

KAYSVILLE CITY COUNCIL  
February 16, 2023

Minutes of a regular Kaysville City Council meeting held on February 16, 2023 at 7:00 p.m. in the Council Chambers in Kaysville City Hall at 23 East Center Street, Kaysville, UT.

Council Members present: Mayor Tamara Tran, Council Member John Swan Adams, Council Member Mike Blackham, Council Member Abbigayle Hunt, Council Member Nate Jackson, and Council Member Perry Oaks

Others Present: Finance Director Dean Storey, City Attorney Nic Mills, Deputy City Recorder Chelsie Fromeyer, Community Development Director Melinda Greenwood, Assistant Finance Director Levi Ball, Information Systems Manager Ryan Judd, Power Superintendent Brian Johnson, Resource and Service Manager Bruce Rigby, Lt. Preston Benoit, Ly Tran, Josh Rabe, Ryan Halder, Hannah Pendergast, Laurene Starkey, Val Starkey, Steven Linge, Melinda Mann, Katie Holmes, Mark Fawson, LeVar Thompson, Pam Thompson, H. Lynn Galbraith, Mike Moon, Beckam Moon, Cooper Moon, Brianne Moon, Elliott Smith, Nicholas Bigler, Josh Holmstead, Flemming Hyllested, Collin Burton, Blake Montgomery, Shaunna Burbidge, Tyler Nay, Lisa Nay, Kyle Schafer, Jennifer Streeter, Liz Davis, Ed Davis, Clarissa Parker, Ellie Parker, Henry Parker, Claire Parker, Jane Parker, Tavan Parker, Alan Quigley

**OPENING**

Ly Tran opened the meeting with a prayer. Mayor Tran led the audience in the pledge of allegiance.

**CALL TO THE PUBLIC**

Ed Davis said that he lives near the proposed Westgate Estates Commercial Subdivision, which is on the agenda tonight. This commercial site has been zoned for many years, but he is concerned about its proximity to the nearby elementary school. Mr. Davis said that when his family moved into their home a little over a year ago, they were aware that this site was zoned for commercial. The neighbors have been told that this convenience store would need to generate around 2,000 ingress and egress vehicles every day in order to be successful. UDOT says that they will not allow ingress or egress off 200 North at this site, forcing all of those vehicles to take access on a residential street. Mr. Davis said that the neighbors are also concerned that there are no plans to install any traffic lights along 200 North in this area.

Laurene Starkey thanked the council for their consideration in saving the old library building. The building is very historic and an important memorial for those who have lived here for a long time. Mrs. Starkey encouraged the council to speak with the residents as they consider the proposals for the library, especially those who have a long history in Kaysville and are dependent on the council's choice and that it remain historic.

Stephen Linge said that he lives on Island Drive and is concerned about the proposed convenience store on 200 North. There are health risks associated with gas stations, and he is concerned about

it being in close proximity to an elementary school. Gas stations release chemicals into the air and could pose health risks. The name of the store, Kum & Go, is in poor taste and inappropriate. Kum & Go has indicated that they plan to install a forty-five foot tall lighted sign, which will shine into his backyard. Kaysville currently does not have a lot of light pollution and we need to keep it that way.

Melinda Mann said that when new buildings and developments are created, impact fees are imposed because new development impacts something that already exists. Mrs. Mann said that she lives in the Westgate Neighborhood, near this commercial development, and would like an impact fee imposed on the developer so that a traffic light can be installed on 200 North. Installing a traffic light would help to address the concerns neighbors have about kids being able to get to and from the elementary school safely. The developer should also be required to pay an impact fee to address the underground fuel tanks that will be installed at the proposed gas station in case there are any problems with those tanks in the future, then money would be available to address potential problems.

## **PRESENTATIONS AND AWARDS**

### **MERCY HOUSING PRESENTATION**

Hannah Pendergast, the Resident Services Coordinator with Mercy Housing, gave a presentation to the council regarding the Francis Peak View Apartment complex in Kaysville, which is owned and operated by Mercy Housing. The Francis Peak View Apartments is located on Mutton Hollow Road, and is a low-income housing unit with between 250 to 300 residents. There is an affordable housing crisis in the United States and about 3.2% of our residents in Kaysville live below the poverty line. This equals out to about 1,000 Kaysville residents. The median annual income of the residents at the Francis Peak View Apartments is just over \$6,000 per year, whereas the median annual income for Kaysville is \$100,500. Residents pay 30% of their individual income. Mercy Housing seeks to create affordable service-enriched housing. Which means that they not only provide affordable housing, but they also provide different resident programs and services for all of the age groups, and they have a community center. Most of the youth that they serve come from single parent households. About half of their residents are Hispanic or Latinx. Mercy Housing is funded through Rural Development and LIHTC (Low-Income Housing Tax Credit). They get a lot of support from volunteers and other partner agencies. Their resident services consists of five areas of focus. The first area focuses on health and wellness, which includes things like a food pantry, one-on-one support for mental health, referrals to any needed health services, and on-site vaccine clinics. The second area of focus is out-of-school time, or after school and summer programming. Their services not only include the youth who live on-site, but also kids from the community. The third focus area is on financial education, where they help residents with job applications, resumes, help with technology literacy, taxes, budgeting, and the like. The fourth focus is on housing stability. Our staff works to try to make sure that their residents can stay housed. If there is a resident facing possible eviction, their staff will work with the property management team to try to help the resident fix what needs to be fixed in order to stay in their unit. The fifth focus involves community engagement and comprises of arts and crafts, holiday parties and other events to try to get the community engaged. Many of their kids are behind in school and their staff works hard to try to support kids academically, and help them get to their at-grade level of education. Some kids do not have the social skills that are typical for their age group, and they try to foster those social skills through play. Their staff does a lot in terms of diversity and

inclusion so that all of the kids know that they are welcome. Their focus with teens is directed more towards career exploration, leadership skills and life skills. In the summer, when kids do not have school lunches to rely on, they will feed the kids and teach them how to cook as well. They try to do fieldtrips when funding is available. Mercy Housing has a scholarship residents can apply for in conjunction with EPIC Real Estate. It is available for twenty-five of Mercy Housing residents every year. They also have a Sub-for-Santa program, and last year they were able to serve 150 kids through the program. For our senior citizens, we have some great volunteers who will check on them to make sure that their needs are being met. The Kaysville Rotary Club helps every year to provide Thanksgiving meals to residents. They also get a lot of support from Kaysville City and our community. "Kaysville GIVES" has helped them for the last two years to help provide gifts during the holidays. They have also applied for the RAMP grant. Ms. Pendergast said that they are happy to give a tour of their property to anyone interested. They are always looking for more volunteers because they do not have the one-on-one support needed for the residents. If there are any small businesses that would like to get involved, they would love to collaborate with them. They will soon be starting a community council once a month and would love members of the council or community to join them to learn what they do and how they can help.

Council Member Jackson asked if they take donations.

Hannah Pendergast responded that they do have specific needs that are always needed, and if people are interested in finding out more about donating those items, they can contact her.

### **DECLARATION OF ANY CONFLICTS OF INTEREST**

No conflicts were disclosed.

### **CONSENT ITEMS**

Council Member Blackham made a motion to approve the following consent items:

- a. Approval of Minutes of January 19, 2023.
- b. Appointment of Mitch Arquette as Parks and Recreation Advisory Board Member.
- c. Appointment of Paul Allred as Planning Commission Member.
- d. Equipment Purchase for Fire Department Rescue Task Force and Police Department SWAT.

The motion was seconded by Council Member Adams.

The vote on the motion was as follows:

Council Member Blackham, yea

Council Member Adams, yea

Council Member Oaks, yea

Council Member Hunt, yea

Council Member Jackson, yea

The motion passed unanimously.

## **ACTION ITEMS**

### **PRELIMINARY PLAT SUBDIVISION FOR THE MCW KAYSVILLE SUBDIVISION LOCATED AT APPROXIMATELY 175 WEST 200 NORTH – TERRAFORM COMPANIES, LLC (ELLIOT SMITH)**

Community Development Director Melinda Greenwood explained that the MCW Kaysville subdivision is located at approximately 175 West 200 North and all of the properties included in the application are currently zoned for General Commercial (GC). TerraForm Companies, the applicant, has submitted a preliminary plat application configuring a 3.06-acre parcel into a four-lot subdivision. Lot 1 will contain the existing Golden West Credit Union. Lot 2 is anticipated to have a car wash facing 200 North Street, and Lots 3 and 4 is planned to have some other commercial space, with a mixed-use overlay application to be submitted in the near future. The proposed subdivision is consistent with the anticipated development of the General Commercial zone. The preliminary plat subdivision for MCW Kaysville was presented to the Planning Commission on January 26, 2023. The Planning Commission voted 6-0 to forward a recommendation of approval to the City Council with no conditions applied.

Mayor Tran opened the meeting for public comment for this item.

There were no comments or questions from the public. Mayor Tran closed the public comment for this item.

Council Member Adams asked about the car wash.

Elliot Smith, representing TerraForm Companies, said that there are plans to build a Mister Car Wash on Lot 2.

Council Member Adams asked about setbacks and the city being able to regulate the look of the buildings.

Melinda Greenwood said that city ordinances specify the setback requirements for each zone. The General Commercial zone does not have required setbacks, lot sizes or lot widths. However, the GC zone states that a twenty-foot yard area be provided between any commercial use and a residential use. Title 18 of the Kaysville City Code includes commercial building architectural standards that specifies some building materials that can be used. When a building permit application is submitted, city Staff would review the building plans to ensure that the building meets those architectural standards. Kaysville does not currently have strict architectural standards, and if the council wished to make them more specific, the city ordinances would need to be amended.

Council Member Jackson commented that because this property is located adjacent to the city's historic district, he would like to see that historical look preserved as much as possible so as to not disrupt the look of the area. Council Member Jackson asked about the timing for developing Lots 3 and 4.

Elliot Smith said that TerraForm Companies does not own the property, but are working to develop Lot 2. The owner of the properties has their own plans for Lots 3 and 4, but they wanted to

subdivide the plat now to include all four lots in anticipation of a future mixed-use development.

Council Member Jackson asked if the council could approve the subdivision of Lots 1 and 2, but not Lots 3 and 4.

Melinda Greenwood added that the reason the applicant has not yet submitted an application for a mixed-use overlay zone on Lots 3 or 4 is because the city is currently in the process of revising our Mixed-Use Overlay zone ordinance. Because the proposed preliminary plat meets our current city code, it is likely illegal for the council to deny the plat without including Lots 3 and 4 as presented. The applicant has a year after preliminary plat approval to bring the final subdivision plat for approval.

Council Member Oaks made a motion to approve the preliminary subdivision plat for the MCW Kaysville Subdivision located at approximately 175 West 200 North for TerraForm Companies LLC. The motion was seconded by Council Member Hunt.

The vote on the motion was as follows:

Council Member Adams, yea  
Council Member Oaks, yea  
Council Member Hunt, yea  
Council Member Jackson, yea  
Council Member Blackham, yea

The motion passed unanimously.

PRELIMINARY PLAT SUBDIVISION FOR THE WESTGATE ESTATES COMMERCIAL SUBDIVISION LOCATED AT 2356 WEST 200 NORTH AND 2368 WEST 200 NORTH - PERRY LAND INVESTMENTS, LLC/KUM & GO L.C.

Mayor Tran commented that the members of the city council and city staff had received numerous emails, phone calls and messages regarding this item. This subject property has been zoned as commercial for many years, before the nearby elementary school and surrounding residences were built. When UDOT was in the process of planning the West Davis Corridor, there was some in the city who were told that UDOT would not allow access off 200 North. Mayor Tran said that when the West Creek Side Estates subdivision was being developed, she had been asked by residents if she thought this commercial property would eventually be developed as a gas station and she had told them she didn't think it would be because of UDOT not allowing access onto 200 North. Perry Homes, who has owned this property and has developed the Westgate Estates subdivision, now has a gas station company that is interested in building on the commercial property. That gas station company is Kum & Go L.C. Perry Homes said that they had informed Kum & Go that their access could potentially be limited, but they were still interested in building on this property. Mayor Tran said that she and the city council understand that having a gas station here will be frustrating to residents because of the increased number of cars that could potentially be generated by both the gas station and the West Davis Corridor. However, the city is limited on what can be legally done at this point because we are held by our own city laws. Mayor Tran explained that this agenda item and discussion is not to decide on whether or not a gas station will be allowed here. This property is zoned General Commercial and under that zone a gas station or

convenience store is a permitted use. The council is in place to represent our citizens and their concerns; however, we also must uphold our own laws and ordinances. The council has had many discussions about this item and it has weighed heavily on our minds. This gas station is already under contract with Perry Homes. The city has approached Perry Homes about their contract with Kum & Go, and they responded that they could not back out of their agreement at this point. The city has also had multiple discussions with UDOT about the nearby interchange on the West Davis Corridor. For several years, Council Member Blackham has had many discussions with UDOT about installing a pedestrian crossing at this West Davis Corridor interchange. The city has also pleaded with them several times to install a pedestrian overpass or underpass at this location, as we know that the pedestrian trail that will be built along the West Davis Corridor will be very popular. Nevertheless, UDOT has informed us that it would cost the city millions of dollars to have that crossing built. We have also asked UDOT to install a light here. Traffic lights are typically only installed when traffic studies are done and those studies show that a traffic light in that location is warranted. It is under UDOT's purview to make the decision regarding whether or not a traffic light is installed at the interchange. UDOT has indicated that they will consider the request and will conduct the necessary traffic studies in order to see if a traffic light would be warranted here. The concerns of the residents are completely valid and the city is doing everything we can to be able to address them.

Melinda Greenwood explained that this item is a request for preliminary plat approval for a two-lot subdivision. This undeveloped lot is located at 2356 West 200 North and 2368 West 200 North, and is located at the northeast corner of 200 North and the West Davis Corridor. The proposed subdivision would create one two-acre lot for a Kum & Go fueling station and convenience store, and the second one-acre lot is for an undetermined commercial use. The Kum & Go gas and convenience store would face 200 North Street. The proposed subdivision is consistent with the anticipated development of the General Commercial zone and complies with applicable zoning ordinances. At the January 26, 2023 Planning Commission, the Commission voted 6-0 to forward a recommendation of approval to the City Council with the following conditions:

1. A cross access agreement between the two parcels is created either by showing it on the subdivision plat or by a separate recorded document.
2. Affirmative acknowledgement from staff that all items listed in Kaysville City Code 19-3-3 have been reviewed and addressed by staff prior to sending them to the City Council.

Mrs. Greenwood said that the City Engineer has confirmed that all relevant items required in 19-3-3 have been submitted, reviewed and are adequate to approve the preliminary subdivision. Melinda Greenwood commented that Josh Rabe and Ryan Halder, with Kum & Go, could not attend this meeting in person tonight, but was participating in the discussion via phone.

Mayor Tran opened the meeting for public comment for this item.

Blake Montgomery said that he lives on Westgate Lane, near where the gas station is being proposed, and he is against this project. The residents of this area and the students who attend the elementary school nearby will suffer adverse health effects as a result of gas station benzene emissions. Increase traffic will make their streets less safe, especially if Kum & Go is allowed access along Westgate Lane. The increased availability of unhealthy food and tobacco products from a convenience store will further jeopardize the health of our children. The proposed sale of beer, and possibly other alcoholic products, will increase the likelihood of crime in the neighborhood. Kaysville City Code 19-3-3(11) requires that buffer zones be created where non-

compatible uses adjoin a proposed subdivision, and Kum & Go has not met this requirement. Mr. Montgomery provided the city council a letter from Mr. Richard D. Klein, who is a consultant with Community and Environmental Defense Services that Mr. Montgomery has been working with. There are numerous scientific studies cited in the letter, and those studies document the negative health effects of benzene and other compounds created by gas stations that can affect those living and learning within 1,000 feet. A U.S. EPA study, also cited in Mr. Klein's letter, urges caution when locating schools within 1,000 feet of a gas station. Kay's Creek Elementary is located only 400 feet from the proposed gas station site. Easy access to a major freeway will be located only 100 feet away. This and other factors show that the buffer zone between residential homes and the school are not compatible with the adjoining uses as required by KCC 19-3-3(11). The Staff and Planning Commission recommendations did not take into account the lack of buffer zone the preliminary plat provides for the health and safety impacts. There are no conditions that could be added to a preliminary plat approval that would resolve the potential health conditions this gas station could create. Therefore, the council should deny the plat. Mr. Montgomery says that the neighbors understand that by denying this subdivision plat, it would not stop Kum & Go from submitting a building permit. Mr. Montgomery added that he had collected 266 names from residents who are against this gas station being allowed, and he has more names that are still being collected.

Collin Burton said that lives on Richards Ramble Road, within the Kay's Creek Elementary School boundaries, and has a master's degree in biotechnology and worked directly with benzene in a lab setting. He has also worked for several years at a cancer diagnostics company. Mr. Burton said that at some point, one of the biggest concerns with gas station pollution was in regards to underground storage tanks leaking pollutants. However, with modern double wall tanks, that concern is no longer as great. Mr. Burton discussed the adverse effects of gas station benzene emissions and said that several studies have been conducted over the last decade, and those studies have shown that there is enough benzene and gasoline released into the air to threaten the health of those living up to 500 feet from a gas station. Benzene is released when we refuel our cars and it escapes from the pipes that vent vapor from underground storage tanks. Some adverse health effects from benzene include cancer, anemia, increased susceptibility to infections, and low birth weight infants. The U.S. EPA is urging a closer examination of school sites located within 1,000 feet of a gas station. Because of this extremely inadequate buffer, the preliminary plat should be denied.

Shaunna Burbidge said she lives at 1776 West 75 South, also within Kay's Creek Elementary School boundaries, and is a member of the Kays Creek Community Council. Ms. Burbidge said that she has been responsible for creating Kay's Creek Elementary School's "Safe Routes to School" plan for the seven years that the elementary school has been open, and she holds a PhD in transportation methods models and computation. The neighbors are concerned regarding the increased traffic that Kum & Go will generate. This road is currently listed as a safe route to school, and with the construction of this gas station, we will no longer be able to classify this as a safe route to school. There are only two entrances and exits to the West Creek Side Estates subdivision. If one of these access roads are removed from the safe route to school, some children will have to walk nearly a half-mile or a mile out of the way to follow a safer route to Kay's Creek Elementary. The primary reference for estimating traffic generated by specific land uses is located in the Institute of Transportation Engineers Trip Generation Manual. Ms. Burbidge said she had independently ran an analysis on the traffic and, at minimum, a conservative estimate for the trip generation of this gas station is 1,500 cars per day. That includes 96 vehicles during the one-hour

peak period when these kids are walking to and from school. A more realistic estimate would be more about 3,300 vehicles over the course of the day. Many of Kay's Creek Elementary students do walk to school and we have already had a difficult time looking for safe routes for our kids to use because of the proposed West Davis Corridor. The siting and location of this school has been a disaster since the school opened, and we are limited in our options of where we can route these kids safely. We have police officers on site nearly every day trying to help with traffic control. With only a single access to the proposed development, all of the vehicles traveling in and out of the development will take that access. If this development is approved, the neighbors ask that it be contingent upon the landowner providing particular buffers and safe accommodation for pedestrians, cyclists, and students that are accessing the school.

Nicholas Bigler said that he lives on Summerfield Way, north of where the Kum & Go gas station is proposed. Dr. Bigler said that he has worked in the medical field for five years and is currently a full-time anesthesiologist. His neighbors and he are concerned that the Kum & Go will harm the health of their children due to an increased availability of junk food and tobacco. There are many ills to childhood obesity, including diabetes, high blood pressure, heart disease, sleep apnea and more. Kum & Go will offer few healthy nutritional foods. Convenience stores are usually open all day and night. We are especially concerned about the adverse health effects by having a convenience store located so close to an elementary school. A higher rate of obesity is associated with the presence of convenience stores within close proximity to a school. A number of children attending this school will pass by the proposed convenience store. Because of the extremely inadequate buffer, the preliminary plat should be denied.

Brianne Moon said that she lives at 30 North 2300 West near the proposed development, and teaches at Kay's Creek Elementary. The health and safety of the students need to be protected. The neighbors are concerned that the Kum & Go will result in an increase in crime, which could spill into nearby neighborhoods. Kum & Go has plans showing a beer cave for carryout alcohol sales. Scientific studies have shown the potential effect of convenience stores that sell alcohol. The gist of the research shows that allowing carryout sale of alcoholic beverages at a proposed convenience store may increase crime and other adverse health effects, especially if this store is open 24/7. One study indicated that the presence of an off-premise beer sales 24/7 hour establishment might attract people at an increased risk for involvement with violent crime. In another study, researchers concluded that children with an alcohol outlet on their route to school were more likely to be offered alcohol, tobacco and other drugs, as well as being exposed to drug selling and seeing people using drugs. A number of children attending the elementary school will pass by the proposed convenience store. The neighbors and teachers are very concerned about crime rates in our area increasing and would like to know what could be done to help address this.

Clarissa Parker said that in the city's Code 19-2-1 "Subdivision Development Process", it says that the subdivider must contact the city engineer for information concerning the city's subdivision requirements and compatibility with the general plan, and discusses the proposed plan of development prior to preparing any plot plans or charts. Any subdivision must be compatible with the city's General Plan. Members of the community are concerned that either this conversation about the compatibility of this development according to the General Plan never occurred, or that the General Plan was ignored during the process. The General Plan is intended to guide the growth and development of this community that we all love. In Chapter 2, "Transportation and Connectivity", of the General Plan, under Goal 2, "Balance Community Corridors", it states that there needs to be established slower design and posted speeds, frequent crossings, quality

pedestrian environments and the ability to manage traffic at key destinations, such as schools and commercial centers. This area is already an unsafe environment for vehicles, pedestrians and bicycles, and that will worsen when the West Davis Corridor is completed. Adding a gas station here will only exacerbate the safety concerns, especially since UDOT will reportedly not allow a traffic light at the intersection. This development will not establish a quality pedestrian environment, nor will it manage traffic properly at key destinations, like the elementary school. This development will clearly be misaligned with the city's General Plan. With access being prevented on 200 North, the Westgate neighborhood will not only not get the buffering required, but also a high volume gas station will require thousands of vehicles to pass through the neighborhood. There will be more noise generated from the tankers refueling the station, traffic, and air compressors. There will also be light pollution created from the lighting of the commercial use. None of these things will complement the neighborhood.

Kyle Schafer said that he lives in the Hill Farms Subdivision off 200 North, and his kids go to Kay's Creek Elementary. The leaders of our community needs to safeguard our kids and residents. When the elementary school was built, the city knew that this commercial space was here and could have rezoned it years ago. Now we have been backed into a corner being that what is being proposed fits within the existing GC zone. It did not have to be this way. The city could have taken the necessary steps to protect our residents and our kids by removing the commercial use zone from this property. There is a lesson to be learned with this so that it does not happen again. The neighbors here are concerned about the light pollution that this gas station will create. They are also concerned about what kind of signage will be installed. What can be done to mitigate the impact this will have on the neighborhood? What can be done to limit light pollution? The city needs to consider requiring that sidewalks be expanded, and crosswalks be installed. There also will needs to be more police presence in this area.

There were no further comments or questions from the public. Mayor Tran closed the public comment for this item.

Josh Rabe, with Kum & Go L.C., said that they appreciated the comments received and the efforts of staff to present this project for approval.

Council Member Jackson asked if there were rules about how far an establishment that sells alcohol must be from a school or church.

Melinda Greenwood said that the state has a couple guidelines that says that alcohol cannot be sold for consumption within 200 feet, measured by a straight line, of a community location. Both the nearby church and the school are over 200 feet away from the Kum & Go site. The other guideline is that alcohol cannot be sold within 600 feet of a community location, measured by ordinary pedestrian travel. After review, this location also meets that requirement and so they will be allowed to sell alcohol for off-premise consumption.

Council Member Blackham commented that he feels there will be substantially more traffic generated here as a result of the West Davis Corridor than that of the Kum & Go. In addition, UDOT cannot tell Kaysville City that we cannot allow access onto 200 North, which is a city street. The city wants to allow Kum & Go access onto 200 North in order to keep the majority of the traffic off neighborhood streets. Council Member Blackham said that when he began term on the council, he went down to UDOT and saw the proposed design for the West Davis Corridor and

it showed an at-grade crossing at the west end of 200 North at the freeway interchange, which he feels doesn't make sense. From there he spoke with our Senator, our House Representative, has tried to speak with the Governor's office, has met with UDOT, and has done everything he could to get the at-grade crossing changed. At that time, he felt that it would have just taken a simple change order on the project to change the at-grade crossing to a grade-separated pedestrian crossing, but he felt like he couldn't get anywhere with anyone. Council Member Blackham said that he tried to get the funding for a grade-separated crossing, and tried to get the County involved because this will be a crossing for a regional trail. It could have been easy to make a safe route pedestrian pass, but he got nowhere despite all of his efforts. At one point UDOT told the city that they would participate in creating a grade-separated crossing if we would help fund a portion of it, which the City Council committed to participating in and offered money towards it. At that time, UDOT told us that in order to add the pedestrian crossing it would be a two or three million dollar addition to the project, when in reality if UDOT had just done a change order to their project, it would have been next to nothing in comparison. Now UDOT has told us that in order to build the pass, it would cost us seven million dollars, which is not money that the city has to spend. Many years ago when this area was being planned, citizens told us that they wanted commercial in this area because they knew that it would have regional transportation and they wanted the city to have more commercial base. The 200 North Street is a major arterial road and we want to locate commercial uses along our arterial roads. Services like convenience stores and gas stations are planned along freeways. While some may think that having this property zoned as commercial years ago is poor planning, it wasn't because we wanted to save this land here for commercial, so we can provide services to people on the west side of the city.

Council Member Oaks said that there is a lot of emotion and concern involved in this decision, and he is appreciative of all the comments they had received. Council Member Oaks said that he feels that it is valid to be concerned about this convenience store drawing in more crime, but the amount of crime is likely less than what one might think. It is common to find a service station located on an off-ramp. If there weren't a school already located here, it is likely there would be more commercial uses in this area. As with all applications, the city council will do what we can to help mitigate the impact of this commercial use. Kum & Go stations are very well done and are aesthetically pleasing.

Council Member Adams asked the Kum & Go representatives if they had any comments in regards to neighborhood concerns.

Josh Rabe said that Kum & Go is a family-owned company that has been in business for many years. They are a convenience store chain that is in fourteen states, and they employ over 5,000 people. Their purpose is to make days better by connecting with people. They understand that life is hectic, but fuel and food are both needs we all have. Kum & Go stores offer healthy, clean label products. They care about people, and employ more people full-time than any of their competitors. They offer benefits packages because we want people to have health care. They also offer competitive wages because they want their employees to take their job seriously. Ten percent of their profits go back to local charities. Kum & Go has one other located store in Utah, in Draper, but has eighteen or nineteen other sites in the state under contract. They see Utah as a great opportunity for Kum & Go stations, and they look forward to being partners with local communities, and hiring local employees. This has been a well thought out, long process in order to get to this point, and they have done their best to meet everything required of them. Mr. Rabe said that Kum & Go wants to be a good partner with Kaysville. Their company believes in

protecting the health and safety of communities, and they will do what is required of us in order to accomplish this.

Council Member Adams asked if Kum & Go had considered other locations in Kaysville.

Josh Rabe said that they had looked at four sites in Kaysville and did extensive due diligence in considering all four sites. However, they felt that because this property was already commercially zoned and was located in a growing area, they felt this was the best site for them. Mr. Rabe said that they like Kaysville a lot and are looking at doing multiple sites in Kaysville.

Council Member Adams asked about how buffering had been addressed.

Melinda Greenwood said that the proposed preliminary plat meets city requirements. The General Commercial zone does not have a setback requirement, but it has a requirement that there be twenty feet of yard between the residential zone and the use of the building. Kum & Go has indicated that they will likely have about sixty feet of yard buffer between their commercial use and the adjacent residential zone. Another portion of our code requires fencing between the two uses and the applicant is proposing a six-foot cedar fence, which also meets the city code.

Mayor Tran commented that there are things the city can require the applicant to do to help mitigate potential impacts to the neighbors, but we can also have further conversations with Kum & Go to see if there is more they can do.

Council Member Hunt thanked the neighbors for making the effort to express their concerns to the council. The council has had discussions with staff to try to figure out what the city can do legally to help protect the surrounding neighborhoods. Council Member Hunt said that she had visited the school during pickup time and witnessed major traffic issues already occurring here, which will become even more of an issue when West Davis Corridor opens. There were times when she witnessed cars blocking westbound traffic lanes. This is a very concerning issue and there needs to be come commitment that it will be addressed by council and staff. Council Member Hunt encouraged the neighbors and residents to reach out to UDOT about concerns with not allowing this commercial property to have access onto 200 North, as well as concerns about pedestrian travel issues being created by the West Davis Corridor. Council Member Hunt also encouraged the public to speak with State Legislatures in regards to proximity requirements for alcohol and tobacco sales, as well as concerns about safety regulations with gas stations.

Council Member Jackson said that access onto 200 North from this commercial property is necessary. It would be unacceptable for Kum & Go to be allowed only one access point, which is onto a residential street. The city owns 200 North Street and therefore it should not be up to UDOT to make that determination on whether there is an access point onto 200 North or not.

Nic Mills said that there is a case that UDOT could potentially make for exercising their power of eminent domain to condemn a grudge strip on the property. If UDOT decides to do that, they would have to pay the property owner whatever they value the access as, as well as severance damages to the property by limiting the commercial project because of access problems. They would also likely have to purchase the furthest west lot because by purchasing the grudge strip along this property on 200 North, they would also be eliminating any access that furthest west property would have, and it would therefore no longer conform to city code.

Council Member Jackson said that he had heard that there might be plans for Kum & Go to install a forty-five foot pole sign.

Melinda Greenwood said that the preliminary plans for Kum & Go did show a forty-five foot sign. However, our current city code only allows forty-five foot commercial signs along I-15. A thirty-foot pole sign would be allowed, and city code has provisions to regulate how the sign could be lit. The City Council could amend our city code regarding sign regulations, however it is unlikely that a text amendment would be approved by the council prior to when the applicant will submit a building permit.

Council Member Jackson said that he would prefer to see an eight-foot monument sign here, in consideration of the residents in the area. Council Member Jackson asked about requiring a taller fence to be installed.

Melinda Greenwood said that the Council could ask the Planning Commission to consider requiring that a seven-foot masonry fence be installed, when this project comes before Planning Commission for final plat approval.

Council Member Blackham made a motion to approve the preliminary plat for the Westgate Estates Commercial Subdivision located at 2356 West 200 North and 2368 West 200 North for Kum & Go L.C. with the following conditions:

1. The subject property is allowed access onto 200 North Street.
2. A cross access agreement between the two parcels be created by showing it on the subdivision plat and not a separate document.
3. Staff ask the Planning Commission to consider possible additional sign requirements based on comments received by the neighbors, and encourage the Planning Commission to require that a seven-foot masonry fence be installed.

Council Member Oaks seconded the motion.

Council Member Blackham said that there had been some separate discussion about requiring a “right-in, right-out” type access off 200 North from the Kum & Go site, which will likely be the best type of access to have here. However, he did not include this as a requirement in his motion because he felt it best to let Staff work with Kum & Go to determine what the best access would be.

Council Member Hunt suggested that the developers consider adding a berm as well as a fence.

The vote on the motion was as follows:

Council Member Oaks, yea  
Council Member Hunt, yea  
Council Member Jackson, yea  
Council Member Blackham, yea  
Council Member Adams, yea

The motion passed unanimously.

Melinda Greenwood said that she had been asked by a neighbor if the developers would be willing to meet with the neighbors to discuss this development further.

Josh Rabe responded that they are always open to meeting, and suggested having a meeting at city hall to include neighbors, staff, council and whomever else that want to participate. They will be able to bring their local engineers and any other appropriate parties to make sure they can answer any questions.

AN ORDINANCE AMENDING TITLE 17, CHAPTER 27 OF THE KAYSVILLE MUNICIPAL CODE REGARDING MIXED USE ZONING DISTRICT OVERLAY

Melinda Greenwood explained that the Mixed-Use zone is new to the city. One mixed-use project was presented to the council in January of this year, and during that time, Staff discovered some amendments that needed to be made to our ordinance to address language inconsistencies and deficiencies. Some of the proposed amendments will add a little more flexibility, but it also sets expectations upfront for developers. This ultimately will allow projects that will reflect what we want to see in our community, but also projects that will be successful. Mrs. Greenwood reviewed the proposed amendments to Title 17, Chapter 27 with the City Council. The amendments include:

1. Revisions to make application requirements clearer.
2. The allowance of a hotel or motel in a General Commercial base zone.
3. Moving conditional uses to permitted uses.
4. Clarification of commercial space requirements and acknowledgement that final ratios will be approved through a development agreement.
5. Allowance of building heights up to four stories for buildings that are exclusively used for commercial uses.
6. Increase in height allowance for accessory structures to a practical height of no less than ten feet.
7. Clarification of setback requirements.
8. Clarification of what will be allowed for open space.
9. Revisions to improve parking requirements.
10. The addition of curb management requirement.
11. Other minor edits and clarification language.

Mrs. Greenwood added that these revisions to the Mixed-Use zone were presented to the Planning Commission at their January 12, 2023 meeting, who discussed the amendments and directed Staff to make additional edits. The Planning Commission then held a public hearing at the January 26, 2023 meeting and forwarded a recommendation of approval to the City Council with a unanimous vote.

Mayor Tran opened the meeting for public comment for this item.

There were no comments or questions from the public. Mayor Tran closed the public comment for this item.

Mayor Tran commented that she would like to see hotels or motels limited to certain areas of the city.

Council Member Jackson said that he would like to remove the term “motel” because he does not

want to see motels in the city.

Mayor Tran suggested tabling this item because of the lateness of the evening, but also to give the city council further time to review the recommended ordinance amendments.

Council Member Jackson said that he would like to ensure that this ordinance would not allow for storage units.

Melinda Greenwood said that the General Commercial zone and Central Commercial zone do not allow for storage facilities. In the Mixed-Use Overlay ordinance, there is a provision that says that the uses would be allowed as the base zone permits. Therefore, because storage units are not allowed in the GC or CC zones, they would not be permitted through a Mixed-Use Overlay. Staff could also add language into the Mixed-Use Overlay code to state that storage units would be a prohibited use.

Mayor Tran commented that she feels that storage units could be appropriate in certain areas, and therefore would like to keep language about prohibiting storage units out of the Mixed-Use Overlay ordinance.

Council Member Hunt made a motion to extend the city council meeting past 10:00 p.m. The motion was seconded by Council Member Jackson.

The vote on the motion was as follows:

Council Member Hunt, yea

Council Member Jackson, yea

Council Member Blackham, yea

Council Member Adams, nay

Council Member Oaks, nay

The motion passed with a vote of three to two.

Council Member Blackham asked why a traffic study is being required by Public Works and not the City Engineer.

Melinda Greenwood responded that it was listed for Public Works because the City Engineer position technically falls under the Public Works department.

Council Member Blackham said that when this Mixed-Use Overlay zone was first presented to council for approval, the council wanted to require a specific percentage to be used as commercial space to ensure that the larger portion of the development be the base zone and its permitted uses, and the Mixed-Use Overlay did not interfere with the base zone uses. There needs to be some assurance that the commercial space of a building under a Mixed-Used Overlay zone remain on the main level.

Melinda Greenwood said that there is language included in this ordinance that would require that the commercial space be on the main level.

Council Member Blackham said that he has concerns that a developer will present a request including two lots and asking for a Mixed-Use overlay for both lots, with the intent to put commercial on one property and residential on the other. This was not the intent of creating a Mixed-Use Overlay zone.

Melinda Greenwood said that, in her opinion, this ordinance could be interpreted to allow for a Mixed-Use Overlay zone on a development, which could include a number of parcels. If a Mixed-Use Overlay zone were approved on a development with more than one parcel, the required development agreement would be recorded against each parcel within that development. This may be an area of the code where more clarification needs to be made.

Council Member Blackham said that he feels that the way it is currently written is unclear and feels that if a development wants to have a Mixed-Use Overlay, then every parcel within that development should meet the requirements of the Mixed-Use Overlay ordinance. Otherwise, we may receive a request for a project where the developer will cram all of the required 30% commercial use into one area or on one parcel, and then use the remaining 70% as residential use and sell all of the residential area off. At that point, the development is not meeting the intent of the Mixed-Use Overlay zone.

Melinda Greenwood added that she feels that the concerns mentioned could be addressed through a mechanism within a development agreement stipulating what we want to see for the project, and recording that agreement against any parcel within the project. Deed restrictions could also be put in place. Mrs. Greenwood said that the language could be made clearer so that developers know what the city's expectations are.

Council Member Blackham said that the intent of this code has been to be more restrictive with the commercial aspect to ensure that the commercial uses remain in these properties where a Mixed-Use Overlay can be applied. Otherwise, we know that developers will make requests to propose as much residential as they can on these commercial properties, with the commercial use being secondary.

Melinda Greenwood said she feels that it might be better to consider the project itself and not the properties. A project would include all of the parcels, including zoning and the restrictions included in the development agreement. The city could include a requirement in a development agreement stating that the parcels could be owned separately or to someone else as long as they receive city approval. There are instances where it would be appropriate, and instances it would not. Mrs. Greenwood said that she would be concerned that by making it specific to each parcel, we may be limiting opportunities or creating situations where a Mixed-Use project is not going to be successful. We want to ensure that we have the flexibility in the code that we need to have the highest probability of our projects being successful.

Council Member Blackham said that there he would prefer to see that each parcel meet the requirements of the Mixed-Use Overlay, and not each project.

Nic Mills said that Council Member Blackham raises some good concerns. City staff could consider writing this ordinance similar to what we have for PRUD overlays.

Melinda Greenwood stated that much of this Mixed-Use Overlay code is very site-specific. If a

development wants to change any portion of their previously approved project, they would have to come back to council to amend the development agreement.

Council Member Hunt commented that she would prefer to have more time to review these proposed ordinance amendments before voting on this item.

Council Member Hunt made a motion to table this item, an Ordinance amending Title 17, Chapter 27 of the Kaysville Municipal Code regarding Mixed-Use Zoning District Overlay. The motion was seconded by Council Member Adams.

The vote on the motion was as follows:

Council Member Jackson, yea  
Council Member Blackham, yea  
Council Member Adams, yea  
Council Member Oaks, yea  
Council Member Hunt, yea

The motion passed unanimously.

#### A RESOLUTION AMENDING KAYSVILLE CITY'S CONSOLIDATED FEE SCHEDULE FOR FISCAL YEAR 2023 TO AMEND POWER RATES

Power Superintendent Brian Johnson said that the city's current power rates are very concerning to the Power Department as we are currently facing interesting dynamics that we have never had to deal with before within the Power industry. The world is moving away from the combustion engine and purchasing electric cars, and we are seeing the increased high demands for power for these electric vehicles. It has put a lot of strain on our electric systems. We are also seeing more high-density housing and more businesses, which pulls more power from our infrastructure. We are facing more government mandates and restrictions in regards to coal mining, and that has reduced our power resources. This has caused us to have to reach out into the open market to purchase power, but we have to purchase it at a much higher rate. None of these things are going to go away, and we are not going to get those resources back. Loss of power resources drives up the cost of power from an open market purchase. Sometimes we see some fluctuations in the power market because of cost of natural gas, however, we are losing resources that are not going to come back and this is definitely cause for concern. The Nebo Power plant was recently put back into service, and we hope to see costs return to some form of normalcy, but we are still above typical market prices. The annual cost per kilowatt-hour (KWH) has increased \$0.026 per KWH from 2020 to 2022 and \$0.018 per KWH from 2021 to 2022. Even if we weren't to take into account the two highest priced months of 2022 due to unexpected resource issues being resolved, we still have experienced an average increase in cost of \$0.018 from 2021 to 2022, which is a 14% increase. Our power costs have increased \$4.6 million from 2020 to 2022. A rate study conducted in 2016 recommended and predicted that the city's power rates should be nearly 25% higher than our current rate. This is a long-term concern that needs to be addressed. Not only is the cost for power going up, but operational costs have also increased. Capital improvements have increased due to higher priced materials and necessary large-scale infrastructure improvements. The city's power system needs a lot of attention. Much of the underground power grid is between 40 to 60 years old, and our wiring is only rated for 50 years. We are beginning to see burn-ups because of

this and it is something that needs to be addressed. The city also has substations that are due for replacing, especially with the increased demand for power. Yesterday our Resource and Service Manager, Bruce Rigby, reached out to all of the other UAMPS members and asked them how many of their cities had already increased power rates this year and 80% responded that they had. He then asked how many of them planned to do another rate increase, or doing a first rate increase, this year and all of the members said they were going to. This power problem is not centralized to Kaysville, but is industry-wide. We have not yet heard what Rocky Mountain Power will be doing. The Kaysville Power is requesting a power rate increase of 5% across all KWH tiers effective March 1, 2023. A Power Commission meeting was held on February 7, 2023 and they passed a motion to recommend a power rate increase to the city council. After analyzing the increases in power and operation costs over the last three years, including experiencing loss of power resources, Staff feels it would be advantageous to implement a small rate increase immediately to help maintain costs as we further evaluate the need for potential restructuring of the Kaysville power rates. If the 5% rate increase is approved, the Power Department's intent is to reevaluate our rate structure later this year to determine what the best scenario is for our city in the future under these unique circumstances. The 5% rate increase will help mitigate the impact we have already seen to power costs, but it will not fix it. Many of our Power Commission Members felt that the proposed 5% increase is not enough and that we should be requesting 10%. The proposed 5% is not a resolution to cover the unprecedented recent increase in costs but a necessary increase to maintain the base level needs for operation. If the rate increase is approved, the average home, at a usage of 1,000 KWH a month, will see an increase of approximately \$4.50 a month in their power utility bill. Even with a 5% rate increase, we will still be below Rocky Mountain Power and the majority of UAMPS member's rates. Our power reserves are currently at the recommended minimum. Power reserves have to meet minimum requirements in order to qualify for potential future bonding for generation or power related needs. Some other cities have created a power purchase adjustment clause where they fluctuate their costs with the power purchasing rates, and this might be something the city may want to look into. The city could also consider tier restructuring, or charging depending on demand or time of use. If this 5% power rate increase were not approved at this time, it would set the city up to having to do an even greater power rate increase later on.

Mayor Tran opened the meeting for public comment for this item.

Val Starkey said that he appreciates the attention that the council gives to the public. Mr. Starkey said that he is a former power engineer and has a different perspective on power. He is also in support of Alan Farnes, the Power Commission Chair, Brian Johnson, and John Palmer who is a professor of power engineering and has given the Kaysville Power Department some comments supporting the building up and maintenance of the city's power infrastructure. In regards to the 5% rate increase, he would prefer that rates be increased to 10% because the city has not implemented any power rate increases for about five years. People see the news and they know that we are in trouble. The council needs to consider what needs to be done. We know that Kaysville Power is a critical asset to our community. It would be an excellent choice for the council to increase rates by 10% so that the city has all of the funds we need for our power infrastructure. The city has a lot of infrastructure that needs attention. Mr. Starkey added that the city needs to provide information to residents explaining the reasons behind the power rate increase.

Alan Quigley said that he is a member of the Power Commission and in a recent Power

Commission meeting the 2016 study was mentioned. That study suggested that the city increase our power rates by 4.5% to 5.5% per year over the next five years. We are already 25% behind where that study said we should be. Some have mentioned conducting another study, but what would the city do if that study came back indicating that we need to raise power rates by 30% from where we are currently at? A 30% rate increase would equal to about \$27 more a month for the average residential home. The city has gotten to the point where we have a lot of infrastructure that needs to be fixed, and we cannot fall behind because we do not have the funds and something could have been done to obtain those funds. If our reserve power funds fall too low, we will fall below the threshold needed in order to obtain a bond, and we would end up paying more in interest and fees. Mr. Quigley said that the city has transformers that are needed, and we need to find a way to pay for them. The Power Commission felt that the city needs to increase power rates by 10%, which seems like a lot, but it is very much needed.

There were no further comments or questions from the public. Mayor Tran closed the public comment for this item.

Council Member Oaks asked why the Power Department was not requesting a 10% rate increase now, rather than only 5% now and potentially another 5% later on in the year.

Brian Johnson said that when it was discussed by Power Commission, we felt that the city council would not approve a 10% rate increase. There are many unknowns for what the future will entail, and the 5% will help to have enough funds to maintain where we are at for a little while, until we can see more numbers come in. We will still have to take some funds from our power reserves, but it will not be as drastic as if we did not do a rate increase at all. The 10% rate increase is likely a more accurate number of what we need in order to be able to maintain our system where it is currently at.

Council Member Oaks mentioned that the Power Department recently showed the council a five-year plan for the Power Department, and what projects need to be done on the power infrastructure. Council Member Oaks said that he is concerned that as the Power Department has to dip into their power reserves in order to cover power costs, they will not have the funds needed in order to get those projects done on the five-year plan. We do not want to put ourselves in an untenable position down the road by not addressing the problem now. The council would be negligent if we do not approve this.

Nic Mills commented that because of how this item had been noticed, if the council were to want to approve a 10% rate increase, they would not be able to do it tonight. It would probably be best to approve a 5% rate increase tonight, and then approve another 5% increase at another time, if that is what the council wishes.

Council Member Jackson stated that he does not feel comfortable raising the power rates at this time. In past years, the Power Department did not have adequate power reserves. It has been mentioned that the Power Department wants to have at least six months of operating funds in their reserves, which would likely amount to around \$9.7 million. In regards to power, we need to think long-term. The needed transformers will cost millions of dollars and will be purchased over a few years' time. The power reserves fund has been built up so well that now, with the war in Ukraine and inflation, this would be a good time to dip into our reserve funds. Council Member Jackson said that he would prefer that the city wait a couple of months to see the numbers from January

and February.

Brian Johnson said they do not want to stray from what is on their five-year plan because the projects on that plan have become more of a necessity in order to maintain our power infrastructure. There are currently \$9.2 million in the power reserves. The recommended amount to have in our power reserve is \$9.8 million. We have \$2 million in our power purchasing reserve, which is with UAMPS. Even taking out the two months when the Nebo Power Plant being closed and our power costs were higher, the city is still short of where we need to be with our power rates. The power department will still have to take money from our power reserves to cover costs, even with a 5% rate increase. The demand for power is going to be even higher as the weather warms up and people will be turning on their air conditioners, and as our power resources continue to diminish. We will be in a worse situation later if we deplete our power reserves now. While we cannot tell you what the future will bring, we have brought before the council is years of experience from our staff, members of the Power Commission, and knowledge from other cities. Lehi City just implemented an 18% power rate increase with the intention of raising rates again 18% to 22% later this year.

Mayor Tran said that our power costs have increased dramatically, and it is very concerning. If the city does not approve a rate increase, we are being negligent in our duties. We need to be responsible and approve this rate increase. Mayor Tran said that she prefers an incremental rate increase. The city also needs to be honest and upfront with our citizens, and let them know the reasons behind our decision.

City Council Blackham said that we had a couple of bad months where we saw a loss of about \$551,000 in the last six months. However, in the six months prior to that, we saw a profit of \$1.2 million. A decision should not be made to increase power rates just because we had two months with higher power costs. If this power rate increase is approved, Kaysville will be charging the highest KWH power rate in Davis County. The council does not yet know what our budget will be for the upcoming fiscal year or what kind of tax increase may need to be implemented. Council Member Blackham said that he was hoping to transfer some of the power reserve funds to help make up deficiencies in other areas of the city budget, but that likely won't happen at this point. A 5% power rate increase will not bring in much money for our power funds. Council Member Blackham said that he would prefer to wait until more information could be gathered about fluctuating rate structures before a power rate increase is implemented. Through further research, we could find out what we need to raise our power rates to and then we can do it one time.

Council Member Adams suggested figuring out what power rates need to be at by looking at the numbers from the previous years and adjusting our rates every year to where we need to be.

Brian Johnson commented that Bountiful Power has a means for generation, which is something that Kaysville does not have. It is something that we are looking into to see if it would be effective. The problem we are facing is that we do not currently have a transmission loop, and that would limit us to one small substation in which we'd be able to source that generation out. As Mr. Quigley mentioned, if we do end up depleting our reserves too low, we will lose our ability to bond. We are required to have a minimum amount of reserves and maintain that amount in order to do bonding. This are living in a time where we are seeing situations occurring that we have never seen before and are trying to figure out the best way to address them.

Mayor Tran said that while it is never easy to have to ask more money from our citizens, we also need to trust our staff, who are professionals and are telling us that this is a critical issue that needs to be addressed by raising power rates.

Council Member Oaks made a motion to approve a Resolution amending Kaysville City's Consolidated Fee Schedule for FY 2023 to amend power rates, seconded by Council Member Hunt.

The vote on the motion was as follows:

Council Member Blackham, nay

Council Member Adams, yea

Council Member Oaks, yea

Council Member Hunt, yea

Council Member Jackson, nay

The motion passed with a vote of three to two.

Council Member Blackham thanked city Staff and the Power Commission for the work they have done and all of the information that they have provided to the council.

#### **ADJOURNMENT**

Council Member Oaks made a motion to adjourn the City Council meeting at 10:48 p.m. The motion was seconded by Council Member Adams and passed unanimously.