



PROVO MUNICIPAL COUNCIL

Work Meeting

2:00 PM, Tuesday, July 21, 2020

Electronic meeting: [youtube.com/provocitycouncil](https://www.youtube.com/provocitycouncil)

This meeting will be conducted entirely via electronic means. The meeting will be available to the public for live broadcast and on-demand viewing at: [youtube.com/provocitycouncil](https://www.youtube.com/provocitycouncil). If you do not have access to the Internet, you can join via telephone following the instructions below.

For more information regarding the City Community Safety Plan for COVID-19 and related City facility closures, please visit: provo.org/covid19

To listen to the meeting by phone: July 21 Work Meeting: Dial 346-248-7799. Enter Meeting ID 865 7356 6094 and press #. When asked for a participant ID, press #.

Agenda

Roll Call
Prayer

Approval of Minutes

April 7, 2020 Budget Retreat

Business

1. A discussion regarding a WaterSMART Grant application. 20-105
2. A motion to add an additional committee member to the Public Gatherings Committee. (20-103)

Policy Items Referred from the Planning Commission

3. An ordinance amending the zone map classification of approx 1.92 ac of property generally located at 442 and 490 S State St from General Commercial to High Density Residential and authorizing a related development agreement. Maeser Neighb. (17-0010R)

Closed Meeting

The Municipal Council or the Governing Board of the Redevelopment Agency will consider a motion to close the meeting for the purposes of holding a strategy session to discuss pending or reasonably imminent litigation, and/or to discuss the purchase, sale, exchange, or lease of real property, and/or the character, professional competence, or physical or mental health of an individual in conformance with 52-4-204 and 52-4-205 et. seq., Utah Code.

Adjournment

**Provo City Municipal Council
Chair's Statement re Open and Public Meetings Act**

In accordance with Utah Code 52-4-207(4)* I have determined that conducting meetings of the Municipal Council with an anchor location, such as the Municipal Council Chamber, presents a substantial risk to the health and safety of those who may be present there. These are the facts upon which I have made this determination:

- Utah has been in a declared state of emergency due to novel coronavirus disease 2019 (COVID-19) since March 6, 2020, a disease outbreak which the World Health Organization has characterized as a pandemic.
- The Centers for Disease Control and Prevention (CDC) state that COVID-19 is easily spread from person to person between people who are in close contact with one another. The spread is through respiratory droplets when an infected person coughs, sneezes, or talks, and it may be spread by people who are non-symptomatic.
- Federal, state, and local authorities have recommended that individuals limit public gatherings, wear facemasks, and follow social distancing guidelines, that individuals exposed to persons experiencing symptoms of COVID-19 self-quarantine for 14 days, and that individuals experiencing symptoms of COVID-19 self-isolate to prevent and control the continuing spread of COVID-19.
- Notwithstanding that Utah generally, and Utah County specifically, have been moved to the Low Risk (Yellow) Phase, reported COVID-19 cases in Utah County have more than doubled since May 31, 2020.
- Physical distancing measures will be difficult to set up and maintain in the Provo City Municipal Council Chamber.

Therefore, for the next 30 days, all meetings of the Municipal Council will be conducted entirely via electronic means:

- Council meetings are broadcast live and available later on demand at youtube.com/provocitycouncil.
- Agendas and support materials are available at agendas.provo.org.
- To make a public comment or to join a meeting via telephone, follow the instructions provided on public notices of each meeting.
- To send comments to the Council or weigh in on current issues, visit opencityhall.provo.org or email the Council at council@provo.org.

-George Handley, Chair, July 6, 2020

I have determined that conducting meetings of the Governing Board of the Redevelopment Agency of Provo City is subject to the same risks identified above based on the facts stated herein. Therefore, I adopt the same procedures listed above for meetings of the RDA Governing Board.

-David Sewell, RDA Chair, July 6, 2020

* As amended by HB5002, *Open and Public Meetings Act Amendments*, (2020 Fifth Special Session), Utah Code Annotated (UCA) 52-4-207(4) provides that a public body may convene and conduct an electronic meeting without an anchor location if the chair of the public body:

- (a) makes a written determination that conducting the meeting with an anchor location presents a substantial risk to the health and safety of those who may be present at the anchor location;
- (b) states in the written determination described in Subsection (4)(a) the facts upon which the determination is based;
- (c) includes in the public notice for the meeting, and reads at the beginning of the meeting, the information described in Subsections (4)(a) and (b); and
- (d) includes in the public notice information on how a member of the public may view or make a comment at the meeting.

UCA 52-4-207(5) states that a written determination described in Subsections (4)(a) and (b) expires 30 days after the day on which the chair of the public body makes the determination.

<https://le.utah.gov/~2020S5/bills/static/HB5002.html>

If you have a comment regarding items on the agenda, please contact Councilors at council@provo.org or using their contact information listed at: <http://provo.org/government/city-council/meet-the-council>

Materials and Agenda: agendas.provo.org

Council meetings are broadcast live and available later on demand at youtube.com/user/ProvoCityCouncil
To send comments to the Council or weigh in on current issues, visit OpenCityHall.provo.org.

The next scheduled Council Meeting will be held on 8/4/2020 12:00:00 PM. The meeting will be streamed on YouTube, unless otherwise noticed. The Work Meeting start time is to be determined (typically between 12:00 and 4:00 PM) and will be noticed at least 24 hours prior to the meeting.

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

In compliance with the ADA, individuals needing special accommodations (including auxiliary communicative aides and services) during this meeting are invited to notify the Provo Council Office at 351 W. Center, Provo, Utah 84601, phone: (801) 852-6120 or email evanderwerken@provo.org at least three working days prior to the meeting. Council meetings are broadcast live and available for on demand viewing at youtube.com/ProvoCityCouncil.

Notice of Telephonic Communications

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

Notice of Compliance with Public Noticing Regulations

Pursuant to Executive Order 2020-05, certain requirements of Utah Code 52-4-202 and 52-4-207 have been waived. There will be no anchor location for this meeting; it will be conducted exclusively using online means and will be available to view on YouTube at youtube.com/ProvoCityCouncil. This meeting was noticed in compliance with Executive Order 2020-05, which supersedes some requirements listed in Utah Code 52-4-202 and Provo City Code 14.02.010. Agendas and minutes are accessible through the Provo City website at agendas.provo.org. Council meeting agendas are available through the Utah Public Meeting Notice website at utah.gov/pmn, which also offers email subscriptions to notices.

Pending minutes – awaiting approval

Please note: these minutes have been prepared with a timestamp linking the agenda items to the video discussion. Electronic version of minutes will allow citizens to view discussion held during council meeting.



PROVO MUNICIPAL COUNCIL

Budget Retreat Minutes

2:00 PM, Tuesday, April 07, 2020

Electronic meeting: [youtube.com/provocitycouncil](https://www.youtube.com/provocitycouncil)

Agenda ([0:00:00](#))

Roll Call

The following elected officials were present at the meeting:

Council Chair George Handley, conducting
Council Vice-chair David Harding
Councilor Shannon Ellsworth
Councilor William Fillmore
Councilor Travis Hoban
Councilor David Sewell
Councilor David Shipley
Mayor Michelle Kaufusi

Prayer

The prayer was given by Cliff Strachan, Council Executive Director.

Business ([0:14:12](#))

- 1. A presentation by the Provo Mayor's Office concerning their FY 2020-2021 budget. (20-007) ([0:15:32](#))**

Wayne Parker, CAO, introduced various members of the Mayor's office staff and the roles they play in the office. Mr. Parker shared an overview of functions and operations of the mayor's office and highlighted needs in the upcoming budget year. *Presentation only.*

- 2. A presentation by the Community & Neighborhood Services Department concerning their FY 2020-2021 budget. (20-007) ([0:35:19](#))**

Gary McGinn, Community and Neighborhood Services Director, presented. Mr. McGinn outlined core operations of the department as well as areas of primary focus in the upcoming fiscal year. Mr. McGinn explained that it was time for a substantive update to the General Plan and that the Planning Commission also hoped to transition to more long-range planning (rather than administrative issues). He also reviewed the operations of the parking enforcement, zoning, licensing, ombudsman, and property management divisions. In response to several questions from Councilors, Mr. McGinn elaborated on parking enforcement and how appeals are managed and reviewed. The division's primary goals are consistent and enhanced enforcement, as well as pedestrian safety. CDBG and HOME funds are administered through the department; this year,

Pending minutes – awaiting approval

Please note: these minutes have been prepared with a timestamp linking the agenda items to the video discussion. Electronic version of minutes will allow citizens to view discussion held during council meeting. COVID-19 recovery funds would also be a part of their analysis regarding how funds could be used in the community. Councilors shared feedback on the overhaul of the General Plan. In response to a question from Councilor David Shipley, Mr. McGinn explained that HUD was developing guidelines for the COVID-19 recovery funds which would be administered by Community and Neighborhood Services. *Presentation only.*

3. A presentation by the Development Services Department on their FY 2020-2021 budget (including Planning, Building, Economic Development, Redevelopment Agency, etc.). (20-007) ([1:09:26](#))

Bill Peperone, Development Services Director, highlighted the basic functions and operations for the department, including economic development, redevelopment, the Landmarks Commission, building division, and planning division. Mr. Peperone also noted areas of the General Plan which are impacted by Development Services.

Councilor Shannon Ellsworth asked if a potential recession would result in more demand from developers to reduce parking requirements. Mr. Peperone indicated that could be a possibility. However, most projects asking for parking reductions in recent months have done so based on very specific criteria. The ordinance has built-in limitations, which would apply even in an economic turndown. Mr. Peperone also explained that with a lot of new housing currently going in, these projects are not yet occupied, so it is difficult to determine yet if this housing stock is achieving the desired results in different areas of the city. Councilor Bill Fillmore asked about Amanda Knight Hall and Mr. Peperone shared an update on the applicant's current progress.

Mr. Peperone highlighted a supplemental request to shift \$200,000 from Community and Neighborhood Services for building inspectors, which should have been allocated to Development Services during the department reorganization. He felt their budget was adequate, but they have specific ideas they plan to present to the Administration if reductions were needed.

David Walter, Redevelopment Division Director highlighted details about several current projects and their relation to goals identified by the Council. Keith Morey, Economic Development Division Director, shared an update on resources for businesses during the coronavirus pandemic. They recently did a mass mailing to all businesses with current licenses, which has been helpful and important in establishing a database of Provo businesses. In response to a question from Mr. Fillmore, Mr. Morey shared details about the small business loan program they hoped to advance to help local businesses recover from the pandemic. Mr. Morey also noted that they are continuing to explore potential at the Provo Airport for more opportunities as expansion and construction takes place there. *Presentation only.*

4. A presentation by the Administrative Services (including the City Recorder, Information Systems, Justice Court, Facilities, and Finance divisions) on their FY 2020-2021 budget. (20-007) ([1:44:47](#))

John Borget, Administrative Services Director, introduced the presentation. He invited staff from the various divisions in the department to present on the budgets for their areas. ReAnnun Newton presented on the Justice Court. Amanda Ercanbrack, City Recorder, gave an overview

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of the services the Recorder provides. If reductions were needed, likely training and travel would be first to go; any other reductions would impact their service level and personnel, which would negatively impact the public. Dick Blackham shared an update on the City's facilities, including updates on a number of projects and a report on the City Center construction. Dan Follett, Finance Division Director, reviewed the City's outstanding debt and bonds. In response to a question from Councilor David Sewell, Mr. Follett explained that refinancing the telecom bond would not save the City money due to changes to the tax laws; the best thing to do was to maintain a good bond rating, which helps secure lower interest rates on bonds. Josh Ihrig shared an update on Information Systems projects and operations. *Presentation only.*

5. A presentation by the Provo Energy Department concerning their FY 2020-2021 budget. (20-007) ([2:25:30](#))

Travis Ball, Provo Power Director, presented. Mr. Ball shared information about the department's sustainability initiatives, including their collaboration with UMPA on a community solar project. Mr. Ball outlined proposed budget cuts as they anticipate decreased revenues due to the current coronavirus pandemic and possible recession in the future. Some CIP projects can be delayed by a year or two to help their budget stay in line, as they have stayed current on capital improvements in recent years. *Presentation only.*

6. A presentation by the Provo City Fire Department concerning their FY 2020-2021 budget. (20-007) ([2:37:28](#))

Fire Chief Jim Miguel outlined the operations for the Provo Fire Department and their many operations. In addition to their emergency management and preparedness, the Fire Department provides advanced life-support transport, emergency medical services, and emergency rescue operations. They also partner with the development community on inspections for fire safety. emergency rescue operations. Chief Miguel explained that they have great working relationships with their partner and neighboring agencies, some of which are accomplished through an automatic mutual aid program. The emergency communications 911 center has recently transitioned from being managed by a police lieutenant to a communications manager who is specially trained in this area. Chief Miguel shared details on their system reliability, which is how they determine staffing and distribution of resources throughout the City. They hope to reassess their staffing and resources through a master planning project, as the City considers the immediate and long-term needs to provide fire response as growth increases. Chief Miguel also highlighted some details of the department's equipment needs accounted for in the budget. Chief Miguel extended an offer to Councilors to tour the Fire Department's facilities. *Presentation only.*

7. A presentation by Customer Service concerning their FY 2020-2021 budget. (20-007) ([3:03:50](#))

Karen Larsen, Customer Service Director, presented. Ms. Larsen shared an overview of the services provided by Provo 311 as well as the metrics used in their operations; statistics are essential for running a successful call center. The 311 call center was introduced in 2012 and has been a huge help in diverting non-emergency service calls that previously went to 911. The call center is funded by the enterprise departments, as their primary function is utility billing.

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Customer Service also handles licensing, special events, airport security badging, parking citation payments, fingerprinting, passports, pavilion reservations, general city information, and non-emergency service requests. Before introducing new services, they examine the financial viability of implementing new services. The Provo 360 software integration has also been instrumental in making their combined services available online.

Ms. Larsen shared highlights of the upcoming fiscal year budget for Customer Services. She showed comparisons between the current fiscal year and projected new year; there were slight increases to personnel and chargebacks, consistent with annual increases in those areas. There was a net decrease to the operations and maintenance budget, as the FY20 budget included the expenses for a consultant associated with the Provo360 project implementation for Customer Service. *Presentation only.*

8. A presentation by the Legal Department concerning their FY 2020-2021 budget. (20-007) ([3:24:49](#))

Brian Jones, Deputy City Attorney, presented. He reviewed the responsibilities of the civil, criminal prosecution, and claims and litigation divisions of the Legal Department. He explained that Provo was unique in having staff cross-trained in all these areas; most cities have more separation between the different legal functions. He highlighted the benefits of this approach—the City can offer better service and staff can provide better internal support with their familiarity of the various functions in Legal. Mr. Jones highlighted the staffing for each division, with emphasis on the case load and volumes for the last several years for criminal prosecution. The claims and litigation, which Mr. Jones oversees, also handles risk management for the City.

Since the bulk of their work is in support of other City departments, the largest proportion of the Legal Department’s budget is for personnel. Mr. Jones highlighted personnel changes over time. Adjusted for inflation, their requested operational budget is about 88% of their 1996 operational budget. Moving to digital storage and software solutions has made their operations more efficient. The proposed increase for this fiscal year budget was for cell phone reimbursement. In response to a question from Councilor David Sewell, Mr. Jones explained that Legal uses metrics of how many cases are referred to Legal, rather than how many criminal charges are filed; many code enforcement issues are resolved before charges are filed. He noted that the current approach, combined with additional staffing in Community and Neighborhood Services, has resulted in the success Legal has with code compliance. He noted that easy cases are generally resolved quickly, while more complex situations often take more time. *Presentation only.*

9. A presentation by the Provo City Council Office concerning their FY 2020-2021 budget. (20-007) ([3:40:01](#))

Cliff Strachan, Council Executive Director, presented. He reviewed the Council’s proposed budget, noting that it has been fairly steady year-to-year as much of the budget is non-discretionary; approximately 75% of the budget is for personnel. Discretionary portions of the Council budget include the annual financial audit, neighborhood program and matching grants, travel and training, and Open City Hall. *Presentation only.*

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Adjournment

Adjourned by unanimous consent.

PROVO MUNICIPAL COUNCIL STAFF REPORT



Submitter: JMCKNIGHT
Department: Public Works
Requested Meeting Date: 07-21-2020

SUBJECT: A discussion regarding a WaterSMART Grant application. 20-105

RECOMMENDATION: Information only. This item is scheduled to come to the Council Meeting on August 4, 2020.

BACKGROUND: Public Works has been working to identify ways to artificially recharge the aquifers that supply water to the City. A WaterSMART drought resiliency grant has been identified as a potential funding source for these ASR projects. One of the requirements of the grant application is a resolution indicating the Council's support and commitment to meeting the requirements of the grant program.

FISCAL IMPACT: Yes in potential grant funding

PRESENTER'S NAME: Dave Decker

REQUESTED DURATION OF PRESENTATION: 30 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:

Aquifer Storage and Recovery projects will help the City meet long term goals for sustainability of the City's water resources.

CITYVIEW OR ISSUE FILE NUMBER: 20-105

PROVO MUNICIPAL COUNCIL STAFF REPORT



Submitter: EVANDERWERKEN
Department: Council
Requested Meeting Date: 07-21-2020

SUBJECT: A motion to add an additional committee member to the Public Gatherings Committee. (20-103)

RECOMMENDATION: A motion is requested to add Shannon Ellsworth as another member of the Public Gatherings Committee.

BACKGROUND: The committee was formed during the Work Meeting on July 7, 2020. Since it was created, Councilor Shannon Ellsworth has expressed interest in being a part of that committee. The committee members were amenable to the request and it has been brought to the full Council to formalize the action.

FISCAL IMPACT:

PRESENTER'S NAME: Cliff Strachan

REQUESTED DURATION OF PRESENTATION: 5 minutes

COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:

CITYVIEW OR ISSUE FILE NUMBER: 20-103



Planning Commission Hearing Staff Report Hearing Date: April 24, 2019

***ITEM # 2 Tim Soffe requests a Zone Change from General Commercial (CG) to High Density Residential (HDR) for 1.92 acres of land located at 442 & 490 South State Street. Maeser Neighborhood. 17-0010R**

Applicant: Tim Soffe
Staff Coordinator: Dustin Wright
Property Owner: Bart Coon
Parcel ID#: 220290005, 220290026
Current Zone: General Commercial (CG)
Proposed Zone: High Density Res. (HDR)
General Plan Des.: Residential
Acreage: 1.92
Number of Properties: 2
Number of Lots: 2
Council Action Required: Yes

ALTERNATIVE ACTIONS

1. **Continue** to a future date to obtain additional information or to further consider information presented. *The next available meeting date is May 8, 2019, 6:00 p.m.*
2. Recommend **denial** the requested Rezone. *This action would not be consistent with the recommendations of the Staff Report. The Planning Commission should state new findings for denial.*

Current Legal Use:

Commercial uses listed in 14.22.020 of the Provo City Code.

Relevant History:

In January 2018 the Planning Commission approved the PPA with the conditions and recommended approval to the City Council of the zone change request.
The City Council continued the zone change and requested that the applicant work with the neighbors to come up with a project that would reduce the building height.

Neighborhood Issues:

A neighborhood meeting on May 16, 2017. Neighbors expressed issues with:

- HDR zone is excessive for neighborhood
- Excessive building height (four stories)
- Vehicular access onto 500 S. and added traffic.
- Too many one-bedroom units.

The applicant has met with neighbors following their last City Council hearing and made changes to the proposed project to address some of the concerns.

Summary of Key Issues:

- City Council directed the applicant to work with the neighborhood and then incorporate that feedback into the project.
- A development agreement would be able to address concerns raised for the HDR zone that would allow for more development than desired on the site once rezoned.

Staff Recommendation:

Staff recommends the following conditions:

1. That a Development Agreement limit building height

	for the north building to three stories and the east building to four stories, with a maximum building height of 44' and the south building to two stories; 2. That the total number of dwelling units be limited to 60; and 3. That the existing lots are combined into one lot.
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OVERVIEW

The applicant is requesting a zone change from General Commercial (CG) to High Density Residential (HDR) at this location to allow for a four-story, 32-unit apartment, a three-story, 24-unit apartment and a two-story, 4-unit townhomes on the corner of 500 South and State Street. These proposed sixty units would be on commercial property that is to be rezoned to High Density Residential (HDR).

The HDR zone would allow for more units and additional building height than is being requested, therefore, a development agreement would be advisable to ensure that only what has been proposed would be developed.

The City Council continued the zone change request and instructed the applicant to go back and work with the neighborhood and address their concerns. The applicant has now done that and made changes to their original proposal of 64 units in 2 four-story buildings.

FINDINGS OF FACT

1. A neighborhood meeting was held on May 16, 2017.
2. Plans have been changed to address concerns expressed by the neighborhood.
3. The proposed project plan would meet the requirements for a development in the HDR zone.
4. HDR zone allows up to 50 dwelling units per acre.
5. The proposed plan includes only 32 dwellings per acre.
6. HDR zone allows for a building height of 55 feet.
7. The proposed plan is four stories but limits the building height to 44 feet.
8. The General Plan designation is for Residential.
9. The current zoning is General Commercial.

1. Provo City Code Section 14.02.020(2) sets forth the following guidelines for consideration of general plan amendments:

Before recommending an amendment to this Title, the Planning Commission shall determine whether such amendment is in the interest of the public, and is consistent with the goals and policies of the Provo City General Plan. The following guidelines shall be used to determine consistency with the General Plan:

- (a) *Public purpose for the amendment in question. **The amendment would allow the property to transition from commercial to residential and match the existing General Plan designation for residential instead of existing commercial.***
- (b) *Confirmation that the public purpose is best served by the amendment in question. **A development agreement limiting some of elements in the HDR zone such as height and number of units per acre will help address some of concerns that neighbors expressed.***
- (c) *Compatibility of the proposed amendment with General Plan policies, goals, and objectives. **The General Plan policies and goals for the Maeser Neighborhood allow for development along State Street to be considered for development other than one-family residential.***
- (d) *Consistency of the proposed amendment with the General Plan's "timing and sequencing" provisions on changes of use, insofar as they are articulated. **No issues with timing and sequencing.***
- (e) *Potential of the proposed amendment to hinder or obstruct attainment of the General Plan's articulated policies. **Policies in the Plan aim to "protect viable, significant areas of one-family structures". The site has been adjusted to better transition into the surrounding neighborhood and is limited to this site. The project is adjacent to areas of one-family structures, but will not expand into them.***
- (f) *Adverse impacts on adjacent land owners. **The proposed development would generate an increase in traffic and taller structures than what exists now. Existing commercial zoning would also allow for taller structures and could have a greater traffic impact if fully developed as a commercial site.***

- (g) *Verification of correctness in the original zoning or General Plan for the area in question. **Zoning and General Plan designation are correct. The General Plan Map has been updated.***
- (h) *In cases where a conflict arises between the General Plan Map and General Plan Policies, precedence shall be given to the Plan Policies. **No conflicts have been identified.***

STAFF ANALYSIS

Staff has reviewed the revised project plan and found that it conforms with the development requirements of the HDR zone. The two lots would need to be combined into one lot as part of a separate application with the City.

The reason that the applicant is seeking High Density Residential (HDR) and not Medium Density Residential (MDR) density is that the proposed density is 32 dwelling units per acre and the MDR zone only allows up to 30. The setbacks are less in the HDR which also allows the building to address the State Street more appropriately.

If the City desires to rezone the property to HDR, a development agreement would be beneficial to ensure that project doesn't increase in density or height from what has been proposed.

CONCLUSIONS

The multi-family housing would be a good alternative to the commercial zoning that is in place now. The changes that have been made will help the site transition better into the surrounding single-family neighborhood.

The General Plan goals and policies relating to this area of the City aim to "maintain all existing one-family residential areas" while noting that exceptions should apply to development along State Street. The applicant is seeking to amend the zoning map to allow for a higher density development. The rezone will not extend into areas of existing one-family residential.

STAFF RECOMMENDATION

Staff recommends the following conditions:

1. Development Agreement for building height limiting the north building to three stories and the east building to four stories and the south building to two stories and to limit the number of units to sixty as part of the Rezone.
2. The existing lots are combined into one lot as part of a separate application.

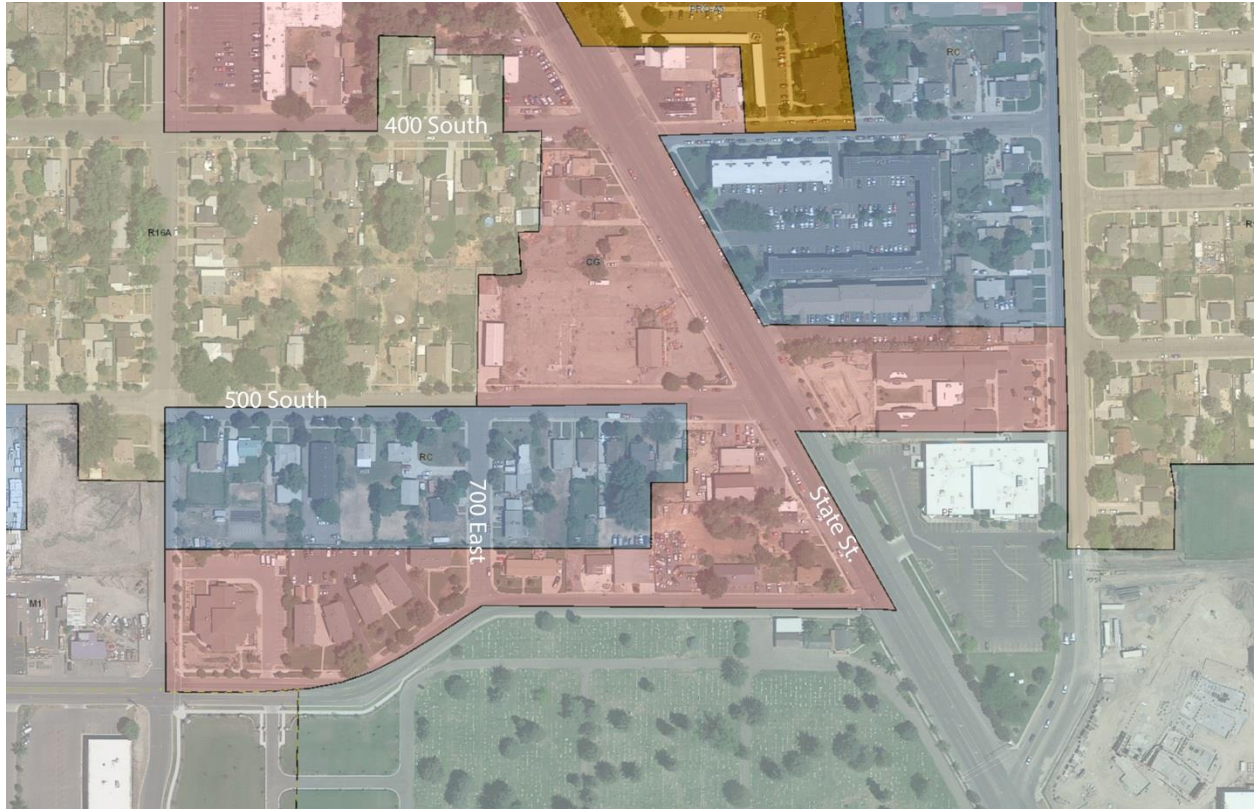
ATTACHMENTS

1. Site Location
2. Zoning Map

ATTACHMENT 1 - SITE LOCATION



ATTACHMENT 2 – Zoning Map



ORDINANCE 2020-

AN ORDINANCE AMENDING THE ZONE MAP CLASSIFICATION OF APPROXIMATELY 1.92 ACRES OF REAL PROPERTY, GENERALLY LOCATED AT 442 AND 490 SOUTH STATE STREET FROM GENERAL COMMERCIAL (CG) TO HIGH DENSITY RESIDENTIAL (HDR) AND AUTHORIZING A RELATED DEVELOPMENT AGREEMENT. MAESER NEIGHBORHOOD. (17-0010R)

WHEREAS, it is proposed that the classification on the Zone Map of Provo for approximately 1.92 acres of real property, generally located at 442 and 490 South State Street (an approximation of which is shown or described in Exhibit A and a more precise description of which will be attached hereto as Exhibit B after the Zone Map has been updated), be amended from General Commercial (CG) to High Density Residential (HDR) to allow for a housing complex; and

WHEREAS, on April 24, 2019, the Planning Commission held a duly noticed public hearing to consider the proposal and after such hearing the Planning Commission recommended approval to the Municipal Council in a 6:1 vote with conditions; and

WHEREAS, the Planning Commission's recommendation was based on the following conditions:

1. That building height be limited for the north building to three stories; the east building to four stories, with a maximum building height of 44 feet and the south building to two stories;
2. The total number of dwelling units be limited to 60; and
3. The existing lots are combined into one lot; and

WHEREAS, on May 7, 2019, the Municipal Council met to ascertain the facts regarding this matter and receive public comment, which facts and comments are found in the public record of the Council's consideration, and approved the rezone with the development agreement attached hereto as Exhibit C; and

WHEREAS, the effective date of the ordinance approved on May 7, 2019 was contingent on the execution of the development agreement and the ordinance expired before the development agreement was executed; and

WHEREAS, on July 21, 2020, the Municipal Council met to ascertain the facts regarding this matter and receive public comment, which facts and comments are found in the public record of the Council's consideration; and

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

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

PART I:

The Mayor is hereby authorized to negotiate and execute a development agreement as proposed by the applicant for this zone change, in form substantially similar to the draft attached hereto as Exhibit C, an executed copy of which shall be attached hereto as Exhibit D after execution.

PART II:

The classification on the Zone Map of Provo, Utah is hereby amended from the General Commercial (CG) Zone to the High Density Residential (HDR) Zone for approximately 1.92 acres of real property generally located at 442 and 490 South State Street as described herein. The effective date of this zone map change shall be the date of final execution of the development agreement described in Part I.

PART III:

- A. If a provision of this ordinance conflicts with a provision of a previously adopted ordinance, this ordinance shall prevail.
- B. This ordinance and its various sections, clauses and paragraphs are hereby declared to be severable. If any part, sentence, clause or phrase is adjudged to be unconstitutional or invalid, the remainder of the ordinance shall not be affected thereby.
- C. The Municipal Council hereby directs that the official copy of the Zone Map of Provo City, Utah be updated and codified to reflect the provisions enacted by this ordinance.
- D. Except as otherwise stated in Part II, this ordinance shall take effect immediately after it has been posted or published in accordance with Utah Code 10-3-711, presented to the Mayor in accordance with Utah Code 10-3b-204, and recorded in accordance with Utah Code 10-3-713.

83 E. Notwithstanding any provision or language to the contrary in this ordinance, if the
84 Development Agreement authorized in Part I has not been fully executed by the
85 necessary parties within one year from the date of the Municipal Council's approval of
86 this ordinance, the entire ordinance shall expire, becoming null and void as if it had never
87 been approved. Because the zone classification change contemplated in Part II cannot
88 come into effect if the Development Agreement is not executed, neither the applicant nor
89 any successor(s) in interest shall have any vested rights under this ordinance if it expires.
90

91 END OF ORDINANCE

Exhibit A

Site Location



Zoning Map

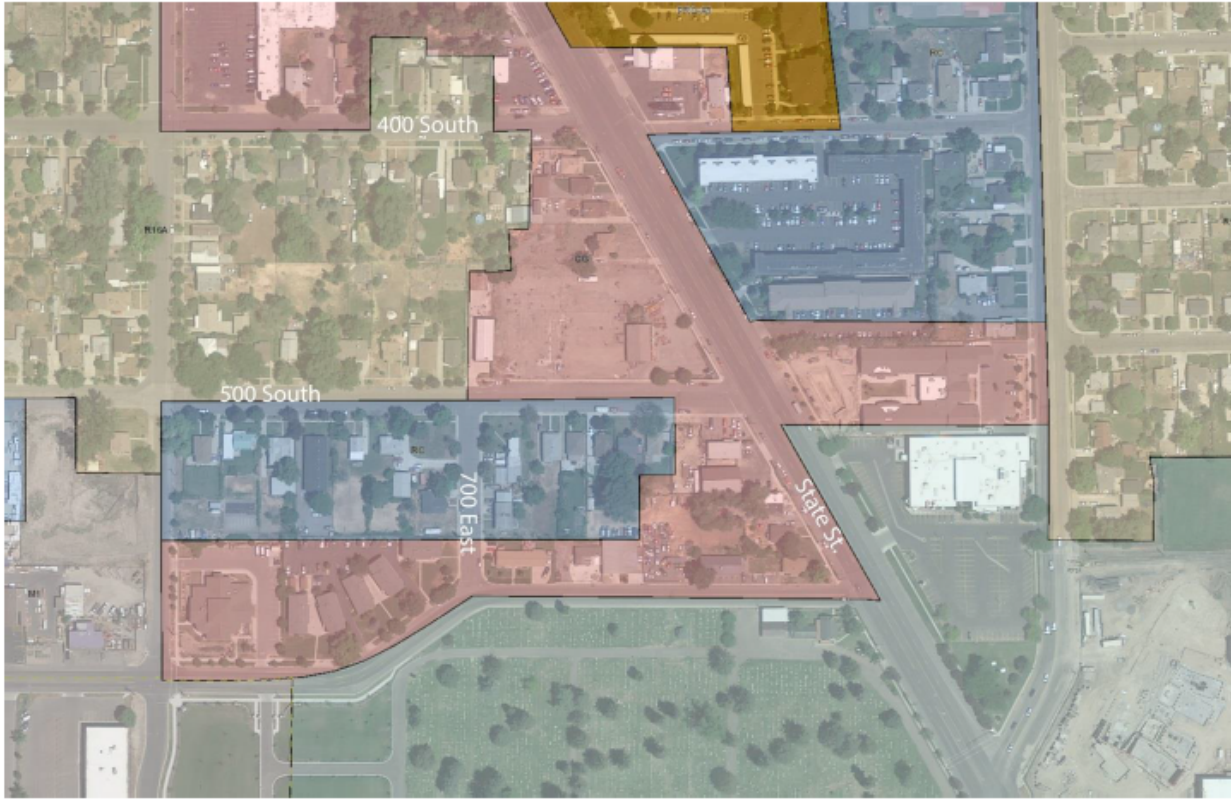


Exhibit B

Legal Description

Exhibit C

Draft Development Agreement

Exhibit D

Executed Development Agreement

**DEVELOPMENT AGREEMENT
FOR
Tanaraq on Fifth**

(490 South State Street)

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into as of the _____ day of _____, 2020 (the “Effective Date”), by and between the CITY OF PROVO, a Utah municipal corporation, hereinafter referred to as “City,” and South Village LLC, a Utah limited liability company, hereinafter referred to as “Developer.” The City and Developer are hereinafter collectively referred to as “Parties.”

RECITALS

A. Developer is the owner of approximately 1.92 acres of land located within the City of Provo as is more particularly described on EXHIBIT A, attached hereto and incorporated herein by reference (the “Property”).

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

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

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

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

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

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

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

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

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

AGREEMENT

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

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

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

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

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

- a. Development on the site will be limited to:
 - i. 60 total units;
 - ii. one 3-story building located on the north side;

- iii. four 2-story units located on the south side; and
- iv. one 4-story building located on the east side that will not exceed 44 feet in height.

b. The subject property will be developed in a manner consistent with the Site Plan attached as Exhibit B.

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

6. Vested Rights and Reserved Legislative Powers.

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

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

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

generated by a nationally or statewide recognized construction/safety organization, or by the State or Federal governments and are required to meet legitimate concerns related to public health, safety or welfare; or,

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

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

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

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

1. All rights and remedies available at law and in equity, including injunctive relief, specific performance, and termination, but not including damages or attorney's fees.

2. The right to withhold all further approvals, licenses, permits or other rights associated with the Project or development activity pertaining to the defaulting party as described in this Agreement until such default has been cured.

3. The right to draw upon any security posted or provided in connection with the Property or Project by the defaulting party.

The rights and remedies set forth herein shall be cumulative.

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

To the Developer: South Village LLC
Attn: Bart Coon
125 E. Main Street Ste. #121
American Fork, UT 84003
Phone: 801-420-0076

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

9. General Term and Conditions.

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

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

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

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

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

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

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

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

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

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

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

l. Approval and Authority to Execute. Each of the Parties represents and warrants as of the Effective Date this Agreement, it/he/she has all requisite power and

authority to execute and deliver this Agreement, being fully authorized so to do and that this Agreement constitutes a valid and binding agreement.

m. Termination.

i. Notwithstanding anything in this Agreement to the contrary, it is agreed by the parties hereto that in the event the final plat for the Property has not been recorded in the Office of the Utah County Recorder within ten (10) years from the date of this Agreement (the "Term"), or upon the occurrence of an event of default of this Agreement that is not cured, the City shall have the right, but not the obligation, at the sole discretion of the City Council, to terminate this Agreement as to the defaulting party (*i.e.*, the Developer). The Term may be extended by mutual agreement of the Parties.

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

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

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

11. Sale or Conveyance. If Developer sells or conveys parcels of land, the lands so sold and conveyed shall bear the same rights, privileges, intended uses, configurations, and

density as applicable to such parcel and be subject to the same limitations and rights of the City as when owned by Developer and as set forth in this Agreement without any required approval, review, or consent by the City except as otherwise provided herein.

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

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

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

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

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

CITY:

CITY OF PROVO

ATTEST:

By: _____
City Recorder

By: _____
Mayor Michelle Kaufusi

DEVELOPER:

South Village LLC, a Utah limited liability company

By: _____
Name: _____
Title: _____

STATE OF UTAH)
 :ss
COUNTY OF UTAH)

On the ____ day of _____, 2020, personally appeared before me _____, who being by me duly sworn, did say that he is the _____ of _____, a Utah limited liability company, and that the within and foregoing instrument was signed on behalf of said limited liability company with proper authority and duly acknowledged to me that he executed the same.

Notary Public
Residing at:

Exhibit A

Legal Description of the Property

Exhibit B

Site Plan



Provo City Planning Commission

Report of Action

January 24, 2018

ITEM 2* Tim Soffe requests a Zone Change from General Commercial (CG) to High Density Residential (HDR) for 1.92 acres of land located at 422-490 South State Street. *Maeser Neighborhood*. 17-0010R, Dustin Wright, 801-852-6414

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

RECOMMENDATION FOR APPROVAL

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

Conditions of Approval:

1. A development agreement to restrict building height to 3 stories.
2. Lots are combined into one lot as part of a separate application.

Motion By: Brian Smith

Second By: Andrew Howard

Votes in Favor of Motion: Brian Smith, Andrew Howard, Ed Jones, Shannon Ellsworth, Dave Anderson

Dave Anderson was acting as Chair.

•Includes facts of the case, analysis, conclusions and recommendations outlined in the Staff Report, with any changes noted; Planning Commission determination is generally consistent with the Staff analysis and determination.

LEGAL DESCRIPTION FOR PROPERTY TO BE REZONED

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

RELATED ACTIONS

Other related items heard on January 24, 2018 at the Planning Commission Public Hearing: General Plan Amendment 17-0002GPA and Project Plan 17-0013PPA

DEVELOPMENT AGREEMENT

Planning Commission recommends that the Municipal Council require a Development Agreement to limit building height to 3 stories.

STAFF PRESENTATION

The Staff Report to the Planning Commission provides details of the facts of the case and the Staff's analysis, conclusions, and recommendations. Key points addressed in the Staff's presentation to the Planning Commission included the attached Staff Report.

CITY DEPARTMENTAL ISSUES

- Approval received from Coordinator's Review Committee.

NEIGHBORHOOD MEETING DATE

- A neighborhood meeting was held on May 16, 2017.
- City-wide application; all Neighborhood Chairs received notification.

NEIGHBORHOOD AND PUBLIC COMMENT

- The Neighborhood Chair was present /addressed the Planning Commission during the public hearing.
- Neighbors or other interested parties were present or addressed the Planning Commission.

CONCERNS RAISED BY PUBLIC

Any comments received prior to completion of the Staff Report are addressed in the Staff Report to the Planning Commission. Key issues raised in written comments received subsequent to the Staff Report or public comment during the public hearing included the following:

- The existing parking issues on 500 S. from developments on the east side of State St. parking in this area of the neighborhood.
- Privacy concerns with a tall structure allowing new residents to view rear yards.
- Increased traffic in single-family neighborhood.
- Potential for auto and pedestrian accidents.
- Existing issues with speeding in the area could be increased.
- Proposed setbacks not leaving enough space for State St. to be widened in the future.
- The proposed project will not fit in aesthetically to the neighborhood because the height is too much.
- Potential for financial impacts on surrounding property.
- Timing of traffic study and if school was in at the time.

APPLICANT RESPONSE

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

- UDOT wants to reduce the number of access points on State Street.
- The site will have enough parking to meet the parking requirements of the proposed zone.
- There will be a realignment of 500 S. that will accommodate on-street parking and improve the angle that it intersects with State St.
- The market study shows a need for young married couples and this would be the target for the project.
- Views will not be blocked more than trees at full maturity would.
- A vast planting of new trees in the parkstrip and in the landscaped areas surrounding the parking lot will help buffer the new development from neighbors.
- There will be an on-call management company for the site.
- The traffic study concludes that the level of service will change from an "A" to a "B" at one intersection.
- Reducing the proposed height could jeopardize the ability to build on the site.

PLANNING COMMISSION DISCUSSION

Key points discussed by the Planning Commission included the following:

- Considering Medium Density Residential (MDR) instead of High Density Residential (HDR).
- Results of the market study for the area.
- Feasibility of three-story instead of four-story structures or one building being three and the other four.
- Routes that people would take to BYU.
- Existing zoning compared to the proposed zoning and related impacts.
- Traffic study results and traffic concerns in the area.



Director of Community Development

See Key Land Use Policies of the Provo City General Plan, applicable Titles of the Provo City Code, and the Staff Report to the Planning Commission for further detailed information. The Staff Report is a part of the record of the decision of this item.

Where findings of the Planning Commission differ from findings of Staff, those will be noted in this Report of Action.

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

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

BUILDING PERMITS MUST BE OBTAINED BEFORE CONSTRUCTION BEGINS

Exhibit A

Parcel 1:

Beginning at a point, being South 5°28'30" West 1608.27 feet and South 89°59'12" West 2300.84 feet from the Witness Corner for Northeast Corner of Section 7, Township 7 South, Range 3 East, Salt Lake Base and Meridian, said Witness Corner being South 87°34'20" East 258.29 feet from the Northeast Corner of Section 7, Township 7 South, Range 3 East, Salt Lake Base and Meridian, and running:

thence South 29°41'16" East 229.08 feet along the West line of State Street; thence North 89°29'37" West 394.51 feet along the North line of 500 South Street; thence North 1°49'05" East 198.05 feet; thence South 89°29'37" East 274.76 feet to point of beginning.

Parcel 1 Contains 66,258 sq. ft or 1.52 acres

Parcel 2:

Beginning at a point, being South 5°28'30" West 1608.27 feet and South 89°59'12" West 2300.84 feet from the Witness Corner for Northeast Corner of Section 7, Township 7 South, Range 3 East, Salt Lake Base and Meridian, said Witness Corner being South 87°34'20" East 258.29 feet from the Northeast Corner of Section 7, Township 7 South, Range 3 East, Salt Lake Base and Meridian, and running:

thence North 89°29'37" West 254.33 feet; thence North 0°09'52" East 71.43 feet; thence North 89°43'14" East 211053 feet to the West line of State Street; thence South 29°41'16" East 86.00 feet along the West line of State Street and the point of beginning.

Parcel 2 Contains 17,007 sq. ft. or 0.39 acres



**Planning Commission
Staff Report
Rezone
Hearing Date: January 24, 2018**

ITEM 2* Tim Soffe requests a Zone Change from General Commercial (CG) to High Density Residential (HDR) for 1.92 acres of land located at 422-490 South State Street. **Maeser Neighborhood.** 17-0010R, Dustin Wright, 801-852-6414

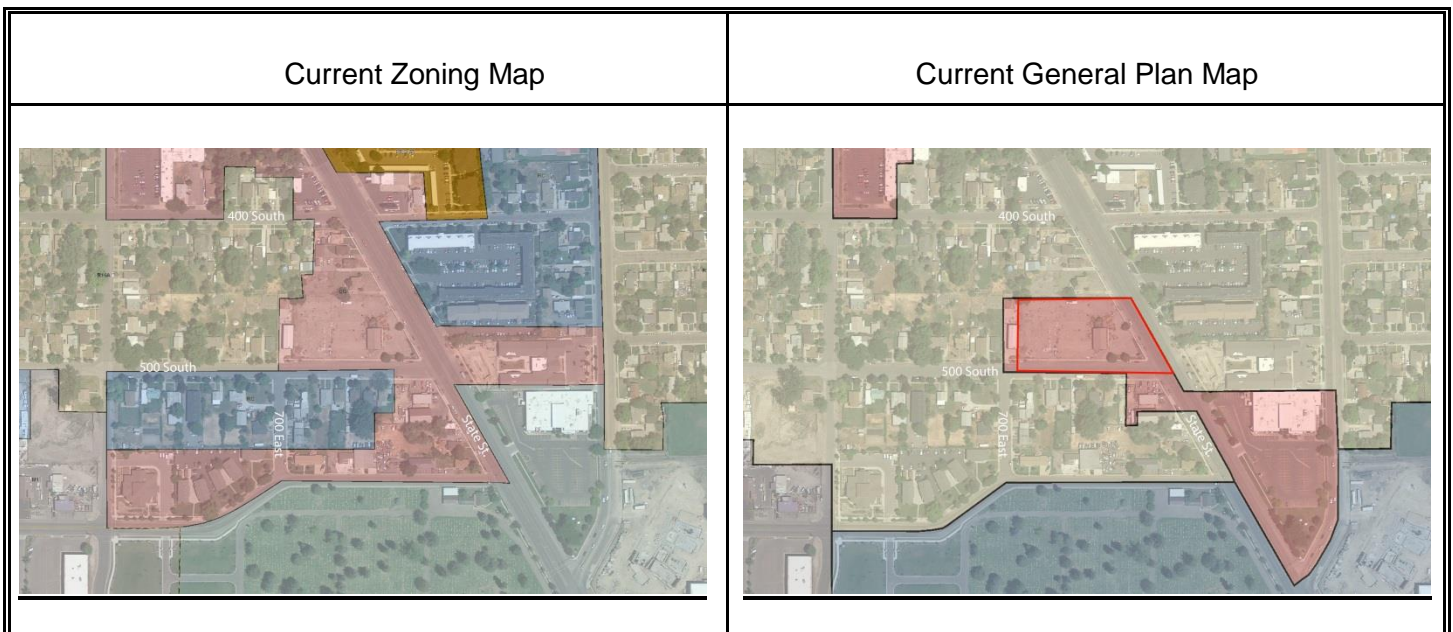
<p>Applicant: Tim Soffe Staff Coordinator: Dustin Wright</p> <p>Property Owner: Kimball Stratton Parcel ID#: 220290005, 220290026 Current Zone: General Commercial (CG) Proposed Zone: High Density Res. (HDR) General Plan Des.: Commercial Acreage: 1.92 Number of Properties: 2 Number of Lots: 2 Council Action Required: Yes</p> <p><u>ALTERNATIVE ACTIONS</u></p> <p>1. Continue to a future date to obtain additional information or to further consider information presented. <i>The next available meeting date is February 14, 2018, 5:30 p.m.</i></p> <p>2. Deny the requested Zone Change. <i>This action <u>would not be consistent with the recommendations of the Staff Report.</u> The Planning Commission should <u>state new findings.</u></i></p>	<p>Current Legal Use: Commercial uses listed in 14.22.020 of the Provo City Code.</p> <p>Relevant History: The property has been used in the past as a garden center and been vacant for a number of years.</p> <p>Neighborhood Issues: A neighborhood meeting was held on May 16, 2017. Neighbors have expressed issues with:</p> <ul style="list-style-type: none">• HDR zone is excessive for neighborhood.• Four stories being too tall.• Access on 500 S. and added traffic.• Too many one-bedroom units. <p>Summary of Key Issues:</p> <ul style="list-style-type: none">• General Plan designation change• Neighborhood concerns with proposed project plan associated with this application. <p>Staff Recommendation: Staff recommends the following conditions:</p> <ol style="list-style-type: none">1. A development agreement to restrict building height to 3 stories.2. Lots are combined into one lot as part of a separate application.
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OVERVIEW

The applicant is requesting approval to change the existing Zoning Map from General Commercial (CG) to High Density Residential (HDR) for this location. The HDR would allow the applicant to develop the proposed 64-unit apartment complex on the property. The HDR zone would allow for more units and additional building height than is being requested and therefore a development agreement would be advisable to ensure that only what has been proposed would be developed.

The applicant presented the proposed project to the Maeser Neighborhood in May of 2017. There wasn't much opposition to having a residential use on the property as long as it fit well in the neighborhood. The concerns with the proposed development were related to the building height, excessive traffic, parking concerns and the disproportionate number of one-bedroom units.

While multi-family housing would be a good alternative to the commercial zoning that is in place now, what is being proposed doesn't transition well into the surrounding single-family neighborhood. Reducing the proposed 4-story building height to a 3-story structure would be more appropriate.



FINDINGS OF FACT

1. Provo City Code Section 14.02.020(2) sets forth the following guidelines for consideration of general plan amendments:

Before recommending an amendment to this Title, the Planning Commission shall determine whether such amendment is in the interest of the public, and is consistent with the goals and policies of the Provo City General Plan. The following guidelines shall be used to determine consistency with the General Plan:

- (a) *Public purpose for the amendment in question. **The amendment would allow the property to transition from commercial to residential.***
- (b) *Confirmation that the public purpose is best served by the amendment in question. **While a transition to residential could be good, the proposed zone proves to be more intense than desired by the neighborhood.***
- (c) *Compatibility of the proposed amendment with General Plan policies, goals, and objectives. **The General Plan policies and goals for the Maeser Neighborhood allow for development along State Street to be considered for development other than one-family residential.***
- (d) *Consistency of the proposed amendment with the General Plan's "timing and sequencing" provisions on changes of use, insofar as they are articulated. **No issues with timing and sequencing.***
- (e) *Potential of the proposed amendment to hinder or obstruct attainment of the General Plan's articulated policies. **Policies in the Plan aim to "protect viable, significant areas of one-family structures". Higher density development is being proposed that may not be compatible with articulated policies.***
- (f) *Adverse impacts on adjacent land owners. **The proposed development would generate an increase in traffic and taller structures than what exists now.***
- (g) *Verification of correctness in the original zoning or General Plan for the area in question. **Zoning and General Plan designation are correct.***

- (h) *In cases where a conflict arises between the General Plan Map and General Plan Policies, precedence shall be given to the Plan Policies. **No conflicts have been identified.***

STAFF ANALYSIS

Staff finds that multi-family on this corner would be appropriate. However, the neighboring residents have expressed concerns with multiple aspects of the proposed zone and what it would allow. These issues have not been addressed by the applicant nor has there been any compromise to mitigate the negative impacts that rezoning the property would bring.

The reason that the applicant is seeking High Density Residential (HDR) and not Medium Density Residential (MDR) density is that the proposed density is 34 dwelling units per acre and the MDR zone only allows up to 30. The setbacks are less in the HDR which also allows the building to address the State Street better.

If the City desires to rezone the property to HDR, a development agreement would be beneficial to ensure that project doesn't increase in density or height from what has been proposed. A development agreement could also be used to reduce some of the impacts neighbors are concerned about by limiting building height or reducing the number of units.

CONCLUSIONS

The General Plan goals and policies relating to this area of the City aim to "maintain all existing one-family residential areas" while noting that exceptions should apply to development along State Street. The applicant is seeking to amend the zoning map to allow for a higher density development. If the City is going to rezone the property to a residential zone, the General Plan should be amended so that the designation is also residential.

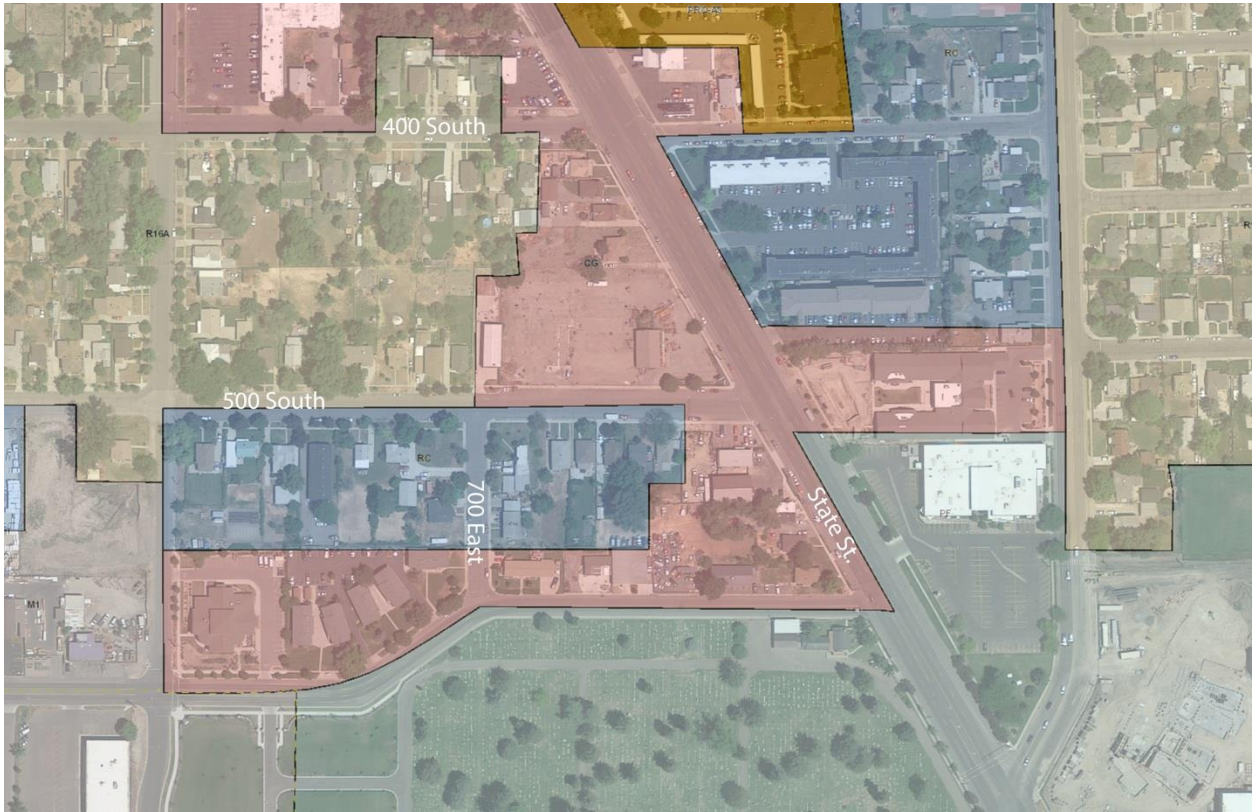
STAFF RECOMMENDATION

Staff recommends the following conditions:

1. A development agreement to restrict building height to 3 stories.
2. Lots are combined into one lot as part of a separate application.

ATTACHMENTS

1. Zoning Map





Provo City Planning Commission

Report of Action

April 24, 2019

Item *2 Tim Soffe requests a Zone Change from General Commercial (CG) to High Density Residential (HDR) for 1.92 acres of land located at 442 & 490 South State Street. Maeser Neighborhood. 17-0010R

The following action was taken by the Planning Commission on the above described item at its regular meeting of April 24, 2019:

RECOMMENDED APPROVAL WITH CONDITIONS

On a vote of 6:1, the Planning Commission recommended that the Municipal Council approve the above noted application with the following conditions:

Conditions of Approval:

1. That building height be limited for the north building to three stories and the east building to four stories, with a maximum building height of 44' and the south building to two stories;
2. That the total number of dwelling units be limited to 60; and
3. That the existing lots are combined into one lot.

Motion By: Andrew Howard

Second By: Robert Knudsen

Votes in Favor of Motion: Andrew Howard, Robert Knudsen, Debora Jensen, Russ Philips, Shannon Ellsworth, Jamin Rowan.

Votes not in Favor: Dave Anderson

Debora Jensen was present as Chair.

- Includes facts of the case, analysis, conclusions and recommendations outlined in the Staff Report, with any changes noted; Planning Commission determination is generally consistent with the Staff analysis and determination.

LEGAL DESCRIPTION FOR PROPERTY TO BE REZONED

The property to be rezoned to the High Density Residential Zone is described in the attached Exhibit A.

RELATED ACTIONS

- Report of Action from Planning Commission Hearing on January 24, 2019 Item 2.

DEVELOPMENT AGREEMENT

- The applicant has expressed has offered to enter into a development agreement to memorialize the limitations he has placed on his development. The conditions of approval accurately reflect those proffers and limitations.

STAFF PRESENTATION

The Staff Report to the Planning Commission provides details of the facts of the case and the Staff's analysis, conclusions, and recommendations.

NEIGHBORHOOD MEETING DATE

- A neighborhood meeting was held on 05/16/2017.

NEIGHBORHOOD AND PUBLIC COMMENT

- The Neighborhood Chair was present /addressed the Planning Commission during the public hearing.
- Neighbors or other interested parties were present or addressed the Planning Commission.

CONCERNS RAISED BY PUBLIC

Any comments received prior to completion of the Staff Report are addressed in the Staff Report to the Planning Commission. Key issues raised in written comments received subsequent to the Staff Report or public comment during the public hearing included the following:

- A desire was stated to also limit the building for the building closest to State Street to three stories.
- It is estimated at 750 average daily trips will be generated from this project and slowing traffic down to increase safety would be desirable.
- There could be a need for additional parking so that there is not a parking issue.
- There is an existing issue along the streets in this area with parking. Adding this development will make it a bigger issue.
- Limit the development to three stories to help maintain a smaller scale residential feel in the neighborhood.

APPLICANT RESPONSE

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

- There has been a lot of working with the neighbors to address the concerns. Not all concerns can be practically met, but there have been a lot of changes to help address as many as possible.
- The density is just over the Medium Density Residential limit of 30 units per acre.
- The maximum building height of 44' meets the requirement for the MDR zone.
- Worked with UDOT to get permission to have an entrance on State Street.
- Adjustments will be made to the intersection on 500 South and State to meet the request for Provo Public Works to improve the road alignment.
- Expressed willingness to do a development agreement limiting the site to the items listed in the staff report and have the project plan be incorporated into the development agreement.

PLANNING COMMISSION DISCUSSION

Key points discussed by the Planning Commission included the following:

- The number of units has decreased by four since this item was last heard by the Planning Commission.
- The intersection at 500 South and State is less pedestrian friendly since the last time that the Planning Commission saw this item.
- The buffering and fencing will play an important role in limiting impacts on adjacent residential.
- The townhomes on 500 South will be for rent, but could be for sale.
- The parking requirement is 101 and the proposed site will meet that requirement.
- There have been a lot of positive changes since the Planning Commission saw the first proposal.
- Provo has a lot of apartments and other housing options should be considered.



Planning Commission Chair



Director of Community Development

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

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

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

BUILDING PERMITS MUST BE OBTAINED BEFORE CONSTRUCTION BEGINS

Exhibit A

Parcel 1:

Beginning at a point, being South 5°28'30" West 1608.27 feet and South 89°59'12" West 2300.84 feet from the Witness Corner for Northeast Corner of Section 7, Township 7 South, Range 3 East, Salt Lake Base and Meridian, said Witness Corner being South 87°34'20" East 258.29 feet from the Northeast Corner of Section 7, Township 7 South, Range 3 East, Salt Lake Base and Meridian, and running:

thence South 29°41'16" East 229.08 feet along the West line of State Street; thence North 89°29'37" West 394.51 feet along the North line of 500 South Street; thence North 1°49'05" East 198.05 feet; thence South 89°29'37" East 274.76 feet to point of beginning.

Parcel 1 Contains 66,258 sq. ft or 1.52 acres

Parcel 2:

Beginning at a point, being South 5°28'30" West 1608.27 feet and South 89°59'12" West 2300.84 feet from the Witness Corner for Northeast Corner of Section 7, Township 7 South, Range 3 East, Salt Lake Base and Meridian, said Witness Corner being South 87°34'20" East 258.29 feet from the Northeast Corner of Section 7, Township 7 South, Range 3 East, Salt Lake Base and Meridian, and running:

thence North 89°29'37" West 254.33 feet; thence North 0°09'52" East 71.43 feet; thence North 89°43'14" East 211053 feet to the West line of State Street; thence South 29°41'16" East 86.00 feet along the West line of State Street and the point of beginning.

Parcel 2 Contains 17,007 sq. ft. or 0.39 acres

ITEM 2*

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Maeser Neighborhood
17-0010R

400 South

500 South

700 East

State St.





400 South



500 South

700 East

State St.

500 South



ST



RENDERING IMAGES

PROVO MARRIED HOUSING

PROVO, UTAH



25 MARCH 2019

COLORS ARE REPRESENTATIONAL ONLY. FINAL COLORS MAY VARY FROM ABOVE REPRESENTATION



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PROVO MARRIED HOUSING

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RENDERING IMAGES



PROVO MARRIED HOUSING

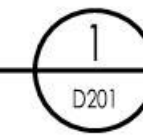
PROVO, UTAH

25 MARCH 2019

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32 PLEX - SOUTH ELEVATION
3/16" = 1'-0"



32 PLEX - WEST ELEVATION
3/16" = 1'-0"

