

Draper City Council Meeting Roll

Tuesday July 2, 2019

NAME Please Print	ADDRESS Please Print	ITEM OF INTEREST Please Print
Bryn Johnson	851 Kaseys Cir Draper UT 84020	Traffic congestion on Highland Dr
Linda Noack	2163 Feather Hill	Property variance
~~Nancy Brady~~		
Vinny Ruyton	1705 57th	# 5
Nicole Hawkins	822 Draper Heights	# 8
Michael Beierschmitt	822 Draper Heights	# 8
Brian Barnhill	13238 S Corner Wood	# 8
Dave & Julie Petersen Family	1183 Summerharvest Dr.	Miss Draper
TRACI GUNDERSEN	11804 S Burkwood Ln	# 8
Brett Hummer	1764 Moose Hollow Cir.	BroBaw
Camara Spauld	"	Kellen & Blake
Reed & Amy	2018 E Oak Street	# 8
Nate Taylor	14201 Adobe School Drive	Prayer
Jacquelyn Solod	1121 Hidden Valley Pr.	Miss Draper



DATE: July 2, 2019
TO: Draper City Council
FROM: Christina Oliver, Department of Community Development Director
SUBJECT: Draper City Municipal Code Update

The purpose of this memo is to outline text amendments that staff is working on. While not all encompassing, it is the start of a process to clarify Draper City Municipal Code for all stakeholders and to ensure compliance with Utah Code.

Draper City staff will draft a communication plan for the distribution of draft text amendments to promote public consumption and feedback by July 16, 2019. This plan will include, but will not be limited to, citywide electronic publication of the draft text amendment in advance of being published on the Draper City Planning Commission's forthcoming agenda. Further city staff will be contacting various homebuilders and development companies to garner insight into their interpretations of Draper City's Municipal Code and what changes they suggest.

Forthcoming draft text amendments include the following:

September

Land Use and Development Regulations

9-3-040 Rules of Construction and Definitions, Definitions

Various definitions will be modified.

9-5-030 Administrative and Development Review Procedures, General Application Requirements

Creation of a timeliness guideline that directs staff to inactivate applications after a stated period of time. Fee refund clarification.

9-5-045 Administrative and Development Review Procedures, Noticing

Modification to align with Utah Code.

9-5-090 Administrative and Development Review Procedures, Site Plan Review

Procedure and standards for approval to be updated.



MEMO

To: Draper City Council

From: Jennifer Jastremsky, AICP, Senior Planner

CC:

Date: 7-2-19

Re: Update to Ordinance and Motion: Ordinance #1395, City Initiated Corner Lot Setbacks Text Amendment

Comments:

There has been a small change to the Ordinance 1395 being proposed tonight that did not make the agenda packet, and is different from what was presented to the Planning Commission. The ordinance that was included in the staff report did not include the definition for corner lot found within the subdivision code. This definition is the same as that found in the zoning code and will need to be modified to match the definition change proposed in DCMC Title 9. The code section is as follows:

17-1-040: Definitions

LOT, CORNER: A lot or parcel abutting two (2) intersecting or intercepting streets where the interior angle of intersection or interception does not exceed one hundred thirty five degrees (135°). Corner lots shall have two (2) front yards and two (2) ~~side~~ rear yards.

An updated motion will be required tonight in order to include the definition in the subdivision code. The updated motion is as follows:

Sample Motion for Approval – I move that we approve the City Initiated Corner Lot Setbacks Text Amendment, as requested by Draper City, amending DCMC Section 9-3-040 definitions and Tables 9-9-2 and 9-10-3 development standards, application TEXTMAP-668-2019, based on the findings listed in the staff report with the following modification. The amendment be modified to include the definitions section DCMC Section 17-1-040 amending the definition for corner lot within the subdivision land development code.

ORDINANCE NO. 1395

AN ORDINANCE OF DRAPER CITY AMENDING THE TEXT OF THE LAND USE AND DEVELOPMENT CODE OF THE DRAPER CITY MUNICIPAL CODE RELATING TO CORNER LOT SETBACKS.

WHEREAS, Utah State law grants to Draper City the authority to regulate uses of property by zoning districts; and

WHEREAS, it is necessary from time to time to revise certain terms of the Draper City Municipal Code to address provisions that become diminished in appropriateness, applicability, or clarity; and

WHEREAS, the Land Use and Development Code of the Draper City Municipal Code has been established to provide regulations concerning general developments within the City Boundaries; and

WHEREAS, the City Council of Draper City adopted the Land Use and Development Code to guide development within the City Boundaries; and

WHEREAS, the Land Use and Development Code contains a conflict in regards to corner lot setbacks; and

WHEREAS, on May 9, 2019, the Draper City Appeals and Variance Hearing Officer issued an Order on Hearing (the "Order") interpreting the Land Use and Development Code pertaining to corner lot setbacks; and

WHEREAS, the Order contradicted the interpretation of corner lot setbacks Community Development staff had been using for several years when approving building permits, certificates of occupancy, subdivision plats and other permits/approvals for corner lots; and

WHEREAS, the Order has created numerous nonconforming lots and negatively impacted subdivision plats that were approved under staff's longstanding interpretation of the Land Use and Development Code; and

WHEREAS, the owners of conforming corner lots and corner lots in subdivision plat that have been rendered nonconforming by the Order did not have the opportunity to be heard before the Appeals and Variance Hearing Officer; and

WHEREAS, the Draper City Council desires to clarify the legislative intent of the Land Use and Development Code pertaining to corner lot setbacks as interpreted and applied prior to the Order; and

WHEREAS, the City Council of Draper City finds good cause to revise the terms and provisions of Land Use and Development Code regarding the corner lot setbacks; and

WHEREAS, the City Council determines it is in the best interest of the city for the change to be retroactive to May 9, 2019; and

WHEREAS, notice has been issued according to the requirements of the Utah Code Annotated and Draper City Municipal Code for public hearings before the Planning Commission and City Council to receive public input regarding the revision of the Land Use and Development Code; and

Councilmember Lowery

Councilmember Summerhays

Councilmember Vawdrey

Councilmember Weeks

Mayor Walker

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Minimum lot frontage	50 feet	50 feet
Minimum lot width ¹	100 feet	100 feet
Building standards:		
Maximum floor area of all structures at ground level as a percentage of lot area	10 percent	10 percent
Maximum height, main buildings ²	35 feet	35 feet
Maximum height, accessory buildings ^{3,2}	20 feet	20 feet
Setback standards - front yard ^{4,3} :		
~~All buildings (adjacent to existing or proposed minor collector street ROW as shown on the most recently amended version of the City's official street map, except those in section 9-27-140 of this title)–~~	~~30 feet– (40 feet)–~~	~~30 feet– (40 feet)–~~
<u>Main buildings on interior and corner lots³</u>	<u>30 feet</u>	<u>30 feet</u>
Setback standards - rear yard ^{5,3} :		
Main buildings <u>on interior lots</u> ~~(adjacent to existing or proposed minor collector street ROW as shown on the most recently amended version of the City's official street map, except those in section 9-27-140 of this title)~~ ³	20 feet ~~(30 feet)~~	20 feet ~~(30 feet)~~
<u>Main buildings on corner lots³</u>	<u>12 feet</u>	<u>12 feet</u>
Accessory buildings of 120 square feet or less	No requirement	
Accessory buildings greater than 120 square feet	20 feet ^{6,4}	
Barns and stables	See section <u>9-27-050</u> of this title	
Swimming pools	See section 9-27-180 of this title	
Setback standards - side yard ^{7,3} :		
Main buildings <u>on interior lots</u> ^{3,8,4}	12 feet	12 feet
~~Main buildings on corner lots with yards that abut the side yard of another lot–~~	~~20 feet–~~	~~20 feet–~~
Accessory buildings of 120 square feet or less	No requirement	

area, multiple-family dwelling							acre	
Minimum area, townhouse dwelling	NP	NP	NP	NP	NP	NP	1,000 s.f.	1,000 s.f.
Minimum area, other main buildings	40,000 s.f.	20,000 s.f.	40,000 s.f.	13,000 s.f.	10,000 s.f.	8,000 s.f.	n/a	n/a
Maximum lot depth (as a multiple of lot width at widest point)	4.0 to 1	3.0 to 1	4.0 to 1	2.0 to 1	2.0 to 1	2.0 to 1	5.0 to 1	5.0 to 1
Minimum lot frontage	50'	50'	50'	50'	50'	50'	n/a	n/a
Minimum lot width ²	100'	90'	100'	80'	80'	70'	n/a	n/a
Building standards:								
Maximum dwelling unit density per acre	1 du/acre	2 du/acre	1 du/acre	3 du/acre	4 du/acre	5 du/acre	8 du/acre	12 du/acre
Maximum square footage of floor area at ground level (including garages) as a percentage of lot area	40%	40%	40%	40%	40%	40%	n/a	n/a
Maximum height, main building	35'	35'	35'	35'	35'	35'	35'	35'
Maximum height, accessory buildings	See subsection 9-27-120C of this title							
Setback standards - front yard ³ :								
Main buildings on interior and corner lots ⁴	30'	30'	30'	25'	25'	25'	n/a ⁵	n/a ⁵

Setback standards - side yard ³ :								
Main buildings <u>on interior lots</u> ⁴	12'	12'	12'	10'	8'	8'	n/a ⁵	n/a ⁵
Accessory buildings	See subsection <u>9-10-040A</u> of this chapter							
Barns and stables	See section <u>9-27-050</u> of this title							
Swimming pools	See section 9-27-180 of this title							

Notes:

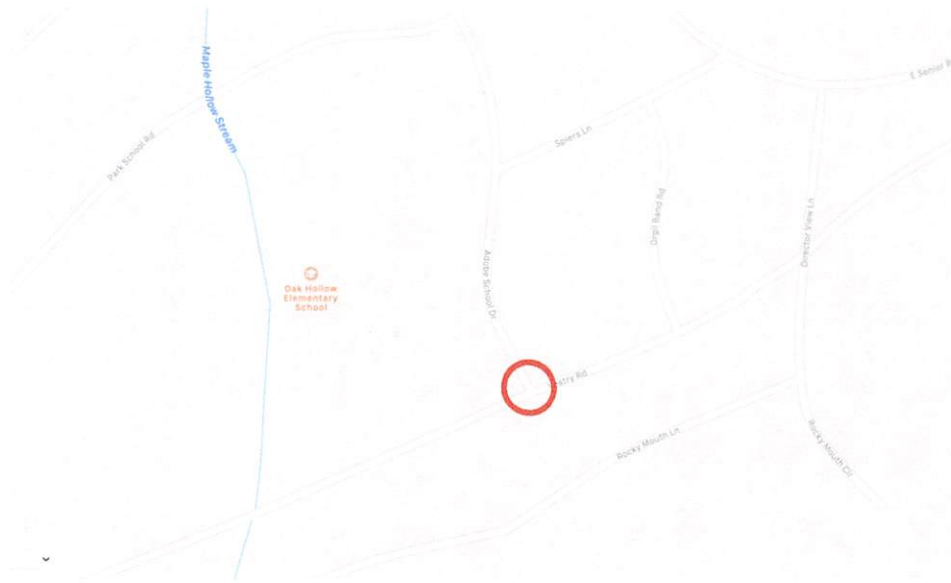
1. Minimum required lot area on private right of way or access easement shall be net area, excluding any area of the lot located within a private right of way or access easement.
2. Corner lots should be platted 10 feet wider than interior lots of subdivisions to accommodate 2 front yards in accordance with section 17-5-020 of this code.
3. Except as modified by the provisions of section 9-27-140, "Lots And Yards", of this title.
4. Except as modified by the provisions of subsection 9-27-140G, "Setback Measurement", of this title.
5. Setbacks between building units (i.e., fourplex, sixplex, etc.) as well as setbacks for all buildings (clubhouses, building units, etc.) from project boundaries shall be determined at site plan approval.

17-1-040: DEFINITIONS:

LOT, CORNER: A lot or parcel abutting two (2) intersecting or intercepting streets where the interior angle of intersection or interception does not exceed one hundred thirty five degrees (135°). Corner lots shall have two (2) front yards and two (2) ~~side~~-rear yards.

Traffic Solutions for Congestion Caused by Rec Center and Other Developments

1-

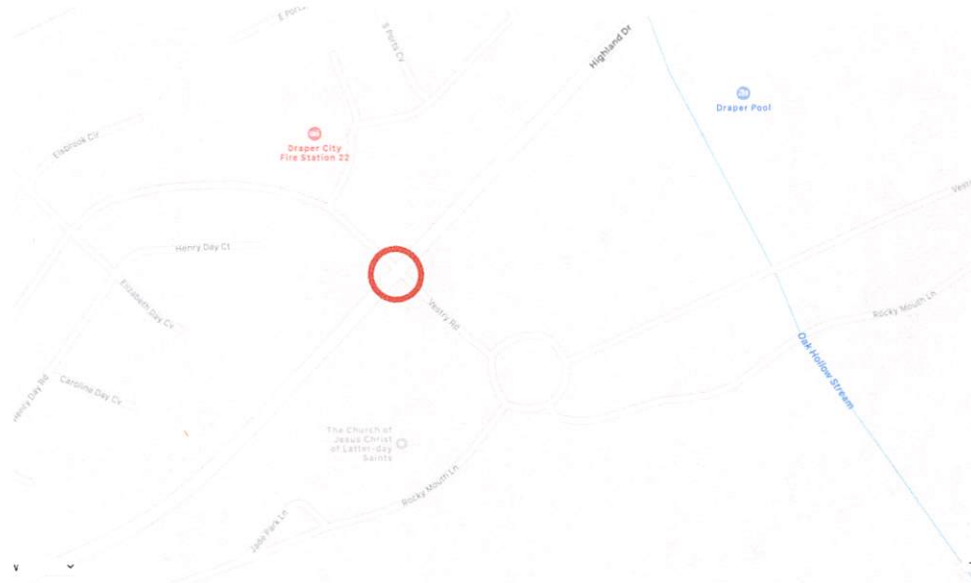


FLASHING 3-WAY STOP SIGN AT VESTRY RD AND ADOBE SCHOOL RD

WILL

- cause traffic to slow down on Vestry which already speeds
- make pick up and drop off at Oak Hollow less congested
- provide middle school and high school bus riders a safer way to cross Vestry since these students catch the bus before sunrise

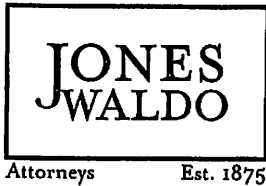
2-



ROUNDBOUT AT VESTRY RD AND HIGHLAND DR

WILL

- cause traffic on Highland to slow down
- allow those trying to cross over Highland to cross easier
- be safer than a light
- not cause traffic on Vestry to back up to the existing roundabout (which happens now)



T: 801.521.3200
F: 801.328.0537

170 South Main Street
Suite 1500
Salt Lake City, UT 84101

www.joneswaldo.com

June 11, 2019

HAND DELIVERY

Draper City Zoning Department
Draper City Office of Zoning Administrator
1020 East Pioneer Road
Draper, Utah 84020
Attn: Jennifer Jastremsky

Michael Barker
Draper City Attorney
1020 East Pioneer Road
Draper, Utah 84020

Sean Reyes
Utah State Attorney General
350 N State St, Suite 230
Salt Lake City, UT 84114

Re: Draper City Appeals and Variance Hearing Officer Order on Administrative Hearing (Administrative Appeal Number 411-2018) – Notice of Intent to Pursue Civil Enforcement

To Whom It May Concern:

This office represents Michael Beierschmitt and Nicole Hawkins (“Appellants”), owners of property located in Draper, Utah, in connection with zoning appeals filed before Draper City’s Zoning Administrator, which were resolved by Order dated May 9, 2019 (a copy is enclosed for reference). The purpose of this letter is to notify Draper City, pursuant to Utah Code Ann. § 63G-4-501(2)(a)(i), of Appellants’ intent to seek civil enforcement of the attached Order in the event that Draper City attempts to modify the Order’s import or enforceability through retroactive amendment of the zoning ordinance interpreted thereunder.

Pursuant to this notice, appellants notify Draper City as follows:

Appellants Michael Beierschmitt and Nicole Hawkins own the residence located at 822 Draper Heights Way, Draper City, Utah 84020 (Tax Number 34-08-303-016; hereafter "Appellants' Property"). Appellants have owned the property since August 8, 2016, and occupy it as their primary residence.

Property immediately adjacent to the Appellants' property is currently titled in Terra Koa, LLC, a Utah limited liability company wholly owned by Pratt Dimond and Lisa Dimond ("Terra Koa Property"). Terra Koa Property is part of a subdivision approved January 9, 2018 as the "REMCO Subdivision," and amended by both the Draper City Planning and Zoning Commission on December 13, 2018 as the "Aulani Cove Subdivision."

In the summer of 2018, Appellants first learned that Terra Koa contemplated construction of a large spec home on the Terra Koa Property (shown as Lot 102 of both the REMCO Subdivision and the amended Aulani Cove Subdivision). Only in August of that year did they also learn that Terra Koa's design for the home contemplated a rear setback of only 12 feet between the Terra Koa property and the Appellants' property, and intended to build not only to, but beyond, the 12-foot line. Through a series of appeals detailed in the attached Order of May 9, 2019, Appellants challenged construction of the proposed home on the Terra Koa Property.

Pending appeals were heard by the Administrative Hearing Officer on March 29, 2019. By the enclosed Order of May 9, 2019, the hearing officer determined that, under Title 9, Chapter 10 of Draper City's Zoning Ordinance, the setback between the Terra Koa Property and Appellants' property should be 20 feet rather than 12 feet, as per table 9-10-3 thereunder, concluding that a clear reading of the provision mandated a 20-foot setback. As construction had by then occurred within the 20-foot setback area, the hearing officer ruled as follows:

Lot 102 [Terra Koa property] being a Corner lot with a rear yard abutting the side yard of another lot (Lot 40) [Appellants' Property] requires a 20-foot setback on its west side . . . with the instant matter remanded back to the Zoning Administrator for further action consistent with the present decision and to specifically: . . . oversee in conjunction with the Building Official either the removal or modification of that part of the deck presently constructed on the west side of the home being constructed on Lot 102 so as not to encroach within the determined 20-foot setback and be in compliance with Section 9-27-140.F.

See Order at page 15.

Draper City took no appeal from the May 9, 2019 Order under either Utah Code Ann. §10-9a-802 or 63G-4-401, and the appeal time has now passed.

On its own motion, though, Draper City has now proposed an amendment to Draper City Municipal Code Section 9-3-040 and Tables 9-9-2 and 9-10-3 to change the rear yard setback on corner lots within residential and agricultural zones from 20 feet to 12 feet. A copy of the staff

report and proposed text is enclosed. Public hearing is scheduled for the evening of June 13, 2019.

It is unclear, either from the language of the proposed amendment or from the staff report, whether or not Draper City, in proposing the amendment, seeks to make the changes therein retroactive to defeat the Hearing Officer's May 9 Order. To the extent that the City's proposed amendment to Draper City's zoning ordinance is prospective only in operation, and is not seen as a means of circumventing the Hearing Officer's ruling on the appeals put before him on March 29, 2019, Appellants have no issue therewith. To the extent, however, that the City sees the proposed amendments as a vehicle for unwinding the May 9, 2019 Order by retroactive amendment, and avoiding the necessity of compliance therewith, the move is unlawful.

The case of *Western Land Equities, Inc., v. City of Logan*, 617 P.2d 388 (Utah 2005) made clear that, among the "bundle of rights" inherent in ownership of real property, is the right to treatment under existing zoning laws:

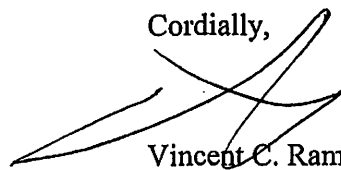
It is established that an owner of property holds as subject to zoning ordinances enacted pursuant to a state's police power [citation omitted] the legality of retroactive civil legislation is tested by general principles of fairness and by due process considerations.

617 P.2d at 390-391. The principles articulated *Western Land Equities, Inc.* echo the more general principle that substantive changes or amendments to existing legislation may not be applied retroactively as to defeat or impair vested rights – see *Waddoups v. Noorda*, 2013 UT 64, 321 P. 3d 1108; *Roark v. Crabtree*, 893 P. 2d 1058 (Utah 1995).

Draper City is hereby put on notice that any attempt to apply an amendment to Draper City Zoning Ordinance retroactively, in a manner that would impair Appellants' vested rights in zoning existing on and around their property as of their date of acquisition will be challenged by an enforcement proceeding in accordance with the foregoing, and/or by a claim of unlawful taking or damaging of private property for public use under Utah Code Ann. § 78B-6-511.

Please contact the undersigned with any questions.

Cordially,



Vincent C. Rampton

VCR/mqb

BEFORE THE
APPEALS AND VARIANCE HEARING OFFICER
DRAPER CITY, STATE OF UTAH

IN THE MATTER OF:

APPEAL APPLICATIONS:

TERRA KOA, LLC/DIMOND
ADMINISTRATIVE APPEAL,

Michael Beierschmitt and Nicole Hawkins,
Applicant/Appellant,
Appeal Application APPL-411-2018
(Filed 11-30-18),

Being an appeal of the Draper City
Zoning Administrator's November 16, 2018
determination that appeal application
APPL-365-2018 was not timely filed and
covered subject matter not appealable

and

REMCO (Aulani Cove Subdivision)
PLAT AMENDMENT,

Michael Beierschmitt and Nicole Hawkins,
Applicant/Appellant,
Appeal Application APPL-427-2018
(Filed 12-27-18),

Being an appeal of the Draper City
Planning Commission's December 13, 2018
decision approving a plat amendment for
the "Remco Subdivision Amended"
development in an RA2 (Residential Agricultural)
zone,

ORDER ON HEARING
(Administrative Hearing)

(Draper City Code:
Sec. 9-4-180.D.4,
"Appeal Hearing")

Mark E. Kleinfeld,
Hearing Officer

Regarding properties located at:

822 Draper Heights Way
Draper, Utah 84020
(Beierschmitt-Hawkins property)

and

842 East Traverse Ridge Road
(14726 South Aulani Cove)
Draper, Utah 84020
(Dimond property)

(Approximate Property Addresses)

STATEMENT OF THE CASE

THIS MATTER(s) came on to be heard before the Draper Appeals and Variance Hearing Officer on March 29, 2019 at 9:00 o'clock A. M., with Mark E. Kleinfeld serving as Hearing Officer.

Said hearing being held at the Draper City offices located at 1020 East Pioneer Road, Draper, Utah 84020, having been convened at the designated time of 9:00 (9:03) A. M., March 29, 2019 and adjourned at 10:54 A. M. on said same day.

Appearances:^{1, 2}

Vincent C. Rampton, Jones Waldo, 170 South Main Street, Suite 1500, Salt Lake City, Utah 84101, Attorney for Applicants/Appellants Michael Beierschmitt and Nicole Hawkins.

Michael G. Barker, City Attorney, Draper City.

Brian Barnhill, Osborne & Barnhill, 11576 South State Street, Suite 204, Draper, Utah 84020, Attorney for Terra Koa, LLC, Pratt Dimond and Lisa Dimond.

¹ Also appearing and making presentations as to case chronology were members of the Draper City Planning & Zoning Department, Jennifer Jastremsky, Senior Planner/Zoning Administrator, and Dan Boles, Planner III.

² Additionally, Michael Beierschmitt, one of the Appellants, was permitted to make a brief statement during "*opening argument*".

By the Presiding Officer:

Pursuant to Applicants' request an Administrative Appeal Hearing was conducted on March 29, 2019 in the above-entitled proceeding. The Applicants were present at that time.³

The hearing was convened and conducted in accordance with Draper City Code Section 9-5-180.D.4 of the Draper City Code ("DCC").

"ISSUE", BURDEN and "STANDARD OF REVIEW"

1. The basic issue(s) in this matter(s) is:

"Should:

- a. Draper City's Zoning Administrator's November 16, 2018 determination that appeal application APPL-365-2018 was not timely filed and covered subject matter not appealable be affirmed, reversed or modified, in whole or in part?" (Section 9-5-180.D.4, DCC);

and

- b. Draper City's Planning Commission's December 13, 2018 decision approving a plat amendment for the "Remco Subdivision Amended" development in an RA2 (Residential Agricultural) zone be affirmed, reversed or modified, in whole or in part?" (Section 9-5-180.D.4, DCC)."

2. The "*burden of going forward*" in this matter(s) as to the above issue(s) is on the Appellants.

3. As to the above foregoing "*issue(s)*" or "*question(s)*" to be answered the "*standard of review*" is that of "*correctness*" of the lower decision. (Section 9-5-180.D.4, DCC).

Oral argument was offered and received.

The Appeals and Variance Hearing Officer being fully advised in the premises and taking administrative notice of the files and records of Draper City in the instant matter(s), now enters his *Findings of Fact, Conclusions of Law, and Order*, as follows:

³ Also present were Pratt Dimond and Lisa Dimond.

FINDINGS OF FACT

I, find by a preponderance of the evidence, the following facts:

Preliminary-Jurisdictional Facts

1. a. Draper City ("City") is a municipal corporation and political subdivision of the State of Utah. Draper City is empowered to administer and enforce the Draper City Code ("Code" or "DCC"), including Title 9, "Land Use Development and Regulations".
 - b. This title shall be enforced by the zoning administrator. (Sec. 9-7-030).
 - c. The Planning Commission is a subdivision of the City and "[i]t shall be the function of the Planning Commission to oversee the proper development of the City in accordance with pertinent City ordinances and provisions of Utah Code Annotated title 10, chapter 9a, as amended." (Section 3-1-280.I).
2. a. i. Any person aggrieved by a decision of the zoning administrator or other official enforcing the provisions of this chapter may appeal for relief therefrom to the appeals and variance hearing officer as provided in this title. (Section 9-7-100).
 - ii. Any person adversely affected by a decision administering or interpreting a provision of this title may appeal to the Appeals and Variance Hearing Officer as provided in subsection D1 of this section. A complete Notice of Appeal shall be filed within fourteen (14) days of the decision being appealed. (Section 9-5-180.C).
- b. Any interested person aggrieved of a final decision of the Planning Commission may appeal that decision by filing a written appeal stating the grounds within fourteen (14) days from the date of the decision or action to the Appeals and Variance Hearing Officer as designated by ordinance. (Section 3-1-280.K).

TERRA KOA, LLC/DIMOND ADMINISTRATIVE APPEAL **APPL-411-2018**

3. Appellants own the residence located on Lot 40, Draper Heights Subdivision, currently addressed as 822 Draper Heights Way, Draper, Utah 84020.
4. Appellants' property abuts the west property line of Lot 102 of the present "Aulani Cove Subdivision" (formerly "REMCO Subdivision") presently owned by Terra Koa, LLC, Pratt Dimond and Lisa Dimond, formerly addressed as 842 East Traverse Ridge Road and currently addressed as 14726 South Aulani Cove, Draper, Utah 84020.

5. Appellants first noticed excavation and foundation work on the “Dimond property” in June 2018.

6. Appellants on or about August 23, 2018 noticed placement of a covered porch or deck and supporting posts on the west side of the Dimond property.

7. Appellant Beierschmitt on or about August 23 and 24, 2018 opened up an initial dialogue with Draper City through one Ellen Xanthos, apparent Planning Coordinator, regarding as perceived by Appellants an encroachment concern,

8. Over the course of the approximate next six (6) weeks an ongoing interaction involving letters, emails and phone conversations and occasional face to face ensued between Draper City and Appellants, including Appellants’ legal counsel.⁴

9. Early on sometime in late August, in the August 28 through 30, 2018 timeframe, Keith Collier, Draper City Building Official, placed a “hold” on the home.

10. An apparent October 2, 2018 meeting took place between Appellants and Draper City officials.

11. Sometime prior to October 9, 2018 the “hold” was apparently lifted by the Draper City Zoning Administrator and or Building Official.

12. Appellants filed a request for reconsideration on October 9, 2018 of Draper City’s apparent “go ahead” permitting construction to proceed on the proposed residence located at 824 East Traverse Ridge Road, Draper, Utah 84020.

⁴ In sorting through the voluminous record and reviewing the correspondence between the Appellants and the City one finds a myriad of legal theories and concepts. All seasoned and peppered with municipal code citations as well as court decisions and an occasional state statutory reference. At times one finds oneself on first blush looking at a “shotgun” approach and then on closer inspection a “rifle” argument; and then one feels as if a “kitchen sink” or “throw it up on the wall and see what sticks” advocacy approach. In sum and substance summary what Appellants’ legal counsel seeks (sought) was a voiding and stoppage of the construction taking place on Lot 102 to the immediate East of his clients’ property.

13. Appellants filed an appeal on October 18, 2018 of Draper City's apparent" go ahead" permitting construction to proceed on the proposed residence located at 824 East Traverse Ridge Road, Draper, Utah 84020.

14. The Draper City Zoning Administrator on November 16, 2018 issued her decision concerning APPL-365-2018 (filed October 18, 2018).

15. Appellants filed their appeal of said November 16, 2018 decision, current APPL-411-2018, on November 30, 2018.

REMCO PLAT AMENDMENT
APPL-427-2018

16. Appellants own the residence located on Lot 40, Draper Heights Subdivision, currently addressed as 822 Draper Heights Way, Draper, Utah 84020.

17. Appellants' property abuts the west property line of Lot 102 of the present "Aulani Cove Subdivision" (formerly "REMCO Subdivision") presently owned by Terra Koa, LLC, Pratt Dimond and Lisa Dimond, formerly addressed as 842 East Traverse Ridge Road and currently addressed as 14726 South Aulani Cove, Draper, Utah 84020.

18. On December 13, 2018 an amended subdivision plat was presented to and approved by the Draper City Planning Commission.

19. Appellants filed their appeal of said December 13, 2018 approval, current APPL-427-2018, on December 27, 2018.

20. That based on the preliminary facts as set forth in Paragraphs 1 through 19, immediately above, the Hearing Officer set Friday, March 29, 2019 at 9:00 A. M.⁵ at the Draper City offices at 1020 East Pioneer Road, Draper, Utah 84020 as the time and place for the appellate review hearing.

⁵ The hearing was originally set for February 6, 2019. Due weather conditions it was continued to March 1, 2019. Based on emergency family circumstances of the Hearing Officer the hearing was further continued to the instant March 29, 2019 date.

DISCUSSION-ANALYSIS

It is the interpretation and application of certain sections of the Draper City Code to the facts regarding the current subject premises that is at the heart of the present matter(s).

All three parties, Appellants, the City and Terra Koa, LLC (the Dimonds) in large measure concur as to the basic chronology and facts of the present circumstance.

The question(s) presented is:

“Should:

- a. Draper City’s Zoning Administrator’s November 16, 2018 determination that appeal application APPL-365-2018 was not timely filed and covered subject matter not appealable be affirmed, reversed or modified, in whole or in part?” (Section 9-5-180.D.4, DCC);

and

- b. Draper City’s Planning Commission’s December 13, 2018 decision approving a plat amendment for the “Remco Subdivision Amended” development in an RA2 (Residential Agricultural) zone be affirmed, reversed or modified, in whole or in part?” (Section 9-5-180.D.4, DCC).”

Primary Applicable Pertinent (State Statutes,) Municipal Code Sections and Judicial Precedent are as follows (although others may otherwise specifically cited within the body of this “Order on Hearing”):

Section 3-1-280: Planning Commission.

Section 9-3-040: Definitions.

Section 9-4-070: Zoning Administrator.

Section 9-5-180: Appeal of Administrative Decisions.

Section 9-7-030: Enforcement Authority.

Section 9-7-100: Appeals.

Section 9-10-030. Uses Allowed.

Section 9-10-10-060: Regulations For Specific Uses.

Section 9-10-080: Planned Residential Development Overlay Zone.

Section 9-10-090: Use and Development Standards Tables.

Table 9-10-3. (Corner lots).

Section 9-27-140: Lots and Yards.

Section 10-1-070: Appeal of Decisions.

Section 10-3-100: Suspension or Revocation of Permit.

Section 10-6-040: Filing Appeal.

Section 11-2-050: Streets Intersecting Arterials and Minor Arterials.

Section 17-1-040: Definitions.

Section 17-1-065: Accurate Information.

Section 17-1-120: Appeals.

Utah Code Ann. 10-9a-701(1)(b)

Summit Operating, LLC v. Utah State Tax Comm., 2012 Utah 91, 293 P. 3d 369 (Utah).

Fox v. Park City, 2008 Utah 85, 200 P. 3d 182 (Utah).

After one works through the stockpile of voluminous documents, photographs and materials that is the record what one is left with boils down to the need for a hopefully *common sense* application of property, municipal and land use planning law.

Acknowledging such is easier said than done what is needed is a starting point or *standard of review* to be established.

Draper City Code Subsection 9-5-180.D.4.b which reads in part “The Appeals and Variance Hearing Officer shall [b.] Determine the *correctness* of the officer or body’s interpretation and application of the *plain meaning* of the land use regulations and

thereafter affirm or reverse, wholly or in part, the lower decision, modify that decision or impose any conditions needed to conform the matter appealed to applicable approval standards; “ establishes that standard and starting point. (EMPHASIS ADDED.)⁶

Such legislative statement by the Draper City Council creates a *presumption of correctness* of the lower decision, **IF** such was based on a “reasonableness” review of the facts established by the evidence in the record.

Such presumption of correctness may be rebutted by competent *credible evidence in the record*.

TERRA KOA, LLC/DIMOND ADMINISTRATIVE APPEAL
APPL-411-2018

The answer(s) to two (2) preliminary questions in a large sense are determinative of the handling of the present (Terra Koa) appeal.

1. Is a “hold” the same as a “stop work order”?; and
2. Does the lifting of “*either or*” equate to “a decision administering or interpreting a provision of this title” as may permit “any person adversely affected” to appeal such a decision? (Section 9-5-180.C).

Neither term, stop work order or hold, is directly defined by the Draper City Code.

The import and impact of either term, hold or stop work order is though the same,

---- a stoppage or halting of activity.

Here in the present instance on or about August 28, 2018, Building Official Keith Collier issued a “hold” directive, causing a cessation of construction on Lot 102.

Sometime shortly after an October 2, 2018 meeting between Appellant Beierschmitt and City representatives and on or after October 4, 2018 the “hold” was lifted and activity (re) commenced on Lot 102;

This October 4th ish action or decision is the what that is being appealed. Not the January 9, 2018 (original) Plat approval per se nor the June 1, 2018 Lot 102 building permit issuance themselves.

Appellants first filed an October 9, 2018 a request for reconsideration and on October 18, 2018 filed appeal APPL-365-2018.

⁶ As per Subsection 9-5-180.D.5 “[t]he Appeals and Variance Hearing Officer shall have all the powers of the officer or body from whom the appeal was taken ”.

The action being appealed, Keith Collier's lifting of the hold or stop work order or whatever label one gives the cessation of construction directive on Lot 102, was just that, an appealable "decision administering or interpreting" a myriad of provisions of a title(s) of the code. Although the question of whether a 12 foot or 20 foot setback on the west side of Lot 102 is the primary focal point.

The answer to both questions no. 1 and 2 are "Yes".

Absent such "Yes" answers the Zoning Administrator's November 16, 2018 decision letter would be and should be affirmed in its entirety without further discussion or analysis.

Such October 4, 2018 decision to lift the August 28, 2018 hold was both appealable and timely appealed by Appellants.

Does such open the flood-gates to reexamine each and every action concerning Lot 102 ad infinitum, including the genesis of the REMCO subdivision and issuance of the instant building permit and construction here at issue? ⁷

At the heart of the present dispute is whether Lot 102 is:

1) a "Lot, corner" and as per Section 9-3-040 has two front and two side yards, inferentially thereby having no rear yard, and necessitating only a 12 foot setback on its west side; or

2) as per Table 9-10-3 imposing a requirement of a 20 foot setback on the west side as a "corner lot" with a rear yard that abuts the side yard of another lot, here Lot 40.

On a plain word for word reading of the respective sections, separately, both on their face would appear to be straight forward and determinative.

When read in conjunction with each other AND applied to the instant conundrum the result is the present result before the Hearing Officer ----- disputation, chaos and in some sense outright hand-wringing of the respective parties.

⁷ After the delving into the mounds and pounds of paper work, including architectural renderings and surveys and the like, present in this matter, it is clear to the Hearing Officer that at many stages opportunities of possible resolution may well have been missed. The vehicle of legal process and jargon being a poor substitute for good old-fashioned sitting around a table and frank and open discussion. Give and take and where appropriate ----- compromise. As in all human interaction what may well be the biggest stumbling block present in the instant matter is the "E" word, ego. SEE also footnote 4, supra.

What is of necessity is both a legal analysis instituting statutory construction guidelines coupled with common sense reality of what a house (home) is, including the grass or landscaped or to be landscaped yards surrounding it.

Section 9-3-040, appears to have been originally enacted as per Ordinance 949, October 5, 2010 and has apparently traversed through several versions, it being the general definitional section, the latest via Ordinance 1349, September 4, 2018.

Section 9-10-090, including Table 9-10-3, was passed via Ordinance 1185, January 26, 2016.

Chapter 3 of Title 9, where Section 9-3-040 is found, the definition, "Lot, Corner" is **general** in nature speaking to every lot that meets its definition in whatever zone type, commercial, industrial, residential or otherwise throughout the city as per certain intersection and angle parameters.

Chapter 10 of Title 9, where Table 9-10-3 is found speaks **specifically** to residential zones, including residential agricultural.

Table 9-10-3 speaking very specifically to RA2 "Corner lots" that meet its parameters of "rear yards that abut the side yard of another lot".

Utilizing basic statutory construction it must be assumed, and the City Council is charged with such, that the Council knew its own ordinances on the books at the time of passage of Table 9-10-3. Its January 26, 2016 passage of Ordinance 1185 (Section 9-10-090, Table 9-10-3) "overtaking" and by inference "modifying" Ordinance 949 of October 5, 2010.

Knowing or at a minimum being charged with such the City Council passed a very **detailed** Table in 9-10-3 with **specific** and *unique application* thus overlaying the less specific Section 9-3-040 general definition

Is the landscaping or to be landscaped realty, including under the instant circumstances the deck on the west side of Lot 102 (Dimond property) abutting the side yard of Lot 40 (Beierschmitt/Hawkins property) a "rear yard" as contemplated by Table 9-10-3?

There being no specific definition of "rear yard" in the Code one must employ common sense and logic and life experience.

The front of the home under construction is directly east and fronts on South Aulani Cove.

While questionnaires and studies or Gallup polls of the general population are not at issue or present in the instant matter one might if they could employ and conduct such I think be quite interested in the results.

Common sense and life experience⁸ would seem to indicate that opposite of front is back or rear and vice versa.

If one entrance of ingress to a building or house is acknowledged as the front the opposite exit or egress would logically point to it being the back or rear.

Operative-Determinative Facts

1. The deck presently constructed on Lot 102 encroaches approximately 8 inches if a 12 foot setback is utilized.
2. The deck presently constructed on Lot 102 encroaches approximately 8 feet, 8 inches if a 20 foot setback is utilized.
3. Lot 102 is a corner lot that on its west side abuts the side yard of Lot 40 on its east side.
4. Lot 102 has a "rear yard" on its west side.

Applying the mandates and direction of the referenced city code sections, state statutes and relevant court cases, as applicable:

The appropriate setback on the west side of Lot 102 where it abuts Lot 40 is 20 feet and should have been so determined by the Zoning Administrator.

⁸ While arguably belatedly the Hearing Officer at this juncture needs to make personal disclosure, although such did not present itself until one was deep into the middle of drafting the present decision and does not rise in his mind to a level of bias as would necessitate recusal. I grew up as a boy in Maywood, New Jersey. My family lived on a corner lot. No deck but a patio. My family lived there 25+ years. I went to law school at Creighton University in Nebraska. My first purchased home in Mullen, Nebraska was on a corner lot. No deck or patio. I lived there 10+ years. I presently live in Layton, Utah in a home purchased approximately 35 years ago. It is located on a corner lot. It has a deck. While specifically not familiar with the definition of "corner lot" or "Lot, corner" utilized, if any, in the respective mentioned cities' planning and zoning regulations I can say that in all my interactions with family, friends and even strangers in regards to these three homes any and all references to the yard or property directly opposite of the front door was to the "back door" or "back yard" or "back patio" or "back deck". (N.B.: Yes, 25 + 10 + 35 = 70).

REMCOT PLAT AMENDMENT
APPL-427-2018

Based on the discussion set forth immediately above analyzing that the setback for a corner lot with a rear yard abutting the side yard of another lot should have a 20 foot setback it is clear that there are "issues" with the December 13, 2018 plat amendment approved by the Planning Commission.

Appellants December 27, 2018 appeal was timely made.

The appropriate remedy would seem to be a further plat amendment comporting with the actual mandated 20 foot setback rather than the erroneous, but good faith advanced 12 foot setback.

Operative-Determinative Facts

1. The proposed plat amendment presented to the Planning Commission on December 13, 2018 was prepared in *good faith based on the then understood setbacks* for a "Lot, corner" as advanced by the Zoning Administrator.
2. The Planning Commission's approval on December 13, 2018 was done in *good faith based on the then understood setbacks* for a "Lot, corner" as advanced by the Zoning Administrator.

Applying the mandates and direction of the referenced city code sections, state statutes and relevant court cases, as applicable:

The most efficient, expedient and appropriate remedy should be to "affirm" the Planning Commission's actions of December 13, 2018 based on "good faith" of all pertinent participants. And permit a further plat amendment to be filed with and acted upon by the Planning Commission to be done within a reasonable period of time and if not so accomplished then the Planning Commission on its own initiative to accomplish the same so as to indicate a 20 foot setback rather than the erroneous 12 foot setback presently of record.

BASED ON THE ABOVE AND FOREGOING FINDINGS OF FACT and analysis the Presiding Officer enters the following:

CONCLUSIONS OF LAW

TERRA KOA, LLC/DIMOND ADMINISTRATIVE APPEAL
APPL-411-2018

1.a. Draper City's Zoning Administrator's November 16, 2018 determination that appeal application APPL-365-2018 was not timely filed and covered subject matter not appealable must be accorded an initial presumption of "correctness".

b. Appellants have partially succeeded to rebut such presumption of correctness.

c. The Appeals and Variance Hearing Officer has all the powers of the officer [or body] (Zoning Administrator) from whom an appeal is taken. (Section 9-5-180.D.5, DCC).

d. Lot 102 is a corner lot with a rear yard abutting the side yard of another lot, namely Lot 40, contemplated by Table 9-10-3 and accordingly should have a 20 foot setback on its west side.

e. That part of the deck presently constructed on the west side of the home being constructed on Lot 102 should either be removed or modified so as to not encroach within the 20 foot setback and be in compliance with Section 9-27-140.F.

2. Draper City's Zoning Administrator's November 16, 2018 determination that appeal application APPL-365-2018 was not timely filed and covered subject matter not appealable should be reversed in part, modified and remanded to the Zoning Administrator for further action(s) in accordance with the present determination and decision.

REMCO PLAT AMENDMENT
APPL-427-2018

1.a. Draper City's Planning Commission's December 13, 2018 decision approving a plat amendment for the "Remco Subdivision Amended" development in an RA2 (Residential Agricultural) zone must be accorded an initial presumption of correctness.

b. Appellants have failed to sufficiently rebut such presumption of correctness.

2. Draper City's Planning Commission's December 13, 2018 decision approving a plat amendment for the "Remco Subdivision Amended" development in an RA2 (Residential Agricultural) zone should be affirmed in its totality. (Section 9-5-180.D.4, DCC).

AND BASED ON THE ABOVE AND FOREGOING CONCLUSIONS OF LAW
the Appeals and Variance Hearing Officer Hearing Officer enters the following:

ORDER

WHEREFORE, IT IS ORDERED that:

TERRA KOA, LLC/DIMOND ADMINISTRATIVE APPEAL
APPL-411-2018

Draper City's Zoning Administrator's November 16, 2018 determination is **reversed**
as follows:

1. Appellants appeal was timely filed.
2. Appellants appeal and request for relief was in regards to an appealable issue(s).

Draper City's Zoning Administrator's November 16, 2018 determination is **modified**
as follows:

3. Lot 102 being a Corner lot with a rear yard abutting the side yard of another lot (Lot 40) requires a 20 foot setback on its west side.

with the instant matter **remanded** back to the Zoning Administrator for further action
consistent with the present decision and to specifically:

4. Oversee in conjunction with the Building Official either the removal or modification of that part of the deck presently constructed on the west side of the home being constructed on Lot 102 so as to not encroach within the determined 20 foot setback and to be in compliance with Section 9-27-140.F.
5. Facilitate a face to face meeting of all pertinent parties⁹ within 15 days of the present order as to formulate a mutually agreeable plan of procedure in regards to the referenced deck's removal or modification and to reduce such to writing and file a copy of the same with Appeals and Variance Hearing Officer.

⁹ SEE footnote 7, supra also.

REMCO PLAT AMENDMENT
APPL-427-2018

Draper City's Planning Commission's December 13, 2018 decision approving a plat amendment for the "Remco Subdivision Amended" development in an RA2 (Residential Agricultural) zone is **affirmed in its totality**. (Section 9-5-180.D.4, DCC).¹⁰

DATED and ENTERED this 9th day of May, 2019.

DRAPER CITY, UTAH
BY:

/s/ Mark E. Kleinfeld (Electronic signature)
MARK E. KLEINFELD,
HEARING OFFICER
2450 East 3700 North
Layton, Utah 84040
Telephone: (801) 755-5532
mkmekvan93@gmail.com

JUDICIAL REVIEW

As an "Administrative Hearing" judicial review of this Order may be obtained by filing a petition for plenary relief therefrom consistent with Draper City Code Section 9-4-050.H within thirty (30) days of the date of this Order with a court of competent jurisdiction.

¹⁰ In light of the Appeals and Variance Hearing Officer's decision in the Terra Koa, LLC/Dimond appeal, while not ordered, it is recommended that the Planning Commission re-review the December 13, 2018 Plat Amendment and take such actions it deems appropriate in light of Terra Koa, LLC/Dimond.

CERTIFICATE OF MAILING

I hereby certify that on the 9th day of May, 2019 a true and correct copy of the above and foregoing ***ORDER ON HEARING (Administrative Appeal Hearing)*** was sent first class mail, postage prepaid to the following:

Jennifer Jastremsky
Zoning Administrator
Draper City
1020 East Pioneer Road
Draper, Utah 84020

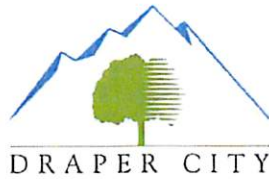
and courtesy copies sent first class mail, postage prepaid to the following:

Vincent C. Rampton
Attorney At Law
Jones Waldo
170 South Main Street
Suite 1500
Salt Lake City, Utah 84101

Mike Barker
City Attorney
Draper City
1020 East Pioneer Road
Draper, Utah 84020

Brian Barnhill
Attorney At Law
Barnhill & Osborne
11576 South State Street
Suite 204
Draper, Utah 84020

/s/ Mark E. Kleinfeld (Electronic signature)



Development Review Committee

1020 East Pioneer Road
Draper, UT 84020
May 29, 2019

To: Draper City Planning Commission
Business Date: June 13, 2019

From: Development Review Committee

Prepared By: Jennifer Jastremsky, AICP, Senior Planner/Zoning Administrator
Planning Division
Community Development Department
801-576-6328, jennifer.jastremsky@draper.ut.us

Re: City Initiated Corner Lot Setbacks – Text Amendment Request

Application No.: TEXTMAP-668-2019
Applicant: Draper City
Project Location: City Wide
Current Zoning: City Wide
Acreage: City Wide
Request: Request for approval of a text amendment to Draper City Municipal Code Section 9-3-040 and Tables 9-9-2 and 9-10-3.

BACKGROUND AND SUMMARY

This application is a request for approval of a text amendment to Draper City Municipal Code (DCMC) Section 9-3-040 definitions and Tables 9-9-2 and 9-10-3 development standards in order to modify the building setbacks on corner lots and modify the corner lot definition in the code.

The city recently had an appeal filed that, among other things, questioned how setbacks for corner lots are calculated. The city has long interpreted that per the definition found in DCMC Section 9-3-040, a corner lot does not contain a rear yard, but has two front yards and two side yards. The definition is as follows:

LOT, CORNER: A lot or parcel abutting two (2) intersecting or intercepting streets where the interior angle of intersection or interception does not exceed one hundred thirty five degrees (135°). Corner lots shall have two (2) front yards and two (2) side yards.

The code further includes a provision in DCMC Table 9-10-3, residential development standards, that corner lots with rear yards that abut the side yard of another lot has a 20-foot rear yard setback. This standard can also be found in DCMC Table 9-9-2, agricultural development standards.

The Appeals and Variance Hearing Officer's decision found that the definition of a corner lot was general and the standards found in DCMC Table 9-10-3 is a specific criterion. He found that the specific criteria supersedes the general criteria as the table was adopted after the definition. This means, corner lots do have a rear yard and have to comply with the standard as found in DCMC Table 9-10-3.



This text amendment seeks to correct the conflict in the code and clarify minimum required setbacks for corner lots.

ANALYSIS

Text Amendment. The proposed text amendment will do two things. One, it will modify the corner lot definition in DCMC Section 9-3-040, as listed below. The modified definition of lot, corner will change the yard standards from two front and two side yards to two front and two rear yards, in conformance with the appeal decision.

LOT, CORNER: A lot or parcel abutting two (2) intersecting or intercepting streets where the interior angle of intersection or interception does not exceed one hundred thirty five degrees (135°). Corner lots shall have two (2) front yards and two (2) ~~side-rear~~ yards.

The second item the proposed text amendment will do is amend DCMC Tables 9-9-2 and 9-10-3. The agricultural and residential development standards, respectfully. The change will clarify the setback for main buildings on corner lots for front, rear, and side yard setbacks. It will also eliminate the criteria for corner lots with rear yards that abut the side yard of another lot. An example of what the proposed development standard tables look like is below. To see the full tables please refer to Exhibit B of this report for the legislative draft.

Setback standards - rear yard ³ :								
Main buildings on interior lots ⁴	20'	20'	20'	20'	20'	20'	n/a ⁵	n/a ⁵
Main buildings on corner lots ⁴	12'	12'	12'	10'	8'	8'	n/a ⁵	n/a ⁵
~~Adjacent to existing or proposed minor collector street right of way as shown on the most recently amended version of the city's official street map, except those in section 9-27-140 of this title~~	~~30'~~	~~30'~~	~~30'~~	~~30'~~	~~25'~~	~~25'~~	~~n/a⁵~~	~~n/a⁵~~
~~Corner lots with rear yards that abut the side yard of another lot~~	~~20'~~	~~20'~~	~~20'~~	~~20'~~	~~20'~~	~~20'~~	~~n/a⁵~~	~~n/a⁵~~

Criteria For Approval. The criteria for review and potential approval of a text amendment request is found in Sections 9-5-060(e)(2) of the Draper City Municipal Code. This section depicts the standard of review for such requests as:

2. Text Amendments:

- a. Whether the proposed amendment is consistent with goals, objectives and policies of the city's general plan;
- b. Whether a proposed amendment furthers the specific purpose statements of the zoning ordinance;
- c. Whether the proposed amendment is appropriate given the context of the request and there is sufficient justification for a modification to the zoning ordinance;
- d. The proposed amendment will not create a conflict with any other section or part of this title or the general plan;
- e. Whether the potential effects of the proposed amendment have been evaluated and determined not to be detrimental to public health, safety, or welfare and represents an overall community benefit; and
- f. The extent to which a proposed text amendment implements best current, professional practices of urban planning, design, and engineering practices

REVIEWS

Planning Division Review. The Draper City Planning Division has completed their review of the text amendment submission. Comments from this division, if any, can be found in Exhibit A.

Legal Division Review. The Draper City Attorney has completed his review of the text amendment submission. The request complies with federal and state laws and Draper City ordinances. Comments from this division, if any, can be found in Exhibit A.

Noticing. Notice has been properly issued in the manner outlined in the City and State Codes.

STAFF RECOMMENDATION

Staff recommends the Planning Commission review the request, receive public comment, and make a decision based on the findings listed below and the criteria for approval listed within the staff report.

The findings for approval as are follows:

1. The proposed amendment is consistent with goals, objectives and policies of the city's general plan.
2. The proposed amendment furthers the specific purpose statements of the zoning ordinance.
3. The proposed amendment is appropriate given the context of the request and there is sufficient justification for a modification to the zoning ordinance.
4. The proposed amendment will not create a conflict with any other section or part of this title or the general plan.
5. The proposed text amendment implements best current, professional practices of urban planning, design, and engineering practices.

The findings for denial as are follows:

1. The proposed amendment is not consistent with goals, objectives and policies of the city's general plan.
2. The proposed amendment does not further the specific purpose statements of the zoning ordinance.

3. The proposed amendment is not appropriate given the context of the request and there is sufficient justification for a modification to the zoning ordinance.
4. The proposed amendment will create a conflict with any other section or part of this title or the general plan.
5. The proposed text amendment does not implement best current, professional practices of urban planning, design, and engineering practices.

MODEL MOTIONS

Sample Motion for Positive Recommendation – I move that we forward a positive recommendation to the City Council for the City Initiated Corner Lot Setbacks Text Amendment, as requested by Draper City, amending DCMC Section 9-3-040 definitions and Tables 9-9-2 and 9-10-3 development standards, application TEXTMAP-668-2019, based on the findings listed in the Staff Report dated May 29, 2019.

Sample Motion for Modified Positive Recommendation– I move that we forward a positive recommendation to the City Council for City Initiated Corner Lot Setbacks Text Amendment, as requested by Draper City, amending DCMC Section 9-3-040 definitions and Tables 9-9-2 and 9-10-3 development standards, application TEXTMAP-668-2019, based on the findings listed in the Staff Report dated May 29, 2019 and as modified by the findings and conditions below:

1. List any additional findings and conditions...

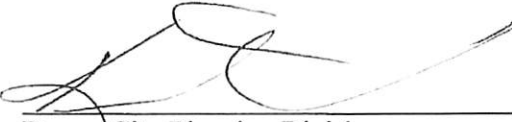
Sample Motion for Negative Recommendation – I move that we forward a negative recommendation to the City Council for the City Initiated Corner Lot Setbacks Text Amendment, as requested by Draper City, amending DCMC Section 9-3-040 definitions and Tables 9-9-2 and 9-10-3 development standards, application TEXTMAP-668-2019, based on the findings listed in the Staff Report dated May 29, 2019.

DEVELOPMENT REVIEW COMMITTEE ACKNOWLEDGEMENT

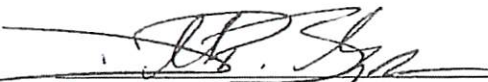
We, the undersigned, as duly appointed members of the Draper City Development Review Committee, do acknowledge that the application which provides the subject for this staff report has been reviewed by the Committee and has been found to be appropriate for review by the Draper City Planning Commission and/or City Council.



Draper City Public Works Department



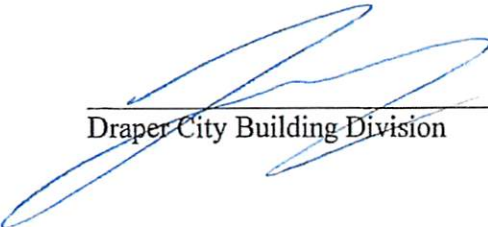
Draper City Planning Division



Draper City Fire Department



Draper City Legal Counsel



Draper City Building Division



EXHIBIT A
DEPARTMENT REVIEWS

REVIEWS ARE NOT MEANT TO BE AN ALL INCLUSIVE LIST OF POSSIBLE COMMENTS OR CONDITIONS.

Planning Division Review.

1. The Appeals and Variance Hearing Officers decision overturns the City's interpretation of corner lot setbacks. This interpretation has been in place for decades and the decision could create hundreds of nonconforming lots within the city.

Legal Division Review.

1. The request complies with federal and state laws and Draper City ordinances.

EXHIBIT B
LEGISLATIVE DRAFT

9-3-040: DEFINITIONS:

As used in this title, the words and phrases defined in this section shall have the following meanings unless the context clearly indicates a contrary meaning:

BUILDING LINE, REAR: A line parallel to the rear lot line and at a distance therefrom equal to the required depth of the rear yard and extending across the entire width of the lot or parcel.

LOT, CORNER: A lot or parcel abutting two (2) intersecting or intercepting streets where the interior angle of intersection or interception does not exceed one hundred thirty five degrees (135°). Corner lots shall have two (2) front yards and two (2) ~~side~~-rear yards.

LOT LINE, REAR: The lot line generally opposite and most distant from the front lot line, except in the case of a triangular or gore shaped lot, a "constructive" line ten feet (10') in length within the lot or parcel, parallel to the front lot line which intercepts the side lot lines at points most distant from the front lot line.

LOT WIDTH: For interior lots or parcels, the shorter of horizontal distance between side lot lines, measured at the required front yard setback line or rear setback line. For corner lots, or parcels, the distance between one of the front lot lines and the opposite side yard line at the required setback line.

YARD, REAR: A space extending across the full width of a lot or parcel between the rear building line and rear lot line. The depth of the rear yard is the minimum distance required by this title between the rear lot line and rear building line.

TABLE 9-9-2

Development Standard	Zones	
	A5	A2
Lot standards:		
Minimum lot area, single-family dwelling	5 acres	2 acres
Minimum lot area single-family with accessory dwelling	5 acres	2 acres
Minimum lot area, main buildings other than single-family dwellings	5 acres	2 acres
Maximum lot depth (as a multiple of lot width at widest point)	5 times lot width	5 times lot width
Minimum lot frontage	50 feet	50 feet
Minimum lot width ¹	100 feet	100 feet

Building standards:		
Maximum floor area of all structures at ground level as a percentage of lot area	10 percent	10 percent
Maximum height, main buildings ²	35 feet	35 feet
Maximum height, accessory buildings ^{3,2}	20 feet	20 feet
Setback standards - front yard ^{4,3} :		
All buildings (adjacent to existing or proposed minor collector street ROW as shown on the most recently amended version of the City's official street map, except those in section 9-27-140 of this title)	30 feet - (40 feet)	30 feet - (40 feet)
Main buildings on interior and corner lots ³	30 feet	30 feet
Setback standards - rear yard ^{5,2} :		
Main buildings on interior lots (adjacent to existing or proposed minor collector street ROW as shown on the most recently amended version of the City's official street map, except those in section 9-27-140 of this title)	20 feet (30 feet)	20 feet (30 feet)
Main buildings on corner lots ³	12 feet	12 feet
Accessory buildings of 120 square feet or less	No requirement	No requirement
Accessory buildings greater than 120 square feet	20 feet ^{6,4}	20 feet
Barns and stables	See section 9-27-050 of this title	See section 9-27-050 of this title
Swimming pools	See section 9-27-180 of this title	See section 9-27-180 of this title
Setback standards - side yard ^{7,3} :		
Main buildings on interior and corner lots ^{3,8,4}	12 feet	12 feet
Main buildings on corner lots with yards that about the side yard of another lot	20 feet -	20 feet -
Accessory buildings of 120 square feet or less	No requirement	No requirement
Accessory buildings greater than 120 square feet	20 feet ^{9,5}	20 feet
Barns and stables	See section 9-27-050 of this title	See section 9-27-050 of this title
Swimming pools	See section 9-27-180 of this title	See section 9-27-180 of this title

Notes:

1. Corner lots should be platted 10 feet wider than interior lots of subdivisions to accommodate 2 front yards in accordance with section [17-5-020](#) of this code.
2. Also see height provisions of section 9-27-120 of this title and section 9-9-070 of this chapter.
- ~~3. See note 2 of this table.~~
- ~~4.3.~~ Except as modified in section 9-27-140, "Lots And Yards", of this title.
- ~~5. See note 4 of this table.~~
- ~~6.4.~~ Must meet drainage and fire regulations.
- ~~7. Except as provided in section 9-27-140, "Lots And Yards", of this title.~~
- ~~8. See note 6 of this table.~~
- ~~9.5.~~ Must meet drainage and fire regulations.

TABLE 9-10-3
DEVELOPMENT STANDARDS IN RESIDENTIAL ZONES

Development Standard	Zones							
	RA1	RA2	RH	R3	R4	R5	RM1	RM2
Lot standards ¹ :								
Minimum area, single-family dwelling	40,000 s.f.	20,000 s.f.	40,000 s.f.	13,000 s.f.	10,000 s.f.	8,000 s.f.	6,000 s.f.	4,000 s.f.
Minimum lot area, single dwelling unit with accessory dwelling unit	40,000 s.f.	20,000 s.f.	40,000 s.f.	13,000 s.f.	n/a	n/a	12,000 s.f.	
Minimum area, two-family dwelling	40,000 s.f.	20,000 s.f.	40,000 s.f.	13,000 s.f.	NP	NP	10,000 s.f.	8,000 s.f.
Minimum project area, multiple-family dwelling	NP	NP	NP	NP	NP	NP	1 acre	1 acre
Minimum area, townhouse dwelling	NP	NP	NP	NP	NP	NP	1,000 s.f.	1,000 s.f.
Minimum area, other main buildings	40,000 s.f.	20,000 s.f.	40,000 s.f.	13,000 s.f.	10,000 s.f.	8,000 s.f.	n/a	n/a
Maximum lot depth (as a multiple of lot width at widest point)	4.0 to 1	3.0 to 1	4.0 to 1	2.0 to 1	2.0 to 1	2.0 to 1	5.0 to 1	5.0 to 1

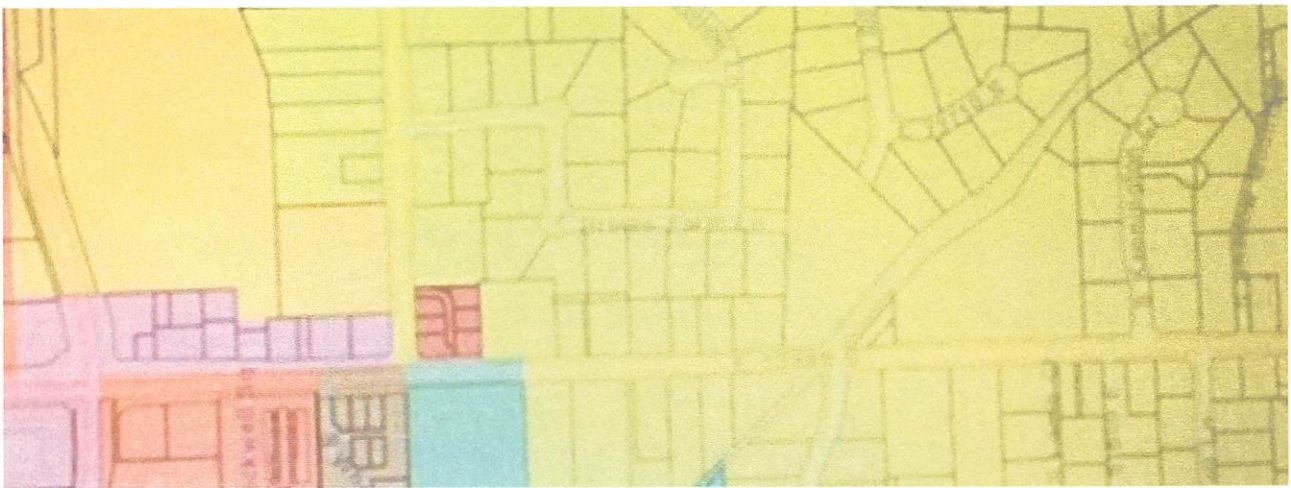
Minimum lot frontage	50'	50'	50'	50'	50'	50'	n/a	n/a
Minimum lot width ²	100'	90'	100'	80'	80'	70'	n/a	n/a
Building standards:								
Maximum dwelling unit density per acre	1 du/acre	2 du/acre	1 du/acre	3 du/acre	4 du/acre	5 du/acre	8 du/acre	12 du/acre
Maximum square footage of floor area at ground level (including garages) as a percentage of lot area	40%	40%	40%	40%	40%	40%	n/a	n/a
Maximum height, main building	35'	35'	35'	35'	35'	35'	35'	35'
Maximum height, accessory buildings	See subsection 9-27-120C of this title							
Setback standards - front yard ³ :								
Main buildings on interior and corner lots ⁴	30'	30'	30'	25'	25'	25'	n/a ⁵	n/a ⁵
~~Adjacent to existing or proposed minor collector street right-of-way as shown on the most recently amended version of the city's official street map, except those in section 9-27-140 of this title~~	~~40'~~	~~40'~~	~~40'~~	~~35'~~	~~30'~~	~~30'~~	~~n/a⁵~~	~~n/a⁵~~
Accessory buildings	See subsection 9-10-040A of this chapter							
Swimming pools	See section 9-27-180 of this title							
Setback standards - rear yard ³ :								
Main buildings on interior lots ⁴	20'	20'	20'	20'	20'	20'	n/a ⁵	n/a ⁵

Main buildings on corner lots ¹	12'	12'	12'	12'	10'	8'	8'	n/a ⁵
Adjacent to existing or proposed minor collector street right-of-way as shown on the most recently amended version of the city's official street map, except those in section 9-27-140 of this title-	30'	30'	30'	30'	25'	25'	25'	n/a ⁵
Corner lots with rear yards that abut the side yard of another lot-	20'	20'	20'	20'	20'	20'	20'	n/a ⁵
Accessory buildings	See subsection 9-10-040A of this chapter							
Barns and stables	See section 9-27-050 of this title							
Swimming pools	See section 9-27-180 of this title							
Setback standards - side yard ³ :								
Main buildings on interior and corner lots ⁴	12'	12'	12'	10'	8'	8'	n/a ⁵	n/a ⁵
Accessory buildings	See subsection 9-10-040A of this chapter							
Barns and stables	See section 9-27-050 of this title							
Swimming pools	See section 9-27-180 of this title							
Accessory buildings	See subsection 9-10-040A of this chapter							
Barns and stables	See section 9-27-050 of this title							
Swimming pools	See section 9-27-180 of this title							
Accessory buildings	See subsection 9-10-040A of this chapter							
Barns and stables	See section 9-27-050 of this title							
Swimming pools	See section 9-27-180 of this title							

Notes:

1. Minimum required lot area on private right of way or access easement shall be net area, excluding any area of the lot located within a private right of way or access easement.
2. Corner lots should be platted 10 feet wider than interior lots of subdivisions to accommodate 2 front yards in accordance with section 17-5-020 of this code.
3. Except as modified by the provisions of section 9-27-140, "Lots And Yards", of this title.
4. Except as modified by the provisions of subsection 9-27-140G, "Setback Measurement", of this title.
5. Setbacks between building units (i.e., fourplex, sixplex, etc.) as well as setbacks for all buildings (clubhouses, building units, etc.) from project boundaries shall be determined at site plan approval.

NE Corner of 300 East & 13800 South



Residential Low-Medium Density

Corner (6 lots): Residential Medium-High Density