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PROVO MUNICIPAL COUNCIL

Redevelopment Agency of Provo

Regular Meeting Minutes

5:30 PM, Tuesday, May 19, 2020

Room 200, Municipal Council Chambers

Electronic meeting: <https://www.youtube.com/user/provocitycouncil>

Opening Ceremony

Roll Call

THE FOLLOWING MEMBERS OF THE COUNCIL AND ADMINISTRATION WERE PRESENT:

Councilor Shannon Ellsworth	Councilor Bill Fillmore
Councilor George Handley	Councilor David Harding
Councilor Travis Hoban	Councilor David Sewell
Councilor David Shipley	Mayor Michelle Kaufusi
Chief Administrative Officer Wayne Parker	Council Attorney Brian Jones
Council Executive Director Cliff Strachan	

Conducting: Council Chair George Handley

Prayer – Dixon Holmes

Pledge of Allegiance – Hannah Salzl

Public Comment

There were no public comments

Action Agenda

- 1. Resolution 2010-14 appropriating \$33,500 in the General Fund for professional services to create a Fire Services Master Plan applying to the fiscal year ending June 30, 2020. (20-083) ([0:02:24](#))**

Motion: An implied motion to approve Resolution 2020-14, as currently constituted, has been made by council rule.

Jim Miguel, Provo City Fire Chief, presented. He gave a brief overview of the fire department.

- 88 Full-time Employees
 - 79 Safety Personnel

- 4 Support staff
- Same staffing levels as FY 2000
- Five fire stations
 - Minimum daily staffing of 19 employees.
 - Four have fire suppression resources.
 - All stations have an advanced life support ambulance.
- Calls for service in 2019 totaled 11,757.

Chief Miguel stated that the National Fire Department Response Standards indicate the first unit should arrive within five minutes or less from the time the call was dispatched. All units should arrive within nine minutes. Provo City's goal was to meet those standards more than 90 percent of the time.

Chief Miguel said the last informal study of the fire department was performed in 2000. A formal comprehensive master plan had never been conducted. The master plan would parallel the city's 2050 master plan and would answer the following questions:

- Where should station 1 be rebuilt in order to serve the growing population in downtown?
- Where should station 6 be built to provide services to northwest Provo?
- How do we best serve southwest Provo?
- How do we best serve the expanded Provo Airport? Commercial flights should not land or take off from the airport unless there is on-site fire protection.
- What is the appropriate staffing levels for these stations per the National Fire Protection Association (NFPA)?
- Do we have sufficient staffing to cover multiple calls in the city? A major structure fire would take every resource we had.
- With new construction downtown, especially the proposed 14-story building, our fire suppression equipment needs to be reviewed. It takes a different approach and more staffing to provide fire protection to larger buildings.

The master plan committee included fire department members, city representatives, stakeholders (airport), and community members. The proposal they received from the lowest bidder indicated the master plan would be completed within six months.

Chief Miguel asked the council to approve the appropriation of \$33,500 to hire Emergency Services Consulting International to facilitate the design of the 2050 Fire/EMS Masterplan.

In response to a question from Ms. Ellsworth, Chief Miguel said they wanted to complete the master plan now and evaluate it again if there were major changes in the assumptions when the Provo City Vision 2050 plan was completed. We were already behind the curve in the northwest and at the airport.

Mr. Sewell said a constituent had asked what value there was in paying money to bring in an outside consultant. Chief Miguel said there was a lot they could do in house, but there were

technical projections and national trends that should come from an outside source. Spending this money was worth the data they would receive about how to handle the increased density.

Chair Handley invited public comment.

Gage Eckles, President of the Professional Firefighters of Provo, stated that Provo was understaffed and had the same staffing levels for the past 20 years. He hoped the council would support the firefighters. This would be a benefit for the fire department and the citizens of Provo.

There were no more public comments.

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

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell and Shipley in favor.

2. Ordinance 2020-16 granting Qwest Corporation d/b/a CenturyLink QC a nonexclusive franchise to operate a telecommunications network in Provo City, Utah. (20-091)
[\(0:22:35\)](#)

Motion: An implied motion to adopt Ordinance 2020-16, as currently constituted, has been made by council rule.

Marcus Draper, Assistant City Attorney, presented. A franchise agreement gave companies the right to access city property above and below the public right-of-way. The proposed agreement would replace the old franchise agreement that had expired. CenturyLink was the primary landline provider for Provo City. They already had several telephone poles located in the right-of-way. The agreement stated that the city would be paid three and a half percent of the gross revenues they earned within city limits. Mr. Draper confirmed that this company was not affiliated with Google Fiber.

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

In response to a question from Mr. Fillmore, Mr. Draper said we have not had any issues with CenturyLink. He noted that CenturyLink was the parent company of Qwest, formerly U.S. West Communications, and Mountain Bell. They were a successor in interest for a franchise agreement that had been in effect for about 100 years.

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

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell and Shipley in favor.

3. Resolution 2020-15 approving the 2020-2024 Consolidated Plan and funding recommendations to the first-year action plan. (20-080) (0:36:34)

Motion: An implied motion to approve Resolution 2020-15, as currently constituted, has been made by council rule.

Dan Gonzalez, Management Analyst, presented. Every five years Provo City was required to submit a five-year strategic plan in order to receive funding for Community Development Block Grants (CDBG) and HOME Investment Partnership (HOME) projects. Provo received a CDBG entitlement while the HOME funding was shared with other entities in Utah County through the Utah Valley HOME consortium. This was the second public hearing required by the Department of Housing and Urban Development (HUD).

For the year 2020, Provo City would receive \$1,268,127 in CDBG funding. Add to that \$568,882 in Program Income and an additional \$154,502 from finished projects for a total CDBG allocation of \$2,019,511. HOME funding included an allocation of \$1,409,127 with an additional \$925,976 in Program Income and \$75,150 from finished projects for a total of \$2,410,253. Copies of the funding allocations were included in the council packets and available online at www.agendas.provo.org.

For the past couple of years, Provo City had been participating in a CDBG regional collaborative effort for public service capital projects. This year they were recommending two projects.

- \$200,111 for United Way – Rehabilitation of the Community Services Building on Freedom Blvd.
 - Utah County - \$61,326
 - Orem - \$43,867
 - Provo - \$94,918
- \$250,557 for Wasatch Mental Health – Receiving Center
 - Utah County - \$109,258
 - Orem - \$51,670
 - Provo - \$89,629

In addition to public service capital projects, an additional \$403,497 would be used to fund public service agencies. This was fifteen percent of the total allocation, the maximum amount that could be used for social services.

The Provo City Community & Neighborhood Services Department requested funding for one code enforcement officer. The officer would be doing inspections in CDBG eligible neighborhoods.

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

In response to a question from Mr. Hoban, Mr. Gonzalez confirmed that \$275,000 had been allocated for the Carson townhomes in Provo.

Mr. Harding said we have a good understanding of the recommendations for next year. However, we are also voting to approve a five-year plan for the programs. He asked how the plan compared to the last one. Mr. Gonzalez said there were no major changes. The priorities for public service agencies varied a little. Five years ago, the high priority was for medical services, now the priority was for abuse programs.

Chair Handley called for a vote on the implied motion.

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell and Shipley in favor.

4. **Ordinance 2020-17 amending the zone map classification of approximately 0.52 acres of real property, generally located at 852 North 500 West, from One Family Residential (R1.6A) to General Commercial (CG). North Park Neighborhood. (PLR220200109) ([0:32:10](#))**

Motion: An implied motion to adopt Ordinance 2020-17, as currently constituted, has been made by council rule.

Aaron Ardmore, Provo City Planner, presented. An office building used by the hospital was located on this property. The parcel was actually split between two zones, One Family Residential (R1.6A) and General Commercial (CG). The hospital wanted to purchase the property and wanted the entire property zoned commercial.

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

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

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell and Shipley in favor.

5. **Resolution 2020-16 authorizing Provo City to enter into an Interlocal Agreement with the Redevelopment Agency of Provo City authorizing the use of Tax Increment in The Mix Community Development Project Area. (20-089) ([0:47:18](#))**

Motion: An implied motion to approve Resolution 2020-16, as currently constituted, has been made by council rule.

David Walter, Redevelopment Agency Director, presented. The council recently adopted a redevelopment project area for The Mix (the former Plumtree Plaza on University Parkway). This was the first step in obtaining tax increment financing for the project. Westport Capital purchased the land in 2016 for development of The Mix project. The project would include retail space, a hotel development, and for sale apartments on the north end of the project. He

noted that some of the land in the area was privately owned and not included in the project area.

Under Utah Code, the agency was allowed to enter into interlocal agreements with taxing entities authorizing the use of tax increment financing. The taxing entities included Provo City, Provo School District, Utah County, and the Utah Central Water Conservancy District. The agreement would allow them to capture a portion of the increment that would be generated from the base year value and what would be built on site. The base year value for calculation of tax increment would be \$21,338,000.

The proposed resolution would approve the interlocal agreement between Provo City and the RDA. The RDA board would also vote to approve the agreement.

Mr. Walter gave the following responses to councilor questions:

- Cafe Rio will remain on their current site. They were very successful at that location.
- Westport self-funded many of this type of project. They would build the project and then sell it off to another fund to manage it for the long-term.
- Westport wanted to get started on a water canal issue (it ran through the property) this year so they could begin development of the property.
- Westport still had commitments for the retail portion of the site.
- Westport has had several different franchises interested in building a hotel on the site.
- Some of the sewer lines needed to be upgraded because they had become clogged and had degraded over time. Westport was requesting this tax increment to help fund improvements to the sewer in the area, including installation of 2,300 lineal feet of 18-inch pipe.

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

Chair Handley called for a vote on the implied motion.

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell and Shipley in favor.

Redevelopment Agency of Provo

The council recessed as the Municipal Council and reconvened as the RDA Board by unanimous consent at 6:30 p.m.

- 6. Resolution 2020-RDA-05-19-1 authorizing the Redevelopment Agency to enter into Interlocal Agreements with various parties authorizing the use of Tax Increment in The Mix Community Development Project Area. (20-085, 20-086, 20-087, 20-088) ([0:59:51](#))**

Motion: An implied motion to approve Resolution 2020-RDA-05-19-1, as currently constituted, has been made by council rule.

Chair Sewell introduced the resolution and explained that this item was RDA Board approval of interlocal agreements with the taxing entities.

As mentioned earlier, Mr. Walter said these agreements allowed the RDA to capture a portion of tax increment by entering into individual agreements with each taxing entity.

There were no questions for Mr. Walter so Chair Sewell invited public comment. There was no response to the request.

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

Vote: The motion was approved 7:0 with Board Members Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell and Shipley in favor.

7. *****CONTINUED*** A resolution of the Redevelopment Agency of Provo City authorizing and allocating funds for an economic assistance loan program. (20-081)**
8. *****CONTINUED*** A resolution of the Redevelopment Agency of Provo City appropriating \$500,000 in the Tax Increment Fund for an Economic Assistance Loan Program. (20-084)**
9. **Resolution 2020-RDA-05-19-2 tentatively adopting a proposed budget for Redevelopment Agency of the Provo City Corporation for the fiscal year beginning July 1, 2020 and ending June 30, 2021. (20-009) ([1:02:38](#))**

Motion: An implied motion to approve Resolution 2020-RDA-05-19-2, as currently constituted, has been made by council rule.

Chair Sewell introduced the resolution and said the RDA board had received the proposed budget. They would be reviewing it during the next several weeks. The final vote on the budget would be the second meeting in June.

David Mortensen, Provo City Budget Officer, presented. The RDA board was being asked to tentatively approve the proposed FY 2021 RDA budget of \$1,171,617. The board would hold two public hearings, one on June 2 and the second on June 16. It was anticipated final adoption of the budget would be June 16, 2020.

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell and Shipley in favor.

Stormwater Service District

With no objections, the meeting was recessed as the RDA and reconvened as the Stormwater Service District at 6:36 p.m.

10. Resolution 2020-SSD-05-19-1 tentatively adopting a proposed budget for the Provo City Stormwater Service District for the fiscal year beginning July 1, 2020 and ending June 30, 2021. (20-010) ([1:06:27](#))

Motion: An implied motion to approve Resolution 2020-SSD-05-19-1, as currently constituted, has been made by council rule.

Mr. Mortensen asked the council for tentative approval of the FY2021 SSD budget of \$6,704,839. Similar to the RDA, the SSD would hold two public hearings with a final adoption scheduled for June 16, 2020.

Chair Handley invited public comment. With no responses, and no board member discussion, he called for a vote on the implied motion.

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell and Shipley in favor.

Action Agenda

With no objections, the SSD meeting was adjourned and reconvened as the Municipal Council meeting by unanimous consent.

11. Resolution 2020-17 tentatively adopting the proposed budget for Provo City Corporation for the fiscal year beginning July 1, 2020 and ending June 30, 2021. (20-008) ([1:08:50](#))

Motion: An implied motion to approve Resolution 2020-17, as currently constituted, has been made by council rule.

Mr. Mortensen said the tentative budget included all funds for a total of \$292,939,096. Public hearings would be held on June 2 and June 16 with anticipated final adoption on June 16, 2020.

Chair Handley invited public comment. There was no response.

Mr. Harding said that after a budget retreat, and multiple hours of discussion, they might have exhausted all of their questions by now.

Chair Handley wanted to make sure the public understood that councilors had spent a considerable amount of time reviewing the proposed budget. They would be spending more time in upcoming meetings.

Chair Handley called for a vote on the implied motion.

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell and Shipley in favor.

12. An ordinance amending Provo City Code relating to permitted uses and yard requirements of the M1 Light Manufacturing Zone. Citywide application. (PLOTA20200117) ([1:12:47](#))

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

Robert Mills, Provo City Planner, presented. He was joined by Gary McGinn, Director of Community & Neighborhood Services, and Fire Marshall Lynn Schofield.

The proposed amendment would make the following changes to uses in the M1 (Light Manufacturing Zone).

- Add a Permitted Use in the Zone - Petroleum bulk stations and terminals (only as to the sale of petroleum products listed in the International Fire Code as combustible liquid classifications Class II, IIIA, and IIIB).
 - Added Specific Language to this Use – “Only on property east of 200 East, north of 600 South, west of 300 East, and south of 500 South.”
- Add a Conditional Use in the Zone with Specific Conditions - Petroleum bulk stations and terminals for the sale of petroleum products in flammable classifications Class IA, IB, and IC of the International Fire Code.
 - Added Specific Language to this Use
 - Only on property east of 200 East, north of 600 South, west of 300 East, and south of 500 South.
 - The site must have frontage on an arterial or collector street.
 - All flammable liquids must be clearly marked
 - Adhere to all applicable regulator code requirements.
 - All flammable liquids must be located a minimum of 25 feet from any property line.
- Removed a Conditional Use from the M1 Zone – Natural or manufactured gas storage and distribution points.
- Add an Accessory Use – Natural and manufactured gas storage or distribution points provided the storage tank does not exceed 500 gallons.

Mr. Mills said these changes should make the M1 Zone safer for surrounding areas. This was specific to the Christensen Oil site, which had been at that location for 85 years. The legal non-conforming use would be replaced with a permitted use wherein they would have specific guidelines for future plans and opportunities.

Fire Marshall Lynn Schofield said this was a process implemented by Chief Miguel to broker lasting peace in the neighborhood. Working with a task force of citizens, they hoped this would give more predictability for what Christensen Oil could do to remain competitive. There had been no fire code violations during his 12-year tenure as fire marshal. Christensen Oil operated a safe, productive business. These amendments would allow them to expand within their current site from temporary storage to permanent storage, which, though not very sightly, provided a safer operation.

Mr. McGinn said that most of the neighborhood concerns were around safety issues with the fire code. He felt those issues had been resolved. The current ordinance that regulated Christensen Oil made their storage a non-conforming use and limited what they could do, including expansion. However, they do not have any intention to expand beyond their current footprint. They wanted to make on site changes that would make their site safer, like taking some of the temporary storage containers and moving them to permanent storage. He said Christensen Oil was willing to submit a memorandum of understanding (MOU) that would address some of the issues with the neighborhood. It would provide predictability for all parties about what could and could not be included on the property.

Mr. Schofield responded to questions asked by Ms. Ellsworth as submitted to her from citizens.

- Diesel Fuel Storage and Use – Diesel fuel was allowed to be stored on location but it was less dangerous than gasoline. The diesel fuel was distributed to several locations in Provo, including fire stations 22 and 23, the school district, various farmers, and industrial companies.
- Fumes Coming from the Site – Hydrocarbons, gasoline, and diesel all have some odors. He felt putting some of the fluids in steel tanks probably reduced that impact far more than storing them in temporary totes.
- Major Truck Traffic thru Residential Neighborhoods – There were still big trucks going through residential neighborhoods but they were not Christensen Oil trucks. Hazardous material routes had been established for Christensen Oil. They take 600 South east to State Street and then either north or south, depending on which direction they needed to go. Alternatively, they take 600 South west to 100 West, north to 400 South, and then back east to University Avenue. He noted that, even though these routes did not regulate smaller tank wagons, Christensen Oil had agreed to require them to use the same routes. There was no route out of Christensen Oil that did not go through at least a small amount of residential development. As for other large trucks, they could post no truck signs in the neighborhood but, without a code change, there would be no force of law to enforce it. The traffic engineer did not feel there were enough trips to make it a no truck zone.
- Neighborhood Sitting on a Bomb – The biggest risk on this property would be a tank failure, resulting in a massive leak of fluid. Leaks were usually contained within the containers. A tank failure could also result in a fire. There were combustible liquids that were not stored in pressurized vessels. Each tank had ventilation capacity to vent off pressure. A tank explosion was a very remote possibility. Christensen Oil ran a very safe operation with products safely contained in properly engineered steel tanks.

Chair Handley invited public comment. ([1:36:44](#))

Britten Chew, Provo, asked what progress was being made on limiting the number of totes allowed at Christensen Oil. He looked forward to seeing the agreement with Christensen Oil before the council voted on it.

Tabitha, Provo, understood the major concern was that temporary storage was less safe than permanent storage. However, there was no verbiage requiring Christensen Oil to eliminate or reduce temporary storage if they installed permanent storage. In addition, did they have any protection against terrorism because a man with a gun was recently found on Christensen property?

Todd Christensen, President of Christensen Oil, commented. Months ago, working with city staff, they came up with a text amendment so they would not have to go through this every time they wanted to make a change on their property. Years ago, they went through the same thing and were not able to grow or develop their business. They took the issue to court and were awarded a summary judgement, which allowed them to make the improvements that had been made over the years. They wanted to work with the city and be a good neighbor and good business citizen. They came up with the idea of changing the zone so they would be a conforming use rather than a legal non-conforming use. They want to make changes to address the public's concern but they could not make them because their hands were tied. The majority of the neighbors did not have a problem with Christensen Oil. A handful of people did not want to compromise.

Ted Beuhler, Provo, lived next to Christensen Oil. He appreciated they were limited to the block. A private residence at 554 South 300 East should not be included in the spot zoning. He encouraged the council not to vote on the issue that night and allow the residents to read the agreement. Christensen Oil should not be able to expand their use and the amount of product stored. After the court case that Christensen Oil won in 2001, City Code 14.36.050(3) was changed in 2002, which stated they were not allowed to expand. He suggested the city contribute to adding a satellite location on a lot by the city's compost lot.

Rachel Favero, Provo, lived adjacent to the site. It was unfortunate that the neighbors began this process. Some of the neighbors that showed opposition were excluded. She felt that adding to the amount of hazardous material stored on their property was an expansion. The neighborhood had spent a year consulting with experts in the fire and oil industry. She felt the city should have someone from the outside, not already directly linked with the situation, evaluate the business.

Carolina Allen, resident in the neighborhood, said many of her neighbors were not aware this was happening. She had talked to 86 people within a six-block radius that signed a petition against Christensen Oil expansion. They did not want more oil stored on the property. The neighborhood wanted clear language to ensure expansion would not happen.

Michael Horrito, Provo, expressed opposition to the zoning text amendment. He was frustrated that the company did something illegally and then they applied for a change. The neighbors felt their concerns were not being addressed. A facility like Christensen Oil should not be next to a residential neighborhood. It should expand in a location further away from residential.

Makayla Horrito, Provo, was 21 years old and lived in the neighborhood her whole life. She expressed opposition to the expansion of Christensen Oil.

Lew Strasburg, controller with Christensen Oil for a number of years, said it was interesting to listen to everyone's concern. The totes that were stored in the yard contain motor oil only, no gasoline or diesel. They were neither flammable nor explosive. Their intent was to make the neighborhood safer. They wanted to take motor oil that was in plastic storage on the ground, and put it in double-walled steel tanks in the containment area behind their warehouse. It would make the area safer for everyone. In all his years working there, he had never seen his company cited by the fire marshal or the city. He had not heard of any expansion of the gasoline and diesel tanks, which were only about 25 percent full of product. There had been a lot of thought going into making their system more modern.

Melissa Christensen Platt, daughter of Todd Christensen and a licensed attorney, wanted to clarify some things. Christensen Oil was a legal non-conforming entity and had done nothing illegal. They would be allowed to continue operating their business whether or not this text amendment passed. The Utah court had not addressed what constituted expansion in non-conforming areas. Some surrounding state courts had said that an enlargement had to involve a change in the fundamental or primary use of the non-conforming property. They further state that the right of a business to naturally expand was a constitutional right protected by the Due Process Clause. Determining whether Christensen Oil's expansion in a non-conforming use was a big unknown and would involve years of litigation. The city already lost one lawsuit about 20 years ago. The proposed text amendment was a collaborative approach in resolving the unknowns, which was much better for the taxpayers of Provo, for Maeser Neighborhood residents, and for Christensen Oil. She noted that Christensen Oil had been a Provo business for half a century and had done so without incident. She urged the council to adopt this text amendment.

With no further comment, Chair Handley invited council discussion. ([2:01:04](#))

Mr. Harding was encouraged by the direction they were taking. There were some disagreements on what a legal non-conforming use could or could not expand, and what expansion meant. He wanted to see where the negotiations went. The changes they proposed would not open up other M1 zones to this use. He wanted strong clarification on what the parties understood would be allowed going forward. It sounded like Christensen Oil was willing to enter into an agreement that defined what they would look like in the future.

Mr. Hoban hoped they could find an amicable solution that would allow Christensen Oil to thrive as a business and still ensure the citizens felt appeased with the resolution. He appreciated Mr. Schofield's confirmation that Christensen Oil was following fire code. However, that was the minimum standard and it did not stop the city from setting additional parameters. We set additional parameters around other developments so he did not see why we could not set comparable parameters for a business, such as the height and materials used for storage tanks. The materials might not explode, but it was flammable and adjacent to a residential neighborhood. He felt the temporary totes were an issue but they were never going away. We might be able to come to an agreement with how many temporary totes were allowed and have them stored in a permanent warehouse that had sprinklers. He hoped they could find a way for both Christensen Oil and the neighborhood to thrive.

Mr. Sewell was encouraged by the direction this was going. Christensen Oil was a valuable business and we wanted to keep them. If we were starting from scratch, we would not want them in this location. However, it was there and they had grandfathered rights. We needed to clarify just what those rights were such as what was meant by expansion and what the limits were. He was in favor of continuing the negotiations and refining the agreement. A number of neighbors requested a hard cap on the amount of fuel stored there. From a legal perspective, given the grandfathered rights, how far could they legitimately go?

Brian Jones did not know if there was anything off limits to ask for. The negotiations would determine what Christensen Oil would be willing to do. Whether this ordinance passed or not, they had a right to exercise their non-conforming use. The only thing Christensen Oil gets out of passage of this ordinance was the clarified status that they were no longer a non-conforming use. In seeking this agreement, what was that worth to them?

Mr. McGinn said that Christensen Oil had expressed a willingness to talk with the city as we try to define this. Instead of looking at a specific amount of oil stored on site, we might look at where and how materials were stored. The totes were not going away. We could work with them in finding a better and safer place to store the totes that would appease everyone.

Mr. Sewell said this was a case where both sides were not going to get everything they wanted. There was an advantage in coming to some type of agreement here, clarifying and defining things so we don't leave the door open for possibly more litigation and problems. He was in favor of staff continuing down the road of negotiations. The council wanted to rezone the home that was in the M1 zone at that location to match the zoning of surrounding homes.

Mr. Fillmore acknowledged the concerns of the Maeser neighborhood. In these situations, there are two key issues. One is education. We need to know the facts and not just rumor or unfounded fears. The second is reliance upon genuine experts. In our case (the council), the experts we rely upon were our fire chief and fire marshal. Both of them have been unanimous and very straightforward in confirming that Christensen Oil has made their facility safe and are willing to make more changes to make it safer. During a recent tour of their property, Christensen Oil proposed entering in an MOU to tighten things up further. The MOU would

bring peace of mind by addressing things like safer truck routes, the number of totes allowed, expanded use of containment basins, and eliminate pressurized natural gas tanks.

Ms. Ellsworth said she would feel more comfortable with the proposed ordinance if we were to create an MOU that worked for both parties. We have to be careful because we could regulate Christensen Oil to death. She felt comfortable advancing the ordinance that night but would honor the rest of the council if they were not ready. She wanted the neighbors or citizens that were watching to know that she had read all of their emails, and certainly cared about the concerns that had been expressed. There was some concern expressed that the noticing was imperfect and flawed. There was not a perfect noticing system and, unfortunately, we could not reach everyone. She had gone out that morning and taped notes on people's doors who lived immediately around Christensen Oil. She wanted to make sure they had her information and accurate information from the fire marshal. One woman contacted her on the phone to ask for more information because she did not have access to a computer. She fully agreed with concerned citizens that the two land uses were incompatible. The decision to permit a bulk oil company at that location was made 85 years ago by a city council that was not around today. She felt that Christensen Oil was a safe business, even though it did not look like one.

Chair Handley said one of the callers, unable to comment because of a technical glitch, asked about allowing the Development Services Director to modify yard requirements. Mr. McGinn said the ordinance allowed the director to make modifications to project plans, which would help the site function better. Not just for Christensen Oil, but for the neighborhood itself. That would happen if, or when, they were putting in a new warehouse to contain totes.

Chair Handley followed up on what Ms. Ellsworth said about reaching everyone. There were certain times, especially during this time of Covid 19, that we have citizens with limited access to online information. We have had to make some adaptations and may continue to make additional adaptations to make sure we are reaching everyone. He has always believed in the old-fashioned method of picking up the phone and making a phone call to city council members. He wanted to stress that he was always available and would try to answer every email.

In his position as a councilor, he sometimes saw very different versions of the same thing. He believed that talking to people was very beneficial. His guided tour of Christensen Oil, with the fire chief and fire marshal, was very helpful. He recommended the neighbors do that also. He felt the concerns of the neighbors were legitimate. The nature of this problem is these two uses were not well matched. The question of moving one or the other did not sit well with anyone. Frankly, it was cost prohibitive during this economy, whether or not it was even possible. The solution has to be a compromise. That meant not everyone was going to be perfectly happy but we need to make sure we safeguard the public safety. High on his list is the issue of where trucks were driving. He felt moving from totes to tanks was much safer, even if it meant building a larger structure. He agreed with Ms. Ellsworth when she said they could regulate Christensen Oil to death and then be forced to fight legally. He emphasized that a

legal non-conforming use was not illegal. He wanted the MOU to have specific language that would help address some of the neighborhood concerns.

Chair Handley and Ms. Ellsworth both expressed concern with the lack of credibility given to the fire chief and fire marshal. They expressed gratitude for the work they do and did not feel they were acting from a compromised position.

Councilors were hesitant to adopt the ordinance without a more thorough and agreed upon MOU. Mr. Shipley made the following motion.

Motion: A motion was made, by Councilor Shipley, to continue this item in order to continue negotiations and that it come back to council when there is an unsigned agreement that the administrative staff feels comfortable with and the council can review. The motion was seconded by Councilor Sewell.

Vote: The motion was approved 7:0 with Councilors Ellsworth, Fillmore, Handley, Harding, Hoban, Sewell and Shipley in favor.

13. *CONTINUED*** An ordinance amending Provo City Code to establish a Critical Hillside Overlay (CH) Zone. Citywide application. (PLOTA20200077)**

14. *CONTINUED*** An ordinance amending the Zone Map classification of multiple East Bench properties to include them in the Critical Hillside Overlay (CH) Zone. Citywide application. (PLRZ20200078)**

Adjourn

With no objections, the meeting was adjourned by unanimous consent at 8:24 p.m.