



PROVO MUNICIPAL COUNCIL

Redevelopment Agency of Provo

Regular Meeting Minutes

5:30 PM, Tuesday, July 23, 2019

Room 200, Municipal Council Chambers
351 W. Center Street, Provo, UT 84601

Opening Ceremony

Roll Call

THE FOLLOWING MEMBERS OF THE COUNCIL AND ADMINISTRATION WERE PRESENT:

Councilor David Harding	Councilor David Knecht
Councilor David Sewell	Councilor Gary Winterton
Councilor George Handley	Councilor George Stewart (arrived at 6:41 p.m.)
Councilor Vernon K. Van Buren	Mayor Michelle Kaufusi
Assistant City Attorney Gary Millward	Council Attorney Brian Jones
Chief Administrative Officer Wayne Parker	Council Executive Director Cliff Strachan

Conducting: Council Chair David Harding

Prayer – Caleb Dewey, Provo City Youth Council

Pledge of Allegiance – David Rogers, Council Intern

Approval of Minutes – The following minutes were approved by unanimous consent:

- April 9, 2019 Council Meeting Minutes
- June 4, 2019 Council Meeting Minutes
- June 18, 2019 Council Meeting Minutes

Youth City Council – Chair Harding welcomed members of the Youth City Council in attendance that night. He thanked them for being engaged in the community.

Public Comment ([0:04:58](#))

Kaye Nelson, Provo, said several neighbors researched, and met with zoning and planning city officials, to discuss the proposed Terra Development. More than 1,900 people had signed the first petition against the Terra Development. The neighborhood was proactive for responsible, sustainable development. They were willing to work with the city to see that development was zoned properly and that the foothills of Provo would be protected.

Tamela Blake, Provo, asked the council to protect green space. High and medium density needed incentives to build in areas where infrastructure was in place. Why destroy the beauty of the mountains.

Kissy Watkins, Provo, reviewed several goals in the general plan that applied to the neighborhoods request to deny the Terra Development. The goals included encouraging maximum buildout in areas south of the university and business districts, preservation of open space, ensure adequate enforcement of zoning regulations, R1.10 zone for the northeast area, and preservation of Provo's beauty for our time and future generations.

Action Agenda

1. Resolution 2019-41 consenting to the appointment of individuals to the Transportation and Mobility Advisory Committee. (19-003) ([0:12:10](#))

Motion: An implied motion to approve Resolution 2019-41, as currently constituted, has been made by council rule.

Mayor Kaufusi presented a resolution, for the council's consent, appointing James Hamula and Stephen Mongie to the Transportation and Mobility Advisory Committee (TMAC).

Chair Harding invited public comment. There was no response.

Chair Harding called for a vote on the implied motion.

Vote: The motion was approved 6-0 with Councilors Handley, Harding, Knecht, Sewell, Van Buren and Winterton in favor. Councilor Stewart was excused.

2. An ordinance to adopt Provo City Code regarding design standards in various Higher Density Residential and Campus Mixed Use zones. City-wide impact. (PLOTA20190025) ([0:15:43](#))

Motion: An implied motion to adopt the ordinance, as currently constituted, has been made by council rule.

Bill Peperone, Community Development Assistant Director, presented. The proposed ordinance would tighten up loopholes in the existing ordinance. He said zoning ordinances had been good at telling developers what the city did not want to happen. These changes would make it easier for the developers to understand what the city wanted to happen.

He had met with developer David Cabanilla who expressed concerns about the door requirements on the street. His door requirement concerns had been addressed in the proposed amendment. Mr. Peperone explained that the buildings referred to, with doors on the street, was not the only door to the unit, in fact it was usually the back door. Another concern expressed by Mr. Cabanilla, regarding location of parking, was not found in the amendment. Mr. Peperone stated that parking amendments to the code would be discussed in the coming weeks. He would be willing to meet with council members and other developers, if needed, to address their questions concerning the amendments.

Mr. Peperone said the planning commission would be given more discretion and flexibility to determine how people met the requirements. Some of the substantive changes included adding a table in the text referring to how many, and how frequently, the doors needed to be built on the street. It was substantially more for commercial than for residential development. The habitable floor area was now a requirement in the HDR and CMU zones. The section for building materials was bolstered to prevent developers from changing building materials after the design had been approved.

Chair Harding expressed appreciation for Mr. Peperone's willingness to meet with Mr. Cabanilla and other developers in the community. This was a solid step towards form-based code.

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

Per council rule, Mr. Knecht requested that this item be continued until the August 6, 2019 council meeting.

Mr. Handley stated that he would be out of town on that date but wanted to express support for the proposed amendment.

Chair Harding explained that council rules allowed land use items to be heard twice in order to give the community a greater awareness. Many items were so routine and non-controversial they could be passed on the first hearing. He felt this item, though he supported it, was important enough to allow developers time to review and make comments.

In response to a question from Mr. Winterton, Mr. Peperone stated that Mr. Cabanilla's safety concerns had been addressed in the amendment. Mr. Winterton could contact him to discuss concerns he had with the amendments in other areas.

3. An ordinance amending Provo City Code Chapter 9.80 to update language and amend procedures regarding permit parking areas. (19-002) ([0:24:42](#))

This item was continued during work meeting earlier in the day. The proposal would be sent back to a council committee for further work.

4. Resolution 2019-42 authorizing the Mayor to sign a water carriage agreement with Central Utah Water and the US Department of the Interior. (19-083) ([0:26:00](#))

Motion: An implied motion to approve Resolution 2019-42, as currently constituted, has been made by council rule.

Gary Calder, Division Director of Water Resources, presented. He explained that a water carriage agreement allowed Provo City to utilize pipes from other entities to carry water from the Provo River and Deer Creek to Provo. The agreement with Utah Power & Light (UP&L) expired in 2015 when they sold the Olmstead power rights (at the mouth of Provo Canyon) to Central Utah Water (CUW). The proposed 40-year carriage agreement with CUW and the U.S. Department of the Interior would allow the city to continue the use of this important asset.

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

With no council discussion, Chair Harding called for a vote on the implied motion.

Vote: The motion was approved 6-0 with Councilors Handley, Harding, Knecht, Sewell, Van Buren and Winterton in favor. Councilor Stewart was excused.

Redevelopment Agency of Provo

Chair Harding recessed as the Municipal Council and reconvened as the Redevelopment Agency by unanimous consent at 6:01 p.m.

Mr. Walter requested that Item No. 6 be heard before Item No. 5 because Mr. Earl, the Millrace developer, had been delayed in traffic.

6. A resolution approving a lease agreement with Blue Sky Development to allow them to utilize parking spaces for a pending mixed-use project at 105 East Center Street. (19-070) ([0:29:29](#))

Motion: An implied motion to approve a resolution, as currently constituted, has been made by council rule.

David Walter, Redevelopment Agency Director, stated the board had discussed this item in previous meetings. They had expressed concern about the number of parking spaces requested and whether they should be allocated or dedicated. One of the concerns was that the current owner (Marco Vista, located in Rancho Cucamonga, California) had not responded to emails concerning the request.

Mr. Walter said the developer, McKay Christensen, had amended his request for parking in the parking structure. Instead of requesting 57 dedicated spaces, he was asking for 37 dedicated stalls with an additional 20 spaces allocated. If the two restaurants were successful, he could request the remaining 20 stalls be dedicated. The owner of the parking structure was contacted and they did not have any issues with the request. They asked to be named as an additional insured party on the agreement.

Of the 37 dedicated spaces, 12 would be for the executive suites along 100 East and the remaining 25 spaces for the ground floor restaurants. They would be restricted Monday through Thursday from 8:00 a.m. to 10:00 p.m. and on weekends from 8:00 a.m. to midnight. The 25 parking stalls would be available for other use by the public outside those times.

This proposal was in recognition of the fact that Mr. Christensen was putting a significant amount of money into the east end of the commercial development on Center Street. The lease amount was increased to \$10 per space for the first ten years, \$30 per space for the next ten years, and \$50 per space for the remaining ten years. The RDA staff was comfortable with the agreement.

In response to a question from Chair Knecht, Mr. Walter stated there would be 35 to 40 spaces, out of the 204 parking spaces, available for other projects. The RDA agreement with the University Tower Project had been terminated. In theory, the University Tower Project would not need any of the RDA's allocated parking spaces. They had been reaching out to the owners of the Wells Fargo parking structure for access and modification to parking within the structure and to other entities for property transfers. The 80 East project developers were also working with the owner of the parking structure for possible modifications to the facility. These agreements were out of the RDA's purview.

McKay Christensen, the applicant, was invited to comment. He stated that the Blue Sky Development would generate property and retail taxes of around \$75,000 per year. In addition, by increasing the lease agreement, it would add an additional \$6,000 per year for a total of more than \$1 million over ten years. That would amount to \$110 per stall per year. He said that the 63 East project paid \$30 per stall per year. He confirmed that, out of the 37 dedicated stalls, 12 would be dedicated full-time while the remaining 25 would be dedicated during hours of retail operation. The dedicated stalls were important for retail to survive and thrive.

Chair Knecht stated it would be good to have new business come in but other businesses had been there for many years. They also paid sales and retail taxes, which went towards paying for all services, not just parking. Mr. Christensen said he was told the parking facility was built to promote new growth and development. It was difficult to compare new construction with old, established buildings.

In response to a question from Chair Knecht, Mr. Christensen reported that they could not use internal parking in the development for commercial use. Those spaces were for residential tenants and needed to be available 24 hours per day, seven days per week. Each residential tenant would have a designated stall. He stated that the owner of the Wells Fargo parking facility had stalls available to the public.

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

Chair Knecht invited board discussion.

Mr. Winterton expressed appreciation that the number of dedicated parking spaces had been reduced. However, he was still unsettled and needed more time to understand the ramifications of how many parking spaces would be available in the facility. Other developments in the area (University Towers, Los Hermanos, and the space next to La Dolce Vita Ristorante) would have options if parking spaces were still available. In addition, University Towers was requesting tax increment, as well as parking, so the school district and county would need to be part of that agreement.

Mr. Sewell wanted to separate this issue into two questions. First, if Mr. Christensen walked in today and began negotiations with the RDA what would we do about parking? What would the board be willing to offer in return for a project that they all wanted? They might each come to a different conclusion in terms of where the trade-off would be in terms of how much parking we would offer. A separate question needed to be addressed. Mr. Christensen came to the

city several years ago with the proposal, had consistently asked for dedicated spaces, and had provided draft agreements that included dedicated parking. There might have been misinterpretations or misunderstandings during the negotiations but we had clearly allowed it to go forward for several years. He compared this proposal to a similar personal experience with his own company when, after several months of negotiation and expectations, the other company pulled out. It left a sour taste to get that far along and have things fall through. He was concerned about the message that was being sent to developers. He wanted to stand behind our RDA staff and their negotiations. The new proposal seemed like a reasonable compromise.

Mr. Harding confirmed that 25 of the stalls would be dedicated Monday through Thursday from 8 a.m. to 10 p.m. and Friday through Sunday from 8 a.m. to 11 or midnight. Although the stalls would be available for public use outside those hours, he did not see any value in that. There would not be a demand for overnight parking between the hours of 10 p.m. and 8 a.m. Many of the 500 stalls in the facility were not dedicated to anyone and yet, when they had an event at the convention center or downtown, all the stalls were filled. Even when they were not allocated, the public was using them. Dedicated stalls would be taken out of public use and that was not the proper use of them. There was no guarantee that their patrons would use parking stalls dedicated for the restaurants. Most people would pull into the first available parking stall or use on street parking. He did not agree with authorizing a long term parking agreement and did not feel comfortable dedicating any stalls.

Mr. Handley was supportive of the proposal. The larger parking questions needed to be addressed with the new parking committee by looking at broader issues downtown. This agreement was not as locked in as the original proposal but gave Mr. McKay the flexibility he needed to attract the restaurants. It was an unusually exciting project in an important area of the city, which met the purpose of the parking stalls. He recognized it was sticky with other business needs but there was flexibility to meet the needs of future opportunities. Mr. Christensen had made a large investment into this project with the expectation of dedicated parking.

He recently took a tour of the facility with a person that had worked downtown for several years. He told Mr. Handley that he had never seen the top floor of the parking facility used, even when there were conventions. It was not fair to the developer if we say no after a reasonable compromise because we have a vague and unsure use of them in the future. The advantages of agreeing to the compromise outweighed the undefined, vague risks. Mr. Handley said he was willing to move forward with the compromise.

Wayne Parker, Provo City CAO, said when they began the process of subsidizing parking structures downtown (four in the last 25 years) our interest was to stimulate development. This was before the Excelsior Hotel was purchased by Marriott, the expansion of NuSkin, construction of the Wells Fargo building, and the Utah Valley Convention Center. At no point did we think that any of our parking stalls would be given to developments. Looking back, we might have defined those parking agreements differently concerning dedicated versus allocated. It was not until we started looking at a strategic parking plan that we looked at how the parking stalls met the needs of the downtown.

He recognized that allocated parking provided much greater flexibility. The administration was supportive of creating the strategic parking committee for future parking needs. The city staff had been supportive of finding a reasonable compromise in this issue with Mr. Christensen and the Blue Sky Development team. He explained that the agreement with 63 East was silent in terms of dedicated parking. When we allocated our parking to them, they went to the owners of the Wells Fargo facility and negotiated dedicated parking stalls for their tenants. If the city were to participate in building a new parking structure, we might state there would be no dedicated parking stalls. All stalls would be available on a first come, first serve basis. Under the circumstances, he was not sure we had the luxury to do that today with Mr. Christensen.

Mr. Walter pointed out that, other than parking spaces, there were no agency or city funds in the form of tax increment, donated land, grant funding, etc., being used for this development. Making the parking spaces available was the only incentive being provided to help this project become successful. Provo City owned the Provo Towne Square land but allowed the owners to lease out the commercial/retail spaces. The Marriot parking structure had a number of stalls available to downtown employees and patrons; however, since Marriot operated and controlled access, many chose not to park in the structure.

Mr. Van Buren expressed concern that if we continue the policies in the past that were not correct (by approving dedicated stalls) we were just continuing a not-so-good policy. We were encouraging the next developer to ask for and expect the same type of agreement. We needed to put our policy in place now and then people would know what to expect in the future. The reason for parking was to encourage redevelopment, which included new restaurants in existing buildings, not just new projects. He was not in favor of dedicating any parking stalls.

Mr. Stewart stated he could not vote for dedicated stalls, no matter how many were dedicated. Dedicated stalls were inefficient and not viable.

Mr. Harding expressed concern for all the restaurants and retail businesses in the downtown. He hoped that by changing the parking paradigm we could facilitate all downtown users. If downtown patrons had good options and a clear understanding of parking availability, we could have a well-functioning downtown parking system. At some point during the negotiations with Blue Sky Development, there was an offer to use some of the RDA parking resources. A high-level discussion became a request for dedicated parking. This was the first time the RDA board had the opportunity to weigh in on dedicated parking. It was not as though the board had approved dedicated parking early on and then changed their minds. The board and RDA staff needed better communication with the understanding that negotiations were based on the board's approval.

Chair Knecht agreed that, in a perfect world, we would have made a different approach concerning parking. He appreciated Mr. Christensen's willingness to compromise and, considering everything that had happened, he would be voting for this proposal. He said that, while future projects might want an unknown number of parking spaces, we were not the only entity they could approach. They could negotiate with the owner of the facility, especially if they wanted alterations to the structure. Even if all of Provo's 204 spaces were allocated or designated, there were still 350 parking spaces left in the structure for use by other businesses. In addition, the city was not the final arbiter, the owner had to agree to this proposal.

Mr. Winterton said that since this was a different agreement he was not ready to vote on the item. He wanted to continue this item for two weeks so he could study, for himself, what the ramifications would be.

Motion: Board Member Winterton made a motion to continue this item for two weeks. The motion was seconded by Board Member Sewell.

Chair Knecht invited discussion on the motion to continue.

In response to a question from Mr. Handley, Mr. Winterton said he wanted to make sure how many parking stalls the RDA would have left if this agreement were approved. He also wanted further discussion on allocated stalls versus dedicated stalls. He wanted a personal assurance that this was the right agreement for the downtown area.

Mr. Stewart said he was ready to vote that night. He would not vote for any agreement that included dedicated stalls, no matter how many times it was continued.

In response to a question from Chair Knecht, Mr. Jones said that, based on the facts as he knew them, there had been no agreements or express promises made that would legally bind the city. He was not aware of any legal ramifications if the board denied the request. If the request were denied, it would be up to the developer to try something else.

Mr. Sewell asked that the item be continued for five weeks instead of two so that Mr. Handley could be present for the vote.

Motion: Board Member Winterton amended his motion to continue this item for five weeks instead of two. The amended motion was seconded by Board Member Sewell.

Mr. Harding welcomed the opportunity to look into this further. He hoped that in the next four or five weeks they could find a more creative solution. He said they were going to change how parking functioned downtown so he was not comfortable locking up these spaces for a long period. It was in everyone's interest that we solve the parking problem to encourage people to come downtown.

Mr. Van Buren asked if the developer would walk away if the parking agreement were denied. Rather than delay the decision for another five weeks, they should vote on the agreement that night so the developer could move forward.

Mr. Harding asked to hear from the applicant again concerning the board's discussion.

Mr. Christensen said they were two weeks away from having his building permits issued. They had spent more than \$700,000 on the designs. He said the planning department required the agreement to be in place before the building permits would be approved. He said this was an issue over allocated versus dedicated. He already had a letter from the administration stating that the parking stalls had been allocated. He felt that would satisfy the requirement but

allocated stalls did nothing for his development. He said the developers did not dictate the rules, the tenants did. That was what he was dealing with on the Blue Sky property. He noted they were not requesting RDA funds, land, or any other help from the city other than the parking needed to attract restaurants and the remainder of the development. About three years ago, he worked with many of the board members on parking and minimum unit sizes for a previous development. It took a year and one-half to get the parking changed. The outcome was an increase in his costs from \$16 million to \$24 million. This project was started in 2014. Now, in 2019, on the eve of pulling his permits, there was an issue over allocated versus dedicated parking stalls that had not been brought up before. He had tried to come back to the board with a compromise. He would be willing to take any amount of time for board members to get where he needed them but it was pushing his building permits back and interest rates were changing.

After further consideration, Mr. Winterton withdrew his motion to continue.

Mr. Jones clarified that the implied motion would not apply for this item because the agreement had been changed. A motion amending the language in the agreement exhibit would need to be made first.

Motion: Board Member Handley made a motion to amend the language in the agreement exhibit to match what the developer was requesting. The motion was seconded by Board Member Sewell.

Mr. Handley reviewed the following negotiated amendments to the agreement:

- Provide 37 dedicated parking stalls, 12 of which would be dedicated 24/7 and 25 dedicated between 8 a.m. and 10 p.m.:
- The remaining 20 parking stalls would be allocated:
- The lease payments would be increased:
- Terms of the agreement would be in three different tiers, rather than a sliding scale: and
- Review clauses would be included for Provo City and Mr. Christensen.

Vote: The motion was approved 6-1 with Board Members Handley, Harding, Knecht, Sewell, Van Buren, and Winterton in favor. Board Member Stewart was opposed.

Chair Knecht called for a vote on the implied motion that included the amended exhibit.

Vote: The motion failed 3-4 with Board Members Handley, Knecht, and Sewell in favor and Board Members Harding, Stewart, Van Buren, and Winterton opposed.

5. Resolution 2019-RDA-07-23-1 authorizing the Chief Executive Officer to enter into an Owner Participation Agreement with Mill Race Development, LLC to transfer Agency-owned property for a project located between 500 S and 600 S and 100 W and University Ave. (19-084) ([1:51:28](#))

Motion: An implied motion to approve Resolution 2019-RDA-07-23-1, as currently constituted, has been made by council rule.

David Walter, Redevelopment Agency Director, presented. The proposed item was the next step in the development of the Mill Race project. The RDA would transfer ownership of a quarter block of property to the developer to allow development of the entire block. Tax increment would also be included in the agreement. The project would provide parking and a pedestrian bridge over 600 South and the railroad tracks for access to the UTA FrontRunner station.

Mr. Parker stated that the participation agreement included language that conditioned a portion of the tax increment on some success of providing owner-occupied units.

Mr. Walter said the developer anticipated having a homeowners association for the residential property.

Justin Earl, project developer, said that one property owners association would govern both the residential and commercial properties. They were comfortable with a reasonable ratio of owner occupied condominiums. He referenced an article from Condominium Law, which stated that it was appropriate to place restrictions on rentership versus ownership but cautioned about making the threshold too high. In an economic downturn, condominium values went down. It would hurt the owners if they were unable to make the payments but could not rent out the units. In addition, they should avoid adversely affecting estate planning, where elderly people transferred titles to younger children, but still lived in the condominium and was considered a renter. The following strategies were recommended:

- Limit the percentage of units that could be rented,
- Establish a limited lease term,
- Restrict the number of units a single individual owned,
- Require owners to live in the condo for a certain number of years, and
- Follow the FHA recommended ratio of 35 percent owner-occupied and 65 percent rental units.

In response to a comment from Chair Knecht, Mr. Earl stated that FHA ratio guidelines for high cost units were different from affordable housing units.

Mr. Earl said they would follow FHA guidelines, or an acceptable ratio with which both the board and developer were comfortable. He noted that it would be easier to obtain a construction loan if it was a for lease development with a condominium conversion after completion. In order to obtain financing, they would be willing to put a clause in the agreement that stated some of the condominiums would be converted to owner occupied after a specified period.

Chair Knecht said his intent was to have stability with some owner occupied units. He asked the developer to solidify the current FHA guidelines and set their goal above that so it was not on the razors edge.

Chair Knecht invited public comment.

Beth Alligood, Provo, appreciated the developer's research. She said that Provo was turning into a renter's playground for investors. She appreciated the intent to combat that tendency

and make it a positive for the community of Provo. She liked limiting the number of units a person could purchase. She would like to see 50 percent of the units owner-occupied. She understood that hardships came to most people so it was important to provide provisions to deal with those hardships.

There were no more public comments.

With no board discussion, Chair Knecht called for a vote on the implied motion.

Vote: The motion was approved 6-0 with Board Members Handley, Knecht, Sewell, Stewart, Van Buren and Winterton in favor. Board Member Harding was excused.

Adjourn

The meeting was adjourned, by unanimous consent, at 7:45 p.m.