

**MINUTES OF LAYTON CITY  
COUNCIL MEETING**

**DECEMBER 19, 2013; 7:07 P.M.**

**MAYOR AND COUNCILMEMBERS  
PRESENT:**

**MAYOR PRO TEM FRANCIS, MICHAEL  
BOUWHUIS, JOYCE BROWN, BARRY FLITTON  
AND SCOTT FREITAG**

**STAFF PRESENT:**

**ALEX JENSEN, GARY CRANE, BILL WRIGHT,  
PETER MATSON, TERRY COBURN, DEAN HUNT  
AND THIEDA WELLMAN**

**The meeting was held in the Council Chambers of the Layton City Center.**

Mayor Pro Tem Francis opened the meeting. Boy Scout Hayden LeBaron with Troop 410 led the Pledge of Allegiance. Tom Day gave the invocation. Scouts from Troops 410 and 203 were welcomed.

**MINUTES:**

**MOTION:** Councilmember Flitton moved and Councilmember Freitag seconded to approve the minutes of:

**Layton City Council Work Meeting – November 7, 2013;  
Layton City Council Meeting – November 7, 2013; and  
Layton City Council Special Meeting – Board of Canvass – November 19, 2013.**

The vote was unanimous to approve the minutes as written.

**PRESENTATIONS:**

Mayor Pro Tem Francis recognized Councilmember Flitton and Councilmember Bouwhuis, who would be stepping down after this meeting, for their service to the City. He said they had served with extreme patience and diligence. Mayor Pro Tem Francis presented them with gifts for their service from a grateful City. Carol Flitton and Shirley Bouwhuis came forward to receive flowers.

Councilmember Brown said she had enjoyed working with both Mike and Barry. She said Mike was very knowledgeable and treated everyone with grace; he had been very valuable to the City and helped with businesses coming to the City. Councilmember Brown said Barry was a very good friend and she had enjoyed serving with him on the Council.

Councilmember Freitag said he was upset that he would lose the wisdom of both Mike and Barry.

**CONSENT AGENDA:**

**AMENDMENT TO TITLE 16 OF THE LAYTON MUNICIPAL CODE ADOPTING THE 2012  
EDITION OF THE INTERNATIONAL FIRE CODE WITH AMENDMENTS – ORDINANCE 13-  
28**

Dean Hunt, Fire Marshall, said Ordinance 13-28 was a proposal to adopt the 2012 Edition of the International Fire Code with some amendments. Dean said previously the City had adopted the 2006 International Fire Code; this was an updated version of the Code. He said the State had adopted the 2012 Edition of the International Fire Code earlier this year.

Dean said the City wanted to make some changes relative to liquid propane. He said State code allowed for up to a 2,000 gallon tank of liquid propane in residential areas. Dean said Staff didn't feel comfortable with

that amount in residential zones and proposed an amendment limiting that to 250 gallons. He said everything else in the 2012 International Fire Code would remain the same. Dean said Staff recommended approval.

Councilmember Freitag asked, relative to the issue with nail salons, would they be required to have individual ventilation systems for each station.

Dean said that was part of the construction code and Paul Bauer, Layton City Building Official, could answer that question. He was not aware of the requirement.

Councilmember Freitag expressed appreciation for the work the Fire Department did with the recent house fire. He said they did a remarkable job preventing additional damage.

**BID AWARD – WIDDISON TURBINE SERVICES, LLC – GREENLEAF WELL REHABILITATION – RESOLUTION 13-61**

Terry Coburn, Public Works Director, expressed appreciation to Councilmembers Bouwhuis and Flitton for their service to the City.

Terry said Resolution 13-61 authorized the execution of an agreement with Widdison Turbine Services for rehabilitation of the Greenleaf Well. He said the project included the rehabilitation of the Greenleaf Well and all associated items for a fully functioning system. Terry said the project would clean and chemically treat the drinking water well to help ensure continued water production at optimum performance from the well in the future. He said an advertisement requesting qualifications was published by the Engineering Division, with Widdison Turbine Services being the only contractor that submitted a statement of qualifications and a bid in the amount of \$123,000. Terry said the engineer's estimate for the project was \$150,000. He said Staff recommended approval.

Councilmember Brown asked Terry to talk about the number of wells in the City and what percentage of the drinking water came from those wells.

Terry said the City was lucky enough to have seven deep wells ranging from 700 to 1,000 feet deep. He said there were communities in the area that had no deep water wells and had to rely solely on Weber Basin Water for their water. Terry said Layton was about half and half; the City contracted with Weber Basin for water and drew water from the seven City wells.

Councilmember Brown said if she remembered correctly, the water coming from those wells was clean and pure.

Terry said that was correct. He said the City continually tested the wells. Terry said Layton's water system was one of very few water systems in the State that was fully approved by the State.

Councilmember Flitton said he read in the paper that some communities had put a halt on building permits because of lack of water. He said Layton had not seen that and he expressed appreciation to Terry and his Staff for the work they did.

Terry said the credit should go to the City Manager, City Attorney and a Mayor and Council that listened to Staff and recognized the growth that was coming, and prepared for it. Terry said it was a lot easier for Staff to do their jobs when they had the support of the Mayor and Council.

Councilmember Freitag expressed appreciation to Terry for the work his department did with keeping the streets plowed.

Councilmember Francis said he had received several compliments from citizens about snow removal.

**ON-PREMISE RESTAURANT LIQUOR LICENSE – ASIAN BISTRO – 1120 NORTH MAIN STREET**

Bill Wright, Community and Economic Development Director, said this was an on-premise restaurant liquor license request for a new restaurant, the Asian Bistro, located at 1120 North Main Street. He said prior uses in the building included the Home Town Buffet. Bill said the location met all buffer requirements, and background checks had been approved by the Police Department. He said Staff recommended approval.

Councilmember Brown indicated that the last occupant had only used part of the building; would this be the same.

Bill said yes.

**FINAL PLAT APPROVAL – SWAN CROSSING SUBDIVISION, PHASES 1 AND 3 – APPROXIMATELY 2700 WEST GORDON AVENUE**

Bill Wright said this was final plat approval for Swan Crossing Subdivision, Phases 1 and 3, located at approximately 2700 West Gordon Avenue. He said the property was zoned R-S and part of the project would back onto Gordon Avenue. Bill said the applicant was Blake Hazen.

Bill said there would be three phases in the subdivision. He said Phase 1 would consist of six single family lots on 2.49 acres, and Phase 3 would consist of 2 single family lots that would back onto Gordon Avenue. Bill said landscape buffering was required along Gordon Avenue. He said there was a provision for pedestrian gates on the two lots that backed Gordon Avenue. Bill said the Planning Commission recommended approval and Staff supported that recommendation.

Councilmember Brown asked if the gates would be required to have a lock.

Bill said it was at the pleasure of the property owner. He said that was something that could be done administratively.

**DEVELOPMENT PLAN APPROVAL – LEGACY COTTAGES – APPROXIMATELY 250 NORTH ADAMSWOOD ROAD**

Bill Wright said this project was coming back to the Council as a result of the development agreement for the project. He said this was a senior housing apartment complex located at approximately 250 North Adamswood Road. Bill said a tremendous amount of study had been done for this project during the rezoning phase. He said the developers, Tyler and Brett Miles, had done a lot of engineering and architectural work for the project to move forward.

Bill identified the property on a map. He said the development agreement capped the number of units at 155, but the proposal was for 150 units. Bill said the units would be 1 and 2 bedroom units ranging from 700 to 1,100 square feet. He said the bulk of the landscaping was contained along the northern and eastern portion of the property to provide for buffering to the residential areas. Bill said there would be two entrances to the development from Adamswood Road. He displayed conceptual drawings of the building.

Bill explained that a 4-way stop sign had been installed at the intersection of 300 North and Adamswood Road. He indicated that a sign on the Bowden property that had caused sight issues had been moved to the north. Bill said land had been dedicated to the City for the road widening.

Bill said the Planning Commission reviewed the conditional use and design review required by the development agreement, and unanimously recommended approval, and Staff supported that recommendation.

Councilmember Flitton said this was one of the areas the Council had taken some heat over from the citizens with regard to too many apartments in the City, but most of the Councilmembers had met with surrounding neighbors who felt that this project was the best use for the property considering its location. He said this would be an asset to the City.

Councilmember Brown said she thought Staff also helped the property owner on the corner of Adamswood Road and 300 North get some additional parking space.

Bill said the Engineering Department worked on that. He said there was some concern with how the road would widen and narrow through that area, and whether the curb and gutter would have to be moved further to the east, closer to the home. Bill said it was discovered that the road would not need to be widened in front of the home thereby preserving some of the on-street parking.

**MOTION:** Councilmember Brown moved to approve the Consent Agenda as presented. Councilmember Bouwhuis seconded the motion, which passed unanimously.

### **PUBLIC HEARINGS:**

#### **DEVELOPMENT AGREEMENT AND REZONE REQUEST (GREEN AND GREEN) – R-S (RESIDENTIAL SUBURBAN) TO PB (PROFESSIONAL OFFICE) – 836 SOUTH ANGEL STREET – RESOLUTION 13-35 AND ORDINANCE 13-18**

Councilmember Bouwhuis asked if, with the absence of the Mayor, would the Mayor Pro Tem vote with the Council or vote in the case of a tie.

Gary Crane, City Attorney, said the Mayor Pro Tem would only vote in the case of a tie vote.

Bill Wright said this was a development agreement and rezone request submitted by Ed Green and Dale Green for property located at 836 South Angel Street, on the southwest corner of Angel Street and Layton Parkway.

Bill displayed a map of the property and explained the extension of Layton Parkway, and the history of the extension. He said the property currently contained 2 single family lots. Bill recapped the discussion of the General Plan and the General Plan map from the earlier Work Meeting. He explained that the PB zone was not identified on the map, but was explained in the policies of the General Plan, and was allowed along entry streets into residential subdivisions and along arterial streets. Bill displayed a map where other PB zoned properties were located in the City. He explained the zoning of other properties along the Parkway. Bill displayed photos of other PB zoned developments in the City.

Councilmember Freitag asked how many of those developments were located on the corner of arterial and collection streets.

Bill said there were some on Fairfield Road and Wasatch Drive; 3200 West and Gordon Avenue; and there were some located only on collector streets at 3100 North in the Greyhawk Development. He indicated that there were several examples of very similar uses, and there were some that were located on arterial streets with access off of local streets.

Councilmember Freitag asked Bill to define a collector street versus a local street.

Bill said collector streets would have higher traffic; local streets were to provide access into a neighborhood. A collector street gathered vehicles to access an arterial street.

Councilmember Freitag asked if it would be fair to say that there were very few places that the PB zone could be restricted in the City.

Bill said there certainly was opportunity for the PB zone. He said there was an evaluation process to determine if they met the General Plan and were in line with good planning practices.

Councilmember Freitag asked if there were any that had been denied in the past.

Peter Matson, Long Range Planner, said there had been a request just west of Weber Basin in a home on a corner lot in a neighborhood that was denied. He said the lot did not face Highway 193 and the Planning Commission recommended denial, which the Council agreed with. Peter displayed a map identifying the street off of Highway 193. He indicated that the property was a vacant lot in the subdivision. The applicant wanted to construct a daycare center. Peter said the main concern was the specific use of a daycare center at that location. There was discussion about the distance of the property from Highway 193.

Bill indicated that this proposal was first before the Council on August 15, 2013, when it was tabled to November 21, 2013. He said it was continued at the November 21st meeting after a lot of input from the community. Bill said the Council wanted to allow for additional time for the residents to digest the traffic studies, obtain additional information about the dental practice, and allow for the neighborhood to meet with Ed Green. He said all of that had been accomplished. Bill said the neighborhood meeting occurred on Saturday, December 14th, and there were several additional items in the development agreement as a result of that meeting.

Bill said relative to the traffic studies, the street could handle the traffic, and turning movements for the intersection and into the development could be accomplished. He displayed a map of the street and explained that the turn lane allowed for 6 vehicles to stack for access into the business. Bill said there had been concerns expressed with sight distance because of the curve in Weaver Lane, but the Engineering Department had determined that there was not a problem. He said there had been additional study on connectivity in the area relative to Kennington Parkway Subdivision and Pheasant Place Subdivision. Bill said additional work had been done on trip generation, with actual counts being done on similar businesses in the City. He said those counts were similar to national standards. Bill said the Traffic Engineer did not raise any red flags indicating that this development should not be considered.

Bill said after the neighborhood meeting Draft #4 of the development agreement, which was given to the Council earlier, had 36 additional uses that had been restricted and would not be allowed on the property. He said some of the uses that would be allowed included accessory buildings, a secondary residential unit, utilities, a barber shop, a medical lab, general office, an optical shop, and art, photo or music studios. Bill said dance studios would not be allowed. Bill said there were also restrictions on the roof pitch and some architectural design requirements. He said in the earlier meeting, Dale Green indicated that they would also agree to limit the square footage to a maximum of 7,500 square feet.

Bill said the Planning Commission recommended approval because the proposal was consistent with the General Plan and with the PB zoning ordinance, and it would help mitigate problems with traffic at the intersection of Angel Street and Layton Parkway. He said Staff supported the recommendation of the Planning Commission.

Councilmember Freitag said Bill had commented that a residential use was not the most desirable use at this location. He said the City was going into a partnership with the School District for a home on the northwest corner of the intersection across Layton Parkway from this property. Councilmember Freitag asked how they, in good faith, could do that.

Bill said there were a few differences on the north and south side of the Parkway. He said utilities on the south lots were extensive, and a backing movement would have a sight issue with the large utility boxes on the property. Bill said the property to the north was a small parcel next to an existing home. Part of the consideration was to not isolate the existing single family home.

Councilmember Brown said on the School District home, part of the agreement was that the people who received the home had to stay in it for a certain amount of time. She said they were given the home at a

reduced rate and were able to get into a home that they wouldn't be able to otherwise. Councilmember Brown said the lot might not be as desirable, but the homeowner was able to get a home that under other circumstances they wouldn't be able to. She said if homes were built on the south side, those homes could turn over several times if the homeowners had issues with the intersection.

Bill said the home to the north would also have to remain owner occupied and could not become a rental.

Councilmember Freitag asked how the City came into partnership with the School District on the lot; did the School District purchase the lot.

Bill said the City had entered into a purchase agreement for the lot, but had not yet purchased the lot.

Councilmember Freitag said all things being equal, knowing why the City purchased that lot; why would the City not be interested in the properties to the south for the same type of partnership with the School District.

Bill said the northern lot closest to the intersection with all the utility boxes was not a desirable lot for residential development.

Councilmember Freitag said the utility box was not a compelling reason to change the zoning; he had a similar box in his front yard. He said a lot of other houses on Angel Street had to back out onto Angel Street; this would only be two more houses on Angel Street. Councilmember Freitag said he struggled with the arguments being made in favor of the rezone; the use of the property, the street, the undesirability of the intersection, and the utility boxes; because similar situations existed in other areas of the City.

Gary Crane said sometimes in these zoning decisions we get a little distracted. The Council wasn't deciding whether this use was better than that use; they were deciding on whether or not this use, that was applied for, was an appropriate use for this parcel of property. He said there certainly could be residential uses on that corner, there could be townhouses on that corner, or there could be all kinds of different uses on that corner that the Council could say would be better than the use being applied for. Gary said the focus should be on whether the use that was being applied for was appropriate for that corner, not whether this one was better than that one. He said sometimes even Staff got caught up in that. Gary said the real focus should be whether this was an appropriate use for that particular site, not if it was the best use. The best use didn't apply to zoning decisions. He said the legal question before the Council was, did this site comport with the General Plan; was the zone appropriate for this particular place. Gary said the Council could consider issues such as access or surrounding uses. He said the boxes as they relate to the use on the site would be a relevant issue, and they may or may not fit with other uses. Gary asked the Council to focus on whether or not this was an appropriate use on this site.

Councilmember Freitag thanked Gary for his explanation. He said some of the things being discussed didn't really matter as it pertained to the Council's decision on whether changing the zone was appropriate as it related to the City's policies. Councilmember Freitag said he understood the examples that had been shown, and the precedent that had been set for placing PB zoning in areas that were allowed by the ordinance. He said comparing that to the recommendations of the General Plan, or more specifically the West Layton General Plan, could there be a conflict that existed in someone's interpretation. Could there be a conflict between where the ordinance indicated the PB zone could be located and what the recommendations of the West Layton General Plan stated was an appropriate use of property in this area.

Gary asked Councilmember Freitag if he meant if the General Plan said one thing and the zoning ordinance said another thing, which one would govern.

Councilmember Freitag said that was another way of saying it. He said the West Layton General Plan clearly defined areas that the City had stated were proper for commercial uses. Councilmember Freitag said he understood that this was not commercial zoning, but the Plan didn't address it at all. He said there were commercial nodes identified in the General Plan in various areas of the City. This area had not been identified in the General Plan, nor had the City taken the PB zone into consideration. Did the ordinance

outweigh the recommendations in the Plan, or did the general recommendations in the Plan outweigh the ordinance.

Gary said the more specific applied. He said once an ordinance was in place, and once the property owner filed an application based on an ordinance, the property owner was vested in whatever the ordinance was on that filing date. Gary said the General Plan was meant to be dynamic or flexible. The ordinance was more specific and that was what the developer was vested in. Gary said there was no mandatory law that required the Council to zone according to a particular Master Plan, but it was strongly recommended. He said in a case where there was a mistake in the Plan or a change in circumstance, the Council could move outside of the Plan.

Gary said he thought Councilmember Freitag was saying that the General Plan was silent on where the PB zones ought to be, but the ordinance was specific where they should be. He said the ordinance would govern because it was the more specific document, at least as far as vesting of the individual was concerned.

Councilmember Freitag said when the Council approved the rezone of the hospital property, they also approved a change to the General Plan. He said the General Plan at the time didn't specifically address the type of zone being considered for that property. Councilmember Freitag asked Gary to explain the difference between having to change the General Plan with the zone change on that piece of property if it wasn't addressed in the Plan, and not having to change the General Plan to address something that was not listed in the General Plan for this rezone.

Gary said he thought Councilmember Freitag was asking if it wasn't mentioned in the General Plan, did they have to change the General Plan to specifically mention it before rezoning the property.

Councilmember Bouwhuis said the hospital property was a unique situation because it was rezoned to MU-TOD (mixed use transit oriented development).

Councilmember Freitag said that was on the north side of the Parkway, but the south side was rezoned PB.

Bill Wright said the south side was rezoned B-RP (business research park), which was a significant difference. He said the B-RP zone allowed for a 100 foot high community hospital that would be hundreds of thousands of square feet. Bill said there was 70 acres of property versus .79 acres of property at this location. He said that property had been identified in the General Plan as medium density residential and the change was out of an apartment kind of land use to a hospital use, and an MU-TOD zone that related more toward the downtown area and the FrontRunner station. Bill said that was a significantly different use, and that was why there were times when the General Plan came to the Council to be amended. He said the proposed use of a hospital was a significant difference than what the policies or map had ever envisioned for that property.

Gary said where there was a big difference in intensity and density, the General Plan ought to be changed. He said community uses within a residential zone were allowed, but there was no indication of where they were allowed. Gary said they were a little more intense, but the zoning didn't have to be changed in order to put a community use into a residential zone. He said this was very much like that; where there were compatible uses the Plan didn't have to mention what all those compatible uses were expressly. Gary said when there was something as big as a hospital, and a piece of agricultural ground was being changed to a piece of ground that would have commercial businesses or hospitals, that was a much more intense use and the General Plan would be changed.

#### **Mayor Pro Tem Francis opened the meeting for public input.**

Dale Green, Property Owner, said the three specific items mentioned in the previous meeting were addressed. He said they addressed the traffic study. Mr. Green said they were offering a quality building that would be limited to 7,500 square feet and be architecturally attractive. He said the dental office was a clean business. Mr. Green said other similar areas had been zoned PB, and now this property didn't fit in the General Plan as PB. He said he was surprised by that discussion.

Mr. Green said Ed Green met with the residents, but not a great deal was accomplished. He said the residents wanted the basement only used for storage. Mr. Green said if he built a home for someone, and indicated that they couldn't finish the basement, that would not be acceptable. He said parking would be done according to ordinance. Mr. Green said they eliminated 36 possible businesses in the agreement, and compromised to 7,500 square feet.

Mr. Green said they didn't want the Parkway, but they had to deal with it. They didn't plan on the utility boxes that took up additional space, but they had to deal with it. He said this was a good use for the property. Mr. Green said people in the subdivision were happy with it; the opposition was coming from other areas. He said they would do everything they could to make the proposal work.

Dr. Kyle Harmon, potential tenant, said they met with the residential group to address the three items outlined in the last public hearing. He explained traffic patterns into the business and problems there would be with access off of the Parkway. Dr. Harmon said many restrictions were placed on the property through the development agreement. He said in response to an email he received this morning, he would not be interested in a marquee sign for the business; a lit sign on the building would be appropriate. Dr. Harmon said they agreed to limit the maximum square footage to 7,500 square feet as opposed to the 9,000 square feet that was allowed on the property. He said the architectural look of the building was not a concern to the residents. Dr. Harmon said they basically agreed to disagree on some things. He said there were many different opinions for what the use of the property should be, but a vested property owner had the right to be heard and do with the property what was allowed in the ordinance and General Plan.

Chuck Easton, 1296 West 500 South, expressed appreciation to everyone for their time. He said the citizens group didn't believe the PB zone should be on this property. The General Plan stated that the function of the comprehensive plan was to serve as a guide for rational development which would protect property values and neighborhood character in the present and future. Mr. Easton said it also stated that the General Plan must consider the preservation of property values and neighborhood character. He said the R-S zoning was defined as residential suburban and was designated as a very low density suburban type of use. The expectation was for more open and rural uses, not the professional business uses that were lower intensity commercial uses.

Mr. Easton said from their research the planning documents had very specific guidelines allowing the PB zone. Rezoning at this location would set a new precedent that would make it very easy to justify rezoning dozens of locations along 65 miles of arterial and collector streets in the City. He said most of the areas shown in Mr. Wright's presentation should include context for consideration. Mr. Easton said the mixed use of those areas was much different that the lack of mixed use on Angel Street and Layton Parkway; there basically was no mixed use. He said one of the PB examples was located on a collector adjacent to Highway 193, which was a significant difference that this area.

Mr. Easton said to zone PB at this location would require loosening the guidelines of the City's planning documents to justify rezones of this type, but this was contrary to the intent of the planning documents. He said City Staff provided a list of items in their November 21st presentation that included professional offices should be located on arterial streets; the proposed business did not access Layton Parkway, nor should it, due to the lot configuration. Mr. Easton said the business would front and be located on a collector street.

Mr. Easton said on page 14 of the General Plan it stated that professional businesses should be located along arterial streets mixed with various densities of multi-family dwellings; there were no multi-family dwellings at the proposed location. He said the second point on the Staff presentation discussed neighborhood centers and their recommended locations. Neighborhood centers as defined in the planning documents were larger overall developments (between 3 and 10 acres) where PB could be used as part of such a development. The subject property was under 1 acre and limited in scope. The neighborhood center concept was unrelated to these parcels. The City discouraged smaller businesses being scattered throughout such an area. There should not be a random mix of freestanding buildings on small individual lots. The General Plan stated that the west Layton area should include one neighborhood commercial complex at an intersection of major arterial

streets. The PB proposal for this small area was at the corner of an arterial street and a collector street.

Mr. Easton said the third point in the Staff presentation stated that smaller business offices should be used as buffers between low density residential uses and arterial streets. The proposed plan did not buffer residential uses from the arterial. There were residential lots that backed up to the arterial street on both sides of the Parkway. This was similar to the pattern along the entire Parkway. He said they believed the intention of the landscape buffer and decorative concrete wall was to create the desired buffer. The parcels in question had more frontage on Angel Street and would be accessed from the collector street. Again, it was not a buffer between low density residential and an arterial street.

Mr. Easton said professional businesses had been planned for west Layton, with the business park at the Parkway and Flint Street, and at the Parkway and the West Davis Corridor interchange. He said both of these proposed business and commercial areas were within one mile of the Green and Green parcels, within close proximity without being located on a collector street in a residential area. Mr. Easton said the West Layton Plan discussed different land uses along west Hill Field Road, but not much detail was provided on land uses on or along the Parkway.

Mr. Easton said in the Staff presentation it was stated that the PB zone was not a conflicting use by a school; but it was a more intense use than single family residential. Traffic concerns still existed. He said the current R-S zone, and the two single family residential lots, would have much less traffic than the proposed PB zoning, with or without further restrictions.

Mr. Easton said they appreciated the City's response to their concerns, but the traffic studies that had grown from 1 page to 3 pages were incomplete in the past when the rezone was originally presented. He said they had discussions with City Staff about the curve on Angel Street, and sight distance issues. Mr. Easton said that had partially been addressed, but the northbound blind corner at Weaver Lane and Angel Street had not been addressed.

Mr. Easton said it had been stated that a driveway should be 200 feet from the intersection. The frontage of the property was 227 feet; subtracting 20 feet from the southern property line and 20 to 30 feet of driveway would mean that the northern edge of the driveway would be less than 200 feet from the intersection.

Mr. Easton said even though the traffic volume may not exceed the road capacity, the trips generated by the PB use would be significantly higher than residential uses. Mr. Easton said even though the crossing guard had been moved to the Parkway intersection, and there had been discussion about the children accessing the school through the neighborhood along the Parkway and Arbor Way, the SNAP plan designated by the Community Council stated that the safest route to the school was on Angel Street and Weaver Lane.

Mr. Easton said in previous meetings the developer had stated that he did not know about the Parkway corridor, but the maps in the West Layton Plan from 2001 showed the corridor and explained that the City was considering an east/west arterial street that would connect I-15 to the Legacy Parkway. Temporary zoning regulations were set up at that time so that future development would incorporate the corridor into their development plans. If the developer was concerned with the marketability of lots fronting onto Angel Street, why would he include residential lots doing just that in his site plan? He said as discussed by Councilmember Freitag, the City acquired the northwest corner lot and planned to donate the lot to the School District to construct a home. Mr. Easton said they felt that the two lots up for rezone would be better as two residential homes on relatively large lots.

Mr. Easton said their concern that PB zoning at this location would set a precedent for neighboring properties to be developed as PB too had been discounted as speculation. The property owner to the northeast validated this concern by stating that if this was to be rezoned, or not, he would and could develop the northeast corner as PB. Mr. Easton asked the Council to consider their points and deny the proposed rezone.

Mr. Easton said if the property was rezoned, they felt that the development agreement should be refined and be more restrictive in scope and use. They would like the building limited to a single story building without

an inhabited basement, and be limited to 5,000 square feet, and they would like there to be no electronic sign. He said they would like the concrete wall and landscape buffer on the Parkway to continue, which would allow the PB property to look more residential than commercial.

Mr. Easton asked that the Council not rezone the property. He said the proposed development was not located on an arterial street, it was not located at the entry to a single family neighborhood, and it would not create a buffer between low density residential and an arterial street. Mr. Easton said this was not a business district nor did they want to set a precedent for the other properties at the intersection. He thanked the Council for their time and consideration.

Bob Stevenson, 1124 Rosewood Lane, said he had the opportunity to be in all three meetings where this had been discussed. He said Kennington Park, Roberts Farm and Pheasant Place were model subdivisions for the City. Mr. Stevenson said he was presently the President of the Northern Wasatch Homebuilders Association and very soon they would announce that the fixed site for the 2014 Parade of Homes would be located in the Kennington Park area.

Mr. Stevenson said he had had the opportunity to live across the street from a dental office, on a residential road. He said in the beginning there were concerns about living across from this type of facility, but amazingly they were very quiet, they were well kept, there was no one there on Saturdays or Sundays, the lights were off at night, the landscaping was done professionally, and it was a very nice looking location. Mr. Stevenson said he had experienced absolutely no problem having a dental office as a neighbor.

Mr. Stevenson said he was currently building a dental office off of Hill Field Road across from Northridge High School. He said this was also on a residential road. Mr. Stevenson said many of the residents from the residential neighborhood seemed to be very pleased with the facility. He said their building would be approximately 5,000 square feet, there would not be a basement but there would be a second floor.

Mr. Stevenson said there seemed to be a concern with how many cars would be turning into and out of the facility. He said he wasn't as concerned with the cars turning into the development as he was with the development in west Kaysville further south on Angel Street. Mr. Stevenson said the through traffic from Gentile Street to 200 North in Kaysville would continue to increase, which was a concern if these lots developed as homes. He said he grew up on Gordon Avenue where they were able to ride their bikes in the road, which was about 18 feet wide. Mr. Stevenson said everyone knew what Gordon Avenue had turned into because of growth in the area. He said he believed that Angel Street would become busier and busier.

Mr. Stevenson said, from a builder's standpoint, it would be very difficult to turn around or move the lots. He said as beautiful as the area was, he would hate to see two homes constructed that may have to be in a lower price range in order for them to sell at this location. Mr. Stevenson said it would only take a little time before the homeowners would get tired of trying to back out of a driveway onto a busy street and the homes would continue to turn over; at some point they would turn into rentals. He said in the long term, the dental office would actually be an enhancement to the subdivision and not a detriment.

Clay West, 871 South Arbor Way, said he would share a backyard with the proposed development. He said it had been stated that these lots would not be of much value as residential lots, but with all of the restrictions included in the development agreement, it seemed that it would not be as valuable for the PB use as well. Mr. West said it seemed that the same problem would occur. He said when they were looking for a home, and drove through this area, they experienced the residential nature of the area. Mr. West said that was what drew people to this area. He said there would be an empty parking lot on the weekends and at night, which he would be able to see through his windows. Mr. West asked that the rezone not be approved.

Shawn Gilbert, Syracuse, said he knew Dr. Harmon through his dental office currently located on Fort Lane. He said he was also associated with the dental office on 3200 West, which had access from a collector street that served a dental office and a physical therapist. Mr. Gilbert said he didn't think the traffic would be a big issue. He said most of the concerns were more about "not in my backyard." Mr. Gilbert said, in reference to Councilmember Freitag's comments about the utility box in his front yard, he would assume that that utility

box was considerably smaller than those at this location. He said he was surprised that a decision on the rezone had not been made.

Bruce Roberts, 908 South Angel Street, said he was directly south of the proposed rezone. He said they had no desire to live by a business. When the subdivision was developed it was supposed to be residential. Mr. Roberts asked that the Council not rezone the property.

Shirley Dixon, 558 South 1500 West, asked Gary Crane if the development agreement had to be made available to the public 48 hours in advance to being voted on.

Gary said there was no requirement by law that the development agreement be in place 48 hours in advance.

Ms. Dixon said Gary had mentioned that it had to be voted on tonight.

Gary said the development agreement was generally voted on at the same time as the zone change because the items that the zone change were predicated on had to be identified in that agreement.

Ms. Dixon said the traffic studies didn't take into account growth from all the additional homes that would be built in the area. She said included in that would be the 50 to 60 homes in the Old Farms Subdivision, 20 homes in the Roberts Farms Subdivision, 100 homes in Kennington Parkway, and the 300 homes in the Hill Farms Subdivision to the south in Kaysville. Ms. Dixon said that was a lot of future traffic that would be using the road. She mentioned the problems with traffic on Antelope Drive and Hill Field Road. Ms. Dixon asked the Council to consider future traffic, which wouldn't be as much of an issue if there wasn't a school in the area. She said the traffic study only provided for a dentist office and a general office building; this was a three suite office building and they didn't know what else would go into those areas.

Ms. Dixon indicated that there had been problems with the Davis Family Physicians site not having enough parking; cars were parking along the street and they had to expand their parking lot to the south. She said there wasn't room at this location to expand the parking lot. Ms. Dixon said the lots were big enough that they would accommodate wide driveways and cars would not have to back onto Angel Street. She said all of the homes being built in the area would have to access this street because of the school, and there would be traffic hazards.

Councilmember Flitton asked Ms. Dixon if she was a part of the meeting with Ed Green and if he conformed to many of their requests for the building.

Ms. Dixon said they didn't have as many concerns with the design of the building; they trusted that the dentist would build a nice office. She said they didn't want the basement to include additional uses that would see clients.

Councilmember Flitton asked if they were okay with the curb appeal.

Ms. Dixon said yes; they were more concerned with traffic.

Carol Merrill Flitton, 2660 East 1700 North, said Ms. Dixon had a very valid concern with regard to traffic flow. She said if 600 new homes would be coming to the area, traffic would increase; what was the percentage of those homeowners that would be coming to this business. Ms. Flitton said it appeared that it would be very small in relationship to the new homes that would be coming in.

Laura, Office Manager of Dr. Harmon, said it was mentioned earlier that in 12 years the PB zone had only been denied one time. She said in that case the Planning Commission and Council denied that proposal.

Mayor Pro Tem Francis said that was correct.

Laura asked if there had ever been a time when the Planning Commission unanimously approved a PB

rezone that was later denied by the Council.

Mayor Pro Tem Francis said he couldn't speak to the entire history, but it seemed in the last 12 years that was not the case.

Mayor Pro Tem Francis thanked the citizens, property owner and Dr. Harmon for being cordial and working well with each other.

**MOTION:** Councilmember Brown moved to close the public hearing and approve the development agreement and rezone request, Resolution 13-35 and Ordinance 13-18, because it was consistent with the policies for placement of the PB zones on collector or arterial streets and that it could be a good buffer between a collector or arterial street and a family neighborhood, making sure that Draft #4 of the development agreement be approved with the addition that the limit on the building be 7,500 square feet. There was no second to the motion.

Mayor Pro Tem Francis asked Gary to clarify what the procedure was when there was no second to a motion.

Gary said it would fail for the lack of a second.

Mayor Pro Tem Francis said it appeared that the measure had failed.

Councilmember Brown asked if there could be another proposal; there had not been a vote on the rezone one way or another.

Mayor Pro Tem Francis asked if there was another motion on the matter.

Councilmember Freitag said there didn't have to be a vote at all if there was no action taken. If there was not a second, didn't the proposal fail as well?

Gary said if there was not a vote, there would be no action taken. By virtue of being no action taken, the rezone wouldn't occur. He said the developer wouldn't quite know what to do. Gary said if the rezone was turned down, the developer would then have the capability of applying again in a year. He said if the motion failed as the result of a vote, he would consider it a continuance until such time as a vote was taken by the body, simply nothing had occurred; no vote was taken therefore it would be just like continuing the item until the next meeting. Gary said someone would have to raise it again and vote on it at that time. He said that was the problem; it didn't vote up or didn't vote down, and it didn't give the developer any indication as to what he should do. Gary said if no one wanted to make a vote, the developer could request that it be raised again at the next City Council meeting, if he chose to do that.

Councilmember Freitag asked if a possible motion was to send it back to the Planning Commission with certain direction.

Gary said yes, but he would be very specific with the direction because this had been batted around for three meetings now, and the developer was entitled to know which direction the City was going.

Councilmember Flitton asked if the vote by the Planning Commission was a unanimous vote to pass it on to the Council.

Bill Wright said yes.

Councilmember Freitag asked how significant the changes were to the development agreement from what the Planning Commission saw and approved.

Gary said there were quite a few of the uses that were taken out; the 7,500 square feet limit was put in; and the height of the building was changed. He said those were pretty significant changes. Gary said limiting the

size of the building and limiting the uses were significantly more restrictive than what the Planning Commission thought were warranted at the site.

Councilmember Freitag said at this particular location on the Layton Parkway there were no concrete walls constructed. He said there were walls farther west; could walls go farther to the east. Councilmember Freitag asked if the walls that were started a little west of this property would be the only ones constructed in this area.

Gary said walls would go all the way east and west on the Parkway adjacent to residential areas.

Councilmember Freitag said there was a gap right now between Angel Street and west of this proposed rezone area. He said if it was residential would the walls go up there.

Bill said if the Council's action was to leave it zoned residential, then the wall would be continued toward Angel Street. He said as it approached the corner of the intersection it stepped down to a height of three feet, similar to other locations along the Parkway as it approached an intersection.

Councilmember Freitag said the City had held off on doing the walls, which made total sense, until this property was either rezoned or not.

Bill said that was correct.

Councilmember Freitag said he wasn't ready to make a decision. He said he knew that Layton Parkway was an arterial, but would the City allow any other entrances or exits onto that arterial through this area. Councilmember Freitag said the Council went through an issue a few months ago about a development to the east, the expansion of the Henry Walker Homes development, where those people really wanted a second entrance into the development, and the Council chose not to do that because the recommendation of the Fire Department was that they could provide adequate fire protection. He said the other reason was that the City Engineer didn't recommend another access at that location; that would be too many accesses. Councilmember Freitag said looking at every other example of the PB zones that were approved, they had been along roads that were either arterial roads that they could have access onto, or they were choosing to have a secondary access, which was the situation of the McMillan building and the Davis Family Physicians building. He said he went to the Davis Family Physicians and he drove up 3200 West and went in the side entrance, not the arterial access. Councilmember Freitag said if the City wouldn't ever consider an access from this piece of property onto the arterial street, he struggled with this meeting the ordinance of it being along the arterial because they wouldn't let the access go through there. He said it was different from every other one of the areas; there were a lot of similarities, but in his mind the biggest difference was that it couldn't access the arterial.

Gary said Woody could address access onto the Parkway.

Bill Wright said the Council did actually approve a PB zoning on Antelope Drive and 650 West where it was rezoned for a wedding studio. He said that property had no access from Antelope Drive, and neither did the PB zoned property on the west side of that road. Bill said the access road was actually a local street and not a collector. He said this wasn't the only opportunity you could find where the building could have an address on an arterial but couldn't have access from the arterial.

Councilmember Freitag said the City had never restricted the access to Antelope Drive for those two locations; it wasn't part of the proposal.

Bill said there was no physical way to get access from Antelope Drive for either of those parcels.

Councilmember Brown said there was also one on the corner of Antelope Drive and Robins Drive the Council approved where there was a home that was rezoned to PB, and it did not access Antelope Drive, nor could it because it was too close to the intersection. She said the only way to access that property was from

the residential area and access it from the residential street. Councilmember Brown said it wasn't even a collector street, it was a residential street.

Bill said that was correct.

Councilmember Flitton said there was another piece of property off of Gentile Street and Chapel Street that was zoned PB, and the house that was rezoned actually faced Chapel Street.

Councilmember Brown said that was correct but it was Whitesides Street.

Councilmember Flitton said there were other examples in the City.

Bill said they seemed to be functioning properly and enhancing neighborhoods.

Councilmember Flitton said his problem was that with the other rezones there wasn't any opposition; he was the only one that voted against the one on Whitesides Street because it faced Whitesides instead of Gentile Street, but there wasn't any other opposition. He said what he was seeing here was opposition from the residents. Councilmember Flitton said he voted on various things that he thought were beneficial to the community as a whole; not that this was a good reason to vote either direction, but this one had a lot of opposition from the local neighbors that differed greatly from whether or not this benefitted the community as a whole versus the neighborhood.

Gary reminded the Council that voting was never done by popular vote; the Council did what was in the best interest of the community as a whole, not what was in the interest of a particular group of neighbors. He said if it was done by popular vote, it would be very easy; the Council could take a vote of the audience and it would probably be a split congregation. Gary said that was the reason zoning was not done by popular vote. The Council had to come up with some legitimate zoning reasons for whatever decision they made. Gary said he hated to push the Council, but that was what they needed to do. He said they had to come up with some legitimate zoning reasons for whatever decision they were going to make. If they weren't going to make any decision, that was a decision to continue it. He said it would be continued until the next meeting and would be raised again. Gary said he hated to force the Council to do that, but that was what they had to do.

Gary said if they wanted to send it back to the Planning Commission and tell them to come up with some reasons for what they decided, or to make a different decision, that was a decision the Council could make. He said if the Council wanted to state that tonight they were going to make a decision because of this zoning reason or that zoning reason; that was a legitimate decision. Gary said to make no decision was a legitimate decision to continue it to the next meeting. He said the Council could go back and forth until they had a motion that could be accepted, but it couldn't be based on what the majority thought or the minority thought; it had to be based on zoning reasons.

Councilmember Freitag asked that rather than sending it back to the Planning Commission could they call for a conference between the two bodies to discuss it.

Gary said they could certainly do that. He said the Planning Commission could be called into a work session to discuss the rezone.

**MOTION:** Councilmember Freitag moved that the City Council and Planning Commission meet in a work session to discuss issues of concern to the Councilmembers as it pertained to the zoning. Councilmember Bouwhuis seconded the motion, and closed the public hearing.

Councilmembers Bouwhuis, Freitag and Flitton voted yea; Councilmember Brown voted nay. The motion carried.

**CITIZEN COMMENTS:**

Dawn Fitzpatrick expressed appreciation to Barry Flitton and Mike Bouwhuis for their service to the citizens of Layton.

**The meeting adjourned at 9:54 p.m.**

---

Thieda Wellman, City Recorder