



PROVO MUNICIPAL COUNCIL

Work Meeting

1:00 PM, Tuesday, November 13, 2018
Room 310, City Conference Room
351 W. Center Street, Provo, UT 84601

Agenda

Roll Call

Prayer

Business

- 1 Approval of minutes
- 2 A report from Downtown Provo, Inc. (18-027)
- 3 A presentation on OnBase, the Council's new agenda management software (18-095)
- 4 A discussion on a proposal related to Neighborhood Housing Services of Provo and homes purchased with CDBG/HOME Dollars (18-076)
- 5 An update on the Interim Transportation Oriented Development (ITOD) zone as it relates to The Mix (18-097)
- 6 A comprehensive update on items from Economic Development (18-094)

Administration

Policy Items Referred from the Planning Commission

- 7 A discussion on an ordinance to amend the Zone Map Classification of approximately 5.89 acres of real property, generally located at 1437 East 2300 North from Public Facilities (PF) to Residential Agricultural (RA). Rock Canyon Neighborhood (PLRZ20180239)

Closed Meeting

Adjournment

Informal discussion may be held in the Council Conference Room between 4:30 pm and 5:30 pm.

Materials and Agenda: <http://publicdocuments.provo.org/OnBaseAgendaOnline>
Council Blog: <http://provocitycouncil.blogspot.com/>

If you have a comment regarding items on the agenda, please email or write to Council Members. Their contact information is listed on the Provo website at:
<http://provo.org/government/city-council/meet-the-council>

The next scheduled Regular Council Meeting will be held on 11/27/2018 12:00:00 PM at 5:30 PM in the Council Chambers, 351 West Center Street, Provo, unless otherwise noticed. The Work Session meeting start times is to be determined and will be noticed at least 24 hours prior to the meeting time, but typically begins between 1:00 and 4:00pm.

Notice of Compliance with the Americans with Disabilities Act (ADA)

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aides and services) during this meeting are invited to notify the Provo Council Office at 351 W. Center, Provo, Utah 84601, phone: (801) 852-6120 or email evanderwerken@provo.org at least three working days prior to the meeting. The meeting room in Provo City Center is fully accessible via the south parking garage access to the elevator. Work Meeting is broadcast live at <https://www.youtube.com/user/ProvoCityCouncil>. For access to past Work and Council Meetings, go to playlists on <https://www.youtube.com/user/ProvoCityCouncil>.

Notice of Telephonic Communications

One or more Council members may participate by telephone or Internet communication in this meeting. Telephone or Internet communications will be amplified as needed so all Council members and others attending the meeting will be able to hear the person(s) participating electronically as well as those participating in person. The meeting will be conducted using the same procedures applicable to regular Municipal Council meetings.

Notice of Compliance with Public Noticing Regulations

This meeting was noticed in compliance with Utah Code 52-4-202 and Provo City Code 14.02.010. Agendas and minutes are accessible through the Provo City website at council.provo.gov. Council Meeting agendas are available through the Utah Public Meeting Notice website at pmn.utah.gov. Email subscriptions to the Utah Public Meeting Notice are available through their website.

Network for public access is "Provo Guest", password "provoguest".

Provo City Municipal Council

Council Zoning Committee

Meeting Agenda



October 25, 2018, 5:00 PM- 6:00 PM

In attendance: Bob Peterson (Presenter), John Spuhler (Presenter), Dave Knecht, George Handley, David Harding, Dave Sewell, Carrie Walls, Marcus Draper, Hannah Salzl

Topics for Discussion

- **Presentation by STR about rental tracking services**
 - City's Concerns
 - Unregistered Rentals - Councilors are concerned about the surge in Air BNB rentals, but the City's long-term rentals are also avoiding registering, so they fly under the radar.
 - Occupancy Rule - The occupancy rule is not easily managed, especially in a college town and even before the short-term rental wave. Renters make more when renting by the bedroom, which drives the price up for families looking to rent.
 - STR Helper Presentation
 - Bob Peterson, John Spuhler
 - Background – Program was intended to be a solution to a problem in their community in Garden City, Utah. Other towns (Moab, Grand County, and others outside of Utah (80 cities)) use their software now too. 2018 Tech Business of the Year in Utah. John and Bob were the former Mayor and Town Manager, respectively.
 - STR Helper scrapes websites (Expedia, VRBO, Travel Mob, Air BNB, etc.) (Could work on LTR too). They found about 120 in Provo around 18 months ago, and when they looked again in September they found 245. Seems to be driven mostly by people renting out a room in their homes. 120 came from houses.
 - The business is very lucrative for cities. 40-60% of revenue from taxes, etc. might be lost to the city because the business is so open and unmonitored.

- Features – Listing addresses are hidden for privacy, but STR Helper can use other data to triangulate their longitude and latitude. Validity checkers provide the address through Google maps, housing websites, social media, and street photos.
 - They can also see the **maximum occupancy** allowed them by their license and compare it to the maximum occupancy in the listing, which is often much higher. This directly addresses the City’s concerns about enforcing the occupancy rule.
 - They can track the **frequency of use** for each rental. It tracks only available or unavailable, which might not always be a reservation.
 - Between the calendar and reviews, they can create a more complete picture of whether the renter is compliant. Their system can send a **letter on file** to all of the noncompliant renters checked by the user.
 - They also offer **registration software**. Applicants can fill out the PDF and submit to the city. On city has a self-certification where prospective renters can check if they meet certain requirements (eg: smoke detector). They cannot proceed until they check all the boxes and pay the license fee. A city representative then approves it. From their dashboard, renters can manage their listing of properties.
- This could all work with City View. STR Helper would simply need data to run their analyses.
- Provo is welcome to contact any of their client cities for reviews and information. (Contact information available upon request from Hannah Salzl, Bryce Mumford, or Carrie Walls.)

- **A discussion on short-term rentals policy** - *The Council unanimously approved a motion at a recent work meeting to refer this topic to the Zoning Committee. The Committee expressed a desire to continue the discussion from September 27, 2018.*
 - Walls – The Council needs to decide if the City wants to work with short term rentals and, if so, how. Some cities charge hotel taxes. Others charge a small amount per night that goes back into their neighborhood. Cities can allow different kinds from renting spare homes to owner-occupants renting spare rooms. She has more maps and information.

- Knecht - Rooming and Boarding is legal in Provo, but there is a fine line between that and Air BNB.
- Harding – We have different options, but we could require an RDL for anyone receiving payment for renting residential space in any way.
- Walls recommends charging STRs hotel taxes.
- Handley – Rentals can also benefit the economy, so the City should not be draconian in their ordinances.
- Walls – Sandy allows rentals to occupy a percentage of residences in the area. Other cities limit occupancy by bedroom. Some require site plans that show parking.
- Knecht – We should look at the history of accessory apartments to see where it has been allowed. Edgemont and his neighborhood both tried it once. It usually turns into a fight with homeowners who do not want to change the character of their neighborhood and raise the density. It might have to be a neighborhood-by-neighborhood issue. We might not have a blanket policy for all of Provo.
- Walls – Two options: 1. rent out entire home, or 2. owner-occupant rentals that include long-term rentals. We can see where the Council would like to go and then give the neighborhoods the opportunity to weigh in.
 - o Knecht – people more likely to go with something that requires a host (option 2)
 - o Harding – It could be a menu option where we give neighborhoods a few different options and let them pick which one(s) they will accept. None is always a choice as well. The Council should make sure that any and all of those options would be acceptable to them.
- Sewell – It would be good to know if other cities allow it to vary by neighborhood.
 - o Sandy’s method is a potential compromise – a city-wide policy that still varies what is allowed in each by residency density.
 - o Knecht – Maybe neighborhoods could choose to opt in
- Short-term = less than 30 days

- **Next meeting**

- o Joint with Housing.
- o Walls would like to bring in another STR company. She will also talk with people in Aurora, CO to see how this is all working for their city.

PROVO MUNICIPAL COUNCIL STAFF REPORT



Submitter: BMUMFORD
Department: Council
Requested Meeting Date:

SUBJECT: A report from Downtown Provo, Inc. (18-027)

RECOMMENDATION

An update from Downtown Provo Inc. on their current initiatives and successes, as well as updates on any programs or projects.

BACKGROUND

Downtown Provo, Inc. reports to the Council from time to time to update Council on their progress and operations, and to account for the contribution from the City.

FISCAL IMPACT

\$75,000 on a dollar-for-dollar match

PRESENTER'S NAME

Quinn Peterson

REQUESTED DURATION OF PRESENTATION

35 min

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES

CASE FILE NUMBER (FOR LAND USE ITEMS ONLY)

<#Case File Number>

PROVO MUNICIPAL COUNCIL STAFF REPORT



Submitter: Elizabeth VanDerwerken
Department: Council
Requested Meeting Date: November 13, 2018 Council Meeting

SUBJECT: A presentation on OnBase, the Council's new agenda management software (18-095)

RECOMMENDATION

Presentation only. The Council and public will receive additional information and instruction on the recent change from SIRE to OnBase Agenda. The presentation will cover how the public and Council will use the available resources to access Council agendas and materials.

BACKGROUND

As part of the City's Provo360 project, the Council made a transition from SIRE to OnBase Agenda Management as the primary software to manage Council agendas. The system introduces many new features which will help Council staff and other city staff to work more effectively to conduct city and Council business.

PRESENTER'S NAME

Elizabeth VanDerwerken and Amanda Ercanbrack

REQUESTED DURATION OF PRESENTATION

15 minutes

ISSUE FILE NUMBER

18-095

PROVO MUNICIPAL COUNCIL STAFF REPORT



Submitter: David Walter
Department: Redevelopment
Requested Meeting Date:

SUBJECT: A discussion on a proposal related to Neighborhood Housing Services of Provo and homes purchased with CDBG/HOME Dollars (18-076)

RECOMMENDATION

The RDA is seeking guidance from the Council about whether to forgive the write-off amounts on all of the loans, the write-off amounts on some of the loans, and/or whether to establish a covenant between NeighborWorks and Provo City that would ensure the houses in question stay affordable.

BACKGROUND

Several years ago, Neighborhood Housing Services (now known as NeighborWorks) purchased and rehabbed several houses using funds borrowed from the Redevelopment Agency that originally came from the Federal Government. Based on the type and amount of funding used, the homes were required to remain affordable for specific durations of time.

Recently, there has been interest in forgiving some of the loans. The RDA is concerned that should some of these houses no longer remain affordable, the Federal Government (HUD) could demand the funds back from Provo that were originally used to rehab them.

More information about specific homes and their situations is included below:

FRANKLIN COMMONS The outstanding loan amount on this property is \$270,000, payable to the City when the constructed properties were sold. This loan was intended to assist eight homeowners. Because the amount of subsidy per unit was greater than \$15,000 but lower than \$40,000, the corresponding amount of time during which the housing must stay affordable (the affordability period) is 10 years.

An affordability period begins when the City reports to HUD that a given activity is completed (i.e., the housing unit has been constructed, and the beneficiary has taken possession of the property). In Franklin Commons' case, the activity was reported as complete on September 30, 2006; therefore, the affordability period requirement of 10 years has been met, and the City does not run the risk of funds being recaptured by HUD. As a result, with approval from the Municipal Council, this loan amount of \$270,000 could be forgiven to NHS, without further responsibility to HUD.

PLACE ON 9TH The outstanding loan amount for Place on 9th is \$261,395. Five units were assisted in this project with a subsidy of \$52,279 per unit. Because more than \$40,000 was used for each unit, the affordability period is 15 years. These activities were reported completed to HUD on April 21, 2011. The affordability period for this project won't be met until April 21, 2026. Should the properties fail to meet the affordability period (occupancy requirement), the City could be liable to repay funds back to HUD (approximately \$3,485 per unit for every year short of the affordability period.) If all five properties were to fall out of compliance now, the City could be required to pay back to HUD approximately \$139,400. NHS is proposing to the City to pay back \$74, 975.37 to satisfy the loan, writing off \$186,419.90. The Municipal Council may approve to accept the reduced payoff on this project, understanding the City's responsibility to HUD should the properties fall out of compliance for the affordability period anytime within the next eight years.

JOAQUIN RETREAT The outstanding loan amount on this property is \$215,800 for one unit. The affordability period for this property is 15 years. Because the activity was reported as completed to HUD on March 21, 2013, there are still ten years left in the affordability period. This means that the City could be required to repay HUD approximately \$1,438.66 per year, should the property fall out of compliance (occupancy requirement) during that time (a total of \$14,386.60). NHS is proposing to the City to pay back \$44,940.73 to satisfy the loan, writing off \$168,993.63. The Municipal Council may approve to accept the reduced payoff on this project, understanding the City's responsibility to HUD should the properties fall out of compliance for the affordability period anytime within the next ten years.

FISCAL IMPACT

PRESENTER'S NAME: David Walter and Councilor Dave Knecht

REQUESTED DURATION OF PRESENTATION: 30 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES

Vision 2030, Goal 1.5 - Encourage owner occupancy or long-term residency by creating healthy and balanced neighborhoods for schools, businesses, religious congregations, and community organizations.

PROVO MUNICIPAL COUNCIL STAFF REPORT



Submitter: HSALZL
Department: Council
Requested Meeting Date: 11-13-2018

SUBJECT: An update on the Interim Transportation Oriented Development (ITOD) zone as it relates to The Mix (18-097)

RECOMMENDATION

An update on The Mix and a briefing on a future request from The Mix before they come before the Council

BACKGROUND

The property owners of The Mix had planned to build retail and office space but have decided to build retail and housing instead due to a surplus of office space on the market. They will need to rezone the area from SC-3 to SC-2 and ITOD. The retail portion would remain about the same. The developer would more than likely bring a residential partner into the project to do that portion.

FISCAL IMPACT

PRESENTER'S NAME

Dixon Holmes

REQUESTED DURATION OF PRESENTATION

30

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES

CASE FILE NUMBER (FOR LAND USE ITEMS ONLY)

18-097

PROVO MUNICIPAL COUNCIL STAFF REPORT



Submitter: BMUMFORD
Department: Council
Requested Meeting Date:

SUBJECT: A comprehensive update on items from Economic Development (18-094)

RECOMMENDATION

Presentation only.

BACKGROUND

This item is to inform Council of the efforts and projects of the Economic Development Department.

FISCAL IMPACT

PRESENTER'S NAME

Dixon Holmes

REQUESTED DURATION OF PRESENTATION

30 min

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES

CASE FILE NUMBER (FOR LAND USE ITEMS ONLY)

<18-094>



Planning Commission Staff Report Rezone

Hearing Date: October 24, 2018

***ITEM #1** George Bills requests a Zone Change from Public Facilities (PF) to Residential Agricultural (RA) for 5.89 acres located at 1437 E 2300 N. Rock Canyon neighborhood. Aaron Ardmore (801) 852-6404 PLRZ20180239

Applicant: George Bills at Gardner & Associates

Staff Coordinator: Aaron Ardmore

Property Owner: RANGER STATION LLC

Parcel ID#: 20:045:0018

Acreage: 5.89

Number of Properties: 1

Number of Lots: 3

ALTERNATIVE ACTIONS

1. **Continue** to a future date to obtain additional information or to further consider information presented. *The next available meeting date is November 14th at 5:00 P.M.*

2. **Deny** the requested Zone Map Amendment. *This action would not be consistent with the recommendations of the Staff Report. The Planning Commission should state new findings.*

Current Legal Use: The property is currently a mostly vacant parcel that contains a storage building for the US Forest Service.

Relevant History: The property was acquired by an LLC, which is represented by the applicant. The applicant submitted a zone change request and a proposed subdivision plan to split the property into three single-family lots. Planning Commission recommended approval to the Council. The Council continued the item so the applicant could find a new solution. The applicant has now requested the RA zone along with a development agreement restricting all agricultural animal rights.

Neighborhood Issues: The applicant met with staff and the neighbors to the west to discuss concerns about building placement and view corridors.

Summary of Key Issues:

- The proposed zone would change from Public Facilities to Residential Agricultural – half-acre minimum lot size.
- The applicant would subdivide the property into three lots.
- The General Plan for this property is Residential.

Staff Recommendation: That the Planning Commission forwards a Positive Recommendation to the Municipal Council.

OVERVIEW

Gardner & Associates is requesting a zone change on behalf of the property owner at 1437 East 2300 North, from the Public Facilities (PF) zone to the Residential Agricultural (RA) zone. The proposed zone restricts residential use to one dwelling per half acre.

The property owner purchased the land in 2007 in order to create single-family lots at a later date. The applicant has now applied for the necessary zone change and preliminary subdivision that would enable the property to be subdivided.

Lots zoned R1.10 are adjacent to the west of the subject property. These lots were originally part of the subject property. Also to the west is R1.SPD zoning where the lots are 12,000 to 13,000 sf. To the north and east of the subject property is City-owned parkland that is zoned Public Facilities.

The street 2300 North is a collector road and provides the frontage to the subject property.

At the September Municipal Council hearing there was public input regarding impacts corralling of horses have on near-by residential uses. The applicant has revised his request to a RA zone along with limiting all the agricultural animal rights with that zone, so that the property owners can still move forward and the concerns can be alleviated.

FINDINGS OF FACT

1. The property is in the Public Facilities Zone.
2. The General Plan designates the property as Residential.
3. The proposed zone is Residential Agricultural.
4. The General Plan would not need to be amended with a Residential Agricultural zone.
5. RA zones around the City are commonly found adjacent to R1.8 and R1.10 zones.
6. The plan proposes a three-lot subdivision.

ANALYSIS

The proposed zone change would allow the development of the property into residential lots, aligning it with the intent of General Plan. The proposed zone of RA would fit the characteristics of the area, as the property serves as a gateway to the Rock Canyon trailhead. Due to limitation

related to the geography of the property, the proposed zone would most likely limit the property to three lots; but the potential for five lots may be possible.

The RA zone is frequently viewed as a half-way point between residential zoning and agricultural zoning. This is why RA zones are so common adjacent to R1 zones. A review of the City's zoning map shows at least 23 RA zones that are adjacent to R1.8 or R1.10 zones.

Provo City Code Section 14.02.020(2) sets forth the following guidelines for consideration of zoning map amendments:

*Upon receipt of a petition by the Planning Commission, the Commission shall hold a public hearing in accordance with the provisions of Section 14.02.010 of this Title and may approve, conditionally approve, or deny the preliminary project plan. Before recommending an amendment to this Title, the Planning Commission shall determine whether such amendment is in the interest of the public, and is consistent with the goals and policies of the Provo City General Plan. The following guidelines shall be used to determine consistency with the General Plan: **(responses in bold)***

(a) Public purpose for the amendment in question.

The proposal allows the property to be developed in an appropriate manner, which will increase the tax base for the City.

(b) Confirmation that the public purpose is best served by the amendment in question.

Any higher density residential development or other use for the property would be inappropriate for the site.

(c) Compatibility of the proposed amendment with General Plan policies, goals, and objectives.

The proposed development meets the General Plan Map designation for the property, and meets the goals in chapter six of the General Plan, specifically in "increasing the amount of owner-occupied housing units."

(d) Consistency of the proposed amendment with the General Plan's "timing and sequencing" provisions on changes of use, insofar as they are articulated.

There are no relevant timing and sequencing provisions dealing with this proposal.

(e) Potential of the proposed amendment to hinder or obstruct attainment of the General Plan's articulated policies.

The proposed zone change should not hinder or obstruct the General Plan policies, but help to achieve them.

(f) Adverse impacts on adjacent land owners.

There would be minimal adverse impacts on adjacent owners, but could include increased traffic and loss of view corridors.

(g) Verification of correctness in the original zoning or General Plan for the area in question.

The zoning and General Plan for the area are correct.

(h) In cases where a conflict arises between the General Plan Map and General Plan Policies, precedence shall be given to the Plan Policies.

There are none.

CONCLUSIONS

Staff feels that the proposed zone is a good fit for the property in enabling it to be developed in accordance with the Provo City General Plan.

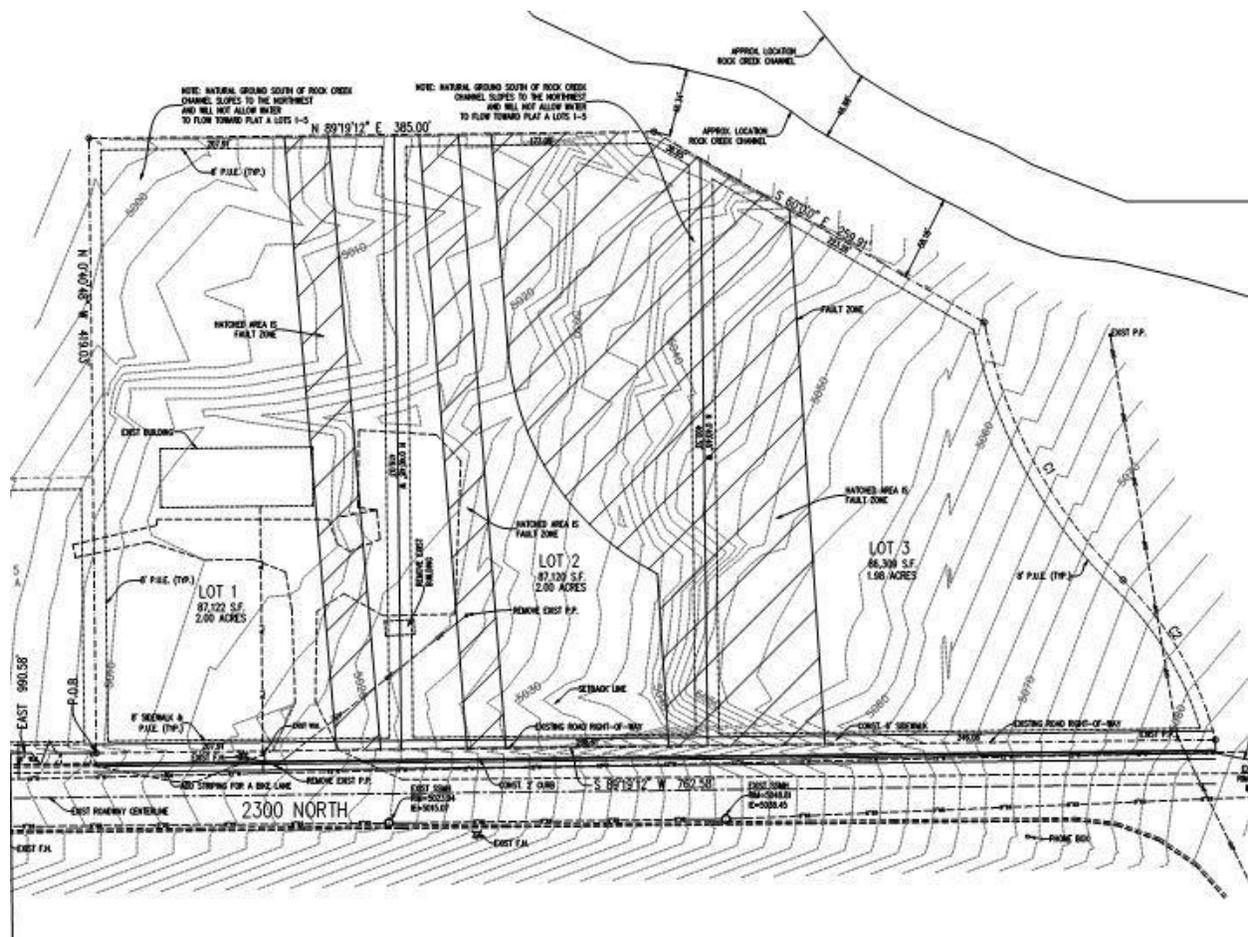
ATTACHMENTS

1. Proposed Zone Change Area
2. Concept Plan

ATTACHMENT 1 – PROPOSED ZONE CHANGE AREA



ATTACHMENT 2 – CONCEPT PLAN





Provo City Planning Commission

Report of Action

October 24, 2018

Item 1 George Bills requests a Zone Change from Public Facilities (PF) to Residential Agricultural (RA) for 5.89 acres located at 1437 E 2300 N. Rock Canyon neighborhood. Aaron Ardmore (801) 852-6404 PLRZ20180239

The following action was taken by the Planning Commission on the above described item at its regular meeting of October 24, 2018:

POSITIVE RECOMMENDATION WITH CONDITIONS

On a vote of 5:0, the Planning Commission recommended that the Municipal Council approve the above noted application, with the following conditions:

Conditions of Approval:

1. That the zone change is connected to a development agreement that waives all animal rights associated with the RA Residential Agricultural Zone but to maintain any and all animal rights associated with R1 single-family zoning.

Motion By: Andrew Howard

Second By: Robert Knudsen

Votes in Favor of Motion: Andrew Howard, Robert Knudsen, Shannon Ellsworth, Deborah Jensen, Jamin Rowan
Deborah Jensen was present as Chair.

- Additional Report of Action for item previously continued after a public hearing or other discussion: September 12, 2018.
- Includes facts of the case, analysis, conclusions and recommendations outlined in the Staff Report, with any changes noted; Planning Commission determination is generally consistent with the Staff analysis and determination.

LEGAL DESCRIPTION FOR PROPERTY TO BE REZONED

The property to be rezoned to the RA Zone is described in the attached Exhibit A.

DEVELOPMENT AGREEMENT

- Applies – a copy is attached.

STAFF PRESENTATION

The Staff Report to the Planning Commission provides details of the facts of the case and the Staff's analysis, conclusions, and recommendations. Key points addressed in the Staff's presentation to the Planning Commission included the following: An overview of the request for the RA zone and limits proffered by the applicant.

NEIGHBORHOOD MEETING DATE

- The Neighborhood Chair sent an email that stated the proposed zone change and development agreement satisfied the concerns of the neighborhood, attached as Exhibit B.

NEIGHBORHOOD AND PUBLIC COMMENT

- Neighbors or other interested parties were present or addressed the Planning Commission with the following questions and concerns:
 - Inquired about the difference between a RA zone and a R1 zone.
 - That a R1 zone would be preferred.
 - Concerns about the possibility of additional lots.
 - Worries about the height and size of accessory buildings.
 - Understanding of what agricultural rights still remained.

APPLICANT RESPONSE

Key points addressed in the applicant's presentation to the Planning Commission included the following:

- Stated that the owners wanted the option to build an accessory structure in the future that could possibly house recreational vehicles, but did not have details of the desired building(s) at this time.
- That any development that occurs on the three lots would not be unsightly.

PLANNING COMMISSION DISCUSSION

Key points discussed by the Planning Commission included the following:

- Followed up on the geological issues of the property, which would limit development.
- Addressed the restrictions of the proposed Development Agreement, and that it would restrict animal rights and future subdivisions.
- Confirmed the building height restriction in the RA zone is 35 feet. This is the same building height limitation for all R1 zones.



Director of Community Development

See Key Land Use Policies of the Provo City General Plan, applicable Titles of the Provo City Code, and the Staff Report to the Planning Commission for further detailed information. The Staff Report is a part of the record of the decision of this item. Where findings of the Planning Commission differ from findings of Staff, those will be noted in this Report of Action.

Legislative items are noted with an asterisk (*) and require legislative action by the Municipal Council following a public hearing; the Planning Commission provides an advisory recommendation to the Municipal Council following a public hearing.

Administrative decisions of the Planning Commission (items not marked with an asterisk) **may be appealed** by submitting an application/notice of appeal, with the required application and noticing fees, to the Community Development Department, 330 West 100 South, Provo, Utah, **within fourteen (14) calendar days of the Planning Commission's decision** (Provo City office hours are Monday through Thursday, 7:00 a.m. to 6:00 p.m.).

BUILDING PERMITS MUST BE OBTAINED BEFORE CONSTRUCTION BEGINS

EXHIBIT A

Beginning at a point located North $00^{\circ}40'48''$ West along section line 1331.76 feet and East 990.58 feet from the Southwest corner of Section 29, Township 6 South, Range 3 East, Salt Lake Base and Meridian; thence North $00^{\circ}40'48''$ West 419.03 feet; thence North $89^{\circ}19'12''$ East 385.00 feet; thence South $60^{\circ}00'00''$ East 259.91 feet to a point on the westerly right-of-way line of a future extension of Foothill Drive; thence along the arc of a 333.00 foot radius curve to the left; 203.61 feet through a central angle of $35^{\circ}01'57''$ (chord bears South $28^{\circ}21'18''$ East for 200.45 feet); thence along the arc of a 227.00 foot radius curve to the right, 126.43 feet through a central angle of $31^{\circ}54'37''$ (chord bears South $29^{\circ}54'57''$ East for 124.80 feet) to the northerly right-of-way line of 2300 North Street; thence South $89^{\circ}19'12''$ West along said northerly right-of-way line, 762.58 feet to the point of beginning.

Area = 5.9815 acres (260,552 sq. ft.)

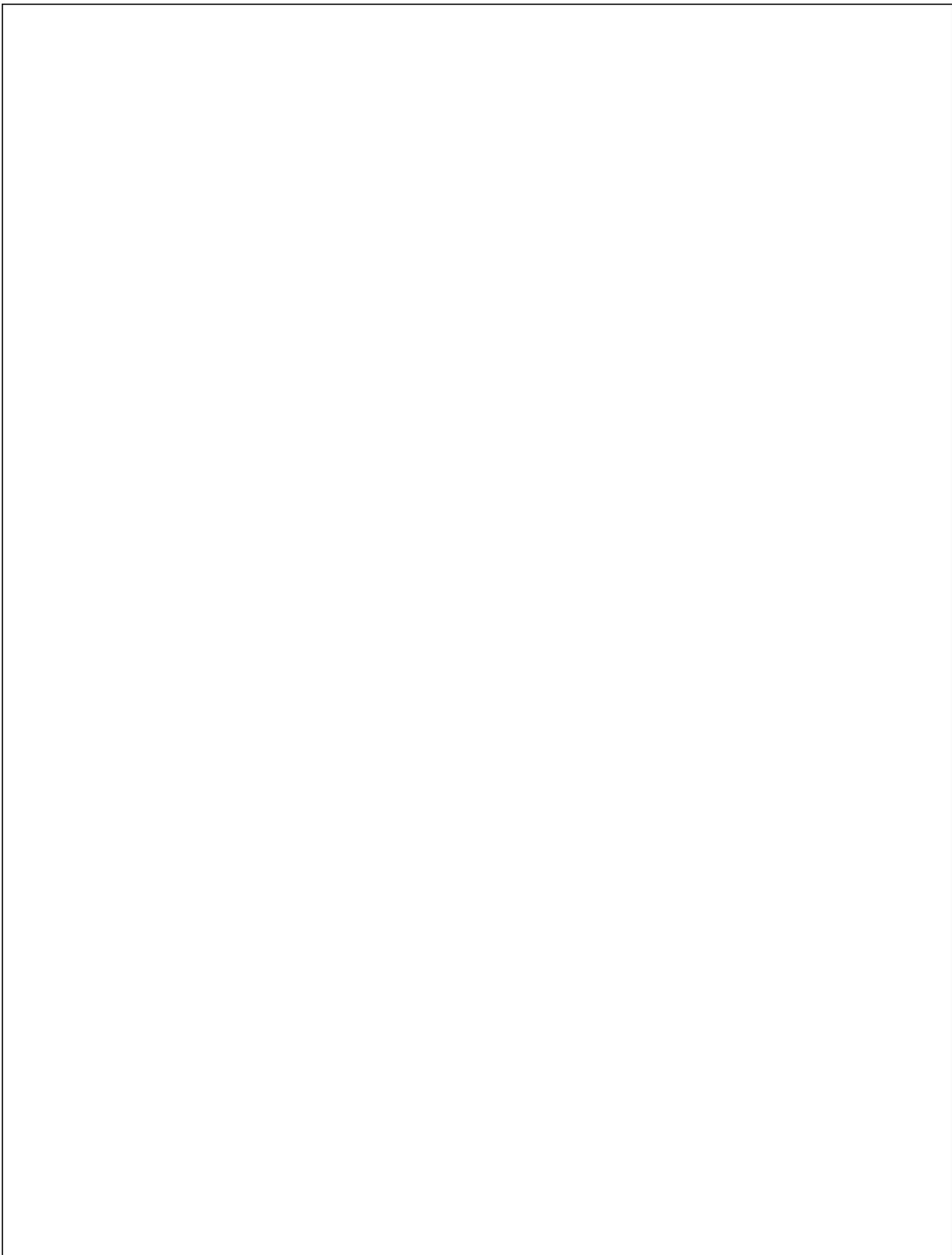


EXHIBIT B

To the Planning Commission:

Upon being elected as neighborhood chair last month, I was apprised at the September 25th, 2018 City Council Meeting that there was an intent to have horses on the property located at 1437 E 2300 N. I was asked to get feedback on how the neighborhood would feel about such a proposal. On October 9th, I reported that there was a history of horses being directly across the street and the neighborhood requested that they be removed at that time. I have heard back from 26 neighbors now, many who border this property, that they do not want any horses or agricultural animal rights on these lots. 14 neighbors further away from the parcel were in favor of a neighborhood farm.

Reasons cited for not wanting animals of such nature included health concerns, namely asthma and allergies, dust from lack of vegetation, smells, ground water contamination as these lots sit on a mountainside, and bugs. Some stated concerns about impacts to the park and trailhead. I have been told that a development agreement will be attached to this new zone request for Residential Agricultural that will restrict animal rights to what you would find in a R1-10 zone. I have not seen this development agreement yet. With the understanding that agricultural livestock will not be permitted in this area, the neighborhood supports this zone change.

Many thanks,

Rachel Luke

Rock Canyon Neighborhood Chair

ORDINANCE 2018-

AN ORDINANCE AMENDING THE ZONE MAP CLASSIFICATION OF APPROXIMATELY 5.89 ACRES OF REAL PROPERTY, GENERALLY LOCATED AT 1437 EAST 2300 NORTH FROM PUBLIC FACILITIES (PF) TO AGRICULTURE 1 (A1.1). ROCK CANYON NEIGHBORHOOD. (PLRZ20180239)

WHEREAS, it is proposed that the classification on the Zone Map of Provo for approximately 5.89 acres of real property, generally located at 1437 East 2300 North (as shown in the attached Exhibit A), be amended from Public Facilities (PF) to Agriculture 1 (A1.1); and

WHEREAS, on September 12, 2018, the Planning Commission held a duly noticed public hearing to consider the proposal and after such hearing the Planning Commission recommended approval of the proposal to the Municipal Council by a 6:0 vote; and

WHEREAS, the Planning Commission's recommendation was based on the project design presented to the Commission; and

WHEREAS, on September 25, 2018 and October 9, 2018, the Municipal Council met to ascertain the facts regarding this matter and receive public comment, which facts and comments are found in the public record of the Council's consideration; and

WHEREAS, after considering the Planning Commission's recommendation, and facts and comments presented to the Municipal Council, the Council finds (i) the Zone Map of Provo, Utah, should be amended as described herein; and (ii) the proposed zone map classification amendment for the real property shown in the attached Exhibit A reasonably furthers the health, safety and general welfare of the citizens of Provo City.

NOW, THEREFORE, be it ordained by the Municipal Council of Provo City, Utah, as follows:

PART I:

The Mayor is hereby authorized to negotiate and execute a development agreement for this zone change, consistent with those representations made by the applicant and the applicant's representatives in the Council Meetings of September 25, 2018 and October 9, 2018, including that the applicant will waive the right to animal uses normally associated with the Agricultural Zone, except as to chickens and up to 2 horses per lot, and will place restrictive covenants on the property prohibiting uses contrary to that waiver

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PART II:

The classification on the Zone Map of Provo, Utah is hereby amended from the Public Facilities (PF) Zone to the Agriculture 1 (A1.1) Zone for approximately 5.89 acres of real property generally located at 1437 East 2300 North, as described in the attached Exhibit A. The effective date of this zone map change shall be the date of final execution of the development agreement described in Part I.

PART III:

- A. If a provision of this ordinance conflicts with a provision of a previously adopted ordinance, this ordinance shall prevail.
- B. This ordinance and its various sections, clauses and paragraphs are hereby declared to be severable. If any part, sentence, clause or phrase is adjudged to be unconstitutional or invalid, the remainder of the ordinance shall not be affected thereby.
- C. The Municipal Council hereby directs that the official copy of the Zone Map of Provo City, Utah be updated and codified to reflect the provisions enacted by this ordinance.
- D. Except as otherwise stated in Part II, this ordinance shall take effect immediately after it has been posted or published in accordance with Utah Code 10-3-711, presented to the Mayor in accordance with Utah Code 10-3b-204, and recorded in accordance with Utah Code 10-3-713.
- E. Notwithstanding any provision or language to the contrary in this ordinance, if the Development Agreement authorized in Part I has not been fully executed by the necessary parties within one year from the date of the Municipal Council's approval of this ordinance, the entire ordinance shall expire, becoming null and void as if it had never been approved. Because the zone classification change contemplated in Part II cannot come into effect if the Development Agreement is not executed, neither the applicant nor any successor(s) in interest shall have any vested rights under this ordinance if it expires.

END OF ORDINANCE.

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Exhibit A

ATTACHMENT 1 – PROPOSED ZONE CHANGE AREA



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**DEVELOPMENT AGREEMENT
FOR
DEER ISLAND PLAT "B"**

(1437 E 2300 N)

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into as of the _____ day of _____, 2018 (the "Effective Date"), by and between the CITY OF PROVO, a Utah municipal corporation, hereinafter referred to as "City," and Ranger Station LLC, a Utah limited liability company, hereinafter referred to as "Developer." The City and Developer are hereinafter collectively referred to as "Parties."

RECITALS

A. Developer is the owner of approximately 5.89 acres of land located within the City of Provo as is more particularly described on EXHIBIT A, attached hereto and incorporated herein by reference (the "Property").

B. On _____, the City Council approved Ordinance _____, vesting zoning (the "Vesting Ordinance"), based on the Site Plan set forth on EXHIBIT B ("Site Plan"), attached hereto and incorporated herein by reference, which will govern the density, development and use of the Property (said density, development, and use constituting the "Project").

C. Developer is willing to design and construct the Project in a manner that is in harmony with and intended to promote the long range policies, goals, and objectives of the City's general plan, zoning and development regulations in order to receive the benefit of vesting for certain uses and zoning designations under the terms of this Agreement as more fully set forth below.

D. The City Council accepted Developer's proffer to enter into this Agreement to memorialize the intent of Developer and City and decreed that the effective date of the Vesting Ordinance be the date of the execution and delivery of this Agreement and the recording thereof as a public record on title of the Property in the office of the Utah County Recorder.

E. The City Council further authorized the Mayor of the City to execute and deliver this Agreement on behalf of the City.

F. The City has the authority to enter into this Agreement pursuant to Utah Code Section 10-9a-102(2) and relevant municipal ordinances, and desires to enter into this Agreement with the Developer for the purpose of guiding the development of the Property in accordance with the terms and conditions of this Agreement and in accordance with applicable City Ordinances.

G. This Agreement is consistent with, and all preliminary and final plats within the Property are subject to and shall conform with, the City's General Plan, Zoning Ordinances, and Subdivision Ordinances, and any permits issued by the City pursuant to City Ordinances and regulations.

H. The Parties desire to enter into this Agreement to specify the rights and responsibilities of the Developer to develop the Property as expressed in this Agreement and the rights and responsibilities of the City to allow and regulate such development pursuant to the requirements of this Agreement.

I. The Parties understand and intend that this Agreement is a “development agreement” within the meaning of, and entered into pursuant to, the terms of Utah Code Ann., §10-9a-102.

J. The Parties intend to be bound by the terms of this Agreement as set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Developer hereby agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated into this Agreement, as a substantive part hereof.

2. Zoning. The Property shall be developed in accordance with (i) the requirements of the A1.1 Agricultural Zone, (ii) all other features as generally shown on the Final Plat, and (iii) this Agreement. The Developer shall not seek to develop the Property in a manner that deviates materially from the Final Plat as permitted by the aforementioned zoning designations for the Property.

3. Governing Standards. The Final Plat, the Vesting Ordinance and this Agreement establish the development rights for the Project, including the use, maximum density, intensity and general configuration for the Project. The Project shall be developed by the Developer in accordance with the Final Plat, the Vesting Ordinance and this Agreement. All Developer submittals must comply generally with the Final Plat, the Vesting Ordinance and this Agreement. Non-material variations to the Final Plat, as defined and approved by the City’s Community Development Director, such as exact building locations, exact locations of open space and parking may be varied by the Developer without official City Council or Planning Commission approval. Such variations however shall in no way change the maximum density, use and intensity of the development of the Project.

4. Additional Specific Developer Obligations. As an integral part of the consideration for this agreement, the Developer voluntarily agrees as follows:

a. To waive all animal rights associated with the A1.1 Agricultural Zone with the exception of chickens and not more than two horses per lot.

5. Construction Standards and Requirements. All construction on the Property at the direction of the Developer shall be conducted and completed in accordance with the City Ordinances, including, but not limited to setback requirements, building height requirements, lot coverage requirements and all off-street parking requirements.

6. Vested Rights and Reserved Legislative Powers.

a. Vested Rights. As of the Effective Date, Developer shall have the vested right to develop and construct the Project in accordance with the uses, maximum permissible densities, intensities, and general configuration of development established in the Final Plat, as supplemented by the Vesting Ordinance and this Agreement (and all Exhibits), subject to compliance with the City Ordinances in existence on the Effective Date. The Parties intend that the rights granted to Developer under this Agreement are contractual and also those rights that exist under statute, common law and at equity. The Parties specifically intend that this Agreement grants to Developer “vested rights” as that term is construed in Utah’s common law and pursuant to Utah Code Ann., §10-9a-509.

i. Examples of Exceptions to Vested Rights. The Parties understand and agree that the Project will be required to comply with future changes to City Laws that do not limit or interfere with the vested rights granted pursuant to the terms of this Agreement. The following are examples for illustrative purposes of a non-exhaustive list of the type of future laws that may be enacted by the City that would be applicable to the Project:

1. Developer Agreement. Future laws that Developer agrees in writing to the application thereof to the Project;
2. Compliance with State and Federal Laws. Future laws which are generally applicable to all properties in the City and which are required to comply with State and Federal laws and regulations affecting the Project;
3. Safety Code Updates. Future laws that are updates or amendments to existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual of Uniform Traffic Control Devices or similar standards that are generated by a nationally or statewide recognized construction/safety organization, or by the State or Federal governments and are required to meet legitimate concerns related to public health, safety or welfare; or,

4. Taxes. Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the City to all properties, applications, persons and entities similarly situated.
5. Fees. Changes to the amounts of fees for the processing of Development Applications that are generally applicable to all development within the City (or a portion of the City as specified in the lawfully adopted fee schedule) and which are adopted pursuant to State law.
6. Impact Fees. Impact Fees or modifications thereto which are lawfully adopted, imposed and collected.

b. Reserved Legislative Powers. The Developer acknowledges that the City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions set forth herein are intended to reserve to the City all of its police power that cannot be so limited. Notwithstanding the retained power of the City to enact such legislation of the police powers, such legislation shall not modify the Developer's vested right as set forth herein unless facts and circumstances are present which meet the exceptions to the vested rights doctrine as set forth in Section 10-9a-509 of the Municipal Land Use, Development, and Management Act, as adopted on the Effective Date, *Western Land Equities, Inc. v. City of Logan*, 617 P.2d 388 (Utah 1980), its progeny, or any other exception to the doctrine of vested rights recognized under state or federal law.

7. Default. An "Event of Default" shall occur under this Agreement if any party fails to perform its obligations hereunder when due and the defaulting party has not performed the delinquent obligations within sixty (60) days following delivery to the delinquent party of written notice of such delinquency. Notwithstanding the foregoing, if the default cannot reasonably be cured within that 60-day period, a party shall not be in default so long as that party commences to cure the default within that 60-day period and diligently continues such cure in good faith until complete.

a. Remedies. Upon the occurrence of an Event of Default, the non-defaulting party shall have the right to exercise all of the following rights and remedies against the defaulting party:

1. All rights and remedies available at law and in equity, including injunctive relief, specific performance, and termination, but not including damages or attorney's fees.
2. The right to withhold all further approvals, licenses, permits or other rights associated with the Project or development activity pertaining to the defaulting party as described in this Agreement until such default has been cured.
3. The right to draw upon any security posted or provided in connection with the Property or Project by the defaulting party.

The rights and remedies set forth herein shall be cumulative.

8. Notices. Any notices, requests and demands required or desired to be given hereunder shall be in writing and shall be served personally upon the party for whom intended, or if mailed, by certified mail, return receipt requested, postage prepaid, to such party at its address shown below:

To the Developer: Ranger Station LLC
Attn: Brooke Roney
724 N 1890 W
Provo, Utah 84601
Phone: _____

To the City: City of Provo
Attention: City Attorney
351 W Center
Provo, UT 84601
Phone: (801) 852-6140

9. General Term and Conditions.

a. Headings. The headings contained in this Agreement are intended for convenience only and are in no way to be used to construe or limit the text herein.

b. Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, representatives, officers, agents, employees, members, successors and assigns (to the extent that assignment is permitted). Without limiting the generality of the foregoing, a “successor” includes a party that succeeds to the rights and interests of the Developer as evidenced by, among other things, such party’s submission of land use applications to the City relating to the Property or the Project.

c. Non Liability of City Officials and Employees. No officer, representative, consultant, attorney, agent or employee of the City shall be personally liable to the Developer, or any successor in interest or assignee of the Developer, for any default or breach by the City, or for any amount which may become due to the Developer, or its successors or assignees, or for any obligation arising under the terms of this Agreement. Nothing herein will release any person from personal liability for their own individual acts or omissions.

d. Third Party Rights. Except for the Developer, the City and other parties that may succeed the Developer on title to any portion of the Property, all of whom are express intended beneficiaries of this Agreement, this Agreement shall not create any rights in and/or obligations to any other persons or parties. The Parties acknowledge that this Agreement refers to a private development and that the City has no interest in, responsibility for, or duty to any third parties concerning any improvements to the Property unless the City has accepted the dedication of such improvements

e. Further Documentation. This Agreement is entered into by the Parties with the recognition and anticipation that subsequent agreements, plans, profiles, engineering and other documentation implementing and carrying out the provisions of this Agreement may be necessary. The Parties agree to negotiate and act in good faith with respect to all such future items.

f. Relationship of Parties. This Agreement does not create any joint venture, partnership, undertaking, business arrangement or fiduciary relationship between the City and the Developer.

g. Agreement to Run With the Land. This Agreement shall be recorded in the Office of the Utah County Recorder against the Property and is intended to and shall be deemed to run with the land, and shall be binding on and shall benefit all successors in the ownership of any portion of the Property.

h. Performance. Each party, person and/or entity governed by this Agreement shall perform its respective obligations under this Agreement in a manner that will not unreasonably or materially delay, disrupt or inconvenience any other party, person and/or entity governed by this Agreement, the development of any portion of the Property or the issuance of final plats, certificates of occupancy or other approvals associated therewith.

i. Applicable Law. This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Utah.

j. Construction. This Agreement has been reviewed and revised by legal counsel for both the City and the Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

k. Consents and Approvals. Except as expressly stated in this Agreement, the consent, approval, permit, license or other authorization of any party under this Agreement shall be given in a prompt and timely manner and shall not be unreasonably withheld, conditioned or delayed. Any consent, approval, permit, license or other authorization required hereunder from the City shall be given or withheld by the City in compliance with this Agreement and the City Ordinances.

l. Approval and Authority to Execute. Each of the Parties represents and warrants as of the Effective Date this Agreement, it/he/she has all requisite power and authority to execute and deliver this Agreement, being fully authorized so to do and that this Agreement constitutes a valid and binding agreement.

m. Termination.

i. Notwithstanding anything in this Agreement to the contrary, it is agreed by the parties hereto that in the event the final plat for the Property has not been recorded in the Office of the Utah County Recorder within ten (10) years from the date of this Agreement (the "Term"), or upon the occurrence of an event

of default of this Agreement that is not cured, the City shall have the right, but not the obligation, at the sole discretion of the City Council, to terminate this Agreement as to the defaulting party (*i.e.*, the Developer). The Term may be extended by mutual agreement of the Parties.

ii. Upon termination of this Agreement for the reasons set forth herein, following the notice and process required hereby, the obligations of the City and the defaulting party to each other hereunder shall terminate, but none of the licenses, building permits, or certificates of occupancy granted prior to expiration of the Term or termination of this Agreement shall be rescinded or limited in any manner.

10. Assignability. The rights and responsibilities of Developer under this Agreement may be assigned in whole or in part by Developer with the consent of the City as provided herein.

- a. Notice. Developer shall give Notice to the City of any proposed assignment and provide such information regarding the proposed assignee that the City may reasonably request in making the evaluation permitted under this Section. Such Notice shall include providing the City with all necessary contact information for the proposed assignee.
- b. Partial Assignment. If any proposed assignment is for less than all of Developer's rights and responsibilities, then the assignee shall be responsible for the performance of each of the obligations contained in this Agreement to which the assignee succeeds. Upon any such approved partial assignment, Developer shall be released from any future obligations as to those obligations which are assigned but shall remain responsible for the performance of any obligations that were not assigned.
- c. Grounds for Denying Assignment. The City may only withhold its consent if the City is not reasonably satisfied of the assignee's reasonable financial ability to perform the obligations of Developer proposed to be assigned.
- d. Assignee Bound by this Agreement. Any assignee shall consent in writing to be bound by the assigned terms and conditions of this Agreement as a condition precedent to the effectiveness of the assignment.

11. Sale or Conveyance. If Developer sells or conveys parcels of land, the lands so sold and conveyed shall bear the same rights, privileges, intended uses, configurations, and density as applicable to such parcel and be subject to the same limitations and rights of the City as when owned by Developer and as set forth in this Agreement without any required approval, review, or consent by the City except as otherwise provided herein.

12. No Waiver. Any party's failure to enforce any provision of this Agreement shall not constitute a waiver of the right to enforce such provision. The provisions may be waived only in writing by the party intended to be benefited by the provisions, and a waiver by a party of a breach hereunder by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions.

13. Severability. If any portion of this Agreement is held to be unenforceable for any reason, the remaining provisions shall continue in full force and effect.

14. Force Majeure. Any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefore; acts of nature; governmental restrictions, regulations or controls; judicial orders; enemy or hostile government actions; wars, civil commotions; fires or other casualties or other causes beyond the reasonable control of the party obligated to perform hereunder shall excuse performance of the obligation by that party for a period equal to the duration of that prevention, delay or stoppage.

15. Amendment. This Agreement may be amended only in writing signed by the Parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first hereinabove written.

CITY:

CITY OF PROVO

ATTEST:

By: _____
City Recorder

By: _____
Mayor Michelle Kaufusi

DEVELOPER:

Ranger Station LLC, a Utah limited liability company

By: _____
Name: Brooke Roney
Title: _____

STATE OF UTAH)
 :ss
COUNTY OF UTAH)

On the ____ day of _____, 2018, personally appeared before me Brooke Roney, who being by me duly sworn, did say that he is the _____ of Ranger Station LLC, a Utah limited liability company, and that the within and foregoing instrument was signed on behalf of said limited liability company with proper authority and duly acknowledged to me that he executed the same.

Notary Public
Residing at:

Exhibit A

Legal Description of the Property

Beginning at a point located North $00^{\circ}40'48''$ West along section line 1331.76 feet and East 990.58 feet from the Southwest corner of Section 29, Township 6 South, Range 3 East, Salt Lake Base and Meridian; thence North $00^{\circ}40'48''$ West 419.03 feet; thence North $89^{\circ}19'12''$ East 385.00 feet; thence South $60^{\circ}00'00''$ East 259.91 feet to a point on the westerly right-of-way line of a future extension of Foothill Drive; thence along the arc of a 333.00 foot radius curve to the left, 203.61 feet through a central angle of $35^{\circ}01'57''$ (chord bears South $28^{\circ}21'18''$ East for 200.45 feet); thence along the arc of a 227.00 foot radius curve to the right, 126.43 feet through a central angle of $31^{\circ}54'37''$ (chord bears South $29^{\circ}54'57''$ East for 124.80 feet) to the northerly right-of-way line of 2300 North Street; thence South $89^{\circ}19'12''$ West along said northerly right-of-way line, 762.58 feet to the point of beginning.
Area = 5.9815 acres (260,552 sq. ft.)

Exhibit B
Final Plat