



PROVO MUNICIPAL COUNCIL

Redevelopment Agency of Provo

Regular Meeting Minutes

5:30 PM, Tuesday, March 17, 2015
Room 200, Municipal Council Chambers
351 West Center, Provo, Utah

Opening Ceremony

Roll Call

THE FOLLOWING MEMBERS OF THE COUNCIL AND ADMINISTRATION WERE PRESENT:

| | |
|---|----------------------------------|
| Council Member Gary Garrett | Council Member Kim Santiago |
| Council Member Vernon K. Van Buren | Council Member Gary Winterton |
| Council Member Harold L. Miller, Jr. | Council Member David Sewell |
| Council Member Calli Hales | Mayor John R. Curtis |
| Chief Executive Officer Wayne Parker | Deputy City Attorney Brian Jones |
| Council Executive Director Matthew Taylor | |

Conducting: Council Chair Gary Garrett

Invocation and Pledge

Invocation: Tyler Walker, Scout Troop 1455

Pledge: Max Armijo, Scout Troop 1455

Approval of Minutes – February 24, 2015

Motion: Council Member Gary Winterton moved to approve the February 24, 2015 minutes. The motion was seconded by Council Member Vernon K. Van Buren.

Roll Call Vote: The motion passed 7:0 with Council Members Garrett, Hales, Miller, Santiago, Sewell, Van Buren, and Winterton in favor.

Presentations, Proclamations and Awards

1. A presentation on the February 2015 Employee of the Month - Sandra Derfler, Senior Accountant

Nathan Murray, Provo Employees Association President, announced that Sandra Derfler, with Finance, had been selected as the February 2015 Employee of the Month and Paul Brown, with

Energy, had been selected as the March 2015 Employee of the Month. He invited their respective department directors to comment.

John Borget, Administration Services Director, stated that Ms. Derfler had been with Finance for a little more than 12 years. She was a fantastic employee, thoughtful, considerate, self-motivated, independent, and maintained logical and clean records. Ms. Derfler was responsible for reconciling the bank statement each month, a job that was tough and challenging, but she did a great job. She also was responsible for tracking the fixed assets for the City. There were a lot of complex assets and it required a lot of attention to detail. When not at work Ms. Derfler enjoys reading, going to their cabin, riding 4-wheelers, and spending time with her 16 grandchildren and one and ¾ great grandchildren.

Denise Roy, Ms. Derfler's supervisor, shared comments made by her coworkers. She was described as the definition of professionalism, efficient, always willing to help anyone and did it with a cheerful attitude. Ms. Derfler was a key member of the finance department and without her they would be lost.

2. A presentation on the March 2015 Employee of the Month - Paul Brown, Tree Trimmer Foreman/Arborist

Dave Atkinson, Electric Operations Manager, stated that Mr. Brown had worked for Provo Power for 13 years. He was a foreman over one of the high-voltage line tree trimming crews. He worked every day around high voltage lines to make sure the lights stayed on. He loves Provo City, works hard to make sure the power stays on, and was a great asset to the City. His crew members respect him and appreciate the training and safety aspects of his leadership. He was there to make sure his employees were safe and went home to their families. When he was not at work he was camping, hunting, and snowmobiling (although he did have a snowmobiling accident that slowed him down for a few months).

3. A presentation by the Covey Center

Paul Duerden, Covey Center Manager, introduced members of a comedy troupe called ImprovBroadway that would be performing at the Covey Center on March 28, 2015. Mr. Duerden invited them to present a short performance from their show.

Public Comment

Warren Hardy, Provo, publically thanked Satan for cleverly darkening the line of those in high places. He asked the Council to reject what had recently been passed by the legislature and was even being discussed in Washington D.C.

There were no more public comments.

Mayor's Items and Reports

4. Resolution 2015-16 requiring the owner of a lot, site, or portion of the Provo City

Cemetery that has been unused for burial purposes for more than 60 years to file a notice of claim to the lot, site, or portion with the Provo City Recorder. (15-030)

James Cornaby, Provo City Cemetery Sexton, presented. Mr. Cornaby stated this request was following state law guidelines. They have found several parcels that fell under the abandonment law where there had been no contact by the owners with the cemetery or the plot had not been used for burial purposes in excess of 60 years. Mr. Cornaby asked the Council to approve the reclamation of the unclaimed parcels so they could be used for other burials.

Mr. Cornaby reported that after the presentation during work session a lot of citizens had contacted the cemetery about property. The numbers presented during work session have changed and, through the notification process, they will continue to change.

Vice-Chair Santiago asked Mr. Cornaby to explain the recourse someone would have if they did not receive the public notice and owned a parcel in the cemetery. Mr. Cornaby stated that after all notification efforts had been exhausted written notification was mailed to the owners last known address. After the mailing there was a waiting period of 60 day. If the owner was not found they published a notification in the newspaper for three consecutive weeks. The owner's rights were terminated if they did not file a claim within 30 days of the last notice in the paper. Cemetery officials would be trying to contact a property owner or family member during the entire process.

If someone filed a claim after the City has reclaimed the property it would be returned to the claimant if the lot had not been resold, providing they have a legal claim to the property. If the property had been resold Cemetery officials would work with the citizen to make amends, such as offering other plots of equal value.

Chair Garrett asked how much the numbers had changed since the presentation during work session. Mr. Cornaby replied they had a number of parcels where the claim process had started through a direct heir of the original purchaser. He did not have exact numbers because paperwork had been issued but they had not completed any of the claims.

In response to a question from Vice-Chair Santiago, Brian Jones stated the resolution included an attachment that listed all the cemetery lots that had been unused for burial purposes for more than 60 years and would qualify for reclamation.

Motion: Council Member Harold L. Miller, Jr. moved to approve **Resolution 2015-16** requiring the owner of a lot, site, or portion of the Provo City Cemetery that has been unused for burial purposes for more than 60 years to file a notice of claim or the lot, site, or portion with the Provo City Recorder. The motion was seconded by Council Member Calli Hales.

Roll Call Vote: The motion passed 7:0 with Council Members Garrett, Hales, Miller, Santiago, Sewell, Van Buren, and Winterton in favor.

5. Resolution 2015-18 accepting or denying an annexation petition for further consideration for approximately 0.47 acres of property generally located at 4435 North Canyon Road. North Timpview Neighborhood (05-0001A)

Sean Allen, Provo City Planner, presented. Mr. Allen reported the property in question was a small lot with a single family home. Vacant land surrounding the property was still in the county. Staff recommended denial of the petition due to not meeting state and city criteria for annexation. Even though the land was contiguous to Provo City boundaries, the annexation, if approved, would leave a peninsula, which was not allowed by Utah Code 10-2-402. Provo City's annexation policy advised against piecemeal annexations; larger pieces of property should be considered.

Mr. Allen stated the neighbors to the south and north did not want to participate in the annexation petition. The applicant himself did not want to be annexed but felt he had to because he would not qualify for an occupancy permit through Utah County.

In response to a question from Vice-Chair Santiago, Mr. Allen explained the property was part of a large parcel that was subdivided illegally back in 1959. The applicant's property did not meet the five acre size requirement for Utah County. The County advised the applicant to request annexation into Provo City in order to receive a permit. If the annexation was denied the County would reconsider giving him the Certificate of Occupancy.

Mr. Jones stated the decision before the Council was not to annex the property but to allow further consideration for annexation or stop the process. Utah State Code stated a city could not annex land that left or created an unincorporated island or peninsula. A peninsula or island could be left at any time if the annexation request was made by cities. Last week the state legislature passed an amendment to that provision which allowed cities to leave an island or peninsula if both the city and county agreed. From a legal standpoint, if the Council wanted to consider the annexation they could approve the petition and the new law would be in effect by the time the review and noticing had been completed. State law provided that if a decision was not made by the Council within 14 days of receiving an annexation petition the petition would be allowed to go forward.

In response to a question from Mr. Winterton, Mr. Allen emphasized the Utah County would reconsider the applicants building permit if the annexation petition was denied. This issue started years ago and the County did not do anything about it and they were hoping Provo City would fix it by annexing the property.

Chair Garrett invited the applicant to speak. The applicant was not present.

In response to a comment by Mr. Miller, Mr. Jones stated he spoke with Rob Moore from the Utah County Attorney's Office and he stated they had no objection to the City annexing the property. In fact, they would like the City to take as much property that we were able to take.

Mr. Van Buren said the urgency for this action was for an occupancy permit to do some remodeling on the existing structure. Mr. Allen agreed stating the owner had a family ready to

move in. Mr. Allen was not sure if the home was currently occupied. He had heard a family might have moved in and the applicant was trying to obtain a temporary permit.

Vice-Chair Santiago said it was unfortunate the property owner was not present because it would have been nice to ask some them some questions. She was concerned that it might set a precedent that the City might not want to put in motion to have house by house on Canyon Road annexed. The City did not want a piecemeal annexation; they would rather bring in a large piece of property.

Motion: Council Member Harold L. Miller, Jr. moved to approve **Resolution 2015-18** denying an annexation petition for further consideration for approximately 0.47 acres of property generally located at 4435 North Canyon Road. The motion was seconded by Vice-Chair Kim Santiago.

Roll Call Vote: The motion passed 7:0 with Council Members Garrett, Hales, Miller, Santiago, Sewell, Van Buren, and Winterton in favor.

6. **Resolution 2015-17 authorizing the issuance and sale of up to \$20 million of energy system revenue bonds of the City of Provo, Utah; fixing the maximum aggregate principal amount of the bonds, the maximum number of years over which the bonds may mature, the maximum interest rate which the bonds may bear, and the maximum discount from par at which the bonds may be sold; authorizing the publication of a notice of bonds to be issued; authorizing the publication of a notice of public hearing and the holding of a public hearing; and providing for related matters. (15-031)**

Dan Follett, Finance Division Director, presented. The Council was being asked to consider a request to approve bond parameters related to the issuance of \$20 million of tax exempt revenue bonds to fund replacement of the Energy campus facilities. The bonds would be repaid from the revenues of the Energy fund. Bond parameters included a principal amount not to exceed \$20 million, final maturity date of not more than 21 years, sold at discount from par of not more than two percent, and bear an interest rate of not more than six percent per anum.

If the resolution was approved the City would publish a public notice that would start the 30 day contest period. Bonds would be sold on a competitive basis to ensure the City received the best possible interest rate. The sale would occur on April 21, 2015. The sale would be contingent upon the Council holding a public hearing during their April 21, 2015 meeting and approving the final sale at the same meeting. The resolution would also include a reimbursement resolution that would allow the Energy Department to be reimbursed from bond funds any project costs that occurred before the bonds were issued.

At the request of Vice-Chair Santiago, Travis Ball, Energy Director, explained the need for the revenue bonds. The Energy Department facilities had been in use for 75 years and they were at a point where they needed to be replaced. After several studies it was determined that rebuilding the Energy campus would be the most financially viable option. The current power plant would remain for three more years during construction of a new power plant (in Provo or somewhere in

Utah County). The new plant would be cleaner, more efficient, and would generate more power. The new plant would need to be built in a location where the natural gas line would provide sufficient pressure. The current plant location did not meet that requirement.

Mr. Ball stated the Energy Department facilities would not be moved because it was important to stay in a central location. The goal was to provide the citizens of Provo the most reliable power. By having a central location it allowed the department to quickly respond to power outages anywhere in the City.

Mr. Jones clarified that the new power plant would be built by the Utah Municipal Power Agency (UMPA) from which Provo City received their power.

Mr. Winterton emphasized that the proposed bond would not raise power rates but that did not mean the rates would not go up in the future. Provo City purchases their power from UMPA. If their rates go up, we have to follow suit. The power rates may go up at some point but that would be because of power costs increasing. Mr. Ball agreed saying the cost of power is always changing so there might be rate increases to account for higher power costs. In addition, there might be other projects, such as the new power plant, that could require a rate increase.

Motion: Council Member Calli Hales moved to approve **Resolution 2015-17** authorizing the issuance and sale of up to \$20 million of energy system revenue bonds. The motion was seconded by Vice-Chair Kim Santiago.

Roll Call Vote: The motion passed 7:0 with Council Members Garrett, Hales, Miller, Santiago, Sewell, Van Buren, and Winterton in favor.

Adjourn as Municipal Council and convene as Redevelopment Agency

Motion: Council Member Harold L. Miller, Jr. moved to adjourn the council meeting at 6:34 p.m. and convene as the Redevelopment Agency. The motion was seconded by Council Member Vernon K. Van Buren.

Roll Call Vote: The motion passed 7:0 with Council Members Garrett, Hales, Miller, Santiago, Sewell, Van Buren, and Winterton in favor.

Redevelopment Agency of Provo

7. Election of the Redevelopment Agency officers, Chair and Vice-Chair for calendar year 2015.

Acting Chair, Dave Sewell, called for nominations for Chair of the Redevelopment Agency Board.

Mr. Garrett nominated Dave Sewell to serve as Chair of the Redevelopment Agency. There were no other nominations. The nomination was approved 7:0.

Chair Sewell nominated Calli Hales to serve as Vice-Chair of the Redevelopment Agency. There were no other nominations. The nomination was approved 7:0.

8. Resolution 2015-03-17-1 appointing the Chair and Vice-Chair of the Redevelopment Agency of Provo City for the remainder of the calendar year 2015. (15-033)

Matthew Taylor, Council Executive Director, stated the resolution simply formalized the election just held for the Chair and Vice-Chair of the RDA Board.

Motion: Board Member Kim Santiago moved to approve **Resolution 2015-03-17-1**. The motion was seconded by Board Member Gary Garrett.

Roll Call Vote: The motion passed 7:0 with Board Members Garrett, Hales, Miller, Santiago, Sewell, Van Buren, and Winterton in favor.

9. Resolution 2015-03-17-2 approving the proposed design of the NeighborWorks project generally located at 590 South 400 West. (14-058)

Mr. Taylor stated that in August 2014 the RDA Board authorized the Mayor to sell property located at 590 South 400 West to NeighborWorks. One of the conditions of the sale was that the Council would review and approve the site design before a building permit was issued. NeighborWorks had requested the item be placed on the agenda for the RDA Board's approval.

Sharlene Wilde, Executive Director at NeighborWorks Provo, presented. Ms. Wilde reported that ten years ago NeighborWorks partnered with Provo City to purchase the L.C. Bailey property, which included two parcels north of the 590 South 400 West property. Ms. Wilde promised the Bailey family they would build something beautiful at that location, something the family could be proud of. The property had not been developed yet because the City had wanted to redevelop and rezone that area. The City recently adopted the Interim Transit Oriented Development (ITOD) zone for the area which allowed for up to 40 units per acre.

When NeighborWorks purchased the property at 590 South 400 West from the RDA one of the conditions of the sale was to work on a design that would meet with the neighbors to design a project they would be happy with and that would meet the vision of the City. The original design of the proposed project included a total of 80 units (40 units per acre), was 4 stories high, did not have any green space, met all the parking requirements, and complied with the ITOD zone requirements. She reported that this plan did not meet with the neighbor's approval.

After a couple of neighborhood meetings it became apparent that it would be hard to plan a project with the entire neighborhood involved, they needed to work with a smaller sub-committee. A committee was formed which included Matthew and Sara Taylor, Kathryn Allen (neighborhood chair), Martha Windsor (neighborhood vice-chair), Carrie Prince, and the developer Dave Gardner.

The committee requested NeighborWorks reduce the density of the project and the Board agreed. The group worked hard on a new plan that was being presented to the Council that night. The new development would include 59 units, a tutoring and learning center for elementary children, additional green space, sufficient parking for residents, and larger units. Ms. Wilde indicated it also provided revenues for their organization which would be used to funnel back into the City in the form of home ownership, promotion, and preservation. NeighborWorks had helped 2,433 families obtain a home, save their home, or get out from under their home when it was too much. In December 2013, NeighborWorks was awarded tax credits to help fund this project.

By March 5th NeighborWorks felt the project was ready to go and asked that it be presented to the RDA Executive Committee. There was a lot of paperwork that needed to be completed to comply with the tax credit guidelines and they were required to have \$1 million spent by the end of the year. Ms. Wilde felt this was a wonderful project and asked the RDA Board to approve the design of the project so they could move forward.

Sherrie Hall-Everett, NeighborWorks Board Member, said they were very sensitive to the neighbors and wanted to be a good community partner. One of the noted advantages of this project was that it was not like other high-density projects. This project consisted of one, two, three, and four-bedroom units that would allow families an option to create permanence in that neighborhood. The board felt they had been sensitive to the design issues in the neighborhood and worked to create great transition space for the property across the street. She felt NeighborWorks had not only met, but exceeded, the expectation for neighborhood involvement. It was time for the development to move forward because delays could have serious consequences and would not necessarily bring significant changes to the outcome of the project. Ms. Hall-Everett urged the RDA Board to approve the design.

Mr. Taylor reported this item was on the agenda at the request of NeighborWorks for the RDA Board to approve the proposed design of the building prior to the issuance of a building permit. This was a requirement made at the time the property was sold by the RDA to NeighborWorks. Mr. Taylor said an application for this project had not been formally submitted for development review. As part of the development review additional staff evaluation would be made to identify whether the project met zoning requirements. There would also be a review by the Design Review Committee and the Planning Commission, where a public hearing would also be held. The Planning Commission would be required to approve projects that met zoning requirements so it would be the burden of the public to prove any zoning violations. There were other processes that could affect the design, even if the RDA Board approved the resolution.

Chair Sewell stated one of the neighborhood concerns was the amount of low income housing in the project. At the time the application was submitted there were no restrictions in place but pending legislation limiting the amount of subsidized or low income housing in a given area may give the board the ability to make that a factor in approving or denying the project. Because of the timing he did not know if the new legislation would affect this project. Mr. Jones stated the pending legislation concept would not apply in this case because the actual development proposal had not been submitted, or appeared on an agenda. Chair Sewell clarified that the board was simply approving or not approving the design of the project.

In response to a question from Mr. Winterton, Mr. Taylor confirmed that the board was reviewing the design before the normal process was followed because it was a condition of the sale agreement between the RDA and NeighborWorks. They just needed the design approval prior to having the building permit issued. The board could decide to let all the other processes take place before approving the design or they could approve the design that night with the understanding the design could change slightly.

Chair Sewell invited public comment.

Eric Watkins, Franklin Neighborhood, asked that the item be continued until the neighborhood could give their input on the design after their April 1, 2015 meeting. The final design presented to the RDA Board had not been shared with the neighbors. Without public support the project would fail. He hoped the Council would consider other mitigating factors because there was a lot of low income housing in the Franklin Neighborhood and surrounding areas. They were just starting to become healthy again and additional low income housing would have an impact on the neighborhood.

Joe Pettigrew, Provo, stated the neighborhood was pretty emotional about this issue. When the sale was approved back in August the majority of community expressed their concerns about the safety in the area, especially at night. They were scared of NeighborWorks, another Boulders, and noise, violence, and police cars. Their fear had not been addressed. He asked that the board wait on their approval until they could make everything work for the neighborhood.

Scott Bowles, 498 West 600 South, lived directly across the street from the proposed project. He moved to Provo with his wife and two children, from Florence, Arizona, a community that had 11 prisons. Their home was right next to a low to moderate income neighborhood. In his experience what mattered most was not what it looked like but how it was managed. When they moved back to Provo he and his wife wanted to move to the Franklin Neighborhood because they wanted an opportunity to serve and to grow. He was well aware of the problems in the area from his time working security at NuSkin and even wrote his master's thesis about BYU housing policy and neighborhood policies in Provo. He felt the design was beautiful but wondered if he could serve the project. At this point he could not give 100 percent support for the project and needed to find ways he could before giving his full support. He asked what happened at night when the architects and builders left. The neighborhood already had enough heavy lifting to do; they did not need any more.

Kathryn Allen, Franklin Neighborhood Chair, stated she was pleased the neighborhood could come together on this project. This project was a very sensitive issue in the neighborhood. She wanted to stress that it was not low-income housing but was called affordable housing. The concerns expressed about being afraid in the neighborhood were very valid. She hoped this would help improve the neighborhood. She appreciated the time and efforts spent by everyone on this project. Ms. Allen said the agenda item was a concern and disappointment because the neighborhood had been promised it would be presented to them before it was presented to the Council.

Ms. Allen said the neighborhood understood that NeighborWorks would be careful in their management of the project. But they wanted to make sure it extended far past their current director and staff so that it did not turn into another Boulders. That was something to be afraid of because the Boulders was a big problem for Provo City. Ms. Allen reminded everyone that the Franklin Neighborhood Plan was being developed and, even though this project might fit in with the plan, the neighborhood needed to be apprised of the project before it was approved. They need reassurance that the project was not anything to be afraid of and that it would be managed well.

Ms. Wilde stated she appreciated the neighbors and their concerns and wanted to reiterate there were several other city processes the project would need to go through before final approval. There may be slight changes to the design but they wanted it presented to the board so they could close on the property by the end of June 2015. There were a lot of other issues that NeighborWorks had to deal with associated with the tax credits before a building permit could be issued. One of the conditions of the contract was that the basic concept be approved by the board. Ms. Wilde said they honestly felt they were following the procedure when they asked it to be placed on the agenda. She asked the board to approve the design and allow them to move forward with the understanding there may be some changes and improvements along the way.

There were no more public comments.

Chair Sewell said he had mixed emotions about this issue. The item was presented to the RDA Executive Committee last week and he felt the project looked good. Kathryn Allen was present representing the sub-committee. He walked out of the meeting thinking there was strong neighborhood support so he approved placing the item on the agenda for this meeting. He was concerned about the timeline and felt that if the design had to go through the normal process, the Design Review Committee, the Planning Commission, and so forth, it might take too long and kill the project. One option would be to continue this item until the next meeting in three weeks and have a neighborhood meeting during that time to get feedback from the residents. Even a three week extension might impose some risk to the project. Or, they could vote to approve the design that night although he understood it was a difficult situation for some of the neighbors.

In response to a question from Mr. Garrett, Ms. Wilde stated that adding porches to the taller buildings was an amenity that could not be worked into the project. Ms. Wilde invited Martha Windsor, a member of the sub-committee, to respond also. Ms. Windsor reported that NeighborWorks had made a presentation for an 80 unit project to the neighborhood during a block party in August and again on September 3, 2014. There was so much discussion at both of these meetings that a sub-committee was formed to review the plans and make suggestions. On September 19, 2015 all their recommendations and suggestions were presented to Dave Gardner, the developer. She felt NeighborWorks had worked closely with the neighborhood. Her understanding was the approval that night was just for the purpose of purchasing the property. There would be opportunities for the neighborhood to look at the final plan and for the process to move forward.

Mr. Garrett asked if there were other amenities besides the porches that were not addressed in the design. Ms. Windsor stated all other suggestions had been addressed in the design. The new project was a great improvement over the original 80 unit design.

In response to a question from Mr. Garrett, Ms. Wilde said the proposed design was a concept; they had to actually draw up the plans and submit them as part of the application. The application would then be passed through all the City departments and the Design Review Committee. Those groups might make changes that could take two to three months to work through. Then it would go to the Planning Commission where a public hearing would be held. The Planning Commission could make changes also that would need to be made and taken back for approval. The financing was waiting on this process to be completed. She was concerned that a three week delay could cause a problem with the purchase of the property. She stressed they need to begin construction and have \$1 million spent by the 31st of December 2015 or the deal was off.

Mr. Garrett felt that NeighborWorks had responded to the RDA Board's request to bring a design back for their review. He felt there were processes in place for the neighbors to provide input and additional modifications in the coming weeks. Their concerns about management and fear concerns could be addressed.

Mr. Taylor clarified that Provo City code required neighborhood development proposal meetings within five days of the city receiving a land use application. It would be up to the neighborhood chair and the developer to provide a time for the meeting and report back to the Planning Commission the results of that meeting.

Vice-Chair Santiago asked if there had been clear expectations about who would relay information about the project to the neighborhood. Ms. Allen replied it was her understanding that the volunteer committee would work on the project but that NeighborWorks would go back to the neighborhood to present the proposed design before it was presented to the RDA. She expressed concern that the neighbors expected to see this before the council approved it. If neighbors in neighborhoods throughout the City felt they had a voice in the process the City would have better neighborhoods. She said it could all have been avoided if someone had let her know the item was placed on the agenda. She could have met with Ms. Wilde and worked something out. Ms. Allen suggested they wait to approve the design until it could be shown to the neighborhood because that was what they were told would happen. They just wanted to see something that would fit into the neighborhood.

Mr. Miller noted they had convened as the RDA Board and his remarks would be as a member of that board. He stated that when the board considered this matter previously it was clear to the developer what the RDA expected to happen. As far as he was concerned the developer had met that expectation. The plan would be presented to the neighbors on April 1, and would have the opportunity to respond to the legislative procedure that could involve the Council, but this meeting did not.

Mr. Winterton agreed that the board was looking at the design only. He had other issues with the project but the design looked great to him. They were not giving final approval to go forward

with the project and they were not being asked to eliminate any steps. Ms. Wilde agreed saying NeighborWorks was not asking to forego any steps that any other developer would be required to go through.

Mr. Van Buren emphasized the resolution stated they were approving the proposed design of the project. He had not heard any comments from the neighbors about the design other than they were happy with it. The rendering they were shown had a traditional street design on one side and a modern, contemporary design on another side. He would have liked to have input from the architect about the design concept and purpose. He felt that was what they should be discussing. Also, should they be approving the actual design or just the proposed design in order to meet the requirements of the sale? If it was just the proposed design they had to consider he suggested they take a vote.

Chair Sewell stated that if it had not been for the sale of the property this item would not have gone to the RDA board. Mr. Jones reported the resolution approved in August 2014 authorized the Mayor to sign the sales agreement and added a provision that a building permit for this property would only be issued after the proposed design was approved by the Municipal Council. The rendering of the proposed design would be attached to the permanent minutes.

Mr. Miller pointed out it was confusing that the property was sold back in August to NeighborWorks by the RDA but that the Municipal Council was being asked to approve the design. Mr. Jones stated that was a mistake in the original resolution but the intent was for the RDA Board to approve the proposed design.

Mr. Van Buren said the rendering shown that night was the proposed design; the board had seen it, studied it, and it would be included in the minutes. He made the following motion:

Motion: Board Member Kay Van Buren moved to approve **Resolution 2015-03-17-2** approving the proposed design of the NeighborWorks project generally located at 590 South 400 West. The motion was seconded by Board Member Gary Garrett.

Roll Call Vote: The motion passed 7:0 with Board Members Garrett, Hales, Miller, Santiago, Sewell, Van Buren, and Winterton in favor.

Adjourn the Redevelopment Agency meeting and reconvene as the Municipal Council

Motion: Board Member Gary Garrett moved to adjourn the RDA meeting at 7:50 p.m. and reconvene as the Municipal Council. The motion was seconded by Vice-Chair Calli Hales.

Roll Call Vote: The motion passed 7:0 with Board Members Garrett, Hales, Miller, Santiago, Sewell, Van Buren, and Winterton in favor.

Municipal Council

Policy Items Referred from the Planning Commission

- 10. A public hearing on Resolution 2015-19 either approving or denying an annexation petition for approximately 56 acres located on the east side of North Canyon Road between approximately 5020 North and 5150 North with requested zonings of R1.10, RA and A1.20 on the included properties. North Timpview and Riverbottoms Neighborhoods. (14-0007A)**
- 11. Resolution 2015-20 indicating the intent of Provo City to annex approximately 3.15 acres of real property generally located at 5050 North Canyon Road. (14-0007A)**

Items No. 10 and 11 were discussed together.

Brian Jones, Deputy City Attorney, presented. Several months ago an annexation petition was submitted that included a large area in northeast Provo. The petition was denied because it left an island or peninsula which was not allowed by state law. One of the petitioners, Tony Brown, owned 3.15 acres of that land and came back to the city to request annexation for his property only. Provo City annexation guidelines state that every annexation should include the greatest amount of property possible. Mr. Brown was asked to see if he could find additional land that could be annexed into the City. He came back with a petition that included the 56 acres between 5020 North and 5150 North along Canyon Road. The proposed annexation did not violate state code because it closed off a peninsula and brought the entire area into the City.

There had been several meetings held where infrastructure needs in the proposed annexed area were discussed. It was proposed that an annexation agreement be signed that would address the infrastructure concerns. A draft annexation agreement was sent to several of the property owners on Saturday, March 14th, and on Sunday, March 15th Mr. Brown sent an email to Mr. Jones stating that the other property owners had decided to withdraw from the annexation petition. That left Mr. Brown as the only petitioner still in play.

Mr. Jones stated there were two options. Can the city legally act on the petition now that the intent of the petition had changed by annexing only Mr. Brown's property? There was nothing in state code that said one way or another how to answer that question. It was not clear it was prohibited but it was not clear it was allowed. The alternative was to deny the petition in its entirety but begin the process for a city initiated annexation of Mr. Brown's property. Under state code 10.2.418 the City could pass a resolution stating their intent to annex the property, publish a notice with the County and in the paper for a three week period about the intent to annex, and then hold a public hearing no more than 30 days after passing the resolution.

Item No. 11 was on the agenda under the assumption that if the original annexation petition was denied the Council could pass the resolution indicating their intent to annex the 3.15 acres owned by Mr. Brown. The public hearing for the annexation would be held on April 21, 2015.

Item No. 10 was scheduled for a public hearing but it would only be required if the Council was going to consider approving the petition. If their intent was to deny the annexation there was no requirement to hold a public hearing.

In response to a question from Vice-Chair Santiago, Mr. Jones stated the annexation of the 3.15 acres was not creating a peninsula but was reducing the size of the current peninsula. He said that Mr. Brown was hopeful that if the resolution was approved the Council could include something that showed their intent to annex his property.

Mr. Van Buren stated there had been a lot of delay because of the proposed annexation agreement and concerns about the infrastructure needs. He asked if those same issues would need to be addressed with the 3.15 acre annexation. Mr. Jones stated that the only infrastructure concern with Mr. Brown's property would be the installation of a 12-inch water line.

Dave Decker, Provo City Public Works Director, reported there might be a few other concerns. The 12-inch water line extending from Foothill Drive to the property would be required. The developer and property owner were both aware of that. In addition to the water line, there was the potential of them participating in a water tank that would eventually benefit Mr. Brown's property. There was also the need for some storm drain improvements that the owner was also aware of.

Regarding Item No. 10, Stan Smith, representing the Smith family, owners of 53 acres, said they held a meeting and decided the disadvantages of joining Provo City far outweighed the advantages so they decided to withdraw their application.

Even though it was not required, Chair Garrett invited public comment; there was no response to the request.

Motion: Council Member Harold L. Miller, Jr. moved to approve **Resolution 2015-18** denying the annexation petition for approximately 56 acres located on the east side of North Canyon Road approximately 5020 North to 5120 North with requested zonings of R1.10, RA, and A1.20 on the included properties. The motion was seconded by Vice-Chair Kim Santiago.

Roll Call Vote: The motion passed 7:0 with Board Members Garrett, Hales, Miller, Santiago, Sewell, Van Buren, and Winterton in favor.

Chair Garrett invited Tony Brown, owner of 3.15 acres in the annexation proposal, to comment. Mr. Brown thanked all those that helped in this process and felt it was the correct course of action.

Mr. Miller did not think the City was very well prepared to respond to such a sizeable annexation request. He said it was borne out by the massive effort made by the Council to draft the annexation agreement. It seemed to have value in informing the other petitioners of their stake if

the annexation were to go forward. Someone more cynical than him would look at what had happened and say that this was what Mr. Brown wanted all the time.

Vice-Chair Santiago asked if the resolution was contingent on an annexation agreement that addressed the 12-inch line, possibility of a water tank, and the storm drain. Mr. Jones suggested the annexation agreement did not need to be part of the resolution, which just announced the City's intent to annex the 3.15 acres. The Council could simply make a motion expressing their belief an annexation agreement covering those issues was needed and direct staff to have the agreement ready for the April 21st meeting.

Motion: Vice-Chair Santiago made a motion directing staff to prepare an annexation agreement to cover infrastructure issues and to have it ready for the April 21st meeting. The motion was seconded by Council Member Dave Sewell.

Roll Call Vote: The motion passed 7:0 with Board Members Garrett, Hales, Miller, Santiago, Sewell, Van Buren, and Winterton in favor.

Motion: Council Member Gary Winterton moved to approve **Resolution 2015-20** as listed on the agenda. The motion was seconded by Council Member Vernon K. Van Buren.

Roll Call Vote: The motion passed 7:0 with Board Members Garrett, Hales, Miller, Santiago, Sewell, Van Buren, and Winterton in favor.

12. A public hearing on Ordinance 2015-11 amending the Zone Map classification for properties located generally from University Avenue to 900 East and from 700 North to the Brigham Young University Campus from Residential Conservation (RC), 50 East Project Redevelopment Option zone (pro-30), and Isles Project Redevelopment Option zone (pro-31) to Campus Mixed Use (CMU). Joaquin Neighborhood (15-0001R)

Bill Peperone, Assistant Director of Community Development, presented. The proposed ordinance was the next step in a process that started fifteen years ago with the drafting of the South Campus Area Master Plan (SCAMP). Although the plan was never formally adopted many of the guiding principles were incorporated into the 2010 General Plan update. Those documents addressed rezoning all the area between University Avenue and 900 East from 500 North up to the BYU campus. As the first step in that process, Community Development staff proposed rezoning the area between University Avenue and 900 East from 700 North up to the BYU campus property as Campus Mixed Use (CMU). The rezone was consistent with the Joaquin Neighborhood planning process. Notice about the proposed rezoning was sent out to all residents in the area. No one spoke out opposing the change.

Chair Garrett invited public comment. There was no response to the request.

Motion: Council Member Vernon K. Van Buren moved to approve **Ordinance**

2015-11 as written. The motion was seconded by Council Member Calli Hales.

Roll Call Vote: The motion passed 7:0 with Board Members Garrett, Hales, Miller, Santiago, Sewell, Van Buren, and Winterton in favor.

13. Ordinance 2015-12 amending Provo City Code Section 15.20 (Development Landscape Requirements) to add references to new zones and update landscaping requirements. City Wide (14-0013OA)

Aaron Ardmore, Provo City Planning, presented. New zones had been enacted in Title 14 that referenced Section 15.20 but were not referenced back to the new zones. The proposed ordinance would clear up the landscaping regulations for the new zones. While working on this amendment the staff found other areas dealing with landscaping and parking lot standards that needed to be clarified and updated. Those amendments were included in the proposed ordinance.

In response to questions from Vice-Chair Santiago, Mr. Ardmore addressed the following issues:

- Line 152 – clarified that gravel, rock, and stone now qualified as mulch and could be used in landscaping.
- Line 263 – The last time this section was updated was in 2004.
- Line 288 – The requirement that a minimum of 15 trees per acre were required in new zones was added. This requirement had always been that way; the language was just moved to a different section.

Motion: Council Member Calli Hales moved to approve **Ordinance 2015-12**. The motion was seconded by Council Member Kim Santiago.

Roll Call Vote: The motion passed 7:0 with Board Members Garrett, Hales, Miller, Santiago, Sewell, Van Buren, and Winterton in favor.

14. Ordinance 2015-13 amending Provo City Code Section 14.29.100 (Building Height) to reduce allowed building height in a Planned Industrial Commercial (PIC) zone when that zone abuts a residential zone. City Wide (14-0012OA)

Mr. Van Buren disclosed that his business had contracted with Novatek over the years and had a current contract with them. His business did not have any effect on new buildings or any of the issues under discussion but he wanted to disclose the information.

Mr. Peperone reported that one of the neighborhood chairs, Tim Brough, filed an application with Community Development asking for new regulations regarding building height in the PIC zone. This amendment would affect all PIC zones in the City but there was only one PIC zone, in the Spring Creek Neighborhood, that had adjacent residential zoning. The PIC allowed for a 55-foot building height while the building height for residential properties was restricted to 35 feet. The PIC also had a provision that allowed a developer or property owner to obtain a

conditional use permit and go higher than 55 feet. The residents in the area were concerned about what that regulation could mean for new buildings along their border.

Mr. Peperone and Mr. Brough worked together to amend the language to include a setback requirement of two feet for every one foot of building height for buildings in PIC zones that bordered residential zones.

After discussing this issue previously with the Council, sunset language was added to the ordinance in Paragraph E, which gave the neighbors and Novatek the opportunity to continue to work on this issue because Novatek was not sure how this amendment would affect them.

Mr. Peperone asked for clarification on the sunset clause. He wasn't sure if the language meant that Novatek had a six-month window to look for another option, meet with the neighbors to discuss that option, and bring that option forward. If that was not completed within the six-month window then the language would become permanent. That was what Mr. Brough would prefer in that it would provide more protection for the neighborhood and Mr. Brough would not need to come back in six months.

Mr. Jones explained that the sunset clause meant that if the ordinance was passed that night and there were no changes after six months then the amendments would come back out of the code. There was nothing to prevent Mr. Peperone from making it permanent during the six month period by removing the sunset provision.

Mr. Peperone stated this item was scheduled to return to the Council after five months in order to allow that to happen but Mr. Brough was concerned about that option. Mr. Jones replied that the Council could take the sunset provision out and it would be up to the administration to come back to the Council within that six-month period if alternative language was proposed.

In response to a question from Mr. Sewell, Mr. Peperone stated the height setbacks proposed in this ordinance were comparable to other zones. Another section of the code talked about these types of transition situations. That section of the code stated that for every two feet of building height you need one foot of setback. The proposed amendment stated you needed two feet of setback for every one foot of building height. That language came out of the Public Facility (PF) zone that had been used for many years. So the requested amendment was not something new. Even in the PF zone a conditional use permit could be given that would go beyond that building height description. Mr. Peperone also stated that the conditional use permit was hard to deny because the requirements were not very strict.

Mr. Taylor stated conditional use permits were deemed approved unless it was demonstrated there was detriment to health or safety of people or property within the vicinity. It could not include property values.

Chair Garrett invited Tim Brough, Spring Creek Neighborhood Chair and the applicant, to comment. This issue was initiated almost two years ago when Novatek proposed a 7-story building and the neighborhood was opposed to it. With a conditional use permit there was nothing they could do because they could not show any health and safety concerns. Novatek was

planning on testing drilling equipment in the building and the neighbors were concerned about the noise. Novatek did some research and found drilling equipment that would do both vertical and horizontal drilling so they located the building further south and withdrew their request.

The neighbors asked if there was something they could do to prevent that in the future. During the past two years Novatek had purchased 8 out of 21 homes in the neighborhood and wanted to change the General Plan in this area. Each of the properties they owned was about an acre in size. They wanted to take nearly 2/3 of the land on the back side of each property and leave a lot size of only 10,000 square feet for the R1.10 zone. The neighborhood opposed that and the Planning Commission upheld the neighborhood request 7:0. Verbal threats had been made to several of the residents because they had opposed Novatek's request. Since that time Novatek had paved behind some of the buildings, encroaching into the residential zone, and removed a lot of the trees. The trees were required as a buffer but the requirement was never recorded when the original plat was done. He stated this proposed ordinance was just a way for the neighborhood to try and protect itself. Mr. Brough said there was not a sunset clause in the proposed ordinance when it went before the Planning Commission.

Mr. Brough stated that earlier in the evening Mr. Holmes had explained to him that the sunset clause in the proposed ordinance read exactly opposite of what he understood. Mr. Brough did not want to have to come back again in order to have the amendment approved. He asked that the sunset clause be reversed or eliminated completely because it was not part of the Planning Commission approval.

Chair Garrett invited public comment.

John Amadio, 2103 South Mountain Vista Lane, stated he deliberately bought his home in that area 20 years ago because they were all large lots. Large lots were designed to be a buffer to the light industry that was supposedly there. He indicated he was a gardener and when they start building big buildings in his area the garden was shaded in the short growing period that Provo had. He supported the objections to the expansion of the industry. The business could not expand to the west because of the railroad tracks. The land just south of the subdivision was a large, open area with plenty of places to build. He supported what Mr. Brough was saying and the sunset clause needed to be stricken because it was not part of the original discussion. He questioned whether some of the industry in the area could even be classified as light industry.

Mr. Holmes stated the sunset clause was intended to be on the business, not the neighborhood. He had hoped for a provision that would pass the ordinance as proposed with the height restriction. The sunset clause was intended to be an opportunity for the businesses to work with the residents on a compromise. If no compromise was reached then the ordinance would stand. The applicant was not supposed to come back to the Council. The neighborhood and Novatek were supposed to meet and discuss options if Novatek developed in that area. Mr. Holmes' understanding was that any expansion would be two-story buildings with a height matching some of the existing buildings.

In response to a question from Mr. Van Buren, Mr. Jones was not sure why they would put any reference to a sunset clause in the ordinance. The Council could just pass the ordinance without

the sunset clause and it would be permanent by striking Paragraph E of Part II. He recommended that if the Council wanted any subsequent discussion they could make a motion to direct staff to work with Novatek and the neighborhood and come back within a six month period with suggestions as to how the ordinance should be changed.

Motion: Council Member Harold L. Miller Jr. moved to approve **Ordinance 2015-13** with the recommended amendments striking Paragraph E of Part II, and amending Paragraph C of Part II to read “The Municipal Council hereby directs that the city code be updated to reflect this amendment.” The motion was seconded by Vice-Chair Kim Santiago.

Roll Call Vote: The motion passed 7:0 with Board Members Garrett, Hales, Miller, Santiago, Sewell, Van Buren, and Winterton in favor.

Council Items and Reports

15. **Ordinance 2015-14 amending Provo City Code Section 9.31.110 (Towing and Parking Enforcement Operations) to remove references to BYU from the notification which is required to be placed on the windshield of a booted or towed vehicle. (15-020)**

Mr. Jones stated this amendment came at the request of Brigham Young University (BYU). When a vehicle was booted a sticker was attached that stated if the owner was a BYU student they could go to the BYU remediation center for help in addressing this issue. BYU has said they do not provide that service so they requested the sentence be removed from the sticker.

Motion: Vice-Chair Kim Santiago moved to approve **Ordinance 2015-14**. The motion was seconded by Council Member Vernon K. Van Buren.

Roll Call Vote: The motion passed 7:0 with Board Members Garrett, Hales, Miller, Santiago, Sewell, Van Buren, and Winterton in favor.

16. **An ordinance amending Provo City Code Section 2.29 (Neighborhood Advisory Board) to amend the purpose statements for the Neighborhood Program. City Wide (14-090)**

Chair Garrett introduced the item and noted there had been changes made to the ordinance draft so it was recommended this item be continued.

Chair Garrett invited neighborhood chairs, vice-chairs, or members of the advisory board to comment.

Dave Knecht, Provo South Neighborhood Chair and Chair of the Neighborhood Advisory Board, reported the proposed changes had been sent to all the neighborhood chairs and there had been some comments submitted. The purpose of the committee was to make the neighborhood program better. He would not mind going back to the committee and discussing any new

information. He was open to comments from neighborhood chairs or the Council. There were some things they could not change but he did not want to be pessimistic and say that how things had been were how they would always be. He liked what they had; it was a pretty good purpose statement that addressed things that had simmered for years. He was serious about getting businesses involved. He suggested adding a box on the business license application for a business owner to check if they wanted to be on the neighborhood emailing list.

Martha Windsor, Franklin Neighborhood Vice-Chair, reported it was hard to find volunteers to work on a permanent basis in their neighborhood. They were most successful by getting volunteers to act for a short time period in an advisory capacity for a specific purpose. Once that purpose was completed they would report back to the neighborhood and then disband the advisory committee. They had been successful working with the business community in their neighborhood. However, they do not have a lot of businesses in the Franklin Neighborhood. She recommended that some of the chairs try to come to a consensus about what really worked in their neighborhood. If they could reach a consensus that was not quite so specific it might be beneficial.

Mr. Sewell thanked Mr. Miller for his suggestions. They needed to run the changes by the committee to determine if there were any substantive changes that needed to be made. It would be worthwhile to continue this item and let the committee meet to discuss the proposed changes.

Motion: Council Member David Sewell moved to continue this item until the next meeting in three weeks. The motion was seconded by Council Member Vernon K. Van Buren.

Roll Call Vote: The motion passed 7:0 with Board Members Garrett, Hales, Miller, Santiago, Sewell, Van Buren, and Winterton in favor.

Adjourn

Motion: Council Member Vernon K. Van Buren moved to adjourn 9:09 p.m. The motion was seconded by Vice-Chair Kim Santiago.

Roll Call Vote: The motion passed 7:0 with Board Members Garrett, Hales, Miller, Santiago, Sewell, Van Buren, and Winterton in favor.