the community. Ms. Egner commented that it was proposed that way that Mr. O'Brien would be the chairman, Public Works would be the vice chair and then the remaining 3 as the board. The Council agreed with the mayor on the DRC committee.

Mayor Frost wanted to discuss the appeals process and how it could fit the city council or planning commission schedule, or it could be a board consisting of the mayor, Mr. Bunker, and a member of the planning commission but since time is not of the essence when it gets to the Appeals Board. The mayor asked the council what the most prudent way would be to handle the appeals process. A discussion ensued with the council, Ms. Anderson and staff about the appeals process.

Ms. Egner stated that potentially the process will go from the DRC to the council being the appeal authority which would comply with other sections of the code to which the mayor agreed with her. Ms. Egner commented that in addition to the change in process created by the code, there are very specific instructions on how comments go and come back. It is detailed in the code that comments have to go out with the code sections with everything and the developer has to respond back and if there's a denial then the denial letter has to include very specific code references as to why it was denied. She added that it is one of the reasons there won't be a lot of appeals unless it's a challenge to an interpretation of code because there can't be arbitrary denials.

Mr. Bunker mentioned that they are not required to give the applicant 4-Reviews; it could be three or it could be less. If an applicant does not meet our code within 2 weeks of the review, they start over. He continued to state that if the staff is going to be held to this standard,

100% perfect, the first review will be denied, the applicants will correct their plat in the first try otherwise they will have to start over.

Ms. Egner commented that current staff is doing a great job with working with developers to try to rebuild relationships and rebuild its reputation. She added that there will be projects where that is the approach, but the code does say *“the city cannot require more than four rounds”* so after the 4th round, action must happen (referring to what Mr. Bunker stated previously).

Mr. O’Brien asked the council if they would prefer the DRC do 1-Review and have a set of standard comments and if the applicant does not meet those comments on the submission, then it is a denial. Ms. Egner recommended not doing that. Mr. O’Brien then stated that when the applicant has made it past the first round of comments and resubmit then essentially it is the 2nd-Review and that’s when it can be denied unless they have minor comments, but the expectation is that the applicant takes their time to put together substantial funds rather than submitting something that does not meet the standard and city code. Ms. Egner replied that the benefit from that happening is it eliminates the increase on review fees because the projects that will come in will be higher quality which means less time to review everything.

Discussion ensued regarding review fees, review process, and taking reviews case by case basis that will determine resubmittal or denial.

Council Member Hunter excused himself and left the meeting at 5:14 p.m.

Ms. Egner mentioned to the mayor that she will make the changes in the code that will go to the planning commission tomorrow. She commented on another code that is coming forward is a large file overlay and getting rid of the overlay itself. She stated that as of right now the code reads that *“if you bring forward a large-scale development overlay zone on the entire property”* and the city has never actually utilized all terrain and put an overlay on a project so it will be eliminated and will be changing the procedures for the large-scale developments to comply with the same procedures as a regular subdivision. She further stated that the clock wouldn’t apply to non-residential but if there is anything that would be required, like density transfer or phasing plan or anything of that nature it has to be approved by the Council before it can go to a DRC for review and approval of those plans.

Ms. Anderson wanted to know, in case members of the planning commission asked about what the difference is between creating a DRC and having a planning commission once a week. Ms. Egner replied that it would be having to convene every single week regardless of what is going on, whether it’s a holiday or projects, it’s being able to convene every week. Mr. O’Brien commented that they will have the ability where designees that are on a management level and to ensure there is staffing is someone is absent there will always be someone available when the city is open since it’s intended to be administrative.

2. Adjournment

The meeting adjourned at 5:32 p.m.



Stephanie Finau, Deputy Recorder