



PROVO MUNICIPAL COUNCIL

Redevelopment Agency of Provo

Regular Meeting Minutes

5:30 PM, Tuesday, May 03, 2016

Room 200, Municipal Council Chambers

351 West Center

Opening Ceremony

Roll Call

THE FOLLOWING MEMBERS OF THE COUNCIL AND ADMINISTRATION WERE PRESENT:

Council Member Kim Santiago	Council Member David Sewell
Council Member Vernon K. Van Buren	Council Member David Harding
Council Member Gary Winterton	Council Member George Stewart
Council Member David Knecht	Mayor John R. Curtis
CAO Wayne Parker	Deputy City Attorney Brian Jones
Council Executive Director Clifford Strachan	

Conducting: Council Chair Kim Santiago

Invocation and Pledge

Invocation and Pledge: Beth Alligood, Lakeview North Neighborhood Chair

Presentations, Proclamations and Awards

Lakeview North Neighborhood Presentation

Beth Alligood, Lakeview North Neighborhood Chair, reported their neighborhood, located on the northwest side of Provo, still had a lot of farmland. There were also a lot of diverse neighborhoods with townhomes and single family homes. The population was diverse but very quiet and did not get involved in politics a lot. The residents appreciated how the administration and council took into account how the residents would like to see the west side grow. Lakeview Elementary was a wonderful school and a big asset to the community. The new Provo High School was moving out to their neighborhood which was a hot topic at that time. The residents were very excited but realized it would push the neighborhood to a lot more growth.

Ms. Alligood had one concern. The "Welcome to Provo" sign was still on 1520 North even though the city border extended up to 2000 North. If they could move the sign up to 2000 North it would incorporate all of north Provo.

1. Covey Center presents Foreigner

Dan James, Technical Director at the Covey Center, invited several cast members to perform a scene from the play entitled *The Foreigner* which could be seen at the Covey Center through May 21, 2016.

2. A Proclamation on Bike to Work Day, May 10, 2016 (16-058)

Mayor Curtis read a proclamation declaring May 10, 2016 as Bike to Work Day and encouraged Provo City residents to ride their bikes to work that day.

Aaron Skabelund, Provo Bicycle Committee, gave council members a flyer listing events occurring during May, 2016 (Bike Month). He noted that in the past an organized bike ride was held on Bike to Work Day with all participants meeting at the Utah County Courthouse. This year the event would be decentralized with various businesses and corporations hosting separate events throughout the city. He encouraged citizens to participate in one of those events.

3. A presentation on the Golden Spoke Award

Mr. Skabelund presented the Fifth Annual Spring/Summer Golden Spoke Award to Susan Kruger-Barber and, by extension, members of the Complete the Street Group from the Joaquin and Maeser Neighborhoods. Ms. Barber had made significant contributions to bicycling in Provo by organizing a street party last June (2015) to help people reimagine 200 East as a neighborhood greenway. The 200 East neighborhood greenway would be a public space that would accommodate (and was safe for) people on foot, riding bicycles, as well as cars. It would run from 600 South at the FrontRunner Station to 800 North on the south side of BYU campus. On cold, wet days, commuters looked forward to BRT as a way to get to and from campus. Mr. Skabelund showed a video showing the June event.

Public Comment

Melanie McCoard, Provo, presented flowers to Mayor Curtis in appreciation for the UMPA deal and said it was a huge step forward in getting out of coal fired power plants. Ms. McCoard noted that DR Horton gave a presentation about the jail property to the Provost South Neighborhood but she would like to have had the Provost Neighborhood included. What happened to the jail property would affect the entire southeast part of town and many would have liked to attend. She encouraged the council to enlarge the conversation when developments like this were presented. Those residents that had watched and been involved in the plans for the southeast part of Provo understood that the jail property was a special circumstance. While they were not particularly happy with DR Horton's proposal it would be more acceptable than something with more density. The city had to make allowances to recoup their costs.

There were no more public comments.

Mayor's Items and Reports

4. A resolution tentatively adopting a proposed budget for Provo City Corporation for the fiscal year beginning July 1, 2016 and ending June 30, 2017. (16-054)

John Borget, Administrative Services Director, presented. The proposed budget for the fiscal year beginning July 1, 2016 and ending June 30, 2017 was \$200,614,858. During meetings with the council the following changes were made to the budget document.

- Council priorities have been added to the document after the Mayor's letter.
- The full-time equivalent summary was compared to the actual full time employed personnel through April 11, 2016.
- Expenditures were grouped by department and listed by project and function.
- The budget included line items for the new budget, prior year budget, and the adjusted budget (which included appropriations and carryovers). This would provide good comparison information. In the past only the new budget and adjusted budgets were shown.
- Revenues as well as expenses were being shown in each of the departments.
- Department were asked to show some performance measures in their budgets.

Mr. Borget stated that the FY 2017 budget supported the city's ongoing goal of continued fiscal health with a sustainable budget. Funds were invested in capital improvements, vehicle replacement, and employees. The proposed budget included:

- Fee increases for the Covey Center and cemetery expansion.
- Utility rate increases.
 - Energy
 - Residential rates – 2 percent increase
 - Commercial rates – 2 percent increase
 - Industrial rates – 6 percent increase
 - Public Works
 - Water rates – 11 percent increase
 - Waste Water rates – 19.8 percent increase
 - Storm Drain rates – 26 percent increase.
- A graph showing the combined utility rate comparison with 21 cities indicated Provo had the fourth lowest rates, even after the proposed rate increases. The energy rate increases were based on the cost of purchased power and the acquisition of the power facility in West Valley. The public works rate increases were based on infrastructure needs and maintenance.
- Funded personnel costs were based on market level adjustments, merit increases of 2.6 percent, and health costs increase of 6.3 percent.
- Departments submitted supplemental requests of \$4 million with \$1.5 million funded in the proposed budget.
- Five new positions were being recommended as part of the budget
 - Three police dispatchers
 - Two zoning officers
 - One cemetery position

- A maintenance fund of \$395,000, to maintain all general fund buildings, was created.
- Estimated revenues of \$1.3 million, generated from the Recreation, Arts, and Parks (RAP) tax approved by the voters, was included in the budget.
- A proposed property tax increase of three percent.

In response to a question from Mr. Knecht, Mr. Borget stated the comparisons for part time employees was challenging because they had a lot of seasonal positions for the summer only. Departments were budgeted a specific amount for part time employees. Sometimes they hired more people and had them work fewer hours.

In response to a question from Mr. Harding, Mr. Borget reported that Dick Blackham, Facilities Manager, looked at all the facilities in the general fund, estimated the useful life for each of those buildings, took the cost of maintaining those buildings and divided the cost by the useful life. That amount (\$395,000) was set aside and during the year those funds would be used for maintenance. Funds not used from this account could be carried over to the next year.

In response to a question from Mr. Sewell, Mr. Borget reported that the three new dispatchers were at the top of the Police Department's supplemental requests. They looked at the call volume, stress, determined they were undermanned. The proposed three percent property tax increase would be used to fund the new dispatchers and also to help purchase fire equipment. Last year's increase was two percent but Mr. Borget felt they needed a little more to fund the positions.

Mr. Harding felt it was important to note that the city's proposed three percent property tax increase did not equate to a three percent increase on the resident's property tax bill. Only a portion of the property tax went to the cities. The state required that property rates decrease automatically as property values increased so the same amount of funding would be generated. He recommended that the city provide a comparison of taxes paid last year with proposed rate increases on a median \$200,000 home. Mr. Borget reported that only one-third of the city's portion of property tax went to the general fund. The balance went to the recreation center and library bonds. Mayor Curtis also noted that property tax went down last year because the city dropped off the road bond.

Mr. Knecht stated that a three percent property tax increase might amount to less than \$10 on his home. Mr. Borget replied that he would provide those numbers to the council.

In response to a question from Mr. Winterton, Mr. Borget stated that the general fund tax rate would be adjusted from the proposed property tax increase. The total tax rate included the general fund, library, and recreation center bonds. When a general fund property tax increase was proposed it would only affect the general fund and not the recreation center or library bonds.

Chair Santiago appreciated the administration for addressing many of the council requests in the proposed budget. She noted that the median income of Provo citizens versus median income of other cities was important to look at also. Mr. Grabau noted the detailed line items were sent electronically to the council members and would be posted to the webpage.

Chair Santiago invited public comment.

Melanie McCoard, Provo, stated she was horrified when the budget was passed last year without public comment. She stated the budget on the webpage was very clear and easy to understand. She did not understand how they managed to maintain a 30 percent debt load and still fund all the capital improvements and put them in a budget. She was amazed how they managed to pay for everything they were buying.

There were no more public comments.

Chair Santiago invited council discussion or a motion. Mr. Jones noted that the budget officer was required to present a tentative budget to the council during the first council meeting in May. At some point the council was required to tentatively adopt the tentative budget and schedule a public hearing on the tentative budget prior to finalizing the budget by June 22 (absent a truth in taxation hearing). The council had two options – tentatively adopt the budget or continue the item in order to consider making changes to the proposed budget before it was tentatively adopted.

Council members discussed continuing the item until they had a chance to review the budget since they had just received it earlier in the day. Other council members felt they could tentatively approve the budget since they could still make changes before a final adoption.

Motion: Council Member George Stewart moved to continue the item, refer it to the council budget committee for study and to get a report back from them, and vote on a tentative budget in two weeks. The motion was seconded by Council Member David Sewell.

Roll Call Vote: The motion passed 6:1 with Council Members Harding, Knecht, Santiago, Sewell, Stewart, and Winterton in favor and Council Member Van Buren opposed.

5. Resolution 2016-16 authorizing the Mayor to submit an application for a Utah County Municipal Grant to be used for the hiring of a consultant to design the necessary construction documents to renovate the Provo River Trail. (16-057)

Doug Robins, Parks and Recreation Assistant Director, presented. The Utah County Municipal Grant was awarded each year with funding coming from the restaurant tax and based on population. This year Provo City was awarded \$62,005.12. The city was proposing to use the grant award on engineering and design work for enhancements along the Provo River Trail. Many sections of the trail were narrow and had started to erode. The proposed enhancements would include added lighting and improved trail standards. The grant required approval by the municipal council before submittal to Utah County.

Motion: Council Member David Harding moved to approve **Resolution 2016-16** authorizing the mayor to submit an application for a Utah County Municipal Grant to be used for the hiring of a consultant to design the

necessary construction documents to renovate the Provo River Trail.
The motion was seconded by Council Member David Knecht.

Roll Call Vote: The motion passed 7:0 with Council Members Harding, Knecht, Santiago, Sewell, Stewart, Van Buren, and Winterton in favor.

Recess Municipal Council

Motion: Council Member David Harding moved to recess the Municipal Council Meeting and convene as the Redevelopment Agency at 6:58 p.m. The motion was seconded by Council Member David Sewell.

Roll Call Vote: The motion passed 7:0 with Council Members Harding, Knecht, Santiago, Sewell, Stewart, Van Buren, and Winterton in favor.

Redevelopment Agency of Provo

6. **Resolution 2016-RDA-05-03-1 of the Governing Board of the Redevelopment Agency of Provo City Corporation authorizing the appropriation of \$154,950.37 from unencumbered reserves in fund 279 for the payment of costs incurred by cowboy partners for the remediation of property once owned by the Redevelopment Agency. (16-048)**

David Walter, Redevelopment Agency Director, presented. He explained that this item was to pay Cowboy Partners for their costs associated with remediation of contaminated soil at approximately 50 North 300 West. The RDA was responsible for the costs because they sold the property to Cowboy Partners.

Mr. Walter stated the contaminated soil was from an area separate from where we had tanks removed. We are looking at our purchase contract to see if we have recourse against the previous owner to get reimbursement. Under state code, since we removed the tanks we were responsible for the costs.

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

Motion: Board Member Kim Santiago moved to approve **Resolution 2016-RDA-05-03-1** as written. The motion was seconded by Board Member Gary Winterton.

Roll Call Vote: The motion passed 7:0 with Board Members Harding, Knecht, Santiago, Sewell, Stewart, Van Buren, and Winterton in favor.

7. **A resolution tentatively adopting a proposed budget for the Redevelopment Agency of Provo City Corporation in the amount of \$4,292,168 for the fiscal year beginning July 1, 2016 and ending June 30, 2017. (16-055)**

Mr. Grabau introduced the item and stated the Redevelopment Agency budget of \$4,292,168 was located on page 168 of the tentative budget book.

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

The following motion was made.

Motion: Board Member David Sewell moved to schedule this for a vote in their meeting in two weeks. The motion was seconded by Board Member David Knecht.

Roll Call Vote: The motion passed 6:1 with Board Members Harding, Knecht, Santiago, Sewell, Stewart, and Winterton in favor and Board Member Van Buren opposed.

Adjourn Redevelopment Agency

Motion: Board Member David Harding moved to adjourn as the Redevelopment Agency and convene as the Storm Water Special Service District at 7:06 p.m. The motion was seconded by Board Member David Knecht.

Roll Call Vote: The motion passed 7:0 with Council Members Harding, Knecht, Santiago, Sewell, Stewart, Van Buren, and Winterton in favor.

Storm Water Special Service District

8. A resolution tentatively adopting a proposed budget for the Provo City Storm Water Special Service District in the amount of \$4,196,475 for the fiscal year beginning July 1, 2016 and ending June 30, 2017. (16-056)

Mr. Grabau indicated the proposed Storm Water Special Service District budget of \$4,196,475 was located on page 165 of the tentative budget. The budget included details on operating and capital expenditures related to infrastructure projects. The proposed rate increase included in the budget was the same as proposed last year (the second of the five year rate increases).

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

Motion: Council Member David Knecht made a motion to move this forward to the next week as they convene as Storm Water Special Service District. The motion was seconded by Council Member George Stewart.

Roll Call Vote: The motion passed 6:1 with Council Members Harding, Knecht, Santiago, Sewell, Stewart, and Winterton in favor and Council Member Van Buren opposed.

Motion: Council Member David Knecht moved to adjourn as the Storm Water Special Service District and reconvene as the Provo City Municipal Council at 7:10 p.m. Seconded by Council Member David Harding.

Roll Call Vote: The motion passed 7:0 with Council Members Harding, Knecht, Santiago, Sewell, Stewart, Van Buren, and Winterton in favor.

Provo City Municipal Council

Policy Items Referred from the Planning Commission

9. **A public hearing on Ordinance 2016-08 amending Provo City Code Chapters 14.41 (Home Occupations), 15.03 (General Development Standards), 15.04 (Conventional and Open Space Subdivision Requirements), and 15.06 (Condominiums) to clarify and update submittal requirements for planning applications. City Wide Impact. (15-00120A)**

Aaron Ardmore, Provo City Planner, presented. The proposed ordinance made adjustments to several sections of the Provo City Code.

- Chapter 14.41 – Home Occupations – a revision of the gross vehicle weight ratings for home occupations to make the requirement closer to current truck standards. The new standard would be a maximum gross vehicle weight rating of 14,000 lbs. (similar to a Ford F150) for minor home occupations and a maximum of 17,500 lbs. (similar to a Provo City utility truck) for major home occupations. Also, the ordinance was amended to show that special conditions would be established by Community Development instead of the Planning Commission to match what the practice had been for the past several years.
- Chapter 15.03 – General Development Standards – amendments would eliminate the need for applicants to provide unnecessary paper copies with planning applications to the city. All reviews were done electronically so the applicant would only have to submit one .pdf version of the application.
- Chapter 15.04 – Conventional and Open Space Subdivision Requirements – code was amended to show city staff reviewing and giving final approval for subdivision final project plans. The state did not require a public hearing for these types of plans. Staff could handle those approvals administratively so the planning commission could focus on bigger picture ideas.
- References to sections no longer included in the code were removed from these chapters.

Chair Santiago invited public comment. There was not response to the request.

Motion: Council Member David Harding moved to approve **Ordinance 2016-08** as written. The motion was seconded by Council Member Vernon K. Van Buren.

Roll Call Vote: The motion passed 7:0 with Council Members Harding, Knecht, Santiago, Sewell, Stewart, Van Buren, and Winterton in favor.

10. A public hearing on Ordinance 2016-09 amending Provo City Code Section 14.49E.050 (One Family Homes at Celebration (Village 1)) regarding the allowance for both side yards to have a minimum setback of five feet. North Lakeview Neighborhood. (16-0002OA)

Brian Maxfield, Provo City Planning Supervisor, presented. Broadview Shores was originally approved as Celebration in 2009. Amendments to the development were made when the property was sold and the roadway through the area was realigned. The project was reapproved as Broadview Shores in 2014. Ivory Homes, the developer, found certain model homes were close to the required setbacks but did not quite fit. The zone required a five foot side yard and an eight foot side yard for utility uses. Staff felt it would be reasonable to reduce the requirements on the 5,000 and 6,000 square foot lots to five foot side yards on both sides. For the 8,000 square foot lots they recommended reducing from eight and eight to five and eight. The planning commission voted unanimously to approve the change. Mr. Maxfield reported that Beth Alligood, the North Lakeview Neighborhood Chair, attended the planning commission meeting and reported there were no real objections from neighbors.

In response to questions from Mr. Knecht, Mr. Maxfield replied that the applicant would need to use certain materials (hardiboard, stucco, stone, etc.) to meet the building code. The fire rating required an extra thickness on wall board intended to delay a fire, not to extinguish a fire. Mr. Maxfield said the fire department was not opposed to the amendment. While they used every angle they could to fight a fire, they usually did not use the back yards.

Mr. Van Buren noted that this change was specific to this development. Mr. Maxfield agreed stating this was a planned, cohesive development and, although the planning commission was going to look at setbacks in other zones within the city, the vote that night was just for this specific development. The structural base would be held to the required setback but pop outs and/or roof overhangs could encroach upon the setback.

In response to a question from Mr. Harding, Mr. Maxfield confirmed that the amendment would allow encroachments with pop outs and bay windows. Encroachments were already allowed in the ordinance and there would be no change to that allowance.

Brad Mackay, Ivory Homes, was invited to comment. He stated the eight foot setback in the V1.5 and V1.6 zones were due to a public utility easement; however, the public utility easement had already been reduced to five foot in other sections of the code. The proposed amendment would simply clarify that change in the ordinance. In the V1.8 zone they were requesting to reduce one side yard to five foot so they could build some larger homes with three car garages. He stated there would not be a public utility easement in the side yards because utilities had vacated their easement requirements. The majority of utilities did not go down side property lines anymore. The only easement they needed in the future was a front public utility easement in most cases. There might be a random case where a storm drain or sewer needed to go down a side yard but, typically, that was denoted on the design plans.

In response to a question from Mr. Winterton, Mr. Mackay stated the standards had an easement on the property lines but he did not think they were using them. Most public utilities were in the front of the property.

Mr. Maxfield said every subdivision had a public utility easement around it. A lot of cities had excluded them, especially on the side yards. Any trunk lines that would extend to other lots were shown as a different easement on the plat than what it would be for the home. If the home needed to be serviced the property owner would have to give up whatever access was needed to be serviced.

Chair Santiago invited public comment.

Melanie McCoard, Provo, reported that at a housing conference held at the end of last year, Dave Gardner talked about how design was more important than density. She said that five feet looked like one thing if all the houses were lined up in a row. There was a development in her neighborhood like that and it looked ridiculous. She felt there was a way to design the project to get the density they needed without crunching those houses together. The council should include a statement in that zone that if the developer presented a better design they could have some of the considerations. If it was just to add density she did not think they should allow it.

There were no more public comments.

In response to a question from Mr. Knecht, Mr. MacKay stated that on a 6,000 square foot wide lot you would have a 13 foot total setback (five on one side and eight on the other), which would give them a 43 foot wide home. That would be a small home and not many people want to buy that narrow of a home. He said that most of the homes would not use the full five and five foot setbacks. On an 8,000 square foot lot, you would have an 80 foot frontage and a 70 foot building envelope with the five and five setback. Their most popular home with a third car garage was 66 feet wide which, with the proposed amendments, could be built on the 8,000 square foot lot.

Chair Santiago stated that citizens on the west side were expressing a need for larger homes so they could stay in the area as their families grew. She expressed concerns about the overhangs being that close but, as a homebuyer, she would appreciate the extra space. In response to a question from Chair Santiago, Mr. Mackay stated there were 95 lots in the first two phases and 60 of those lots would be affected by the change.

Mr. Van Buren stated he intended on voting for the change. Given the restrictions on the lot sizes, the developer could drop a lot and still have plenty of footage for the required setbacks. This was a limit they had put on themselves and now they were asking the council to help them remedy their problem by changing the setbacks. They could have designed the development to have lots the size their house design needed. However, they also needed to look at the trends of people wanting less yard. In most neighborhoods the side yards were not the attractive part of most homes.

Mr. Harding asked if this change was in the interest of Provo, this neighborhood, and future residents of this development. If it was in the best interest of Provo to keep the larger setbacks then the proposal should be denied. The developer could then drop a lot in order to expand the widths of all the homes. If the utility easements were no longer needed there was no reason to require the larger setbacks.

Motion: Council Member Vernon K. Van Buren moved to approve **Ordinance 2016-09**. The motion was seconded by Council Member David Knecht.

Roll Call Vote: The motion passed 7:0 with Council Members Harding, Knecht, Santiago, Sewell, Stewart, Van Buren, and Winterton in favor.

11. A public hearing on Ordinance 2016-10 amending the zone map classification of approximately 0.54 acres of real property, generally located at 1080 West 500 north, from Residential Conservation (RC) to Low Density Residential (LDR). North Park Neighborhood. (16-0002R)

Dustin Wright, Provo City Planner, presented. The applicant proposed creating a third lot out of the backs of two lots he owned at that location. The current zone did not allow for the new lot to be created so a new zone would need to be established. The R1.6 zone would be the most ideal; however, the lot width did not meet the requirement of 60 feet. The General Plan for the area limited new development to detached one-family homes with rehabilitation of existing one-family homes. The two existing homes on those properties were in the process of being remodeled. The potential for a third single-family detached home fit with the goal with the neighborhood. The best zone would be the low density residential (LDR) zone because it would accommodate the lot sizes. In order to prevent the increased density allowed in the LDR zone, the applicant had agreed to sign a development agreement. The development agreement would limit the number of lots to three with detached single-family lots. The development agreement would run with the land so subsequent owners would have the same requirement.

If approved, Mr. Wright said the applicant would realign the property lines running north and south because a garage built several years ago was straddling the property line. The third lot would be created by dividing off the back of the two long lots and a home would be built facing 1080 West. The two existing homes would face 500 North with detached garages in the rear. A three foot setback was required for a detached, accessory structure in the rear. The setback from the existing garage to the new lot would be five feet.

Chair Santiago invited the applicant, Adam Hall, to comment. He noted that the new lot would be 55 feet wide. He noted there were several lots to the north that did not meet the width requirement of the zone and had garages that entered from the front. One of the two remodels on the existing homes was completed and the new buyer was renting until division of property could be completed. The second home should be ready for sale within one week.

Chair Santiago noted that in the planning commission report the neighborhood chair, Jim Pedersen, determined a neighborhood meeting would not be required. Mr. Pedersen, along with

a few neighbors, attended the meeting wanting to ensure there would be sufficient parking. Mr. Wright explained they would be required to have three parking stalls per the LDR zoning requirements.

Mr. Harding liked what was being proposed but struggled with the request for an LDR zone. The lot was larger than 6,000 feet so it fit better with R1.6 other than the width was just a little less. His neighborhood was R1.6 and there were many lots that were less than 55 feet. He would rather have the lot be a slightly non-conforming R1.6 than to have it zoned LDR because it fit but was not in the nature of an LDR. The council should start a larger discussion about using zones consistent with the neighborhood and, if the property did not fit, making the non-conforming.

Mr. Maxfield stated the main problem with R1.6 was the lot width but there was not a variance they could give to allow it. He said the planning commission would be looking at changing minimum lot widths with some of the zones. The lot would fit if they had made those changes; however, right now the R1.6 did not work. He did not know if there was a perfect answer for the council.

Chair Santiago asked if the development agreement, even though it was in perpetuity, could be missed several years down the road. Mr. Jones replied that development agreements should get recorded and show up in title searches. Once the institutional knowledge of the agreement was gone, they could get missed. That was one of the problems with using development agreements to accomplish zoning.

Mr. Jones felt it would be a significant mistake to apply a zone up front to a property that did not meet the zone requirements. The council would be opening themselves up to arbitrary and capricious rulings by the court and complaints by other property owners.

Mr. Harding noted that on 800 North the vast majority of the homes were single family. He asked how Community Development felt about zoning it LDR and then rezone it to R1.6 in a couple of months with the understanding it would be non-conforming, such as many other properties that were R1.6 but not meeting the width standard. Mr. Maxfield replied that the council could take that action and direct staff to come back with a text amendment that would address the problem.

In response to a question from Mr. Knecht, Mr. Maxfield said staff was presenting a text amendment to the planning commission during their second meeting in May relating to lot widths. There was also discussion of adopting an R1.5 zone which would have the boundaries that this lot would fit. Reducing the minimum lot width in all the zones would still require the same total area but would provide flexibility in the lot widths. The soonest they would have those changes would be sometime during the end of summer.

Mr. Winterton said that a title company should see the development agreements because they were recorded with the plat. Mr. Jones said the title company was not representing the city. If the property was sold 20 years from now the new owner might become aware of the development agreement but that did not mean the city was aware of it. The owner was not

obligated to tell the city. Usually someone in the neighborhood had the institutional knowledge to remember the restrictions and complain to the city.

Gary McGinn, Community Development Director, stated they would prefer the right zoning as opposed to a development agreement. With a zoning violation the city could enforce the zone through their normal process. If the property was zoned LDR the only violation would be through a contractual agreement and would be handled through our legal department. He would recommend going forward on this project with the LDR zone and a development agreement. It was a good project and the applicant had time frames they had to meet for construction. In the meantime, staff could work on amending the property width requirement in certain zones. Once that was resolved they could come back and zone it R1.6 because they had built the flexibility in the code.

Mr. Jones said the council would be acting illegally by imposing a zone that they knew did not fit. They would be setting a precedent for all future zoning applicants that the zoning code did not mean what it said. The zoning code would mean what the council thought when the applicant was standing in front of them. Mr. Jones suggested the code could be changed to state the required frontage but allow exceptions by Community Development staff within a certain percentage. The mechanism for making the exception would be built into the code.

Mr. McGinn pointed out that, even if the council approved the R1.6 zone that night, Community Development staff would still deny the plat because it did not comply with the code.

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

Motion: Council Member David Sewell moved to approve **Ordinance 2016-10** amending the zone map classification from RC to LDR as written and subject to the conditions recommended by the planning commission. The motion also noted that the ordinance, as written and included in the public materials, already included a provision authorizing the mayor to negotiate and execute a development agreement restricting the development to three lots with single-family homes and makes the zone change effective after the execution of the development agreement. The motion was seconded by Council Member David Knecht.

Roll Call Vote: The motion passed 7:0 with Council Members Harding, Knecht, Santiago, Sewell, Stewart, Van Buren, and Winterton in favor.

12. A public hearing on an ordinance amending Provo City Code Section 14.34.500 (Fencing Standards for Residential Zones) to allow six-foot, solid fencing within the front setback in residential zones. City Wide Impact. (16-0001OA)

Robert Mills, Provo City Planner, presented. The applicant sponsored this ordinance amendment due to a complaint about his fence. The proposed amendment would allow an applicant to apply the width of a park strip to the front setback requirement in order to allow a solid six-foot wall fence or hedge in the front setback area. The zoning code already allowed solid walls and fences

in the front yard setback up to a maximum height of three feet. It also allowed a six-foot wall or hedge as long as they were non-sight obscuring (at least 50 percent open). Staff was concerned that amending the ordinance would result in undesirable, unforeseen consequences and it would apply city-wide, not just for this property. A proposal like this could reduce the visibility and safety in the area. They recommended denial of this ordinance amendment. The planning commission unanimously voted in favor of the recommendation to deny.

Mr. Mills showed a picture of the applicant's six-foot solid wall fence and the large park strip area the applicant wanted to apply so the fence would be legal. He pointed out that there were probably many cases within Provo where situations like that existed. Mr. Mills noted that the front yard included the entire area in front of the dwelling.

Brian Dapp, the applicant, was invited to comment. He felt the fencing rules needed to be applied fairly, equally, and changes to the rules needed to be made. The ordinance required that the first 20 feet of front yard fencing be three feet high or 50 percent open. The front yard was described as unoccupied landscaped area extending across the full width of the property. However, this was confusing – do you measure 20 feet from the back of the curb, the front of the walk, or the property line?

Mr. Dapp showed examples of several fences throughout Provo showing similar fences. Some were permitted and others were not legal and a clear violation of the ordinance. The fencing ordinance stated that a fence “shall not create a sight distance hazard to vehicular or pedestrian traffic.” The ordinance allowed exceptions for grade changes, retaining walls, and/or subdivision entrances.

His amendment would add language to allow the parking strip to be part of the 20 foot requirement. He said the residents were already asked to maintain the park strips so they should be allowed to include them in their front setbacks. By making this amendment the city would be meeting the intent of the ordinance, they would be righting an injustice, it was a reasonable request, and the work load for city zoning staff would be reduced. If they did not want to approve the amendment that night, he asked that they continue this item, look at the ordinance, and make appropriate changes.

Mr. Dapp stated he began this process because someone complained about his fence. He understood that the zoning ordinances on fences were only pursued if a complaint was received. He was cited because his fence did not meet the 20 foot setback requirement. He thought it interesting that he was cited for the fence but not for the shrubbery which was so high it hid the fence. When he installed the fence he was told by Community Development that he did not need a building permit. He also understood that he was in compliance with the fence ordinance. Now, two years later he was asked to remove the first 20 feet of the fence.

Mr. Dapp said he submitted 20 examples of illegal fences to staff several weeks ago. They dismissed nine of those for various reasons that he did not understand while some of them had been grandfathered in. Mr. Dapp said he wanted to solve the problems so that was why he proposed the text amendment.

Mr. Winterton expressed concern about the safety issues surrounding high fences and gave an example of a bicyclist killed by a city vehicle because the fence was too high and vision was blocked.

Chair Santiago noted that during the planning commission meeting the Lakeview North Neighborhood Chair and a resident representing the Timp Neighborhood expressed opposition to the proposed amendment because they were concerned about solid walls in the front yards. The Franklin Neighborhood Chair spoke in favor of the amendment because she felt it was fair.

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

Mr. Sewell stated he would be hesitant to support an amendment that both staff and planning commission recommended denying; however, he felt the applicant had made some good points. While this might not be the right place to do it there might be some changes to the ordinance that could be made to address some of the concerns.

Mr. McGinn noted that they could not just go out, look at a fence, and determine if it was illegal. If the fence was put in when the law allowed it the fence was not illegal, it was non-conforming (legal). That was why they usually waited until a complaint was received on a specific fence because of the research involved in determining the status of the fence. They received two or three fence cases per year and they usually dealt with clear vision triangles or having shrubs cut down. He did not think there were any big problems in the current fence ordinance and, while there could be some tweaks to the ordinance, it was not a pressing problem. The proposed ordinance was a problem because it would allow solid six foot high fences in the front yard right up to the property line.

Chair Santiago had some concerns about all the applicant's work to install the masonry wall and then having to tear part of it down. However, she could see some safety issues if a driveway was built along that wall. She also saw the city-wide concern. Until it was pointed out to her, she had driven in and out of her driveway for more than ten years and never thought about the visibility of trying to see up the street because of fencing. She asked staff to look at her fence and shrubs to see if it was in compliance.

Mr. Harding felt it would be a poor precedent to change a zoning ordinance simply because we could not enforce all the zoning violations on that ordinance. He understood it was frustrating for citizens when they received a complaint and then could see several other similar instances that were not being enforced. He felt it was poor design to allow six-foot solid fences deep into the front yard. His biggest concerns were safety issues by limiting the visibility up to the sidewalk, not just on the roadway. One of the key points from the planning commission that the city should address was that Provo City should be following their own ordinances. The planning commission also asked that the applicant be given additional time to come into compliance and Mr. Harding supported that request.

Motion: Council Member David Harding moved to deny the ordinance amending Provo City Code Section 14.34.500 (Fencing Standards for Residential Zones). The motion was seconded by Council Member Gary Winterton.

Roll Call Vote: The motion passed 7:0 with Council Members Harding, Knecht, Santiago, Sewell, Stewart, Van Buren, and Winterton in favor.

Adjourn

Motion: Council Member Gary Winterton moved to adjourn at 9:11 p.m. The motion was seconded by Council Member Vernon K. Van Buren.

Roll Call Vote: The motion passed 7:0 with Council Members Harding, Knecht, Santiago, Sewell, Stewart, Van Buren, and Winterton in favor.