

**AMERICAN FORK CITY COUNCIL
FEBRUARY 23, 2021
PUBLIC HEARING, REGULAR SESSION MINUTES**

ATTACHMENTS

Members Present:

Bradley J. Frost	Mayor
Kevin Barnes	Council Member
Staci Carroll	Council Member
Barbara Christiansen	Council Member
Rob Shelton	Council Member
Clark Taylor	Council Member

Staff Present:

David Bunker	City Administrator
Terilyn Lurker	City Recorder
Stephanie Finau	Deputy Recorder
Anna Montoya	Finance Officer
Aaron Brems	Fire Chief
George Schade	IT Director
Cherylyn Egner	Legal Counsel
Adam Olsen	Senior Planner
Darren Falslev	Police Chief

Also present: John Woffinden, Richard Berger, Ken Jones, Mike Horan, and Jake Horan

Mayor Bradley J. Frost welcomed everyone and read the following statement:

In accordance with Resolution No. 2020-07-20R, Mayor Bradley J. Frost has determined that conducting meetings of the City Council with an anchor location, such as the City Council Chambers or Administration Conference Room, presents a substantial risk to the health and safety of those who may be present there. The following are a few of the facts upon which this determination has been made:

- It is difficult to anticipate the number of attendees at any meeting in order to maintain social distancing to comply with Utah health guideline levels. Further, regardless of the number of attendees, social distancing measures for Council, staff, and attendees will be difficult to maintain in the City Council Chambers and Administration Conference Room.
- COVID-19 continues to pose an immediate threat to the health, safety, and welfare of American Fork City residents.
- American Fork City can provide a way for the public to hear, or hear and view, open portions of City Council meetings and to provide a way to participate in public hearings.

The American Fork City Council held a public hearing in conjunction with the regular session on Tuesday, February 23, 2021, electronically, commencing at 7:00 p.m.

PUBLIC HEARING

- To receive public comment on the AF Utah LLC Addition, consisting of 19.40 acres at approximately 1000 West 200 South.

- To receive public comment on the Silverado Annexation, consisting of 26.04 acres at approximately 1000 West 150 South.
- To receive public comment on the North Binch Annexation, consisting of 26.02 acres at approximately 800 West 500 South.
- To receive public comment on the vacation of a portion of a public utility easement at 1072 North 980 East, lot 29 of the Autumn Crest Subdivision. The portion of the easement to be vacated is the southern five (5) feet of the northern ten (10) foot easement.
- To receive public comment on the vacation of a portion of a public utility easement in the Alvera at the Meadows project, located at 688 W. Nicholas Lane. The portions of the public utility easement to vacate are along the east easement of the project consisting of 9,188 sq feet and a portion along the south easement consisting of 5,400 sq feet.
- To receive public comment on the vacation of a portion of a public Right-of-Way on 700 West at about 300 South and is approximately .05 acres. A vacation of a portion of a public Right-of-Way on 570 West from 330 South to approximately 450 South and is approximately 0.35 acres.
- To receive public comment on the vacation of a public Right-of-Way on 1700 South at about 400 East and is approximately 0.083 acres.
- To receive public comment on the declaration of a 1998 Crown Victoria to be surplus and disposed of.

No public comments for any of the public hearing items.

REGULAR SESSION

1. The Pledge of Allegiance was led by Mayor Bradley J. Frost. Invocation was given by Council Member Shelton. Roll call was conducted by Mayor Bradley J. Frost.

Mayor Frost led those participating in a Pledge of Allegiance and an invocation was given by Council Member Shelton. Roll call was taken.

2. Twenty-minute public comment period- limited to two minutes per person.

Dale Christiansen introduced himself, and stated that he was there as a representative for Neighborly Ventures. He first thanked the Council for consideration of their input, and thanked them for their time. Dale Christiansen noted that they had provided a number of inputs for the record that would be read in. He stated that on the agenda was their plat for approval following consideration of the code change, and he said that they looked forward to its approval. He further said that they looked forward to being long term members of the American Fork community with the investment they planned to make in development of the project. He reiterated their thanks for Council's input and their consideration.

Stephanie Finau read four public comment letters that had been sent in (see attachments).

3. City Administrator's Report

City Administrator David Bunker reported that registration for spring soccer closed, and that they had over 1,100 youth from American Fork sign up. He informed them that was an all-time record, and that there was more youth engaging in American Fork sports than ever before. He expressed excitement on behalf of the City, and was happy they had new fields at Art Dye to accommodate more games.

Mr. Bunker also reported that on the prior Saturday, the American Fork High School men's swim team took the State championship. He wished them congratulations, and also gave a shoutout for the hard work done by the women's swim team. He noted that Lone Peaks women's team took the State title. He expressed congratulations to all of the American Fork youth athletes and their hard work.

4. Council Reports

Council Member Christiansen echoed Mr. Bunker's sentiments about the athletes.

Council Member Shelton reported on an item from dispatch. He informed them that they were currently going through their preliminary budgets, and he said that based on the growth and call volumes used to calculate the budgets, they would be approximately \$27,000 higher than the previous year. He noted that those were rough estimates, and that when they were more refined, he would send those numbers to Mr. Bunker. Council Member Shelton said he was glad to see that their population estimates were lower than the population estimates used during the retreat and said that they would take those numbers to their advantage.

Council Member Shelton said that regarding dispatch there were a few updates, and some legislative bills being tracked as it looked like everyone was trying to make the system more efficient. He stated that one of those was about on hold calls being taken by neighboring call systems. He explained that meant if a call came in and was on hold for more than 90 seconds, it would roll to another dispatch agency. He said that there were a few agencies around them that had not met that 90 second rule. He expressed that posed some concerns because while they were happy to help and anyone who called 911 should get timely service, there still needed to be some revenue component to be justly compensated.

Council Member Shelton also reported that Council Member Carroll and he had a meeting with Senator Kennedy in regard to several complaints from citizens. Council Member Shelton said that they had received some feedback from residents that mentioned that while it was a State issue, it was nice to be able to have the local government get involved to help make the connection, instead of being given a State contact and sent on their way to contact by themselves. Council Member Shelton expressed appreciation for Council Member Carroll, Senator Kennedy, and Chief Falslev for the collaborative effort.

Council Member Barnes, Council Member Carroll and Council Member Taylor all had nothing specific to report.

5. Mayor's Report

Mayor Bradley J. Frost added to Mr. Bunker's report. Mayor Frost said that they had the American Fork and Lone Peak swim teams take State championships and noted that they both used the American Fork facility to practice. He thanked staff for the swimming pool being kept open, clean, and prepared for State champions.

Mayor Frost reported that he had a weekly call with all the Utah mayors and the Utah Health Director, and the County chose a site in American Fork to be a hub for immunizations. The site was the old Walmart that the district had offered up, and it will be used to vaccinate up to 2,000 people per day. He said that for most of the summer there would be a large group of people that migrated into American Fork for vaccinations. Mayor Frost reported the good news that there were two upcoming providers that would bring the vaccination in single doses, which would make it

less complicated to manage follow-up visits. Mayor Frost repeated that American Fork would have a lot of traffic, and he expected that to begin within the next three to four weeks. He noted that as the Shopko site in Spanish Fork became unavailable, they would turn to American Fork to vaccinate a large group of people in the county.

COMMON CONSENT AGENDA

(*Common Consent* is that class of Council action that requires no further discussion or which is routine in nature. All items on the Common Consent Agenda are adopted by a single motion unless removed from the Common Consent Agenda.)

1. Approval of the February 2, 2021 work session minutes.
2. Approval of the authorization to release the Improvements Construction Guarantee in the amount of \$199,552.12 and issue a Notice of Acceptance for the 860 PLACE PLAT A construction of public improvements located at 480 South 860 East.
3. Approval of the authorization to release the Improvements Durability Retainer of \$ 202,260.38 for FIELDS OF TIMPANOOGOS APARTMENTS, located at 300 South 650 East.
4. Approval of the authorization to release the Improvements Durability Retainer of \$13,920.75 for PERRY FLEX DEVELOPMENT, located at 277 South 740 East.
5. Ratification of City payments (February 3, 2021 to February 16, 2021) and approval of purchase requests over \$25,000.

Council Member Taylor moved to approve the minutes. Council Member Carroll seconded the motion. Voting was as follows:

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Clark Taylor, Council Member
SECONDER:	Staci Carroll, Council Member
AYES:	Barnes, Carroll, Christiansen, Shelton, Taylor

Mayor Frost noted to the public that the City Council received a packet that was sometimes very large at 400-500 pages, and that they studied to prepare and ask questions. He felt it was always important to mention it because the decisions they might make fairly quickly were things that received careful study and consideration by Council members. Mayor Frost introduced the action items.

ACTION ITEMS

1. Review and action on a resolution approving an amendment to the land use element of the general plan at approximately 50 East 1100 South from the Low Density Residential to the Design Industrial designation.

Senior Planner Adam Olsen stated that this item and the immediately following this zone amendment went hand in hand. He explained that the applicant wanted to amend the land use and the zone map designations for the area from the low density residential to the design industrial and planned industrial zone. Mr. Olsen said that if these items were approved, the applicant would come back with a site plan for an office warehouse development. They had included a photo of a similar project they would like to bring into that area. The Planning Commission recommended these items for approval.

Council Member Shelton moved to adopt Resolution No. 2021-02-09R approving an amendment to the land use element of the general plan at approximately 50 East 1100 South from the Low Density Residential to the Design Industrial designation. Council Member Barnes seconded the motion. Voting was as follows:

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Rob Shelton, Council Member
SECONDER:	Kevin Barnes, Council Member
AYES:	Barnes, Carroll, Christiansen, Shelton, Taylor

2. Review and action on an ordinance approving a zone map amendment located at approximately 50 East 1100 South from the R1-20,000 Residential to the PI-1 (Planned Industrial) zone.

Council Member Taylor moved to adopt Ordinance No. 2021-02-08 approving a zone map amendment located at approximately 50 East 1100 South from the R1-20,000 Residential to the PI-1 (Planned Industrial) zone. Council Member Christiansen seconded the motion.

Mayor Frost asked if there was any discussion on the motion.

Council Member Shelton commented regarding a piece of residential area on the map. He referred to a location on the map that was a skinny dark green piece, and he said that he thought it was slated for residential. He then noted that the sliver pieces below it was also residential. He stated that it seemed as if this action siloed off those residential components. He noted that he was okay with that, but wanted to take a look and see if it made sense to bring those into the same zone of the planned industrial zone. He thought this would bring some congruence.

Mr. Olsen said that he imagined that when those properties came into the City, they would likely come in into an industrial zone. He said that if the property owner on that RA-5 wished to change, they could initiate that just as the ones currently on the agenda had done. He stated that the PF stood for public facilities, and that a lot of it was slated for the future Vineyard connector alignment as UDOT had purchased those properties.

Council Member Shelton said that the reason he had mentioned it was because it might be their land use element when they did the change. He thought that they looked at the underlying zone and land use when they did the annex, and thought it might be smart to be proactive on it or if they should wait. Mr. Olsen replied that it could be easily done through a City initiated amendment. Council Member Shelton stated that his thought behind it was that when someone looked to buy that property, they could look at the land use element and see the intent.

Council Member Barnes asked what buildings, if any, were on the RA-5 property right now. Mr. Olsen replied that there was one home there.

Mr. Bunker asked Mr. Olsen if there was also a business there. Mr. Olsen replied that he was unsure if there was a business on the RA-5 but stated that there was a new Amazon facility east of that. John Woffinden stated that the property in the RA-5 zone was owned by Frank Carson.

Mayor Frost called for a vote. Voting was as follows:

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Clark Taylor, Council Member
SECONDER:	Barbara Christiansen, Council Member
AYES:	Barnes, Carroll, Christiansen, Shelton, Taylor

3. Review and action on an Ordinance approving the vacation of a Public Utility Easement at Alvera at the Meadows Apartments located at 688 West 130 North.

Mayor Frost stated that Legal Counsel Cherylyn Egner could give them the purpose of this easement.

Ms. Egner stated that in speaking with staff, it appeared that they had a 30' easement for utilities, and they would still maintain the 15' easement. She noted that all of the City's utilities were within that 15' easement. She said that there was already some encroachment in there, and that this essentially cleaned up the easement so there was not an encroachment while still preserving enough for City utilities.

Council Member Carroll moved to adopt Ordinance No. 2021-02-09 approving the vacation of a Public Utility Easement at Alvera at the Meadows Apartments located at 688 West 130 North. Council Member Taylor seconded the motion. Voting was as follows:

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Staci Carroll, Council Member
SECONDER:	Clark Taylor, Council Member
AYES:	Barnes, Carroll, Christiansen, Shelton, Taylor

4. Review and action on ordinance approving the vacation of a Public Utility Easement on lot 29 of the Autumn Crest Subdivision located at 1072 North 980 East.

Council Member Barnes moved to adopt Ordinance No. 2021-02-10 approving the vacation of a Public Utility Easement on lot 29 of the Autumn Crest Subdivision located at 1072 North 980 East. Council Member Christiansen seconded the motion. Voting was as follows:

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Kevin Barnes, Council Member
SECONDER:	Barbara Christiansen, Council Member
AYES:	Barnes, Carroll, Christiansen, Shelton, Taylor

5. Review and action on an Ordinance approving the partial Right-of-Way Vacation for 1700 South related to the Roderick Catalyst Phase 2 Subdivision

Council Member Taylor moved to adopt Ordinance No. 2021-02-11 approving the partial Right-of-Way Vacation for 1700 South related to the Roderick Catalyst Phase 2 Subdivision. Council Member Shelton seconded the motion. Voting was as follows:

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Clark Taylor, Council Member
SECONDER:	Kevin Barnes, Council Member
AYES:	Barnes, Carroll, Christiansen, Shelton, Taylor

6. Review and action on an Ordinance approving the Right-of-Way Vacation for portions of 570 West and 700 West related to the Fenn Farms Conservation PUD.

Council Member Taylor moved to adopt Ordinance No. 2021-02-12 approving the right-of-way Vacation for portions of 570 West and 700 West related to the Fenn Farms Conservation PUD. Council Member Carroll seconded the motion. Voting was as follows:

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Clark Taylor, Council Member
SECONDER:	Staci Carroll, Council Member
AYES:	Barnes, Carroll, Christiansen, Shelton, Taylor

7. Review and action on an ordinance approving amendments to Section 17.4.608.B of the American Fork City Code regarding requirements to provide office and/or retail uses in the TOD zone.

Mayor Frost stated that this item had gone before the Planning Commission the week prior, and the developer was promised that it would be brought back in a timely manner. Mayor Frost asked Mr. Olsen to give them a preview of the meeting. Mayor Frost noted that the Planning Commission chair, John Woffinden, was available for questions.

Mr. Olsen reiterated that this went to the Planning Commission the prior week. He explained that the draft that went before the Planning Commission proposed to allow the consolidation of the commercial or mixed use space into one location or building. He said that it went forward. He also explained that the Planning Commission discussed back and forth the requirement for the delivery of the mixed use or commercial space to occur no later than at 50% buildout of the project. The Planning Commission discussed back and forth, and there was also a comment from a developer of the next agenda item. Mr. Olsen relayed that the Planning Commission ultimately recommended the changes to City Council with the following notes. They thought that the delivery of the office/retail shall occur no later than at completion of 75% build out of any residential portions of the project area. They felt that it was important to have a trigger point in there, but also that 75% gave any development a little more leeway and time involved.

Mr. Olsen explained that City Council had two options before them that night. The first was the 50% build out trigger point. The second was the 75% build out trigger point recommended by the Planning Commission. He noted that there was some public comment read into the record during the public hearing on it, and much of the comment was also made at the pc. That was why the Planning Commission ultimately decided to move forward with the 75% build out as opposed to the 50%.

Mayor Frost asked how the Planning Commission vote went. Mr. Olsen replied that all but one member voted in favor of the amendments. He explained that the one who voted against it had done so because they did not like the idea of consolidation, and not because they had concerns about the trigger point itself. The individual felt that rather than have the commercial uses be consolidated into one building, it was better to disperse the project through that area.

Mayor Frost asked John Woffinden if he had any more insight to give on the topic. Mr. Woffinden said that he agreed with Mr. Olsen's summary. Mr. Woffinden's main concern was that they had to have a way to have sub-commercial come in and not just go completely residential and eliminate room for commercial five or six years down the road. He stated that the whole idea of the TOD was to have a mix of commercial and residential in the same area. They had to have the trigger point to make sure that the City did not end up with entirely residential.

Mr. Woffinden noted that the developer did not want a time frame at all, and that was why they started with 50% and compromised to a 75% build out. They wanted to make sure the City had some input and was able to have some commercial.

Mayor Frost expressed appreciation for the public comment and stated that it provided some good perspective. He turned it over to Council for discussion.

Council Member Barnes stated that as he read through the minutes, he noted that there was a lot more discussion on this item than there usually was. He said that there seemed to be mixed feelings on the item before the final vote was taken. He asked if that was an accurate understanding. Mr. Woffinden replied that it was accurate. He said that there were only a few things on the agenda that night, and this one took up the majority of the discussion.

Council Member Barnes noted that somewhere along the line he saw a comment that they were willing to dedicate certain areas of the land for that development. He asked for further clarification on that. Mr. Woffinden clarified that they said that they would reserve a certain area that was for commercial use. He expressed that the whole point was to make sure the City got their commercial somehow. Council Member Barnes asked if that reserve meant that they would just leave it as bare ground. John Woffinden confirmed. Council Member Barnes said that he just wanted to make sure that was what they were willing to do to meet the determined percentage requirement.

Council Member Taylor noted that they saw that plan three weeks prior. Council Member Barnes asked if it was for that one piece. Mr. Olsen explained that this was the ordinance change that allowed the consolidation. He stated that the direction they received from the meeting was to prepare a draft that does allow consolidation. He said that they did, but felt that they needed to put in a trigger point along with it. He confirmed that there was discussion back and forth among the Planning Commission between the site plan and the ordinance change itself. The majority of the Planning Commission liked the idea, but they felt there needed to be some trigger points to start that commercial.

Council Member Barnes said that they were talking about this specific case, but his concern was that it would apply to all future similar situations. Mr. Olsen confirmed. Council Member Taylor said he understood Council Member Barnes's point.

Council Member Taylor said that they envisioned the best laid plans about how these things could go but noted that some retail spots never filled. He referred to Easton Park and the many retail spots that still were not filled. He stated that they were set on the plans brought forth by developers that an area would be dedicated for commercial use, but he felt that it made no sense taking into consideration the way things were currently.

Council Member Taylor said that in all honesty they were very confident they would not be able to fill for probably well into over a year after development. He noted that they had not even completed 200 South done, which would be the main core of that. He felt that they needed to be realistic as they looked at it. He said that the way they envisioned the TOD could still come to be, but he did not think it was by letting vacant space just sit there. He explained that the requirement of the builder to build that would remain, but he personally had difficulty with this being the right thing to do. He said that space was there and it would not go away, and that the timing was critical. He noted that it caused concern because this was for all developments in the TOD.

Council Member Shelton concurred, and referred to Easton Park. He expressed that it did not matter how great their intentions were, humans were inherently lazy and liked convenience. He thought they needed to take a look at it because they could not fight economics. He said that they did not have control over it. He noted that he met with an architect who said his commercial business was down tremendously. Council Member Shelton said that nobody knew how to design commercial office space right now because nobody knew what post pandemic would look like. He said there were reasons lenders were not lending, and that it was a huge risk nobody wanted to take. He also expressed that there was a shortage of available homes, so multifamily residential was up a lot.

Council Member Shelton believed that economics would win out. He stated that a lesser developer, but not the one they had now, may come in and slap up something commercial just to get it done and move on. Council Member Shelton said he would rather have a developer that decided to wait for the right party to come in and design something right, especially with the unknown future of retail and commercial development. He said he would be in favor of the removal of the 75% component. He asked staff if there was a way to ensure it stayed commercial down the road regardless of who purchased the property.

Mr. Olsen replied that there was not one unless it was changed again. He said that the ordinance would have to change again because the percentage requirement was still there and would not change.

Council Member Carroll asked if it was like if they had a plat, because a plat was worded that way. She asked if it was a percentage of that plat.

Legal Counsel Cherylyn Egner explained that it was the 25% equivalent of the residential. She clarified Council Member Shelton's question was if there was any assurance that the dedicated commercial space that was left would remain commercial. The question was if once it was dedicated in the plat as commercial it would not change.

Council Member Carroll said that certain designations could be made on the plat, and she thought that the one thing that could potentially cause future difficulties was what the 25% equivalent of the project's ground floor would look like in terms of the commercial structure. She stated that if they allowed the entirety of that project to finish with the exception of the commercial building, the only way to get the 25% equivalent was if they went six stories of commercial. She thought that they may need to adjust the language a little bit, because otherwise they pigeonholed their commercial developer to accommodate the residential that was already put in place.

Council Member Taylor said that they could not have a situation similar to what they had right now where they had designated the area. He said that they did not know what that area would look like, but had taken into consideration the 25% and had consolidated it in the northwest section closest to 200 South and the surrounding retail area. He stated that there was no way to secure that was going to be that space.

Ms. Egner clarified that what she meant was that she did not know what the anticipation was for that building, but the commercial structure had to serve the equivalent of 25% of the ground floor. She questioned about how many stories the building on the corner would be based on the amount of residential. She said that they would need to sure up some language, and that the commercial developer would probably appreciate having something in there that gave them more of an ability

to create something that was drawn by the market. She expressed that when it was separated into two separate projects, it allowed the residential developer to pigeonhole a commercial developer into dealing with whatever was left behind.

Council Member Shelton asked if they could use the language that part of that calculator was that the commercial had to fit within a two-story building. He suggested that if they needed something different, they would need to come back to the Council for further approval. He expressed that he wanted a way to put some guidelines that still dedicated that the land was going to be commercial, but per the calculation, it had to be spread over a story building.

Ms. Egner expressed the opinion that it was a tough thing to do on the fly. She said that from the points being made, she thought it would work to limit it to a 75% build out unless it could be satisfied by a two story building of commercial, and then at that point a lot would be designated as commercial. She stated that it could be something along those lines so that way they did not create this potentially outrageous requirement for the commercial corner.

Council Member Shelton said that the way he saw it was that a developer would come in with a project, the City would approve it and designate an area to be commercial, and then use the calculation to say based on square footage the lowest they could go was two stories. Council Member Shelton said that at least gave them enough ground for that demand. He then said that commercial demands of three or four stories were great, but they at least had to meet that ground floor. He did not see the need for a large commercial because it was just the ground floor that had to be the commercial calculation, unless they needed to consolidate a ton of space.

Ms. Egner mentioned the next action item, and how where it currently sat there were no limitations on project area or lot size. She thought that there were a lot of other factors that were important to look at to make sure they were not stuck with a commercial developer in five years that wanted the City to modify the ordinance based on what the previous developer had done to them. She said that the tough thing was that they did not anticipate that being an issue with the current and next action items, but she restated the previous statement that whatever was passed here applied for all the potential projects in the future.

Council Member Taylor stated that they had this development come to them three weeks prior and they knew what the calculations were and where the building would sit. He questioned why that would change as they moved forward. He further questioned why there would not be enough room for commercial in a few years' time if it was in their approved plat. He asked for clarification if it was all part of the one approval.

Mr. Olsen replied that it was just the lot and not the commercial building. He explained that their intention was for the 25% equivalent to be in a building on that lot, but that they only would set aside the lot and not design it. Mr. Olsen expressed that the problem they could run into years down the road was a developer who did not want to build a building at x amount of square foot. The City would have to decline the request to change the size because the new developer had to meet the 25% equivalent since that was how the project was approved. He said that could cause some confusion or discussion because the new developer would argue the previously agreed upon project was not their own, and that they wanted the new project to be done a specific way.

Mr. Olsen noted that the next item on the agenda was the apartments, and it was not a site plan approval for the commercial building. Rather it was just a lot set aside for commercial use that

will have a building built in the future that meets the 25% requirement. He reiterated that it was not a site plan and was instead a lot that would be set aside.

Council Member Taylor expressed that he had misunderstood, and that he had thought it would still be a part of their development. He stated that as they envisioned the TOD in regard to building aesthetics, he wanted to be a part of their development. That way the commercial piece of the site plan would have to be included as well as the residential. He expressed the view that this would remove the opportunity for a developer to step away from the commercial plan with the intention to sell it to someone else to deal with. He reiterated that they wanted to maintain the original vision for the TOD.

Council Member Taylor explained that his understanding was that they felt it was not time to construct the commercial section that was approved on the site plan, and he noted that if it was not on the site plan it needed to be. He continued that if it was not time to construct it, but they held to that, it would completely bypass what the ordinance stated. He did not think that was the intent. Council Member Christiansen agreed with that analysis.

Council Member Carroll wondered if there was anyone who could come up with a way to ensure compliance for the future. She expressed that she could not think of a way, but that it would be beneficial if they could find a way for the building to comply other than the 75% trigger.

Mr. Woffinden stated that was their main problem in the Planning Commission. He expressed that they discussed how to make sure they maintained the 25% now and in the future. He reiterated the previous sentiment that they did not want the City to get left with 100% residential in the area as that defeated the whole purpose of the TOD. Mr. Olsen confirmed that the 25% was only on side streets, and that there was no proposal that changed anything on 200 South.

Council Member Shelton mentioned the concerns that they had when they originally looked at it, and expressed that one of his continued concerns was that they continued to fight economics. He said that they either sat or waited for development to come in, which who knew if that would change down the road to be able to enforce that. He reiterated that he felt that they were going against market forces, and that even at 75% they would have to wait for a significant period of time until it was more economical. He explained that if they forced the 75%, he worried that would get something mediocre slapped together just to justify the residential units. He did not know how much drive they would have for commercial on those sites. He said that he liked the proposal from this developer because it put a commercial right on the corner.

Mr. Olsen noted that this development was already on the outer edge, and that there would be no required commercial developments south of there. There was a brief discussion between Mr. Olsen and Council about where the corner lot was located. Council Member Carroll confirmed that their proposed commercial was on the corner of 1100 West and 250 South.

Council Member Shelton said that his point was that the developer had gone as far north as possible to get towards the core since that was where most of the activity would be. He expressed that he saw the reason for consolidation, because if they went any further south they lost the attraction. He felt that they would have future developers come in and not want to do commercial off of these streets because it did not make sense to develop in those locations.

Council Member Carroll said that the alternative was to not have any commercial component. She asked Council Member Shelton if that was what he wanted. Council Member Shelton replied not necessarily. He suggested that they go back to the original language that said the ground floor could be either retail or residential, as that gave them the opportunity to use it as a flux space.

Council Member Carroll expressed that once it was residential it would be stuck that way. Council Member Shelton said that was not necessarily true and said that it could be flipped to commercial. Council Member Carroll noted that there were different building standards for commercial and residential.

Council Member Shelton expressed that they had seen residential locations flip to commercial ones many times along Main Street. He noted that it cost more money but said that when the market justified the cost residential areas were flipped to commercial. He thought that it was hard to fight the market desires, and that they would not see the right quality of projects if they went against market demands. He also felt that the alternative was that they would see areas that did not get developed for a long period of time.

Mr. Bunker asked how many years it would take to develop the residential to 75%. He said if that was a couple years away, there were other projects down in the area that was currently being built out. He specifically named White Horse development, and said that it had hundreds of townhomes that had no commercial requirement. He wondered if this project took a certain amount of time to get to that 75%, maybe it was able to absorb it. He also said that this was the TOD, and one of the purposes was to have enough amenities in that area that people did not drive to get certain things. They would have amenities close enough that they could walk there or walk to the station and take public transportation.

Council Member Shelton thought that was a great rule to have, however he expressed that there would never be a grocery down there. He said that when they looked at shopping habits, there needed to be an anchor tenant to drive it. He explained that people would shop at all the commercial locations around the Walmart or other large commercial spots like that because they went for the anchor tenant who had the main essential amenity. He stated that until they had an essential amenity, people were forced out of the area anyway. Council Member Shelton referred to Easton Park.

Council Member Taylor said that his understanding from the developer was that this project was one that they would construct. The timeframe needed to be considered, because the 240 units from this project would be constructed by the next year. He said that specific to this development, if all the residential components were completed and the site plan was approved, they would construct that commercial building. He expressed that they should not have to construct that building by virtue of the fact that 75% of the development was in. He stated that if there was no demand, he did not think it was a lot that would sit vacant. He believed that this current developer would develop the building when the time was there, but it should not be just because it was over. He reiterated that it did not make sense if there was no demand.

Council Member Shelton expressed that was where there was a little bit of confusion. He said that there was not an approval for a building on that lot, and that they had simply designated the lot to be commercial done some time in the future. He further said that in his conversations, it was his understanding that it would be done by someone else because the current developer did not do commercial developments.

In response to a question from Council Member Taylor, Mr. Olsen said that they had never shown staff a layout to approve a building there and had only said that a building would work there and provided a concept. Mr. Olsen stated that it was not included on the site plan with the apartments.

Council Member Carroll asked if the next action item was for an approval of a site plan or if it was the approval of the final plat. Mr. Olsen replied that it was for the final plat. He explained that the site plan went independent of that, and was something they had been looking at the staff level. However, he said that there had never been any formal submission of that corner being included with the building.

Council Member Carroll said that one of her other concerns in looking at this particular project, its proposal was that the commercial lot would be a three-story commercial building. She said that when they did not look at the approval of a site plan at the time of plat approval, it created another issue in terms of parking and other requirements for the commercial building. She said that a three story commercial building, depending on its use, would change the parking demand.

Mr. Olsen reiterated that they had never seen an official submission for a building on that site. He said that they had told us that two or three stories could work, but they wanted to leave it open for the future commercial developer to decide how to configure. Mr. Olsen further said that they had looked at the site plan for the apartments, but they had never seen a site plan for the corner.

Council Member Taylor asked for confirmation that the current developers would not develop the commercial building. Mr. Olsen confirmed that was his understanding, however Council Member Taylor said his understanding was the opposite. Richard Berger from Neighborly Ventures stated that they would like to build that building, and that their plan was to own it long term. He noted that the only reason they would not build it was if they had a tenant that they absolutely loved and wanted the whole space. He said if it was a matter of it being owned and combined, they would be happy to do that. He stated that they could go with the 75% and just add a sentence that said that the tiny element of this could be varied through deed restriction that it had to be commercial.

Richard Berger reiterated that it was their intention to build it, and that they put it as a corner piece as part of their development and integrated the pedestrian path into. He stated that the reason they had not submitted a site plan was because they had a concept building, but wanted it to be dictated by the market. He explained that they would build the apartments out within the next two years, and that their real concept was that at the end of two years they wanted to be able to show all the units and their vision to potential commercial tenants. He said that if the City stuck with the 75%, they would find a way to do it. He further said that they would build it now and make it as pretty as possible, and it would sit empty for a while. He noted a possible deed restriction requirement again, and said that would be great for them. He expressed that he was even more excited about this project now than he was a month ago when it had been discussed at PC. He asked that they move it along one way or another because they were very excited to move forward and did not want to delay the residential.

Council Member Taylor asked Ms. Egner if there was a problem with the addition of a deed restriction.

Council Member Carroll inquired how they could calculate the 25% of the equivalent ground floor if they did not know the square footage of the commercial. Mr. Olsen replied it was because they

knew the size of the residential buildings. Council Member Carroll said that they did not know how that would fit onto the parcel. Mr. Olsen said that was why any future development would have to show them how that could work on that designated piece. He said that was the whole purpose of allowing the consolidation, as it still had to be an equivalent of the square footage of the ground floor, therefore show them how that would work. Council Member Carroll explained that her point was that they did not show them how it could work because they did not design the commercial building.

Ms. Egner said that it depended on the project because there could be a much larger residential project that if they had the same square footage for their commercial lot, it could create the issue of having to put a five-story building for the commercial in order to accommodate the 25%. She expressed that her biggest issue was how the City staff could enforce it as they moved forward, as well as if they would have developers who came back in a few years that wanted another code change because it did not make sense again.

Ms. Egner addressed Council Member Clark Taylor's question by stating that she did not think that the deed restriction was a bad thing. She said that it could address some but not all of the concerns, such as how they would know it was enough square footage for a reasonable commercial building so they did not go too high. She expressed that a deed restriction to keep it as a commercial lot was half of the answer, but they would still be subject to the commercial possibly not going in for years. She explained that the deed restriction designated the lot as commercial but did not motivate anyone to get something into that commercial space.

Ms. Egner recommended that they pass option 2 tonight and potentially come back later to discuss what other language could be added into it. Council Member Christiansen thought that was a good idea and said that they needed to think about the fact that they were planning for more than five or ten years. She expressed that they were looking at the vision for the area to be a special use for many years to come. Mayor Frost thought that it could be some of the most coveted commercial property around if the right tenant came to play.

Council Member Barnes asked Mr. Olsen if they could figure out what 25% of the development was once they brought in their plans to develop a piece of ground. Mr. Olsen said it was easy once they were shown a site plan, and that they just needed to know the size of the buildings before they could calculate that 25%. Council Member Barnes said that the ground floor of the building had to be 25% of the total development. Mr. Olsen explained that what the code amendment allowed was that for all buildings, an equivalent of 25% of the ground floor area of those buildings needed to be designated as commercial. He further explained that it allowed the 25% of each building to be consolidated into one area.

Council Member Barnes asked if they could just figure out what 25% of the ground floor of all the other buildings was, and then say that was what the ground floor of the commercial had to be. Mr. Olsen answered yes, and it was easy to do. He said that his worry was that typically residential developers were not commercial developers, and so they could provide a piece to accommodate that, but then a commercial developer down the road would want something different. Council Member Barnes asked again about the 25% being required. Mr. Olsen said yes, but they could easily come forward and say that they did not want to build it that big because the market did not support it.

Ms. Egner explained another concern. She said that 25% of the ground level of the residential could be consolidated into one commercial building, but that did not mean that the 25% had to be the ground level of the commercial building. She explained that they could take that 25% and push it into a multi-story building, so there needed to be some sort of height restrictions.

Council Member Shelton felt they should move this forward with the change to 75% to allow the developer to move forward until they can resolve this issue.

Council Member Shelton moved to adopt Ordinance No. 2021-02-13 approving amendments to Section 17.4.608.B of the American Fork City Code regarding requirements to provide office and/or retail uses in the TOD zone with the change to the delivery of the office/retail use shall occur no later than at completion of 75% build-out of any residential portions of the project area. Council Member Taylor seconded the motion.

Council Member Carroll commented that from what she understood, part of the problem was that they created a code where they tried to integrate commercial into residential, and now they talked about separating it completely. She thought that it was important to keep that in mind because they were trying to create something that was integrated. Council Member Carroll also said that she was concerned about the precedent being set with 200 South by allowing consolidation on the rest of the commercial area. She expressed that she thought someone would come in and request to consolidate commercial on 200 South and felt that was a discussion they needed to have.

Council Member Taylor addressed that it had to make sense. He said that with the commercial development on this particular part, the calculation had been made within their ordinance for height restriction. It was confirmed that the ordinance already had height restrictions in it. Council Member Taylor made the broad assumption that no one wanted the land to sit there undeveloped. He agreed with Council Member Carroll but said that for him the consolidation made sense.

Council Member Shelton commented that he would find it helpful if, in the upcoming work session, they showed where the corridors were on a map that this code specifically addressed.

Mayor Frost called for a vote on the motion, noting his appreciation for Council, staff, and the developers for all the work on this project.

Voting was as follows:

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Rob Shelton, Council Member
SECONDER:	Clark Taylor, Council Member
AYES:	Barnes, Carroll, Christiansen, Shelton, Taylor

8. Review and action on subdivisions, commercial projects, condominiums, and PUD's including 1) plat approval; 2) method of satisfaction of water rights requirements; 3) posting of an improvement bond or setting of a time frame for improvement installation; and 4) authorization to sign the final plat and acceptance of all dedications to the public and to have the plat recorded.
- 8a. Review and action on the final plat for Kelton Apartments Phase 1, located in the area of 1100 West 250 South in the TOD-Transit Oriented Development zone.

There was some brief discussion that they were looking for an approval on this item and about the wording in the motion. Ms. Egner confirmed the conditions to be met for the motion to be accepted.

Council Member Shelton moved to approve action on the final plat for Kelton Apartments Phase 1, located in the area of 1100 West 250 South in the TOD-Transit Oriented Development zone. Council Member Taylor seconded the motion. Voting was as follows:

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Rob Shelton, Council Member
SECONDER:	Clark Taylor, Council Member
AYES:	Barnes, Carroll, Christiansen, Shelton, Taylor

9. Review and action on a resolution approving the declaration of items to be surplus and disposed of.

Council Member Shelton moved to approve Resolution No. 2021-02-10R to declaring items to be surplus and disposed of. Council Member Barnes seconded the motion. Voting was as follows:

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Rob Shelton, Council Member
SECONDER:	Kevin Barnes, Council Member
AYES:	Barnes, Carroll, Christiansen, Shelton, Taylor

10. Review and Action on Encroachment Agreements for four Properties on 700 North between 250 West and 290 West.

Council Member Carroll asked if she could get some background on this item. Ms. Egner explained that the City put in the safe sidewalk ramp on 700 North for Shelly Elementary and discovered several properties had fences and sheds on the City right-of-way. She further explained that this particular area that had been encroached upon may be needed for expansion of the roadway in the future. She said that they wanted to have the encroachment agreement written very clearly that this was a public right-of-way. She further said that they would not be required right now to move what was there, but that they may be required to do so in the future.

Mr. Egner further explained that this was a standard encroachment agreement. She explained that one other thing that it did was that property owners could not do additional improvements or expansions on their encroachment.

Council Member Carroll asked if there was any feedback from the property owners. Ms. Egner said she was unsure, but that she knew a few of the property owners had been communicated with; she could not speak to how they received it. She mentioned that Council Member Barnes had gone out there and talked with one of the property owners.

Council Member Barnes commented that he believed that the encroachment was mostly accidental. He said that there was one house that had been built and encroached, and that the others had kind of lined up with that one. He noted that it would impact one individual more than the others because of layout. Council Member Barnes said that they had talked with one individual when they were there that was not very happy with it because it really impacted him. He expected that they were all aware of it now, but he had not heard from them since.

Mayor Frost said that it was a portion they were not paying property taxes on.

Council Member Carroll motioned to approve Encroachment Agreements for four Properties on 700 North between 250 West and 290 West. Council Member Taylor seconded the motion. Voting was as follows:

RESULT: APPROVED [UNANIMOUS]

MOVER: Staci Carroll, Council Member

SECONDER: Clark Taylor, Council Member

AYES: Barnes, Carroll, Christiansen, Shelton, Taylor

11. **Motion to:** Consideration and action to enter into a closed session to discuss items described in Utah State Code 52-4-204 and 52-4-205.

Council Member Carroll motioned to enter closed session at 8:52 p.m. to discuss items described in Utah State Code 52-4-204 and 52-4-205. Council Member Shelter seconded the motion. Voting was as follows:

RESULT: APPROVED [UNANIMOUS]

MOVER: Staci Carroll, Council Member

SECONDER: Rob Shelton, Council Member

AYES: Barnes, Carroll, Christiansen, Shelton, Taylor

Mayor Frost noted they will meet in a separate zoom meeting for the closed session, after which they will return to this meeting to adjourn.

The City Council entered into a closed session to discuss the purchase or sale of real property at 8:53 p.m. Those present included Mayor Frost, Council Member Barnes, Council Member Carroll, Council Member Christiansen, Council Member Shelton and Council Member Taylor. Also present were City Administrator David Bunker, City Civil Attorney Cherylyn Egner, Fire Chief Aaron Brems, Police Chief Darren Falslev, and City Recorder Terilyn Lurker.

The purchase or sale of real property was discussed, and audio recorded as required by law.

Council Member Shelton moved to return to the regular session at 9:30 p.m. Council Member Taylor seconded the motion. All were in favor.

11. **Adjournment**

Council Member Taylor moved to adjourn the meeting. Council Member Barnes seconded the motion. All were in favor.

The meeting adjourned at 9:35 p.m.



Terilyn Lurker, City Recorder



2925 RIVER RD. SOUTH, SUITE 100 | SALEM, OR 97302 | 503-990-8909 | WWW.THENEIGHBORLYWAY.COM

February 23, 2021

Re: Code section 17.4.608.B revision- Agenda Item 5.

City Council,

We appreciate your consideration of the code revision to allow some consolidation of commercial uses in the portion of the TOD zone not along 200 S. We believe strongly in the goals of the TOD zone and believe are excited to be a part of an area that once fully developed will be walkable, vibrant, and will have a mix of residential and active neighborhood commercial uses. We had an engaging conversation with planning commission, and we appreciate that they recommended approval of the code change.

The planning commission also discussed the timing of when the commercial development had to be developed. The original code was silent on this topic and it was not discussed in the earlier City Council meeting. The planning commission recommendation is that once 75% of the residential portion of our project is complete, then the commercial portion also needs to be completed. We request that this provision be removed from the code amendment and the commercial to develop when the market is ready for it. The reason for requesting this change is as follows:

- 1) Market Timing:** The time is not right for commercial uses in this area. The area right now is largely agricultural. It will take time to transition this area into a neighborhood. It is unlikely any tenant, especially a pedestrian friendly neighborhood tenant, will want to be in this location until more residential development occurs. If commercial buildings are required to be built today, they will likely remain empty for several years. Building empty storefront causes a blight on the neighborhood and can actually prevent future commercial tenants who do not want to be next to an empty building. We think that the TOD project area will be most successful and vibrant if the code, while maintaining a requirement for an office and retail component of the TOD project, does not artificially impact the natural development progression of the TOD project.

- 2) Design:** Office and retail projects are best constructed and envisioned once tenants have been identified and leasing plans have been put into place. While residential developments can be designed to anticipate a particular residential tenant mix, office and retail projects are very much tenant driven and should be designed around specific tenant needs instead of in the abstract on a spec basis. If we are allowed to wait on the commercial building until tenants can see the vision of the area, we can then build the space around the tenant instead of forcing them into a space that may not be perfect for them. Additionally, this area currently is on an island disconnected from the pedestrian grid and not within walking distance of other residential development. This means even if we find a tenant interested today it is unlikely to be the pedestrian oriented, neighborhood style tenant which is the eventual ideal that we hope to attract to this location.

3) Capital: It is very difficult to finance a commercial project without preleased tenants to support the project. While lenders are comfortable financing ground up multi-family projects, they are typically reticent to provide financing for spec office and retail projects. It is obviously a much easier proposition to obtain financing for a retail or commercial project with tenants in place to take occupancy once construction is complete. Once substantial residential growth has occurred around the area, it is much more likely to attract commercial tenants which will allow financing to occur.

We appreciate your consideration of this code amendment. We believe our request is reasonable and will create a better neighborhood in the end. The specific language we propose is as follows:

*For buildings within the Mixed use Core sub-district, all buildings abutting 200 south shall have an equivalent of 100% ground floor area designated for office and/or retail use (Table 6E-Building Use). For all buildings **within project areas** abutting streets other than 200 South, an equivalent of 25% ground floor area shall be designated for office and/or retail use (Table 6E-Building Use). **The 25% equivalent may be satisfied collectively in one building, or dispersed throughout the project area in various buildings. Designation of an area for office and/or retail use within project areas abutting streets other than 200 South under this subsection does not require any particular order or phasing of construction of buildings.***

Thank you for your time and consideration.

Richard Berger



Director of Development

(503) 584-4593 Direct



White Horse Developers would like to thank the American Fork City council for all of the hard work and effort that has been put into the TOD zone. This effort will make the entire area and city a desired area and will help the city to continue to grow and be successful.

At this time, we wish to submit a public comment in regards to the requirement for Commercial/ Retail space in the core district of the TOD zone. We do fully support the need for there to be commercial and retail space in this area, as well as the amount that is required per the code. We do not support the timing that is being proposed in this text amendment to the code.

We feel that allowing the commercial/ retail space to be allocated into one (Similar to the Kelton Apartment project by Neighborly Ventures) or multiple buildings/ locations is the correct action that is needed. But, let the market dictate as to when it should be built. The city can require the builder/developer to identify and create certain lots that will only be used for the commercial/ retail space. This will guarantee that the commercial/ retail portion of the TOD can and will be built when the market is ready for such a product.

Thank you for your consideration.

White Horse Developers,

Jake Horan

A handwritten signature in black ink, appearing to read 'Jake Horan', is placed here.



American Fork City Council

To whom it may concern:

My name is Pete Williams. I am Senior Vice President of Investment Sales and Development Services at Colliers International in Salt Lake City. I have over 35 years of experience in high end, multi-million dollar development and sales. My transactions and involvement to date exceed \$750MM in commercial land, office, retail, industrial, and single and multi- family residential. I also have an Economics degree from the University of Utah with an emphasis in Urban Planning.

In addition, it is important to note that Colliers International, in the Utah market is arguably the number one retail services brokerage. We represent clients the likes of WalMart, Costco, Cabelas, Ross, Famous Footwear, T.J. Maxx, Michaels, and so many more, right down to the best of the smaller local retailers. We encompass all aspects of retail services including the hard and soft goods stores mentioned, as well as most of the best national fast casual, and quick serve food providers.

I have been asked by Neighborly Ventures to review the current code adjustments surrounding the inclusion and increase of a retail component to any multi-family residential development within multi-family projects. As an investment specialist, I have been involved in numerous multi-family sales and developments over the years. As Utah has started to expand at the pace it is now experiencing, we are all aware of the need for housing. I am keenly aware of these developments as I track them as part of my day to day business.

We are all aware of the numerous multi-family projects springing up across the Wasatch Front. Originally, new developments were stand alone residential structures, but as of late, the trend at the municipalities is to try to incorporate a retail / services component to these developments.

While mixed use is intriguing in concept, recent history has proven that this is difficult to bring to market successfully in reality. The failure rate across the board for ground level retail in apartments is excessive and disproportionate. Aggregation of the retail is key to creating scale. Allowing for the market to dictate timing of delivery is just as critical to any hoped-for success. Any space delivered before the market is demand is there will result in long-term empty space and/or uncredit worthy and unreliable tenants.

The tenant profile for this type of space is challenging at best. National credit tenants do not want to be on the ground level of apartment buildings. It violates everything that they model when picking a location from ingress and egress, to parking, to mid-block locations, etc. Restaurants and food services dislike this for the same reasons, and the odors that emanate from these uses are detrimental to the enjoyment of the residential space by the residents. That leaves the target tenant to be local, start up, and inexperienced storefronts. Again, the best chance for success is when the tenant can be

surrounded by other traffic generators...ie aggregated space and enough "Roof Tops" to justify the retail existence.

In conclusion, it would be my recommendation that you eliminate the timing requirement for the retail/office to help facilitate any success in delivery of development for the community.

Sincerely,

Pete Williams

Pete Williams

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February, 23, 2021

American Fork City Council
American Fork Planning Commission

To whom it may concern,

NorthMarq originated over \$13 billion in commercial real estate loans in 2020, including \$6 billion for multifamily projects. NorthMarq is a direct HUD, Freddie Mac, Fannie Mae originator and servicer, and corresponds with 90+ insurance companies nationally, with a servicing portfolio of \$64 billion.

I have been asked by Neighborly Ventures to address the availability of financing on retail projects generally, and specifically for the proposed American Fork project.

In a letter addressed to the Planning Commission on February 16th, 2021, subsection 3, Neighborly Ventures indicates a challenging environment to finance retail projects. I concur with its assessment.

Retailers nationally, regionally, and locally have been in a well documented 20 year systemic decline shifting away from “bricks and mortar” retail in favor of online shopping. Retail properties throughout the nation, and including Utah, have suffered significant vacancies and declining rents in many locations. Those trends coupled with COVID shutdowns have accelerated and deepened retail tenants’ viability.

Because of the uncertainty, construction lenders, as a class, aren’t lending on spec retail alone. And fewer permanent lenders continue to lend on completed retail with very conservative loan terms.

It is of particular importance to note that two of the most active lenders in the multi-family space nationally, Freddie Mac, and Fannie Mae no longer count onsite retail income in their project underwriting as they did pre-Covid.

We expect over the next 24 – 36 months as COVID protocols relax, economic activity normalizes, and retail vacancies and rents stabilize, financing for retail should become more available.

Respectfully,



John Bradshaw
Regional Managing Director/Executive Vice President
Northmarq