



PROVO MUNICIPAL COUNCIL

Redevelopment Agency of Provo

Regular Meeting Minutes

5:30 PM, Tuesday, January 05, 2016

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 Kim Santiago
Council Member Gary Winterton
Council Member George Stewart
Council Member David Harding
CAO Wayne Parker
Council Executive Director Matthew Taylor

Council Member Vernon K. Van Buren
Council Member David Knecht
Council Member David Sewell
Mayor John R. Curtis
Deputy City Attorney Brian Jones

Conducting: Council Vice-Chair / Chair Kim Santiago

Invocation and Pledge

Invocation offered by Jonathon Alder

Pledge of Allegiance led by the Slate Canyon 15th Ward Webelos Scout Troop

Presentations, Proclamations and Awards

Jim Moss, Provost South Neighborhood Chair, gave a brief update on his neighborhood. He said the best thing about his neighborhood was the people. They had a diverse neighborhood with people from nearly every continent in the world and they helped each other out. It was a beautiful place to live and they wanted to work together to make sure that Provo continued to go in a positive direction.

1. Election of Municipal Council officers; chair and vice-chair.

Vice-Chair Santiago called for nominations for chair of the Municipal Council. Gary Winterton nominated Kim Santiago for chair. There were no more nominations. The motion passed 6:1 with Council Members Harding, Knecht, Santiago, Sewell, Stewart, and Winterton in favor and Council Member Van Buren opposed.

Chair Santiago called for nomination for vice-chair. Chair Santiago nominated Dave Sewell as vice-chair. There were no more nominations. The motion passed 6:1 with Council Members

Harding, Knecht, Santiago, Sewell, Stewart, and Winterton in favor and Council Member Van Buren opposed.

2. Resolution 2016-01 acknowledging the election of the chair and vice-chair of the Provo Municipal Council for calendar year 2016. (16-003)

Motion: Council Member George Stewart moved to approve **Resolution 2016-01** as written with Kim Santiago as chair and Dave Sewell as vice-chair. 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 George Stewart moved to recess the Municipal Council meeting at 5:52 p.m. and convene as the Redevelopment Agency. The motion was 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.

Redevelopment Agency of Provo

3. Election of Redevelopment Agency of Provo officers; chair and vice-chair.

Chair David Sewell invited nominations for the 2016 chair of the Redevelopment Agency. Board Member Van Buren nominated Gary Winterton as chair. Kim Santiago nominated George Stewart as chair. There were no more nominations. Chair Sewell invited each board member to state who their vote was for. George Stewart, David Harding, Kim Santiago, Dave Sewell, Gary Winterton, and Dave Knecht voted for George Stewart and Kay Van Buren voted for Gary Winterton

Chair Sewell called for nominations for 2016 vice-chair. George Stewart nominated David Harding. There were no more nominations. The motion passed 7:0.

4. Resolution 2016-RDA-01-05-1 appointing the chair and vice-chair of the Redevelopment Agency of Provo City for calendar year 2016. (16-004)

Motion: Board member David Sewell moved to approve **Resolution 2016-RDA-01-05-1** as written with George Stewart as chair and David Harding as vice-chair. The motion was seconded by Board Member Kim Santiago.

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

Motion: Board Member Gary Winterton moved to adjourn as the Redevelopment Agency at 5:57 p.m. and reconvene as the Municipal Council. The motion was seconded by Board Member Vernon K. Van Buren.

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

Municipal Council

Public Comment

Melanie McCoard, Provo, stated that the committee working on the southeast area plan, looking at all the land use in the Provost, Provost South, and Spring Creek areas, had been disbanded. She requested that the committee be given the opportunity to present their recommendations to some “body” and remain intact through the public process.

Christian Faulkner, Rivergrove Neighborhood, was disappointed in the decision to have a private swearing in the day before so that new council members could add an item to the agenda reversing a decision made by the previous council, barely meeting the 24 hour noticing requirement. He urged the new council to be more transparent in the future.

Sherrie Hall-Everett, Lakeview North neighborhood and former council member, stated the public deserved a better explanation for having a private meeting and a private swearing in and was disappointed the way it went down. The public expected transparency and fairness of process. Every developer, regardless of who it was, should expect that fairness.

Jason Christensen, Provo, hoped the new council would undo the wrongs of the past and protect property rights and restore freedom to all citizens. He wanted to start the process of getting another city charter.

Ben Markham, Riverbottoms Neighborhood, learned about the issue of rescinding a previous ordinance just one-half hour ago. He expected elected leaders to live by a policy of the ends not justifying the means. The council needed to stop and take a look at, from a moral perspective, the approach they take. They were setting the standard for the citizens and he expected more.

Diane Christensen, Provo, understood the decision to have a swearing in so they could act with full authority in their meetings. She did not think any of this would have been necessary if the process had been handled better in the last quarter of 2015 in regards to a certain development. Had that been better handled she did not think any of the events over the past two days would have been necessary.

Ryan Frandsen, Rivergrove Neighborhood, felt that what the council had done in the past 24 hours was extremely disappointing. Many of them ran on economic development issues and he asked how a developer or business owner could expect predictability in the process. He hoped the council would engage with the citizens more.

Eric Watkins, Franklin Neighborhood, did not think the ends justified the means. He noted this item could have been placed on the agenda by the prior leadership – they did not have to wait until 24 hours before. He may support the decision but he did not like the way it happened.

There were no more public comments.

In response to some of the comments made, Mr. Sewell said the council members were concerned about participating in the work session if they had not been sworn in yet. Since the invitations for the official swearing in had already been sent out the decision was made to have the City Recorder give the Oath of Office to the council members on Monday, January 4 2016 at noon. The council members could participate in council meetings and the official swearing in ceremony would continue as planned. They simply followed the advice of Brian Jones, their legal counsel.

Mr. Van Buren noted he was sworn in at 12:15 p.m. that day (Tuesday, 5 January), prior to the work session, so that he could function as a city council member during work session. He said the 24 hour period had to be there for noticing of other things.

Mr. Sewell explained that they had to wait until Monday at noon to put the item on the agenda so that it would be the role of the new council.

Mayor's Items and Reports

5. Resolution 2016-02 consenting to the Mayor's appointment of Scott Henderson as the Parks and Recreation Department Director for the City of Provo. (16-009)

Mayor Curtis presented. He reported that Roger Thomas, former Parks and Recreation Director, retired with a remarkable resume of accomplishments. After a nationwide search the decision was made to offer the position to Scott Henderson. With the council's approval, Mr. Henderson would be appointed as the new Parks and Recreation Director.

Mr. Henderson stated he had worked for Provo City for 14 years. This was a humbling position but he knew that he had a talented staff to work with. Being part of that team they could push the department to new successes.

Motion: Council Member Dave Knecht moved to approve **Resolution 2016-02** appointing Scott Henderson as Parks and Recreation Department Director for Provo City. The motion was seconded by Council Member Dave Harding.

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

6. A public hearing on Resolution 2016-03 appropriating \$120,000 in the General Fund to purchase an 18-acre parcel of land just south of the trailhead for Rock Canyon applying to the fiscal year ending June 30, 2016. (16-005)

Tara Riddle, Provo City Property Manager and Ombudsman, presented. In April 2014 the City purchased 80 acres at the mouth of Rock Canyon. Provo City had been given the opportunity to purchase an additional 18 acres, adjacent to the Rock Canyon Trailhead parking lot, from the Liechty family. Two appraisals were completed on the property, one by Provo City (for \$230,000.00) and the other by the Liechty family (for \$250,000.00). Provo City entered into negotiations and a purchase price of \$240,000 was agreed upon. The Rock Canyon Preservation Alliance agreed to pay one-half of the purchase price through private donations. As part of the negotiations, Provo City agreed to record a preservation easement to prevent any future development on the property.

Chair Santiago invited members of the Rock Canyon Preservation Alliance (RCPA) to comment.

Ginger Wooley, RCPA, stated there were 70 people that gave generously towards this project. She had a 90% success rate when approaching people which spoke volumes to the level of feeling in the community towards this resource. She appreciated the city's willingness to step forward as well.

Ned Hill, RCPA, thanked those that had kept the canyon beautiful and to those in Provo City that had given so much to make this day possible.

Chair Santiago invited public comment.

Melanie McCoard, Provo, felt they should have an alliance for Slate Canyon, the Provo River, Utah Lake, Provo Canyon, etc. Groups like this were needed in other areas of the town and they could get the Rock Canyon Alliance to provide training on how to make an alliance successful.

There were no more public comments.

Motion: Council Member George Stewart moved to approve **Resolution 2016-03** appropriating \$120,000 in the General Fund to purchase an 18-acre parcel of land just south of the trailhead for Rock Canyon applying to the fiscal year ending June 30, 2016. 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.

7. Resolution 2016-04 waiving the right of Provo City under Utah Code 53A-2-403 to purchase the Provo High property declared to be surplus by the Provo School District (16-006)

Brian Jones, Deputy City Attorney, presented. The Provo School District recently placed the Provo High School property (located at 1125 North University) on the surplus property list. According to state law, when a school district located in an urban area places property on the surplus property list the city had the right of first refusal and could purchase the land for fair market value or the city could formally waive their right of first refusal within 90 days.

Mayor Curtis stated that Provo City did not have the ability to purchase the land at that time. Having full confidence in the school district, the city wanted to waive their right of first refusal and allow the school district to negotiate with other purchasers immediately.

Motion: Council Member Vernon K. Van Buren moved to approve **Resolution 2016-04** as written. 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.

Policy Items Referred from the Planning Commission

8. A public hearing on an ordinance amending the zone map classification of approximately 0.21 acres of real property, generally located at 290 West 1625 North, from RC (Residential Conservation) to R3 (Medium Multiple Residential), Carterville Neighborhood. (15-0010R)

Josh Yost, Provo City Planner, presented. The application for a rezone for the property did not meet the R3 zone requirements for minimum lot size, yard requirements, lot coverage, and off-street parking. The staff and Planning Commission recommended denial.

Liisa Hancock, representing the applicants Lucy and Robert Critchley, explained the applicants had psychiatric disabilities that prevented them from working fulltime. Their home was divided into a fourplex and was their only source of income. She stated the application was for a rezone to R3 to allow the use to continue but their proposal would actually work better with a rezone to R2.5 and a conditional use as a fourplex. The property was surrounded on three sides by businesses so it was not located in a traditional residential neighborhood. Ms. Hancock stated she had a list of property owners in the area that were in support of this change and they all lived in the area south of the property. They had not received any complaints from the neighbors.

Council members noted that the Planning Commission had voted 6:0 to deny the application but that was based on the R3 zone request. They suggested the applicant go back to the staff and Planning Commission with a request for R2.5 and see what their position would be. The Board of Adjustments could not approve a variance based on financial hardship. The applicant would also have to determine how they would address the parking requirements.

Chair Santiago invited public comment.

Jason Christensen, Provo, stated this was a property rights issue and was at the core of the 1,500 plus property rights violations per year in Provo. Out of respect to the property owners that were truly impoverished, he recommended approving the request.

Lucy Critchley, one of the applicants, stated they had lived on the property for 22 years. The house had been built in the 1970's and would remain the same size; they would not be expanding the size of the home. All they wanted to do was put in some parking.

There were no more public comments.

Motion: Council Member George Stewart moved to deny the request. The motion was seconded by Council Member Dave Knecht.

Mr. Stewart clarified that his motion was simply to deny the request, not to refer back to the Planning Commission. That decision would be up to the applicant.

Chair Santiago called for a vote on the motion.

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

9. A public hearing on Ordinance 2016-01 amending Provo City Code Section 14.50(10).030, to allow certain professional and business services to be located within the clubhouse area of this zone. Riverbottoms Neighborhood. (15-0016OA)

Aaron Ardmore, Provo City Planner, presented. The property was located on North University Avenue across from Riverwoods. The Arbor's PRO zone was approved in 2006 and the clubhouse was completed in 2010 along with two residential units south of the clubhouse. The homeowners association (HOA) had submitted the request as a way to supplement the HOA fees used to maintain the property. The amenities offered in the clubhouse would still be available to the residents. There was adequate space in the building and available parking to lease space in the clubhouse for business uses. The staff and Planning Commission both recommended approval.

In response to concerns that the applicant could put businesses anywhere in the development, not just the clubhouse, Mr. Jones recommended amending the ordinance to include the phrase "...in buildings not originally designed for residential use" after each of the permitted uses.

LaVelle Prince, President of the Arbors on the Avenue HOA, specified that the businesses would be at least 200 feet away from any residential units so it would not have an impact on the residents. Also, there was plenty of parking and access to restrooms for the businesses. They limited the type of businesses to small, low traffic businesses. The businesses would help with operating expenses for the complex. The leases could be modified or terminated at any time if it was not working out with the residents.

Chair Santiago invited Ben Markham, Riverwoods Neighborhood Chair, to comment. He said the neighborhood was strongly in favor of the proposal. Across the street was Riverwoods and their HOA had a similar situation where they had non-residential uses for some of their buildings. The proposal met with General Plan guidelines for that area. The only neighbors were members of the HOA and a house up on the hill quite a bit south of the clubhouse so the request did not conflict with the quality of life for nearby residents.

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

Motion: Council Member Vernon K. Van Buren moved to amend the ordinance by adding the language "in buildings not designed for residential use" after each of the proposed uses. 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.

Mr. Jones presented the amended ordinance to the council members for their review. The applicant did not have a problem with the amended ordinance.

Motion: Council Member Gary Winterton moved to approve **Ordinance 2016-01** as amended. 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.

Council Items and Reports

10. Consideration of a motion to amend the previously adopted Ordinance 2015-47, approved on December 1, 2015, which amended Provo City Code Chapter 2.29 (Neighborhood Advisory Board). (15-140)

Mr. Jones presented. The ordinance, passed by the council on December 1, 2015, was sponsored by Mr. Sewell in his work with a neighborhood advisory committee. Mr. Sewell indicated he would like to discuss a possible amendment to the previous ordinance that would change references to the term business vice-chair to business liaison. In a survey of the neighborhood chairs, 15 of the 16 that responded favored the term “liaison” instead of “vice-chair.”

Council members discussed the proposed amendment with some suggesting that the term “vice-chair” gave too much authority to the business representative and signified they could take the place of the chair. Other council members were concerned that the business liaison would not be part of the neighborhood committee because they were not a vice-chair.

Mr. Sewell suggested adding the business liaison to Section 2.29.080(1)(d) which established the neighborhood committee. By doing that the business representative would be part of the neighborhood committee without having the title of vice-chair.

Chair Santiago invited public comment.

Ben Markham, Riverbottoms Neighborhood Chair, said they made a concerted effort to get businesses involved. He supported the change to business liaison.

John Amario, Spring Creek Neighborhood, said there were 25 businesses in his neighborhood. He felt the term business vice-chair took away a position from someone else in the neighborhood and gave the business representative a lot more vote than someone else representing 500 or 600 houses. He felt the ordinance needed more work.

Mary Millar, Spring Creek Neighborhood Chair, thought there was a good understanding that neighborhoods and businesses needed to coexist in a symbiotic relationship. She did not have a

problem with the business liaison being part of the neighborhood committee. It would be a win-win relationship for everyone involved.

There were no more public comments.

Mr. Sewell asked for a straw poll to be taken concerning the title of the business representative. Those voting for business liaison included Council Members Stewart, Harding, Santiago, Sewell, and Knecht. Those preferring business vice-chair included Council Members Winterton and Van Buren.

Motion: Council Member Dave Harding made a motion to add the business liaison to Paragraph (d) of the ordinance as part of the neighborhood committee. The motion was seconded by Council Member David Sewell.

In response to a question from Chair Santiago, Mr. Jones clarified that the ordinance would make the business liaison part of the neighborhood committee, but the ordinance also allowed the committee to establish their own bylaws concerning the administration of the neighborhood committee.

Chair Santiago called for a vote on the motion to add the business liaison to the amended ordinance in Paragraph (d) so that it read “The Neighborhood Chair, Vice-Chair(s), Business Liaison, and the Neighborhood Chair’s appointees shall constitute a Neighborhood Committee.”

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

The amended version of the ordinance was posted on the screen and sent to the council members.

Motion: Council Member Dave Harding moved to amend the previously adopted **Ordinance 2015-47** by amending the language regarding the business vice-chair as shown in the exhibit on the screen. 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.

The Council took a brief recess from 8:29 p.m. to 8:38 p.m.

11. Consideration of a motion to rescind the adoption of Ordinance 13-0005PPA, approved on December 1, 2015, which amended the zone map classification of 4.38 acres of real property, generally located at 1040 South 1000 East, from Heavy Commercial (CM) and Residential Conservation (RC) to Medium Density Residential (MDR).

Brian Jones, Deputy City Attorney, presented. This item involved a rezone of property approved by ordinance on December 1, 2015. Several of the current council members raised concerns

about the ordinance and its passage and requested that the item be placed on the agenda for discussion with the potential to rescind approval.

Council members held an extensive discussion with the following concerns about the original approval raised:

- The development did not align with the City's vision for the area. The southeast master plan (in the late stages of drafting) called for this area to be LDR.
- Provo City staff had requested several items for the project that were never received such as architectural materials, geotechnical report, subdivision plat and application, easement, dedications for proposed utilities, sufficient landscape plans, building height information, conceptual street layout plan per Provo City Code.
- The proposal morphed many times throughout the project. At no point did any of those plans receive full review and satisfy the concerns of the Coordinators Review Committee (CRC) or the Planning Commission. The plan did not go before the design review committee.
- The Planning Commission had significant concerns and voted to deny the request. There were changes proffered in the council meeting but the Planning Commission did not have the opportunity to review those changes and acknowledge if they addressed their concerns.
- Items for a development agreement were provided in a bulleted list. The council was agreeing in principle with the idea that the development agreement would hammer out all those details at a later time.
- The street through the project connecting 1060 South and 1000 East would need to be a public street and conform to street standards; site plans presented to the council did not show that.
- 1060 South was a substandard road and would need improvements.
- The actual acreage to be rezoned should be 4.18 acres instead of 4.38 acres because the north boundary was being disputed; or proof of an agreement with the property owner on the south would need to be presented.

Other council members felt the process was followed and expressed the following concerns about rescinding the ordinance:

- The process used to put the item on the January 5, 2016 agenda was more flawed than the process used to approve the development on December 1st.
- If the process was flawed on December 1st then it was probably flawed on November 20th, November 3rd, October 20th, and so on because it was the same process.
- Community Development staff had recommended approval during the December 1st meeting even though the Planning Commission did not.
- Several council members had put hours and hours meeting with developers, neighborhoods, neighborhood chairs, Community Development, and other developers to discuss other possibilities for the property in question and it was disappointing to undo what they had worked on for months.
- Several projects, including the recent NeighborWorks development, were approved even though 90% of the neighborhood was against the project.

Chair Santiago invited Mary Millar, Spring Creek Neighborhood Chair, to comment. Ms. Millar felt the council was doing the right thing in order to protect the rights of the residents on 1060 South because they would bear the brunt of any development.

Chair Santiago invited public comment.

Melanie McCoard, Provo, said the vote to revisit the issue was not unprecedented. She did not feel they had followed the process when the ordinance was approved in December.

Jason Christensen, Provo, stated that several things needed to be corrected, including a resolution of the property dispute, a third outlet onto State Street, and a plan to provide the maximum number of parking, before the project should be approved.

Pam Jones, Edgemont Neighborhood, said there had been two main problems identified that night. She would like to know how long it would take for the Council to come up with solutions to the problems so this would not happen again.

Phil Carrol, President of Community Housing Services (the non-profit owner of Suncrest Apartments), suggested the council find ways to fix the issues and then build the project.

Kathryn Allen, Franklin Neighborhood, felt they should consider the neighborhood plan. The residents were trying to tell a story about their vision and passion for their neighborhood. The council should not try to force something on the neighborhood that they did not want.

Ryan Frandsen, Provo, felt they should respect the decision made at the last council meeting even though the dynamics of the council had changed. They were setting a bad precedent for development. He suggested that if the council did not like the process they should create a committee to review it.

Diane Christensen, Provo, stated the council was basing their decisions on fact and concern for the process going forward. The concerns about the boundary line, the impact to residents on 1060 South, and a development agreement that was just a bullet point list were reasons to revisit the decision.

Ken Millar, Provo, expressed concern that it was after 11:00 p.m. when this item was considered at the December 1st meeting. The Planning Commission bylaws stated that they should table an item if it was after 11:00 p.m. There was some reality to having clear heads when discussing issues.

John Amario, Spring Creek, said it was not very often that a Planning Commission unanimously turned down a development. He was unable to attend the December 1st meeting to voice his objections. They needed development along south State Street but expressed concern that a high density housing project only added to the problem of increased traffic in the area.

Erin Langford, Provo, lived on 1060 South and said they would have to take part of her front yard if they widened 1060 South for the development. She expressed concern that the plans presented at the neighborhood meetings were different than the plans presented to the Planning

Commission and council. She appreciated the council looking at this again in order to answer questions about development.

Michael McDonald, resident of 1060 South, was concerned about the safety of children walking down 1060 South if the development was approved. There were already traffic problems in the area and the development would add more density and traffic. The development would also be an infringement on the residents of 1060 South.

John Langford, resident on 1060 South, understood that the development would add quite a bit of traffic to 1060 South. It was already a narrow street and the properties on 1060 South were not large enough to expand the road without taking out most of the front yards. If there was some other way to direct traffic from this area they would appreciate the council considering it.

Chair Santiago invited Craig Carlile, attorney representing Premier Realty and Mr. Turley, to comment. Mr. Carlile indicated he did not plan on revisiting the planning issues concerning the development. They heard late yesterday (Monday, January 4th) that the council was going to consider rescinding the ordinance. He had prepared and submitted to the council a memorandum outlining the legal reasons why this action and process was flawed and not legal (a copy of the memorandum would be attached to the permanent minutes).

Mr. Carlile discussed the following concerns with the council:

- The original plans had been changed several times so that Mr. Turley could meet staff recommendations for the development.
- The meeting that night was not properly noticed. More than 24 hours' notice was required for land use items and all parties involved needed to be notified.
- This was a land use decision, not a procedural decision or reconsideration, or they would not have been taking evidence as to the pros and cons of the development itself.
- According to Robert's Rules of Order, the ordinance could not be rescinded because it became effective on December 31, 2015, thirty (30) days after it was passed because there was not an effective date stated in the motion.
- In a declaration submitted by Mr. Miller, he stated it was not his intent that the effective date be tied to the development agreement when he made his motion. The video tape of the hearing and the minutes bear that out.
- Mr. Miller's motion approved the rezone but also included elements of a development agreement in the conditions that Mr. Turley had proffered. One of those conditions limited the project to a maximum of 75 units.

Steve Turley, applicant, stated he had tried to respond to everyone's concerns and that was why there were more than 40 versions of the plan. For the December 1st meeting the Planning Commission recommended denial of the project but the staff recommended approval. Mr. McGinn, Community Development Director, had said it was not a big deal and they should move forward on the project. They had held three neighborhood meetings with overwhelming support at each of them, and he had submitted nearly 60 letters of support for the project. This project had taken three years. If that was fast tracking then he was guilty. There was nothing in Mr. Miller's motion that said it was contingent upon anything. He was willing to sit down with the Council to make this development happen. He noted that he had offered to put curb, gutter, and sidewalk on 1060 South but no one took him up on that offer. He was still willing to pay for it

but, according to Public Works, they could not put curb and gutter in front of some of the homes and not all of them because of potential flooding issues.

Chair Santiago closed public comment and invited Mr. Jones to comment.

Mr. Jones prefaced his comments by stating that since the council had not acted yet he was not defending an action but was advising them regarding what he believed they could and could not do. Most of his opinion was based on a 2011 Utah Supreme Court ruling, based on a 2005 action of Salt Lake County versus L.C. Canyons. His responses to Mr. Carlile's concerns included the following:

- The Supreme Court ruled that a motion to rescind was an approved and recognized motion of parliamentary procedure and the applicant did not have any vested right because the ordinance never went into effect.
- His reference to a carefully crafted motion was referring to the bullet points of what the development agreement should include, not to the issue of the effective date of the ordinance.
- There were two ordinances drafted for the meeting.
 - The first did not say anything about a development agreement and was published with the Sire materials. That ordinance stated it would be effective after it was posted or published, presented to the Mayor, and recorded.
 - The second ordinance was written in response to an email from Mr. Turley indicating he might be proffering a development agreement. That ordinance was prepared stating the rezone would not be effective until the execution date of the development agreement.
- The version of the ordinance which included the development agreement was being shown on the council's screens during the discussion of the development agreement. It was taken down during Mr. Miller's motion in order to show the bullet point list provided by Mr. Turley.
- It was his clear belief that Mr. Miller was referring to the ordinance which included the development agreement because he included the bullet points in his motion. An email sent by Mr. Miller to Mr. Jones was read to the council. He felt it confirmed that belief (a copy of the email was attached to the permanent minutes).
- The ordinance that was signed by the council chair, presented to the mayor for signature, and recorded included the development agreement language.
- The first public hearing considering the adoption or modification of a land use item had to be noticed with date, time, and place. It did not say that all hearings had to be noticed.

In summary, Mr. Jones stated that the Council had three options:

1. Deny the request to rescind and rely on the mayor, Community Development staff, and him to follow the normal process in handling a development agreement that reflected the concerns of the council.
2. Vote to rescind.
3. Vote to amend the ordinance and put in additional development agreement requirements.

Motion: Council Member George Stewart moved rescind the adoption of Ordinance 2015-45 (13-0005PPA).

Chair Santiago invited Mr. Carlile to respond to Mr. Jones.

Mr. Carlile briefly addressed the following issues:

- Reasonable minds could differ about whether the notification was appropriate or not. His response was why risk having the action they took that night voided.
- The email from Mr. Miller to Mr. Jones did not change Mr. Miller's declaration that Mr. Carlile received stating the effective date of the ordinance was not going to be tied to the execution of the development agreement.
- He repeated that there was nothing in the motion that tied the effective date to the execution of the development agreement so the ordinance became effective on December 31, 2015. The motion to rescind could not undo that.
- Mr. Turley would, in good faith, sign a development agreement although he was not legally required to sign an agreement.
- The ordinance presented was not reflective of what actually happened and a court would say it was an annulment and fall back to statutes making it effective thirty (30) days after passage.

In response to Mr. Carlile, Mr. Jones stated it was not an annulment because Mr. Miller stated "as written" in the motion. Both written ordinances included effective date language. As to which ordinance the council was approving, they might end up having every member of the council deposed as to what their intent was when they voted for the motion.

Motion: Council Member George Stewart repeated his motion to rescind the adoption of Ordinance 13-0005PPA (2015-45) approved on December 1, 2015 which amends the zone map classification of 4.38 acres of real property. The motion was seconded by Council Member David Sewell.

Mayor Curtis stated that he had been given the development agreement the day before and could have ended the discussion simply by signing the agreement. However, he did not sign the agreement because he felt it would undermine his ability to work with the council in the future. Rather than rescind the ordinance he recommended that the council negotiate with the developer to come to terms with something they could be satisfied with. That would fall far short of the expense of a possible legal battle.

Mr. Knecht and Mr. Stewart stated they would prefer that they rescind the ordinance and have the developer go back to the Planning Commission to fix some of the concerns. Also, the development agreement or ordinance should not be negotiated from the dais. The council should have the ordinance and development agreement presented to them in a written format in order to vote on them. They wanted a positive recommendation from the Planning Commission. They could recommend rescinding the ordinance and send it back to the Planning Commission.

Mr. Stewart withdrew his motion and Mr. Knecht made the following motion.

Motion: Council Member Dave Knecht moved that they rescind the ordinance and send it back to the Planning Commission.

Chair Santiago and Mr. Harding expressed concern about just sending the request to the Planning Commission. They wanted to see the proposal go back to the neighborhood, reviewed by staff, and go to the Design Review Committee and Planning Commission for their input.

Mr. Jones stated that a motion to address their concerns would rescind the ordinance approved on December 1st and authorize the developer to come back before the council with an application for a rezone once the described process had been complied with.

Mr. Knecht withdrew his motion and Mr. Jones prepared a possible motion per Mr. Harding's request.

Motion: Council Member David Harding moved to rescind Ordinance 2015-45 (Council Reference Number 13-0005PPA), previously approved on December 1, 2015, with authorization for the applicant to bring a rezone application back to the Council after having the application reviewed at a neighborhood meeting, by Community Development staff, by the Planning Commission, and by the Design Review Committee, and without further application fees.

Gary McGinn, Community Development Director, stated that if they rescinded the ordinance from December 1st the current application was dead and over. The developer could submit a new application and go through the normal process without having to pay additional fees. The normal process was to make an application, CRC looked at it, staff reviewed the application, neighborhood meetings were held, it went to design review (a sub-committee of the Planning Commission) and then to the Planning Commission.

Mr. Parker asked for a clarification. He noted that by rescinding the ordinance the council was not voting to deny the application. Wouldn't that just take the application back to the step it was in before the council acted? Mr. McGinn stated that if no definitive motion had been made and passed that would deal with the item, the application would still be active.

After further discussion the following motion was made.

Motion: Council Member David Harding moved to rescind Ordinance 2015-45 (Council Reference Number 13-0005PPA), previously approved on December 1, 2015 and postpone further consideration of that ordinance indefinitely, with authorization for the applicant to bring a new rezone application through the normal process without further application fees. The motion was seconded by Council Member George Stewart.

Mr. Van Buren clarified that the intent of the new motion was that the first application was dead and the applicant would need to submit a new application for a project on this property.

Chair Santiago called for a vote on the motion.

Roll Call Vote: The motion passed 5:2 with Council Members Harding, Knecht, Santiago, Sewell, Stewart, in favor and Council Members Van Buren, and Winterton opposed.

Adjourn

Motion: Council Member Dave Sewell moved to adjourn the meeting at 12:15 a.m. The motion was seconded by Council Member Van Buren.

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