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## PROVO MUNICIPAL COUNCIL

### Regular Meeting Minutes

5:30 PM, Tuesday, March 02, 2021

Room 200, Municipal Council Chambers

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

### 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 David Sewell

**Prayer** – Councilor Travis Hoban

**Pledge of Allegiance** – Councilor David Sewell

**Public Comment** ([0:14:01](#))

There were no comments from the public.

### Action Agenda

- 1. Resolution 2021-09 regarding the Sales Tax Increment post performance payment with Eastbay Shopping Center LLC (formally Woodside Capital Partners). (21-033) ([0:14:41](#))**

**Motion:** An implied motion to adopt Resolution 2021-09 as currently constituted, had been made by council rule.

Dixon Holmes, Assistant Chief Administrative Officer, presented. In June 2018, Provo City entered into a Sales Tax Increment agreement with Woodside Capital Partners to offset and incentivize the remodel, construction and opening of a new Ross retail store in the East Bay Shopping Center. The store was intended to serve as a magnet to attract other retailers and fill and otherwise low occupancy retail center. Mr. Holmes was asking for an appropriation of \$38,623.75, which was the amount of sales tax revenue that was above the previously established baseline. This was a post-performance incentive.

Chair Sewell opened public comment, there was no response. 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.

**2. Ordinance 2021-09 amending the zone map classification of approximately .30 acres of real property, generally located at 619 N. 500 West, from Residential Conservation (RR) to Professional Office (PO) Zone. North Park Neighborhood. (PLRZ20210022) (0:22:33)**

**Motion:** An implied motion to adopt Ordinance 2021-09, as currently constituted, had been made by council rule.

Aaron Ardmore, Planner, presented. Located at 619 North 500 West, there was a medical business office that had been there since 1980. The zone was Residential Conservation (RC) Zone which had been placed on the property in 2002. The property owners wanted a slight addition on the South, but the RC zone prevented any expansion. The applicant was requesting Professional Office (PO) Zone. The General Plan Map designation was commercial. The Planning Commission asked Staff to study the corridor and see if there were any other properties in the area that should also be changed to RC later. The proposed plan complied with the requested zone.

Chair Sewell invited the applicant's representative, Eric Jones, to speak to the Council. Mr. Jones said they were excited for the project. He clarified this was just a canopy over the new entry with a concrete pad.

Chair Sewell opened public comment, there was no response. 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.

**3. Ordinance 2021-10 amending the Zone Map classification of approximately 8.5 acres, generally located at 1724 South State Street, from CM, RA, R1.6, R1.10, and A1.5 to the MDR Zone. Spring Creek Neighborhood. (PLRZ20190356) (0:30:55)**

**Motion:** An implied motion to adopt Ordinance 2021-10, as currently constituted, has been made by council rule.

Brandon Larsen, Planner, presented. This was not the first presentation; Mr. Larsen gave a brief overview. This would rezone multiple various zones to Medium Density Residential. This would accommodate 30 townhomes, 30 studio apartments, 64 two-bedroom apartments, and 80 one-bedroom apartments. The Planning Commission approved the concept plan and recommended the rezone.

Since the last meeting, the applicant had met with some Council Members to address safety concerns related to Treeside Charter School (TCS). The developer had proffered a development agreement to address the safety concerns. Staff noted that traffic from the school had a tendency to queue on the applicant's property, but staff thought this was a good fit for the area and would attract families that would bring stability to the area.

The developer's legal counsel, Craig Carlisle, spoke to the Council. He said the development agreement would address the safety concerns that had been raised. Mr. Carlisle presented their proposed solutions which included a gate that would be closed during pickup and drop-off, as well as a crossing guard.

Brian Jones, City Attorney, reviewed the development agreement. His first concern was the party to the agreement, South State Development, did not own the property yet. They either needed to include the current owner, Zions M-13, as a party to the agreement or make it so the agreement was not effective until South State Development owned the property. Mr. Carlisle agreed that the current owner could be added as a party to the agreement.

Mr. Carlisle reviewed what had been included in the development agreement. ([0:45:05](#))

Councilor Hoban was concerned that parts of the development agreement required TCS to agree to certain things, but they were not a party to the agreement. Mr. Jones explained that the final legal terms could be negotiated after the rezone was approved because the ordinance granted the Mayor the authority to negotiate the agreement.

Councilor Ellsworth asked what the City's obligation would be if the developer failed to provide a crossing guard. Mr. Jones said there was an indemnification clause, and the City would not be liable, but the City could make efforts to enforce the agreement. Except, the agreement would terminate once the permits had been issued and construction was finished. Ms. Ellsworth was uncomfortable making a promise for something the City had no control over, she suggested removing the section about the crossing guard.

Councilor Hoban pointed out that the location where they had proposed to place the crossing guard was not an area where children were walking, they had already been picked up or dropped off before reaching that point. He did not think it was necessary in that location.

Chair Sewell invited the Neighborhood Chair Mary Millar to speak. The neighborhood was in favor of the development agreement and appreciated the concessions that had been made with the agreement. Others had raised concerns about where the kids in the new development would go to school, but Ms. Millar said the school transportation department was very easy to work with and would ensure there was transportation to whatever school they were going to.

BJ Taylor, Salem, was a TCS Board Member. He requested that the school's attorney get the opportunity to respond to some of the comments. He said they were not opposed to the development; it was just the safety of the children. Mr. Taylor said there were long waits during pickup and drop-off, and it would also impact the residents. He said they were legally obligated to provide exclusive access to the loading areas.

April Claussen, Mapleton, was the TCS Board Chair. She said the School had to enter into legal agreements with the State that required exclusive use of the pickup and drop-off areas. She added that the school's landlord was prohibited from telling them what they could or could not do with the property.

Dave Knecht, Provo, was supportive of the proposed plan. He realized there were differences between the developer and the school, but those would be worked out elsewhere. Mr. Knecht was disappointed the school was not working together with the developer to find a compromise.

Erin Preston, Herriman, was the attorney representing TCS. She said they could not come to a compromise because they could not give what they did not have to give. Ms. Preston stated that UDOT, the State Fire Marshall, and others had made exclusive access a condition of their permit. Through a GRAMA request to UDOT, she determined there was no evidence of Remington requesting access through UDOT. Regarding the neighborhood meeting, she said there had not been a recent traffic study. Sharing access would be a liability for the school.

Alyssa Sheehan, Provo, was in support of the development. She was a renter in the area and was excited about having more affordable housing in Provo.

Jennifer Lloyd, Provo, was a TCS Board Member and had children attending the school. She said TCS could not provide rights it does not have.

Verl Allen, Provo, said there were few opportunities like this for development and this would enhance the blighted area. He thought the access issue was an excuse to keep things status quo. In order for Provo to attract talented professionals, this type of housing was necessary.

Eva Bravova was a longtime Provo resident. She thought Mr. Morley, the current property owner, was either just a "rich white guy," or had friends on the City Council and was being allowed to get what he wanted.

There were no other comments from the public.

Councilor Ellsworth was not comfortable with this development. On South State Street there were about 850 apartments and townhomes, since 2017 this number had increased by 530. There were no commercial amenities, no active transportation, and no sidewalks. It brought density to a part of town that was lacking amenities. She thought a different housing type or incorporating commercial would be better. She thought they needed to look long-term at what was best for the area.

Councilor Handley had previously expressed concerns and preferred to wait for the legal issues to get worked out before voting. He doubted that a development agreement could be agreed upon by the school. He was not satisfied with approving this until everything was worked out between the developer and the school.

Councilor Hoban said even if the litigation gets resolved, there was still a queuing issue. The developer could finish Spring Creek Drive and provide access to the school. The only place there would need to be shared access of 1724 South would be for the portion to the south. The development agreement solved the queuing issue. He did not see the downside in approving this now and thought it would solve a lot of problems.

Mr. Jones thought the school would not be satisfied by anything the developer would offer, he did not envision they would ever be a party to the development agreement either. He encouraged Council to identify their concerns, and when the development agreement satisfied those concerns, then they should proceed. The development agreement would not grant the developer access they did not already have, all it did was commit the developer to give up rights they would have with the rezone.

Councilor Fillmore clarified all they were deciding on was the rezone and development agreement. He thought the developer was doing what they could to address the safety concerns. He wondered if Mr. Jones had considered the complexities of approving the rezone, given the number of parties involved, it could increase the complexities of the legal issues. He questioned if it was premature to grant the rezone.

Mr. Jones did not think any of the complexities Mr. Fillmore described were relevant to the Council's decision. Even if the rezone was granted and one of those roadblocks prevented the development, then it would not be developed.

Councilor Harding only saw this as a request for a rezone, and the development agreement addressed his concerns. Mr. Harding thought this was the right zone for the property.

Councilor Shipley was comfortable with this proposal and the development agreement. He thought Ms. Ellsworth's comments warranted revisiting the land use map to see if there needed to be changes.

Chair Sewell was also supportive and thought this would be positive for the area. It aligned with the current plan and had neighborhood support. Considering the size of the project, he thought the developer had made considerable efforts to address the safety concerns.

Councilor Handley still preferred to wait on the vote and let the legal issues get resolved. He thought it was possible the legal issues would work themselves out with time.

Councilor Hoban asked staff how UDOT would typically approach a development like this. Mr. Larsen said UDOT had been in contact with the applicant. They did not share much with Mr. Larsen, and he thought they did not have enough data at this point in the process and needed an additional study. David Day, Public Works Engineer, explained that UDOT is usually in favor of fewer access points on to main roads, like State Street. He did not think UDOT would require additional access points and it was unlikely anything they could require would stop the development from proceeding.

Mr. Jones reviewed the current draft of the development agreement again. Counsel for the developer agreed to the terms described by Mr. Jones. If approved, Mayor Kaufusi would be authorized to negotiate the agreement as discussed in the meeting. ([2:02:07](#))

Chair Sewell called for a vote on the implied motion.

**Vote:** The motion was approved 5:2 with Councilors Fillmore, Harding, Hoban, Sewell, and Shipley in favor. Councilors Ellsworth and Handley opposed.

## **Adjournment**

Adjournment

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