



## PROVO MUNICIPAL COUNCIL

### Regular Meeting Agenda

5:30 PM, Tuesday, April 18, 2023

Council Chambers (Room 100)

Hybrid meeting: 445 W. Center Street, Provo, UT 84601 or

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

The in-person meeting will be held in the **Council Chambers**. **The meeting will be available to the public for live broadcast and on-demand viewing on YouTube and Facebook at: [youtube.com/provocitycouncil](https://www.youtube.com/provocitycouncil) and [facebook.com/provocouncil](https://www.facebook.com/provocouncil).** If one platform is unavailable, please try the other. If you do not have access to the Internet, you can join via telephone following the instructions below.

#### **TO MAKE A VIRTUAL PUBLIC COMMENT:**

To participate in the public comment portion(s) of the meeting, call in as an audience member as the presentation is wrapping up. Be sure to mute/silence any external audio on your end to reduce feedback (if you are viewing the live proceedings on YouTube, mute the YouTube video; you will be able to hear the meeting audio through the phone while you are on the line).

**Press \*9 from your phone to indicate that you would like to speak.** When you are invited to speak, the meeting host will grant you speaking permission, calling on you by the last four digits of your phone number. Please begin by stating your first and last name, and city of residence for the record. After you have shared your comment, hang up. If you wish to comment on a later item, simply re-dial to rejoin the meeting for any subsequent comment period(s).

**April 18 Council Meeting: Dial 346 248 7799.** Enter Meeting ID 843 7094 3183 and press #. When asked for a participant ID, press #. To join via computer, visit [zoom.us](https://zoom.us) and enter the meeting ID and passcode: 266137.

### **Decorum**

The Council requests that citizens help maintain the decorum of the meeting by turning off electronic devices, being respectful to the Council and others, and refraining from applauding during the proceedings of the meeting.

### **Opening Ceremony**

Roll Call

Prayer

Pledge of Allegiance

### **Presentations, Proclamations, and Awards**

1. A presentation by Mayor Michelle Kaufusi of an award of recognition to Kevin Worthen. (23-011)

## Public Comment

Fifteen minutes have been set aside for any person to express ideas, concerns, comments, or issues that are not on the agenda:

Please state your name and city of residence into the microphone.

Please limit your comments to two minutes.

State Law prohibits the Council from acting on items that do not appear on the agenda.

## Action Agenda

2. A public hearing for 2023-2024 Annual Action Plan. (23-027)
3. An ordinance amending Provo City code regarding micromobility devices. Citywide application. (23-022)
4. An ordinance granting FIF Utah LLC, DBA Utah Broadband, a nonexclusive franchise to operate a telecommunications network in Provo, Utah. (23-039)
5. An ordinance amending Provo City code to prohibit the issuance of administrative approvals for noncompliant properties or businesses. (PLOTA20230048)
6. An ordinance approving the petition to annex approximately 106 acres of property located at approximately 2250 S 950 E. East Bay Neighborhood. (PLANEX20220317)
7. An ordinance amending Zone Map classification of approximately 0.84 acres of real property, generally located at 141 E 500 N, from Residential Conservation (RC) to Medium Density Residential (MDR) & authorizing a related development agreement. Joaquin Neighborhood. (PLRZ20220343)
8. An ordinance amending the Zone Map classification of approx. 0.48 acres of real property, located at 734 S Utah Ave, from Heavy Commercial (CM) to One Family Residential (R1.8). Provost Neighborhood. (PLRZ20230019)
9. A Resolution to place the vacant property known as a "proposed tennis court" in Block "A" Vivian Park Subdivision on the Surplus Property List. (23-040)
10. \*\*\*CONTINUED\*\*\* Nathan Gagon requests OTA to Section 14.34.320, to increase the off-street parking requirement from 800' to 1100'. Downtown Neighborhood (PLOTA20230036)

## Adjournment

If you have a comment regarding items on the agenda, please contact Councilors at [council@provo.org](mailto:council@provo.org) or using their contact information listed at: [provo.org/government/city-council/meet-the-council](https://provo.org/government/city-council/meet-the-council)

Materials and Agenda: [agendas.provo.org](https://agendas.provo.org)

Council meetings are broadcast live and available later on demand at [youtube.com/ProvoCityCouncil](https://www.youtube.com/ProvoCityCouncil)  
To send comments to the Council or weigh in on current issues, visit [OpenCityHall.provo.org](https://www.OpenCityHall.provo.org).

The next Council Meeting will be held on Tuesday, May 2, 2023. The meeting will be held in the Council Chambers, 445 W. Center Street, Provo, UT 84601 with an online broadcast. Work Meetings generally begin between 12 and 4 PM. Council Meetings begin at 5:30 PM. The start time for additional meetings may vary. All meeting start times are noticed at least 24 hours prior to the meeting.

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

In compliance with the ADA, individuals needing special accommodations (including auxiliary communicative aids and services) during this meeting are invited to notify the Provo Council Office at 445 W. Center, Provo, Utah 84601, phone: (801) 852-6120 or email [evanderwerken@provo.org](mailto:evanderwerken@provo.org) at least three working days prior to the meeting. Council meetings are broadcast live and available for on demand viewing at [youtube.com/ProvoCityCouncil](https://www.youtube.com/ProvoCityCouncil).

**Notice of Telephonic Communications**

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

**Notice of Compliance with Public Noticing Regulations**

This meeting was noticed in compliance with Utah Code 52-4-207(4), which supersedes some requirements listed in Utah Code 52-4-202 and Provo City Code 14.02.010. Agendas and minutes are accessible through the Provo City website at [agendas.provo.org](https://www.agendas.provo.org). Council meeting agendas are available through the Utah Public Meeting Notice website at [utah.gov/pmn](https://www.utah.gov/pmn), which also offers email subscriptions to notices.

# PROVO MUNICIPAL COUNCIL STAFF REPORT



**Submitter:** EVANDERWERKEN  
**Department:** Council  
**Requested Meeting Date:**

**SUBJECT:** A presentation by Mayor Michelle Kaufusi of an award of recognition to Kevin Worthen. (23-011)

**RECOMMENDATION:** Presentation only.

**BACKGROUND:** Mayor Kaufusi is recognizing Kevin Worthen for his significant contribution to the Provo community serving as the 13th President of BYU from 2014-2023.

**FISCAL IMPACT:**

**PRESENTER'S NAME:** Mayor Michelle Kaufusi

**REQUESTED DURATION OF PRESENTATION:** 5 minutes

**COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:**

**CITYVIEW OR ISSUE FILE NUMBER:** 23-011

# PROVO MUNICIPAL COUNCIL STAFF REPORT



**Submitter:** MMCNALLEY  
**Department:** Development Services  
**Requested Meeting Date:** 01-01-2018

**SUBJECT:** A public hearing for 2023-2024 Annual Action Plan. (23-027)

**RECOMMENDATION:** No action needed beyond a public hearing to begin the comment period for the Annual Action Plan.

**BACKGROUND:** Proposed funding allocations for HOME and CDBG funds in the 23-24 Annual Action Plan.

**FISCAL IMPACT:**

**PRESENTER'S NAME:** Melissa McNalley, Community Grant Administrator

**REQUESTED DURATION OF PRESENTATION:** 15-30 minutes

**COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:**

**CITYVIEW OR ISSUE FILE NUMBER:** 23-027



# Year Four, Annual Action Plan

July 1, 2023, through June 30, 2024

of the 2020-2024 Five-Year Consolidated Plan

as Amended

City of Provo (City)  
Utah Valley HOME Consortium (UVHC)  
Provo City Corporation – Development Services  
445 West Center  
Provo, Utah 84601

<https://www.provo.org/departments/development/cdbg-home/cdbg-home-documents>



## AP-05 EXECUTIVE SUMMARY - 91.200(C), 91.220(B)

### 1. Introduction

The City of Provo/Utah Valley HOME Consortium Program Year 2023 Annual Action Plan (2023-AAP) is the Fourth Year Action Plan of the 2020-2024 Five-Year Consolidated Plan (ConPlan), as amended. It is a product of a planning and coordination process to identify housing and community development needs. The process forms the framework for a community-wide dialogue to establish priorities and create strategies to address those needs, especially for low- and moderate-income households. This plan is intended to be an informative and useful tool for the residents, organizations and businesses committed to continued growth in our community.

The Annual Action Plan includes the City's application for the federal grants received from the U.S. Department of Housing and Urban Development (HUD) and administered by the Office of Community Planning and Development (CPD), a division of HUD, through which the City receives an annual allocation, or formula grant, from the CPD programs:

- **Community Development Block Grant (CDBG)**

The CDBG program's primary objective is to promote the development of viable urban communities by providing decent housing, suitable living environments and expanded economic activities to persons of low and moderate income.

- **Home Investment and Partnerships Program (HOME)**

The primary objective of the HOME Program is to create affordable housing for low-income households. Communities often partner with nonprofit and for-profit organizations to fund a wide variety of activities including building, buying and/or rehabilitating affordable housing for rent or homeownership or provide direct rental assistance to low-income people.

The City of Provo has designated its Development Services Department to manage and administer all funding received from HUD.

The Utah Valley HOME Consortium is an inter-jurisdictional partnership between the Cities of Provo, Orem, Lehi and Utah County, formed to receive HOME Program funds directly from HUD. The Cities of Orem and Lehi receive their own CDBG entitlement allocation and Utah County, as a qualified Urban County, also receives its own allocation of CDBG funding. All jurisdictions within Utah County, which have signed an Interlocal Agreement to receive CDBG funding through Utah County, are also eligible to benefit

from HOME funds. As the designated Lead Entity for the Consortium, The City of Provo administers the HOME Program.

Regulations in the HOME Program establish that Participating Jurisdictions (PJs) are provided affordable homeownership limits annually by HUD, however the regulations also allow PJs to determine these limits on their own through a local market analysis. The Consortium now conducts such an analysis annually and determines its own affordable homeownership limits. The process and results are outlined in Section AP-90-Program Specific Requirements of this Action Plan, by completing a market analysis ensuring enough recent housing sales are included in the survey.

## **2. Summarize the objectives and outcomes identified in the Plan**

As a result of citizens' and City Council's input The City of Provo will prioritize its activities and projects in three categories of Locally Targeted Objectives: Decent Housing, Suitable Living Environment, and Creating Economic Opportunities.

Housing – Assist in the expansion of housing opportunities, particularly for low- and moderate-income households and encouraging diversification of housing stock.

- Support down payment assistance programs that provide access to home ownership.
- Support housing programs to address the needs of updating aging housing stock through emergency, spot, and full rehabilitation.
- Support rental assistance programs to special needs populations, including efforts to assist families more rapidly from homelessness into permanent housing.
- Support development of new affordable housing to increase the number, types, affordability, and condition of both rental and homeownership housing.

Public Services – Support public service agencies that assist low- and moderate-income persons.

- Support organizations that provide services to populations with special needs (e.g., elderly, persons with disabilities, homeless persons, victims of domestic violence, etc.).
- Support organizations that provide education, including job training.
- Support organizations that provide services to seniors.
- Support organizations that provide healthcare services and health education.
- Support organizations that assist at-risk youth (e.g., after-school programs, recreations programs, mentoring programs).
- Support organizations that provide housing services.

Economic Opportunities

- Support local small businesses and entrepreneurs by providing mentoring and technical assistance, including support to Microenterprise Development.
- Utilize, when available, Section 108 Loan Guarantees.

- Support improvement visibility of small business storefronts in the Central Business District.

#### Public Facilities

- Support creation and improvement of public facilities and improvements (i.e., streets, sidewalks, curb & gutter, and sewer/water improvements).
- Support creation and improvement of public and nonprofit neighborhood community facilities and health centers.

### **3. Evaluation of past performance**

The CDBG and HOME investments have been used to make long lasting improvements serving low-income residents. Past programs have focused on community needs that continue to exist including affordable housing, neighborhood improvements, and public service support for low-income residents.

At the conclusion of each program year the City of Provo prepares its Consolidated Annual Performance Evaluation Report (CAPER) which is submitted to HUD within 90 days of the end of the Program Year (PY).

While specific accomplishment data for Program Year 2022 (PY2022), third year of the 2020-24 ConPlan, are not yet available we believe the programs and projects carried out have benefited greatly and assisted in meeting community needs as projects are moving forward to provide more affordable housing choices throughout Utah County as well as funding used this Program Year to help make various public services available to low-income individuals and assist those with disabilities.

### **4. Summary of Citizen Participation Process and consultation process**

An integral part of the ConPlan planning process is Citizen Participation as it provides for goals and priorities that are defined in the context of community needs and preferences. In addition, the citizen participation process provides a format to educate the community about the federal grants received by City of Provo and the Consortium. To this end the City solicited involvement from a diverse group of stakeholders and community members during the development of the 2020-2024 ConPlan, as amended. A comprehensive public engagement process included stakeholder meetings, citizen's survey available in both English and Spanish, public hearings, committee meetings and a public comment period.

The City received input from residents, stakeholders and other interested parties including service providers through a survey conducted in the fall of 2022 to determine

funding priorities. Through the AAP planning process citizen advisory committees met several times to hear presentations and discuss the needs of the City and make recommendations for funding. All public notices for the Annual Action Plan were published in the Daily Herald newspaper as well as the City website.

Funding recommendations by Citizen’s committees will be presented to the Municipal Council in two public hearings conducted on April 18<sup>th</sup> and June 6<sup>th</sup>, 2023, with recommended funding amounts available for review by the public, Citizen’s committees and boards, and applicants. Provo City’s Municipal Council adopted the Final Draft of the 2023-AAP at the public hearing held on June 6<sup>th</sup>, 2023.

**5. Summary of public comments**

Comments included in Appendix to 23-24 Annual Action Plan.

**6. Summary of comments or views not accepted and the reasons for not accepting them**

All Comments were considered in the 23-24 Annual Action Plan

**7. Summary**

The Annual Action Plan provides for the allocation of CDBG and HOME funds for Program Year 2023 (PY2023) and the reprogramming of existing funds. It also reflects the coordinated efforts of local governments and citizens, as well as the wide network of housing and human service providers in Utah County.

## PR-05 LEAD & RESPONSIBLE AGENCIES - 91.200(B)

### 1. Agency/entity responsible for preparing/administering the Consolidated Plan

The following are the agencies/entities responsible for preparing the Consolidated Plan and those responsible for administration of each grant program and funding source.

Agency Role	Name	Department/Agency
Lead Agency	PROVO	DEVELOPMENT SERVICES
CDBG Administrator	PROVO	DEVELOPMENT SERVICES
HOME Administrator	PROVO	DEVELOPMENT SERVICES
CDBG Administrator	OREM	CITY OF OREM
CDBG Administrator	UTAH COUNTY	MOUNTAINLAND ASSOCIATION OF GOVERNMENTS

**Table 1 - Responsible Agencies**

### 2. Narrative

Provo City (City) is the Lead Agency of entitlement programs regulated by the Office of Community Planning and Development (CPD) of the United States Department of Housing and Urban Development (HUD). The City's Housing Division in the Department of Development Services (DS) is responsible for the administration of CPD-HUD entitlement grants which include the Community Development Block Grant (CDBG), and the HOME Investment Partnerships Program (HOME). The City is also responsible for the preparation of the Consolidated Plan (ConPlan), Annual Action Plans (AAP) and Consolidated Annual Performance Evaluation Reports (CAPER) for Provo City and The Utah Valley HOME Consortium. The City of Orem administers its own CDBG program and Mountainland Association of Governments administers the City of Lehi and Utah County's CDBG Programs.

### 3. Consolidated Plan Public Contact Information

Provo City and its CDBG entitlement partners welcome questions and/or comments regarding this Annual Action Plan update. Please contact the following:

**Provo City CDBG & Utah Valley HOME Consortium**

Melissa McNalley, Community Grants Administrator

Development Services, Provo City

445 West Center Street

Provo, UT 84601

801-852-6164

[mmcnalley@provo.org](mailto:mmcnalley@provo.org)

**City of Orem CDBG**

Kena Mathews, Community Services Manager, City of Orem

56 North State Street

Orem, UT 84057

801-229-7023

[kjmathews@orem.org](mailto:kjmathews@orem.org)

**City of Lehi and Utah County CDBG**

Jessica DeLora, Community and Economic Development Director, Mountainland Association of Governments

586 East 800 North

Orem, UT 84097

801-229-3831

[idelora@mountainland.org](mailto:idelora@mountainland.org)

## AP-10 CONSULTATION - 91.100, 91.200(B), 91.215(L)

### 1. Introduction

Provo City, along with City of Orem and MAG, engaged in a collaborative effort to consult with City departments, representatives of low-income neighborhoods, non-profit and for-profit housing developers, service providers, lenders, public service agencies, homeless service providers, faith-based organizations, supportive housing and service providers, community stakeholders, community partners, and beneficiaries of entitlement programs to inform and develop the priorities and strategies contained within the ConPlan.

- a. **Provide a concise summary of the jurisdiction’s activities to enhance coordination between public and assisted housing providers and private and governmental health, mental health and service agencies (91.215(l)).**

In preparing the Program Year 2023 Annual Action Plan the City held consultations with various organizations which provide services throughout Utah County, including local leaders, housing providers, and service providers.

Provo City also participates in regular meetings with other CDBG grantees in Utah County to streamline and simplify the process for new and renewing applicants.

- b. **Describe coordination with the Continuum of Care and efforts to address the needs of homeless persons (particularly chronically homeless individuals and families, families with children, veterans, and unaccompanied youth) and persons at risk of homelessness.**

The vision of the Mountainland Region Continuum of Care (CoC) is to provide decent, safe and affordable housing and effective support services to homeless, chronic homeless families and individuals including—initial stabilization, transitional housing, permanent housing, access to mainstream resources and independence from governmental assistance. United Way of Utah County (United Way) leads the CoC, of which the City of Provo is a member, represented by several City departments including Fire, Police, and Development Services among them. The CoC is an organized body of local jurisdictions, government agencies, local nonprofit organizations, faith-based service and housing organizations, and other agencies and partners seeking to maximize resources and avoid duplication of services while providing consistent and unified planning in Utah County.

As it annually does, the CoC led the efforts for the point in time count, in which volunteers participated in an outreach to find homeless individuals. The event was advertised in the Daily Herald (local paper), the Provo Mayor's blog, and the United Way Facebook page.

- c. Describe consultation with the Continuum(s) of Care that serves the jurisdiction's area in determining how to allocate ESG funds, develop performance standards for and evaluate outcomes of projects and activities assisted by ESG funds, and develop funding, policies and procedures for the operation and administration of HMIS.**

Neither the City of Provo, nor any other jurisdiction with membership in the HOME Consortium receives ESG funding.

## **2. Agencies, groups, organizations and others who participated in the process and consultations**

<b>1</b>	<b>Agency/Group/Organization</b>	<b>Rocky Mountain University of Health Professionals</b>
	<b>Agency/Group/Organization Type</b>	Health Agency
	<b>What Section of the Plan was addressed</b>	Housing Need Assessment Public Housing Needs Homeless Needs (All) Non-Homeless Special Needs Market Analysis
	<b>How was the Agency/Group/Organization consulted, and what are the anticipated outcomes of the consultation or areas for improved coordination?</b>	The organization responded to the survey and participated in the 2020 ConPlan Discussion. Continue to make available financial support to provide services.
<b>2</b>	<b>Agency/Group/Organization</b>	<b>Fresh Start Ventures</b>
	<b>Agency/Group/Organization Type</b>	Services-Housing Services-Homeless
	<b>What Section of the Plan was addressed</b>	Housing Need Assessment Public Housing Needs Homeless Needs (All) Non-Homeless Special Needs Market Analysis
	<b>How was the Agency/Group/Organization consulted, and what are the anticipated outcomes of the consultation or areas for improved coordination?</b>	The organization responded to the survey and participated in the ConPlan Discussion. Continue to make available financial support to provide services.
<b>3</b>	<b>Agency/Group/Organization</b>	<b>Center for Women &amp; Children in Crisis</b>
	<b>Agency/Group/Organization Type</b>	Housing Services – Housing Services – Children Services – Victims of Domestic Violence Services – Homeless Services – Education
	<b>What Section of the Plan was addressed</b>	Housing Need Assessment Public Housing Needs

		Homeless Needs (All) Non-Homeless Special Needs Market Analysis
	<b>How was the Agency/Group/Organization consulted, and what are the anticipated outcomes of the consultation or areas for improved coordination?</b>	The organization responded to the survey and participated in the ConPlan Discussion. Continue to make available financial support to provide services.
4	<b>Agency/Group/Organization</b>	<b>Community Action Services &amp; Food Bank</b>
	<b>Agency/Group/Organization Type</b>	Services – Housing Services – Children Services - Homeless Services – Education
	<b>What Section of the Plan was addressed</b>	Housing Need Assessment Public Housing Needs Homeless Needs (All) Non-Homeless Special Needs Market Analysis
	<b>How was the Agency/Group/Organization consulted, and what are the anticipated outcomes of the consultation or areas for improved coordination?</b>	The organization responded to the survey and participated in the ConPlan Discussion. Continue to make available financial support to provide services.
5	<b>Agency/Group/Organization</b>	<b>Community Health Connect</b>
	<b>Agency/Group/Organization Type</b>	Services – Health
	<b>What Section of the Plan was addressed</b>	Housing Need Assessment Public Housing Needs Homeless Needs (All) Non-Homeless Special Needs Market Analysis
	<b>How was the Agency/Group/Organization consulted, and what are the anticipated outcomes of the consultation or areas for improved coordination?</b>	The organization responded to the survey and participated in the ConPlan Discussion. Continue to make available financial support to provide services.
	<b>Agency/Group/Organization</b>	<b>Family Support &amp; Treatment Center</b>

6	<b>Agency/Group/Organization Type</b>	Services – Children Services – Education Services – Victims
	<b>What Section of the Plan was addressed</b>	Housing Need Assessment Public Housing Needs Homeless Needs (All) Non-Homeless Special Needs Market Analysis
	<b>How was the Agency/Group/Organization consulted, and what are the anticipated outcomes of the consultation or areas for improved coordination?</b>	The organization responded to the survey and participated in the ConPlan Discussion. Continue to make available financial support to provide services.
7	<b>Agency/Group/Organization</b>	<b>Food &amp; Care Coalition</b>
	<b>Agency/Group/Organization Type</b>	Services – Housing Services – Persons with Disabilities Services – Health Services – Homeless Services – Education
	<b>What Section of the Plan was addressed</b>	Housing Need Assessment Public Housing Needs Homeless Needs (All) Non-Homeless Special Needs Market Analysis
	<b>How was the Agency/Group/Organization consulted, and what are the anticipated outcomes of the consultation or areas for improved coordination?</b>	The organization responded to the survey and participated in the ConPlan Discussion. Continue to make available financial support to provide services.
8	<b>Agency/Group/Organization</b>	<b>Friends of UT County Children’s Justice Ctr.</b>
	<b>Agency/Group/Organization Type</b>	Services – Children Services – Victims
	<b>What Section of the Plan was addressed</b>	Housing Need Assessment Public Housing Needs Homeless Needs (All) Non-Homeless Special Needs Market Analysis

	<b>How was the Agency/Group/Organization consulted, and what are the anticipated outcomes of the consultation or areas for improved coordination?</b>	The organization responded to the survey and participated in the ConPlan Discussion. Continue to make available financial support to provide services.
<b>9</b>	<b>Agency/Group/Organization</b>	<b>Mountainland Head Start</b>
	<b>Agency/Group/Organization Type</b>	Services – Children Services – Education
	<b>What Section of the Plan was addressed</b>	Housing Need Assessment Public Housing Needs Homeless Needs (All) Non-Homeless Special Needs Market Analysis
	<b>How was the Agency/Group/Organization consulted, and what are the anticipated outcomes of the consultation or areas for improved coordination?</b>	The organization responded to the survey and participated in the ConPlan Discussion. Continue to make available financial support to provide services.
<b>10</b>	<b>Agency/Group/Organization</b>	<b>Centro Hispano</b>
	<b>Agency/Group/Organization Type</b>	Services – Health Services – Education Services – Employment
	<b>What Section of the Plan was addressed</b>	Housing Need Assessment Public Housing Needs Homeless Needs (All) Non-Homeless Special Needs Market Analysis
	<b>How was the Agency/Group/Organization consulted, and what are the anticipated outcomes of the consultation or areas for improved coordination?</b>	The organization responded to the survey and participated in the ConPlan Discussion. Continue to make available financial support to provide services.
<b>11</b>	<b>Agency/Group/Organization</b>	<b>Housing Authority of Utah County</b>
	<b>Agency/Group/Organization Type</b>	PHA
	<b>What Section of the Plan was addressed</b>	Housing Need Assessment Public Housing Needs

		Homeless Needs (All) Non-Homeless Special Needs Market Analysis
	<b>How was the Agency/Group/Organization consulted, and what are the anticipated outcomes of the consultation or areas for improved coordination?</b>	The organization responded to the survey and participated in the ConPlan Discussion. Continue to make available financial support to provide services.
<b>12</b>	<b>Agency/Group/Organization</b>	<b>NeighborWorks Provo</b>
	<b>Agency/Group/Organization Type</b>	Housing Services – Education
	<b>What Section of the Plan was addressed</b>	Housing Need Assessment Public Housing Needs Homeless Needs (All) Non-Homeless Special Needs Market Analysis
	<b>How was the Agency/Group/Organization consulted, and what are the anticipated outcomes of the consultation or areas for improved coordination?</b>	The organization responded to the survey and participated in the ConPlan Discussion. Continue to make available financial support to provide services.
<b>13</b>	<b>Agency/Group/Organization</b>	<b>Mountainlands Community Health Center</b>
	<b>Agency/Group/Organization Type</b>	Health Agency
	<b>What Section of the Plan was addressed</b>	Housing Need Assessment Public Housing Needs Homeless Needs (All) Non-Homeless Special Needs Market Analysis
	<b>How was the Agency/Group/Organization consulted, and what are the anticipated outcomes of the consultation or areas for improved coordination?</b>	The organization responded to the survey and participated in the ConPlan Discussion. Continue to make available financial support to provide services.
<b>14</b>	<b>Agency/Group/Organization</b>	<b>Mountainland Continuum Of Care</b>
	<b>Agency/Group/Organization Type</b>	Services – Homeless

	<b>What Section of the Plan was addressed</b>	Housing Need Assessment Public Housing Needs Homeless Needs (All) Non-Homeless Special Needs Market Analysis
	<b>How was the Agency/Group/Organization consulted, and what are the anticipated outcomes of the consultation or areas for improved coordination?</b>	The organization responded to the survey and participated in the ConPlan Discussion. Continue to make available financial support to provide services.
<b>15</b>	<b>Agency/Group/Organization</b>	<b>Project Read</b>
	<b>Agency/Group/Organization Type</b>	Services – Elderly Persons Services – Education Services – Employment
	<b>What Section of the Plan was addressed</b>	Housing Need Assessment Public Housing Needs Homeless Needs (All) Non-Homeless Special Needs Market Analysis
	<b>How was the Agency/Group/Organization consulted, and what are the anticipated outcomes of the consultation or areas for improved coordination?</b>	The organization responded to the survey and participated in the ConPlan Discussion. Continue to make available financial support to provide services.
<b>16</b>	<b>Agency/Group/Organization</b>	<b>Provo City Housing Authority</b>
	<b>Agency/Group/Organization Type</b>	PHA
	<b>What Section of the Plan was addressed</b>	Housing Need Assessment Public Housing Needs Homeless Needs (All) Non-Homeless Special Needs Market Analysis
	<b>How was the Agency/Group/Organization consulted, and what are the anticipated outcomes of the consultation or areas for improved coordination?</b>	The organization responded to the survey and participated in the ConPlan Discussion. Continue to make available financial support to provide services.

<b>17</b>	<b>Agency/Group/Organization</b>	<b>Rural Housing Development Corporation</b>
	<b>Agency/Group/Organization Type</b>	Housing
	<b>What Section of the Plan was addressed</b>	Housing Need Assessment Public Housing Needs Homeless Needs (All) Non-Homeless Special Needs Market Analysis
	<b>How was the Agency/Group/Organization consulted, and what are the anticipated outcomes of the consultation or areas for improved coordination?</b>	The organization responded to the survey and participated in the ConPlan Discussion. Continue to make available financial support to provide services.
<b>18</b>	<b>Agency/Group/Organization</b>	<b>Wasatch Mental Health</b>
	<b>Agency/Group/Organization Type</b>	Other Government: State Services – Persons with Disabilities
	<b>What Section of the Plan was addressed</b>	Housing Need Assessment Public Housing Needs Homeless Needs (All) Non-Homeless Special Needs Market Analysis
	<b>How was the Agency/Group/Organization consulted, and what are the anticipated outcomes of the consultation or areas for improved coordination?</b>	The organization responded to the survey and participated in the ConPlan Discussion. Continue to make available financial support to provide services.

**Table 2 – Agencies, groups, organizations who participated**

**a. Identify any Agency Types not consulted and provide rationale for not consulting**

The Annual Action Plan process provided an opportunity and invited participation comments from all relevant organizations and agencies.

**b. Other local/regional/state/federal planning efforts considered when preparing the Plan**

Name of Plan	Lead Organization	How do the goals of your Strategic Plan overlap with the goals of each plan?
Continuum of Care Plan	United Way of Utah County	Assist persons who are homeless and at risk of homelessness
Analysis of Impediments-2019 Utah Valley	Provo City Corporation	Affirmatively Furthering Fair Housing
Housing Needs Assessment-2019 Utah Valley	Provo City Corporation	Housing Needs
Housing Market Analysis 2019 Utah Valley	Provo City Corporation	Non-Housing Needs
Affordable Housing Report-2019	State of Utah	Housing Affordability
CASFB Community Needs Assessment 2019	Community Action Services and Food Bank	Income, Employment and Housing
The Market Pulse-September 2019	CoreLogic	Housing Market

**Table 3 – Other local / regional / federal planning efforts**

**c. Describe cooperation and coordination with other public entities, including the State and any adjacent units of general local government, in the implementation of the Consolidated Plan (91.215(I)).**

As Lead Entity of the Utah Valley HOME Consortium, the City of Provo engages with other Consortium members discussing community needs and long-term housing strategies. The City of Provo is also an active member of the Mountainland Continuum of Care and the Utah County Council of Governments. In preparing for the upcoming plan year Provo City engaged with Orem City and Mountainland Association of Governments, who administers both Lehi City’s and Utah County’s CDBG Programs, in offering better funding opportunities to Public Services providers by creating a unified application process requiring less duplicative efforts from both CDBG entitlements and Subrecipients. The focus of these efforts is to provide a more immediate and complete impact for public services in need of capital improvement funding as well as a better application/reporting/monitoring system. Efforts are also joined to gather regional data and provide wholistic analyses of the regional housing needs, housing market and barriers to affordable housing.

## **AP-12 Participation - 91.401, 91.105, 91.200(c)**

### **1. Summary of citizen participation process/Efforts made to broaden citizen participation**

#### **Summarize citizen participation process and how it impacted goal-setting**

The City sought out public participation in the development of this plan from citizens at large, non-profit organizations, elected officials and other interested parties through public meetings, public hearings and surveys.

Citizen Advisory Committees and Boards met to evaluate applications and listen to presentations from agencies seeking funding from both CDBG and HOME programs. Residents were invited to participate in the Public Hearings where the projects and/or programs for the fourth year Action Plan were presented as well as provide input in its adoption.

The Public Comment Period to this Plan will run from April 18, 2023, to June 6, 2023. Comments are solicited in person during the Council Public Hearings on April 18, and June 6, 2023. Interested parties can also provide input through email to the CDBG & HOME Administrator for the City of Provo: [mmcnalley@provo.org](mailto:mmcnalley@provo.org); by phone: 801-850-6164; through the Provo City website and by mail: to Provo City Corporation, ATTN: PY-2023 Annual Action Plan, Development Services 445 West Center Street, Provo, Utah, 84601.

### Citizen Participation Outreach

Mode of Outreach	Target of Outreach	Summary of response/attendance	Summary of comments received	Summary of comments not accepted and reasons	URL (If applicable)
Survey Online through website and Social Media Platforms	Non-Targeted / Broad Community	See Appendix			
Public Hearing	City Officials Non-targeted /Broad Community				
Public Hearing	City Officials Non-targeted /Broad Community				

**Table 4 – Citizen Participation Outreach**

## Expected Resources

### AP-15 Expected Resources - 91.420(b), 91.220(c)(1,2)

#### 1. Introduction

The following table summarizes the anticipated resources.

Program	Source of Funds	Uses of Funds	Expected Amount Available Year 4				Expected Amount Available Remainder of ConPlan	Description
			Annual Allocation	Program Income	Prior Year Resources	Total		
CDBG	Public Federal	Acquisition Admin and Planning Economic Development Housing Land Acquisition Public Improvements Public Services	\$1,337,813	\$2,813	\$148,051	\$1,488,677	\$1,337,813	Amount for remainder of ConPlan is estimated as same amount as Year 4 allocation.
HOME	Public Federal	Acquisition Homebuyer Assistance Homeowner rehab Multifamily rental new construction New construction for ownership TBRA	\$1,589,819	\$396,041	\$0	\$1,985,860	\$1,589,819	Amount for remainder of ConPlan is estimated as same as Year 4 allocation. Program Income is typically generated from housing loan repayment

**Table 5 - Expected Resources – Priority Table**

#### 2. Explain how federal funds will leverage those additional resources (private, state and local funds), including a description of how matching requirements will be satisfied

Provo City's Public Facilities and Parks projects use CDBG funding as gap financing allowing leveraging of other sources of funds.

HOME funding is also used to leverage private funding, frequently in addition to the 25 percent Match required by the program. Match is met through a combination of private financing, cash contributions, donated material, services, and labor.

**3. If appropriate, describe publicly owned land or property located within the jurisdiction that may be used to address the needs identified in the plan**

N/A

# ANNUAL GOALS AND OBJECTIVES

## AP-20 Annual Goals and Objectives - 91.420, 91.220(c)(3)&(e)

### Goals Summary Information

Sort Order	Goal Name	Start Year	End Year	Category	Geographic Area	Needs Addressed	Funding	Goal Outcome Indicator
1	Homeowner/Homebuyer	2020	2024	Affordable Housing	City/ Consortium Wide	Affordable Housing	CDBG: \$36,000 HOME: \$1,826,878	Homeowner Housing Constructed: <b>5</b> Homeowner Housing-Rehabilitated: <b>7</b> Direct Financial Assistance to Homebuyers: <b>37</b>
2	Rental Housing	2020	2024	Affordable Housing	City/ Consortium Wide	Affordable Housing		Tenant Based Rental Assistance: <b>0</b>
3	Public Facilities	2020	2024	Non-Housing Community Development	City/ Consortium Wide	Suitable Living Environments	CDBG: \$606,442 CDBG: \$ 6,000	Public Facility or Infrastructures Activities other than Low/Moderate Income Housing Benefit: <b>4988</b> ; PF for Low/Mod <b>1</b>
4	Public Services	2020	2024	Homelessness Non-Homeless Special Needs	City/ Consortium Wide	Suitable Living Environments	CDBG: \$200,672	Public Service Activities other than Low/Moderate Income Housing Benefit: <b>12,510</b>
5	Stimulate Economic Growth	2020	2024	Non-Housing Community Development	City Wide	Economic Development	CDBG: \$372,000	Façade treatment/business building Rehabilitation Jobs Created/Retained Businesses Assisted: <b>2/4</b>
6	Administration	2020	2024	Non-Housing Community Development	City Wide	All	CDBG: \$267,563 HOME: \$158,982	

Table 6 - Goals Summary

## Goal Descriptions

1	<b>Goal Name</b>	Homeowner/Homebuyer Affordability
	<b>Goal Description</b>	The purpose of this goal is to increase the affordability, availability, accessibility and sustainability of owner-occupied housing.
2	<b>Goal Name</b>	Rental Housing Affordability
	<b>Goal Description</b>	The purpose of this goal is to increase the affordability, availability, accessibility and sustainability of rental housing.
3	<b>Goal Name</b>	Public Facilities
	<b>Goal Description</b>	This goal strives to improve neighborhood infrastructure and access to basic services for low--income and special needs populations
4	<b>Goal Name</b>	Public Services
	<b>Goal Description</b>	This goal consists of activities to help low--income individuals and families as well as individuals with special needs receive, therapy, supportive services, education, medical assistance, and other needed services
5	<b>Goal Name</b>	Stimulate Economic Growth
	<b>Goal Description</b>	This goal includes activities that create or retain jobs, foster entrepreneurship and increase access to employment centers for low- and moderate-income populations

**Table 7 – Goals Summary**

## AP-35 Projects - 91.420, 91.220(d)

### Introduction

Five different entitlement allocations from HUD for PY2023 come to Consortium members. For CDBG Programs City of Provo will receive \$1,337,813, Utah County's allocation is \$1,422,713, City of Orem expects to receive \$632,646 and Lehi's allocation is estimated at \$333,305. Additionally, the HOME Consortium expects to receive \$1,589,819 in HOME funds. To these amounts Provo City adds \$398,854 in Program Income and \$148,051 reprogrammed funding from previous years. Provo City's total available for funding is \$3,474,537 (CDBG: \$1,488,677; HOME: \$1,985,860).

#	Project Name
1	CDBG: Administration
2	CDBG: 108 Loan Repayment
3	CDBG: Community Action Services & Food Bank – Homebuyer Class
4	CDBG: Community Action Services & Food Bank—Circles Program
5	CDBG: Community Action Services & Food Bank – Community Garden
6	CDBG: The Refuge
7	CDBG: Children's Justice Center
8	CDBG: Project Read
9	CDBG: Provo City Police Victim Services
10	CDBG: Recreation and Habilitation Services (RAH)
11	CDBG: Alpine House Capital Improvements – Slurry Seal
12	CDBG: Business Façade Rehabilitation
13	CDBG: Neighborhood Revitalization Program
14	CDBG: Public Works – Joaquin Neighborhood Improvements
15	CDBG: Public Works – Wasatch and Foothills Neighborhood Improvements
16	CDBG: Emergency Home Repair – Program Delivery
17	CDBG: Egress Window – Program Delivery
18	HOME: Administration
19	HOME: Rural Housing Development Corporation-Mutual Self-Help Program, Santaquin
20	HOME: Neighborworks – Mountain Crest Manor - Orem
21	HOME: Home Purchase Plus Down Payment Assistance Program
22	HOME: Loan to Own – Down Payment Assistance Program

**Table 8 Project Information**

**Describe the reasons for allocation priorities and any obstacles to addressing underserved needs.**

The City is taking a strategic approach to direct funding. Priorities include expanding affordable housing opportunities throughout the Consortium, providing critical services for the most vulnerable residents, expanding self-sufficiency for at-risk populations, and improving neighborhood conditions in concentrated areas of poverty.

## AP-38 Project Summary

### Project Summary Information

1	<b>Project Name</b>	<b>CDBG: Administration</b>		
	<b>Target Area</b>	Serving Provo City Residents		
	<b>Goals Supported</b>	Homeownership Rental Housing Public Facilities Public Services Economic Development		
	<b>Needs Addressed</b>	Housing Public Facilities Public Services Economic Development		
	<b>Funding</b>	CDBG: \$267,563		
	<b>Description</b>	CDBG Administration budgets are determined by 20% of the Entitlement. DS staff personnel and overhead costs to administer the CDBG and HOME programs.		
	<b>Target Date</b>	6/30/2024		
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>			
	<b>Location Description</b>	445 West Center, Provo, UT, 84601		
	<b>Planned Activities</b>	Manage and Monitor CDBG and HOME Programs		
	<b>Matrix Code</b>	21A General Program Administration		
	<b>Objective</b>	Decent Housing <input type="checkbox"/>	Suitable Living Environment <input type="checkbox"/>	Economic Opportunity <input type="checkbox"/>
	<b>Outcome</b>	Availability/Accessibility <input type="checkbox"/>	Affordability <input type="checkbox"/>	Sustainability <input type="checkbox"/>
2	<b>Project Name</b>	<b>CDBG: Section 108 Loan Repayment</b>		
	<b>Target Area</b>	Provo City		
	<b>Goals Supported</b>	Economic Development		

	<b>Needs Addressed</b>	Economic Development		
	<b>Funding</b>	CDBG: \$314,000		
	<b>Description</b>	Funds will be used to repay the Section 108 loan that was used to cover costs associated with building/updating infrastructure at the Provo City Airport		
	<b>Target Date</b>	6/30/2024		
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>			
	<b>Location Description</b>	3421 Mike Jensen Parkway Provo, UT 84601		
	<b>Planned Activities</b>	Payment of Principal and Interest		
	<b>Matrix Code</b>	19F Planned Repayment of Section 108 Loans 24A Payment of Interest on Section 108 Loans		
	<b>Objective</b>	Decent Housing <input type="checkbox"/>	Suitable Living Environment <input checked="" type="checkbox"/>	Economic Opportunity <input type="checkbox"/>
	<b>Outcome</b>	Availability/Accessibility <input checked="" type="checkbox"/>	Affordability <input type="checkbox"/>	Sustainability <input type="checkbox"/>
<b>3</b>	<b>Project Name</b>	<b>CDBG: Community Action Services&amp; Food Bank - Homebuyer Class</b>		
	<b>Target Area</b>	Serving Residents throughout Utah County		
	<b>Goals Supported</b>	Public Services		
	<b>Needs Addressed</b>	Public Services		
	<b>Funding</b>	CDBG: \$9,500		
	<b>Description</b>	Provide first time homebuyer financial education		
	<b>Target Date</b>	6/30/2024		
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	Programs will serve approximately of 24 LMI beneficiaries, of which about 10 will be Provo residents.		

	<b>Location Description</b>	815 S Freedom Blvd Ste 100, Provo, UT 84601		
	<b>Planned Activities</b>	Homebuyer Education Classes		
	<b>Matrix Code</b>	05U Housing Counseling		
	<b>Objective</b>	Decent Housing <input type="checkbox"/>	Suitable Living Environment <input checked="" type="checkbox"/>	Economic Opportunity <input type="checkbox"/>
	<b>Outcome</b>	Availability/Accessibility <input checked="" type="checkbox"/>	Affordability <input type="checkbox"/>	Sustainability <input type="checkbox"/>
<b>4</b>	<b>Project Name</b>	<b>CDBG: Community Action and Food Bank Services—Circles Program</b>		
	<b>Target Area</b>	Serving Provo City Residents		
	<b>Goals Supported</b>	Public Services		
	<b>Needs Addressed</b>	Public Services		
	<b>Funding</b>	CDBG: \$10,000		
	<b>Description</b>	Participants (Circle leaders) establish goals and plans and learn new tools, assisted by Allies, and Coaches to secure and sustain better jobs and break out of generational poverty.		
	<b>Target Date</b>	6/30/2024		
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	The Center anticipates it will assist about 6 LMI households, of which at least two will be Provo residents.		
	<b>Location Description</b>	815 South Freedom Blvd. Provo, UT 84601		
	<b>Planned Activities</b>	Partial payment of salaries for Coach and an Assistant Coach		
	<b>Matrix</b>	05 Other Public Services Not Listed		
	<b>Objective</b>	Decent Housing <input type="checkbox"/>	Suitable Living Environment <input checked="" type="checkbox"/>	Economic Opportunity <input type="checkbox"/>
	<b>Outcome</b>	Availability/Accessibility <input checked="" type="checkbox"/>	Affordability <input type="checkbox"/>	Sustainability <input type="checkbox"/>
<b>5</b>	<b>Project Name</b>	<b>CDBG: Community Action Service &amp; Food Bank - Community Garden</b>		
	<b>Target Area</b>	Serving Provo City Residents		

	<b>Goals Supported</b>	Public Services		
	<b>Needs Addressed</b>	Public Services		
	<b>Funding</b>	CDBG: \$10,000		
	<b>Description</b>	Funds used to provide community garden and gardening education.		
	<b>Target Date</b>	6/30/2024		
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	21 beneficiaries, all of which will be Provo residents.		
	<b>Location Description</b>	815 S Freedom Blvd. Ste 100 Provo, UT 84601		
	<b>Planned Activities</b>	Salaries for personnel and supplies		
	<b>Matrix</b>	05 Other Public Services		
	<b>Objective</b>	Decent Housing <input type="checkbox"/>	Suitable Living Environment <input checked="" type="checkbox"/>	Economic Opportunity <input type="checkbox"/>
<b>Outcome</b>	Availability/Accessibility <input checked="" type="checkbox"/>	Affordability <input type="checkbox"/>	Sustainability <input type="checkbox"/>	
<b>6</b>	<b>Project Name</b>	<b>CDBG: The Refuge</b>		
	<b>Target Area</b>	Serving Provo Residents		
	<b>Goals Supported</b>	Public Services		
	<b>Needs Addressed</b>	Public Services		
	<b>Funding</b>	CDBG: \$40,000		
	<b>Description</b>	Funds will be used for costs associated with providing services to victims of abuse and domestic violence.		
	<b>Target Date</b>	6/30/2024		
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	Approximately 700 beneficiaries will be served with this funding. Of which, 250 will be residents of Provo City.		

	<b>Location Description</b>	1433 East 840 North Orem, UT 84097		
	<b>Planned Activities</b>	Provide financial assistance to sustain facilities, maintain equipment, and support overall operating costs.		
	<b>Matrix</b>	05G Services for abused spouses and their families.		
	<b>Objective</b>	Decent Housing <input type="checkbox"/>	Suitable Living Environment <input checked="" type="checkbox"/>	Economic Opportunity <input type="checkbox"/>
	<b>Outcome</b>	Availability/Accessibility <input checked="" type="checkbox"/>	Affordability <input type="checkbox"/>	Sustainability <input type="checkbox"/>
<b>7</b>	<b>Project Name</b>	<b>CDBG: Children’s Justice Center</b>		
	<b>Target Area</b>	Serving Residents throughout Utah County		
	<b>Goals Supported</b>	Public Services		
	<b>Needs Addressed</b>	Public Services		
	<b>Funding</b>	CDBG: \$57,000		
	<b>Description</b>	Funds will be used to provide trauma specific mental health treatment for child abuse victims and families residing in Utah County.		
	<b>Target Date</b>	6/30/2024		
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	Approximately 800 individuals will receive assistance, of which about 150 will be Provo residents.		
	<b>Location Description</b>	315 South 100 East Provo, UT 84606		
	<b>Planned Activities</b>	Mental Health therapy for children of abuse and their families.		
	<b>Matrix</b>	05N Services for Abused Children		
	<b>Objective</b>	Decent Housing <input type="checkbox"/>	Suitable Living Environment <input checked="" type="checkbox"/>	Economic Opportunity <input type="checkbox"/>
	<b>Outcome</b>	Availability/Accessibility <input checked="" type="checkbox"/>	Affordability <input type="checkbox"/>	Sustainability <input type="checkbox"/>
<b>8</b>	<b>Project Name</b>	<b>CDBG: Project Read</b>		
	<b>Target Area</b>	Serving Provo Residents		

	<b>Goals Supported</b>	Public Services		
	<b>Needs Addressed</b>	Public Services		
	<b>Funding</b>	CDBG: \$10,210		
	<b>Description</b>	Help adults achieve self-sufficiency by helping them acquire literacy and life skills.		
	<b>Target Date</b>	6/30/2024		
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	Illiterate adults are identified as presumed eligible, however Project Read will serve approximately 100 LMI persons, of which about 50 will be Provo residents.		
	<b>Location Description</b>	550 North University Ave #215, Provo, UT 84601		
	<b>Planned Activities</b>	Literacy Lab, digital literacy/technology, health literacy and education, writing labs.		
	<b>Matrix</b>	05H Employment Training		
	<b>Objective</b>	Decent Housing <input type="checkbox"/>	Suitable Living Environment <input checked="" type="checkbox"/>	Economic Opportunity <input type="checkbox"/>
	<b>Outcome</b>	Availability/Accessibility <input checked="" type="checkbox"/>	Affordability <input type="checkbox"/>	Sustainability <input type="checkbox"/>
9	<b>Project Name</b>	<b>CDBG: Provo Police –Victim Services</b>		
	<b>Target Area</b>	Serving Provo residents		
	<b>Goals Supported</b>	Public Services		
	<b>Needs Addressed</b>	Public Services		
	<b>Funding</b>	CDBG: \$30,124		
	<b>Description</b>	Funds will be used for program delivery of services offered to victims of domestic violence and/or abuse.		
	<b>Target Date</b>	6/30/2024		
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	While victims of domestic violence/abuse are presumed eligible, PPD will provide services to approximately 1,500 persons.		

	<b>Location Description</b>	445 West Center Street Provo, UT 84601		
	<b>Planned Activities</b>	Referrals to resources, court counseling, assistance in interviews with responding officers, emergency sheltering placement.		
	<b>Matrix</b>	05G Services for victims of domestic violence, dating violence sexual assault or stalking.		
	<b>Objective</b>	Decent Housing <input type="checkbox"/>	Suitable Living Environment <input checked="" type="checkbox"/>	Economic Opportunity <input type="checkbox"/>
	<b>Outcome</b>	Availability/Accessibility <input checked="" type="checkbox"/>	Affordability <input type="checkbox"/>	Sustainability <input type="checkbox"/>
10	<b>Project Name</b>	<b>CDBG: Recreation and Habilitation Services (RAH)</b>		
	<b>Target Area</b>	Serving Provo residents		
	<b>Goals Supported</b>	Public Services		
	<b>Needs Addressed</b>	Public Services		
	<b>Funding</b>	CDBG: \$33,838		
	<b>Description</b>	Funds used to provide educational and recreational opportunities to persons with disabilities to improve their lives through the ABLE Project.		
	<b>Target Date</b>	6/30/2024		
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	Approximately 129 LMI persons will be served, of which about 32 will be Provo residents.		
	<b>Location Description</b>	815 N 800 W Provo, UT 84604		
	<b>Planned Activities</b>	Educational and Recreational activities for LMI individuals with physical and mental disabilities.		
	<b>Matrix</b>	05B Services for Persons with Disabilities.		
	<b>Objective</b>	Decent Housing <input type="checkbox"/>	Suitable Living Environment <input checked="" type="checkbox"/>	Economic Opportunity <input type="checkbox"/>
	<b>Outcome</b>	Availability/Accessibility <input checked="" type="checkbox"/>	Affordability <input type="checkbox"/>	Sustainability <input type="checkbox"/>
	<b>Project Name</b>	<b>CDBG: Alpine House</b>		

11	<b>Target Area</b>	Serving Provo residents		
	<b>Goals Supported</b>	Public Services		
	<b>Needs Addressed</b>	Public Services		
	<b>Funding</b>	CDBG: \$6,000		
	<b>Description</b>	Provide a slurry seal to the existing driveway to preserve life of asphalt.		
	<b>Target Date</b>	6/30/2024		
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	It is estimated that physical therapy will be provided for about 20 LMI individuals, all of which are Provo residents.		
	<b>Location Description</b>	156 South 300 West Provo, UT 84601		
	<b>Planned Activities</b>	Driveway and parking repair		
	<b>Matrix</b>	14B Rehabilitation: Multi-Unit Residential		
	<b>Objective</b>	Decent Housing <input checked="" type="checkbox"/>	Suitable Living Environment <input checked="" type="checkbox"/>	Economic Opportunity <input type="checkbox"/>
<b>Outcome</b>	Availability/Accessibility <input checked="" type="checkbox"/>	Affordability <input type="checkbox"/>	Sustainability <input checked="" type="checkbox"/>	
12	<b>Project Name</b>	<b>CDBG: Business Façade Rehabilitation</b>		
	<b>Target Area</b>	Provo City		
	<b>Goals Supported</b>	Economic Development		
	<b>Needs Addressed</b>	Economic Development		
	<b>Funding</b>	CDBG: \$50,000 - Façade Renovations CDBG: \$8,000 - Program Delivery		
	<b>Description</b>	Funds will be used to provide matching grants for commercial façade renovation and program delivery, leading to job creation for LMI.		
	<b>Target Date</b>	6/30/2024		

	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	About one façades will be rehabilitated creating approximately two jobs for LMI Persons.		
	<b>Location Description</b>	445 West Center Provo, UT 84601		
	<b>Planned Activities</b>	Façade renovation and rehabilitation – Job Creation		
	<b>Matrix</b>	14E Rehabilitation; Publicly or Privately Owned Commercial		
	<b>Objective</b>	Decent Housing	Suitable Living <input type="checkbox"/> Environment	Economic Opportunity x
	<b>Outcome</b>	Availability/Accessibility	Affordability <input type="checkbox"/>	Sustainability x
13	<b>Project Name</b>	<b>CDBG: Neighborhood Revitalization Program</b>		
	<b>Target Area</b>	Serving Provo City Residents		
	<b>Goals Supported</b>	Public Facilities		
	<b>Needs Addressed</b>	Public Facilities		
	<b>Funding</b>	CDBG: \$25,000		
	<b>Description</b>	Funds will be used to uplift neighborhoods through installation/repair of curb & gutter, parks/equipment, safety crossings, pathways/lighting.		
	<b>Target Date</b>	6/30/2024		
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	Approximately 1,000 LMI Provo residents will benefit from this project.		
	<b>Location Description</b>	CDBG Eligible Neighborhoods in Provo		
	<b>Planned Activities</b>	Curb & Gutter/Sidewalk/Safety Crossings/Lighting, etc.		
<b>Matrix</b>	03K Street Improvements/03L Sidewalks			

	<b>Objective</b>	Decent Housing	Suitable Living Environment x	Economic Opportunity <input type="checkbox"/>
	<b>Outcome</b>	Availability/Accessibility	Affordability <input type="checkbox"/>	Sustainability x
14	<b>Project Name</b>	<b>CDBG: Provo Public Works – Joaquin Neighborhood Improvements</b>		
	<b>Target Area</b>	Joaquin Neighborhood		
	<b>Goals Supported</b>	Public Facilities		
	<b>Needs Addressed</b>	Public Facilities		
	<b>Funding</b>	CDBG: \$221,442		
	<b>Description</b>	Funds will be used to make safety improvements such as safe routes to school, ADA Ramps, Bulb outs, and lighting.		
	<b>Target Date</b>	6/30/2024		
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	Approximately 5,784 Provo residents will benefit from this project.		
	<b>Location Description</b>	Joaquin Neighborhood		
	<b>Planned Activities</b>	Install and replace sidewalks in need, crosswalks, signage, and ADA ramps and panels.		
	<b>Matrix</b>	03L Sidewalks		
	<b>Objective</b>	Decent Housing <input type="checkbox"/>	Suitable Living Environment <input checked="" type="checkbox"/>	Economic Opportunity <input type="checkbox"/>
<b>Outcome</b>	Availability/Accessibility <input checked="" type="checkbox"/>	Affordability <input type="checkbox"/>	Sustainability <input type="checkbox"/>	
15	<b>Project Name</b>	<b>CDBG: Provo Public Works</b>		
	<b>Target Area</b>	Wasatch and Foothills Neighborhoods		
	<b>Goals Supported</b>	Public Facilities		
	<b>Needs Addressed</b>	Public Facilities		
	<b>Funding</b>	CDBG: \$360,000		
	<b>Description</b>	Wasatch and Foothills Neighborhood safety improvements		
	<b>Target Date</b>	6/30/2024		

	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	Approximately 7,386 Provo residents will benefit from this project.		
	<b>Location Description</b>	Provo Wasatch and Foothills neighborhoods		
	<b>Planned Activities</b>	Install and replace sidewalks in need, crosswalks, signage, and ADA ramps and panels.		
	<b>Matrix</b>	03L Sidewalks		
	<b>Objective</b>	Decent Housing <input type="checkbox"/>	Suitable Living Environment x	Economic Opportunity
	<b>Outcome</b>	Availability/Accessibility <input type="checkbox"/>	Affordability <input type="checkbox"/>	Sustainability <input checked="" type="checkbox"/>
16	<b>Project Name</b>	<b>CDBG: Emergency Home Repair</b>		
	<b>Target Area</b>	City of Provo		
	<b>Goals Supported</b>	Homeownership		
	<b>Needs Addressed</b>	Housing		
	<b>Funding</b>	CDBG: \$ 4,500 – Program Delivery		
	<b>Description</b>	Program Delivery for Emergency home repairs.		
	<b>Target Date</b>	6/30/2024		
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	It is expected to serve about eight low-income households.		
	<b>Location Description</b>	Eligible single-family properties in Provo City.		
	<b>Planned Activities</b>	Rehabilitation of heating/air conditioning, water, electrical, plumbing systems; roof leaks; sewer. May include other repairs to ensure a healthy/sanitary living environment.		
<b>Matrix</b>	14A Rehabilitation: Single-Unit Residential			
<b>Objective</b>	Decent Housing <input checked="" type="checkbox"/>	Suitable Living Environment <input type="checkbox"/>	Economic Opportunity <input type="checkbox"/>	

	<b>Outcome</b>	Availability/Accessibility <input type="checkbox"/>	Affordability <input checked="" type="checkbox"/>	Sustainability <input type="checkbox"/>
<b>17</b>	<b>Project Name</b>	<b>CDBG: Egress Windows</b>		
	<b>Target Area</b>	Provo City		
	<b>Goals Supported</b>	Homeownership		
	<b>Needs Addressed</b>	Housing		
	<b>Funding</b>	CDBG: \$6,500 – Program Delivery		
	<b>Description</b>	Funding will be used to assist low-income homeowners needing to bring bedroom windows up to code.		
	<b>Target Date</b>	6/30/2024		
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	About nine LMI households will be served.		
	<b>Location Description</b>	Eligible single-family properties in Provo City.		
	<b>Planned Activities</b>	Installation of Egress Windows		
	<b>Matrix</b>	14A Rehabilitation: Single-Unit Residential		
	<b>Objective</b>	Decent Housing <input checked="" type="checkbox"/>	Suitable Living Environment <input type="checkbox"/>	Economic Opportunity <input type="checkbox"/>
<b>Outcome</b>	Availability/Accessibility <input type="checkbox"/>	Affordability <input checked="" type="checkbox"/>	Sustainability <input type="checkbox"/>	
<b>18</b>	<b>Project Name</b>	<b>HOME: Administration</b>		
	<b>Target Area</b>	Consortium wide		
	<b>Goals Supported</b>	Homeownership Rental Housing		
	<b>Needs Addressed</b>	Housing		
	<b>Funding</b>	HOME: \$158,982		
	<b>Description</b>	Funds will be used to pay for administration costs of the activities for the Utah Valley HOME Consortium.		
	<b>Target Date</b>	6/30/2024		

	<b>Estimate the number and type of families that will benefit from the proposed activities</b>			
	<b>Location Description</b>	445 West Center Provo, UT 84601		
	<b>Planned Activities</b>	Administration and planning		
	<b>Matrix</b>	21A General Program Administration		
	<b>Objective</b>	Decent Housing <input type="checkbox"/>	Suitable Living Environment <input checked="" type="checkbox"/>	Economic Opportunity <input type="checkbox"/>
	<b>Outcome</b>	Availability/Accessibility <input type="checkbox"/>	Affordability <input type="checkbox"/>	Sustainability <input checked="" type="checkbox"/>
<b>19</b>	<b>Project Name</b>	<b>HOME: RHDC - Self Help Homes</b>		
	<b>Target Area</b>	Santaquin, Utah		
	<b>Goals Supported</b>	Homeownership		
	<b>Needs Addressed</b>	Housing		
	<b>Funding</b>	HOME: \$531,641 CHDO: \$119,236		
	<b>Description</b>	Funds will be used for acquisition of approximately 8.32 acres in Santaquin for the development of about 29 residential single-family homes.		
	<b>Target Date</b>	6/30/2024		
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	Approximately 3 HOME-assisted units will benefit LMI eligible households.		
	<b>Location Description</b>	North Fox Avenue and Dasher Drive (close to 1000 South) Santaquin, UT 84665		
	<b>Planned Activities</b>	Land acquisition, predevelopment costs, lot improvements and new construction of affordable single-family housing.		
<b>Matrix</b>	12 Construction of Housing			

	<b>Objective</b>	Decent Housing <input checked="" type="checkbox"/>	Suitable Living Environment	Economic Opportunity <input type="checkbox"/>
	<b>Outcome</b>	Availability/Accessibility <input type="checkbox"/>	Affordability <input checked="" type="checkbox"/>	Sustainability <input checked="" type="checkbox"/>
<b>20</b>	<b>Project Name</b>	<b>HOME: Mountain Country Home Solutions</b>		
	<b>Target Area</b>	Orem City		
	<b>Goals Supported</b>	Housing		
	<b>Needs Addressed</b>	Housing		
	<b>Funding</b>	HOME: \$656,763.58 CHDO: \$119,236		
	<b>Description</b>	Funds will be used to build a single level four-plex in Orem.		
	<b>Target Date</b>	7/31/2024		
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	Approximately 4 LMI Households will benefit from this project.		
	<b>Location Description</b>	672 East 1700 South Orem, UT 84097		
	<b>Planned Activities</b>	Construction of 4 affordable rental units.		
	<b>Matrix</b>	12 Construction of Housing		
	<b>Objective</b>	Decent Housing <input checked="" type="checkbox"/>	Suitable Living Environment	Economic Opportunity <input type="checkbox"/>
<b>Outcome</b>	Availability/Accessibility <input checked="" type="checkbox"/>	Affordability <input checked="" type="checkbox"/>	Sustainability <input type="checkbox"/>	
<b>21</b>	<b>Project Name</b>	<b>HOME: Home Purchase Plus</b>		
	<b>Target Area</b>	Provo City		
	<b>Goals Supported</b>	Homeownership		
	<b>Needs Addressed</b>	Housing		
	<b>Funding</b>	HOME: \$200,000 CDBG: \$12,500		

	<b>Description</b>	HOME funds to provide down payment assistance and closing costs loans to eligible low-income households. Up to \$12,500 in CDBG funds will be used for Program Delivery		
	<b>Target Date</b>	6/30/2024		
	<b>Estimate the number and type of families that will benefit from the proposed activities</b>	Approximately 5 households will receive down payment and closing cost assistance loans.		
	<b>Location Description</b>	Throughout Provo City		
	<b>Planned Activities</b>	Down payment assistance and closing costs loans. Program Delivery		
	<b>Matrix</b>	13B Homeownership Assistance – excluding Housing Counseling		
	<b>Objective</b>	Decent Housing <input checked="" type="checkbox"/>	Suitable Living Environment <input type="checkbox"/>	Economic Opportunity <input type="checkbox"/>
	<b>Outcome</b>	Availability/Accessibility <input type="checkbox"/>	Affordability <input checked="" type="checkbox"/>	Sustainability <input type="checkbox"/>
22	<b>Project Name</b>	<b>HOME: Loan to Own</b>		
	<b>Target Area</b>	Throughout Utah County		
	<b>Goals Supported</b>	Homeownership		
	<b>Needs Addressed</b>	Housing		
	<b>Funding</b>	HOME: \$200,000 CDBG: \$ 12,500		
	<b>Description</b>	HOME funds to provide down payment assistance and closing costs loans to eligible low-income households. Up to \$12,500 in CDBG funds will be used for Program Delivery		
	<b>Target Date</b>	6/30/2024		

<b>Estimate the number and type of families that will benefit from the proposed activities</b>	Approximately 5 households will receive down payment and closing cost assistance loans.		
<b>Location Description</b>	Eligible cities throughout Utah County		
<b>Planned Activities</b>	Down payment assistance and closing costs loans. Program Delivery		
<b>Matrix</b>	13B Homeownership Assistance – excluding Housing Counseling		
<b>Objective</b>	Decent Housing <input checked="" type="checkbox"/>	Suitable Living Environment <input type="checkbox"/>	Economic Opportunity <input type="checkbox"/>
<b>Outcome</b>	Availability/Accessibility <input type="checkbox"/>	Affordability <input checked="" type="checkbox"/>	Sustainability <input type="checkbox"/>

## **AP-50 Geographic Distribution - 91.420, 91.220(f)**

### **Description of the geographic areas of the entitlement (including areas of low-income and minority concentration) where assistance will be directed**

At this time neither the City of Provo nor the Consortium is establishing specific geographic areas of service.

### **Geographic Distribution**

<b>Target Area</b>	<b>Percentage of Funds</b>

**Table 5 - Geographic Distribution**

### **Rationale for the priorities for allocating investments geographically**

#### **Discussion**

N/A

# AFFORDABLE HOUSING

## AP-55 Affordable Housing - 91.420, 91.220(g)

### Introduction

<b>One Year Goals for the Number of Households to be Supported</b>
Homeless
Non-Homeless
Special-Needs
Total

**Table 5 - One Year Goals for Affordable Housing by Support Requirement**

<b>One Year Goals for the Number of Households Supported Through</b>
Rental Assistance
The Production of New Units
Rehab of Existing Units
Acquisition of Existing Units
Total

**Table 7 - One Year Goals for Affordable Housing by Support Type**

### Discussion

## **AP-60 Public Housing - 91.420, 91.220(h)**

### **Introduction**

**Actions planned during the next year to address the needs to public housing**

**Actions to encourage public housing residents to become more involved in management and participate in homeownership**

**If the PHA is designated as troubled, describe the manner in which financial assistance will be provided or other assistance**

### **Discussion**

## **AP-65 Homeless and Other Special Needs Activities - 91.420, 91.220(i)**

### **Introduction**

**Describe the jurisdictions one-year goals and actions for reducing and ending homelessness including**

**Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs**

**Addressing the emergency shelter and transitional housing needs of homeless persons**

**Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time that individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again**

**Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families and those who are: being discharged from publicly funded institutions and systems of care (such as health care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); or, receiving assistance from public or private agencies that address housing, health, social services, employment, education, or youth needs.**

### **Discussion**

## **AP-75 Barriers to affordable housing -91.420, 91.220(j)**

### **Introduction**

**Actions it planned to remove or ameliorate the negative effects of public policies that serve as barriers to affordable housing such as land use controls, tax policies affecting land, zoning ordinances, building codes, fees and charges, growth limitations, and policies affecting the return on residential investment**

### **Discussion**

## **AP-85 Other Actions - 91.420, 91.220(k)**

### **Introduction**

**Actions planned to address obstacles to meeting underserved needs**

**Actions planned to foster and maintain affordable housing**

**Actions planned to reduce lead-based paint hazards**

**Actions planned to reduce the number of poverty-level families**

**Actions planned to develop institutional structure**

**Actions planned to enhance coordination between public and private housing and social service agencies**

### **Discussion**

## **Program Specific Requirements**

### **AP-90 Program Specific Requirements - 91.420, 91.220(I)(1,2,4)**

#### **Introduction**

##### **Community Development Block Grant Program (CDBG)**

###### **Reference 24 CFR 91.220(I)(1)**

Projects planned with all CDBG funds expected to be available during the year are identified in the Projects Table. The following identifies program income that is available for use that is included in projects to be carried out.

1. The total amount of program income that will have been received before the start of the next program year and that has not yet been reprogrammed
2. The amount of proceeds from section 108 loan guarantees that will be used during the year to address the priority needs and specific objectives identified in the grantee's strategic plan
3. The amount of surplus funds from urban renewal settlements
4. The amount of any grant funds returned to the line of credit for which the planned use has not been included in a prior statement or plan.
5. The amount of income from float-funded activities

Total Program Income

#### **Other CDBG Requirements**

1. The amount of urgent need activities

##### **HOME Investment Partnership Program (HOME)**

###### **Reference 24 CFR 91.220(I)(2)**

1. A description of other forms of investment being used beyond those identified in Section 92.205 is as follows:
2. A description of the guidelines that will be used for resale or recapture of HOME funds when used for homebuyer activities as required in 92.254, is as follows:
3. A description of the guidelines for resale or recapture that ensures the affordability of units acquired with HOME funds? See 24 CFR 92.254(a)(4) are as follows:
4. Plans for using HOME funds to refinance existing debt secured by multifamily housing that is rehabilitated with HOME funds along with a description of the refinancing guidelines required that will be used under 24 CFR 92.206(b), are as follows:



# PROVO MUNICIPAL COUNCIL STAFF REPORT



**Submitter:** EVANDERWERKEN  
**Department:** Council  
**Requested Meeting Date:**

**SUBJECT:** An ordinance amending Provo City code regarding micromobility devices. Citywide application. (23-022)

**RECOMMENDATION:** Presentation only. To be heard in Night Meeting.

**BACKGROUND:** The Administration has requested this item to discuss the emergence of new types of micro mobility devices, including, but not limited to, e-scooters, e-bikes, hoverboards, etc. and how these devices might be best regulated throughout the City.

**FISCAL IMPACT:**

**PRESENTER'S NAME:** Mary Ditto

**REQUESTED DURATION OF PRESENTATION:** 20 minutes

**COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:**

**CITYVIEW OR ISSUE FILE NUMBER:** 23-022

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ORDINANCE 2023-.

AN ORDINANCE AMENDING PROVO CITY CODE REGARDING  
MICROMOBILITY DEVICES. CITYWIDE APPLICATION.

WHEREAS, it is proposed that Provo City Code Sections 9.15.200 (Driving or Riding on Sidewalk), 9.32.020 (Riding a Bicycle, Skateboard, or Roller Skates on the Sidewalk), and 9.32.170 (Riding Skateboards, Roller Skates or Bicycles) be repealed and replaced with a single ordinance defining and governing micromobility devices; and

WHEREAS, the current version of Section 9.32.170 allows private property owners to either allow or prohibit the use skateboards, roller skates, and other similar devices on their property; and

WHEREAS, the proposed replacement version would allow property owners to allow the use of micromobility devices, but impose restrictions on the use, such as limiting the speeds at which such devices may be operated on the property; and

WHEREAS, the current version of Section 9.32.020 is repetitive to the proposed ordinance change in that it authorizes the City Traffic Engineer to erect signs to prohibit the use of bicycles on any sidewalk and does not address additional types of micromobility devices; and

WHEREAS, the proposed replacement version would combine both sections and address all types of micromobility devices; and

WHEREAS, the current version of Section 9.15.200 includes the term “self-propelled vehicles,” which has not been defined in Provo Code. In addition, the content of this section is already prohibited in Utah Code Sections 41-6a-1702 and 72-7-105; and

WHEREAS, the proposed replacement version would include an extensive definition of micromobility devices; and

WHEREAS, on January 31, March 28, and April 18, 2023, the Municipal Council met to ascertain the facts regarding this matter and receive public comment, which facts and comments are found in the public record of the Council’s consideration; and

WHEREAS, after considering the proposal and the facts and comments presented to the Municipal Council, the Council finds (i) Provo City Code should be amended as described herein and (ii) the proposed amendment reasonably furthers the health, safety and general welfare of the citizens of Provo City.

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

PART I:

47 Provo City Code Sections 9.15.200, 9.32.020, and 9.32.170 are repealed in their entirety.  
48 A new Provo City Code Section 9.32.170 is enacted as set forth in Exhibit A.  
49

50 PART II:

51  
52 A. If a provision of this ordinance conflicts with a provision of a previously adopted  
53 ordinance, this ordinance shall prevail.  
54

55 B. This ordinance and its various sections, clauses and paragraphs are hereby  
56 declared to be severable. If any part, sentence, clause or phrase is adjudged to be  
57 unconstitutional or invalid, the remainder of the ordinance shall not be affected  
58 thereby.  
59

60 C. The Municipal Council hereby directs that the official copy of the Provo City  
61 Code be updated to reflect the provisions enacted by this ordinance.  
62

63 D. This ordinance shall take effect immediately after it has been posted or published  
64 in accordance with Utah Code 10-3-711, presented to the Mayor in accordance  
65 with Utah Code 10-3b-204, and recorded in accordance with Utah Code 10-3-713.  
66

67 END OF ORDINANCE.

## Exhibit A

### 68 **9.32.170 Micromobility devices**

69

70 (1) (a) Micromobility device means a human-, motor-, or electric-powered transportation  
71 device that is driven by the user personally.

72 (b) Micromobility device includes, but is not limited to, the following as defined in Utah  
73 Code Section 41-6a-102:

74 (i) electric personal assistive mobility device;

75 (ii) electric assisted bicycle;

76 (iii) motor assisted scooter;

77 (iv) moped;

78 (v) bicycle; and

79 (vi) motor-driven cycle.

80 (c) Micromobility device includes, but is not limited to, any device that would be  
81 described in Subsection (1)(b) but for the fact that it is capable of speeds greater than  
82 those set forth in Utah Code Section 41-6a-102 in the relevant definition.

83 (d) Micromobility device includes, but is not limited to, skateboards, roller skates, roller  
84 blades, hoverboards, non-motor-assisted scooters, and any other small, lightweight,  
85 wheeled conveyance that meets the definition in Subsection (1)(a) and is not specifically  
86 excluded in this Section.

87 (e) Micromobility device does not include automobiles, motorcycles, golf carts, manual  
88 or electric wheelchairs, or other such vehicles.

89

90 (2) A person may not operate a micromobility device at a speed greater than 10 miles per hour on  
91 a public sidewalk. A violation of this subsection (2) is an infraction.

92

93 (3) It is unlawful to ride or use a micromobility device on a public street or sidewalk after dark  
94 unless the user is equipped with reflective material of sufficient size and reflectivity to be visible  
95 from both sides for five hundred (500) feet when directly in front of lawful lower beams of head  
96 lamps on a motor vehicle, or in lieu of reflective material, with a lighted lamp visible from both  
97 sides from a distance of at least five hundred (500) feet. "After dark" shall mean one-half (1/2)  
98 hour after sunset.

99

100 (4) It is unlawful to leave a micromobility device obstructing pedestrian travel on the sidewalk,  
101 in a pedestrian crosswalk, or in a roadway except in an area where it would be lawful to park a  
102 motor vehicle.

103

104 (5) Whenever any person is riding a micromobility device, such person shall yield the right-of-  
105 way to any pedestrian and shall give an audible signal before overtaking and passing such  
106 pedestrian.

107

108 (6) A property owner may prohibit micromobility devices generally, specific types of  
109 micromobility devices, and/or specific uses of micromobility devices on the owner's property by  
110 posting signs that give reasonable notice of the prohibited device(s) and/or use(s). It is unlawful  
111 to use a micromobility device on any property contrary to the prohibitions posted by the owner.

112

113 (7) It is unlawful for any company to provide micromobility device rentals for use upon City  
114 streets unless done on behalf of the City pursuant to a contract with the City.

115

116 (8) It is unlawful to operate any micromobility device described in Subsection (1)(c) on city  
117 sidewalks.

118

119 (9) No person shall ride a micromobility device upon a sidewalk contiguous to University  
120 Avenue between 400 North Street and 100 South Street, and on a sidewalk contiguous to Center  
121 Street between 100 East Street and 500 West Street.



Proposed  
Code Change  
09.32.170

*Micromobility  
Devices*

## CURRENT CODE:

### 9.32.170 Riding Skateboards, Roller Skates or Bicycles.

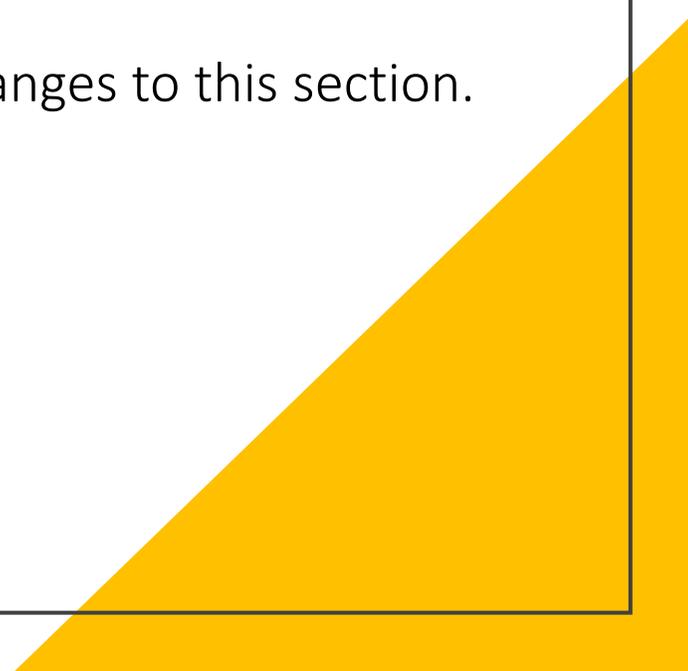
(1) It shall be unlawful to ride or use a skateboard, roller-skates, roller-blades, or similar device on a public street or sidewalk after dark unless the user is equipped with reflective material of sufficient size and reflectivity to be visible from both sides for five hundred (500) feet when directly in front of lawful lower beams of head lamps on a motor vehicle, or in lieu of reflective material, with a lighted lamp visible from both sides from a distance of at least five hundred (500) feet. "After dark" shall mean one-half (1/2) hour after sunset.

(2) It shall be unlawful to ride or use a bicycle, skateboard, roller-skates, roller-blades, or similar device on the sidewalks, steps, or ramps adjacent to the Provo City Library.

(3) It shall be unlawful to use a skateboard, roller-skates, roller-blades, or similar device on private property or school property if the property owner has posted signs on the property prohibiting such conduct. Such signs shall be of reasonable size and number, and shall give notice that use of a skateboard, roller-skates, roller-blades, or similar device on the property is prohibited by this Section of the Provo City Code.

(Am 1989-62, Am 1999-09, Am 1999-11)

## 9.32.170 CONCERNS:

- **Definition**— Many more micromobility devices available now, need a broader definition.
  - **Limitations on Property Owners**— They can only prohibit such devices; they cannot allow devices and impose restrictions on the use.
  - **Narrow**—Additional needs of the City warrants additional changes to this section.
- 
- A large yellow triangle is positioned in the bottom right corner of the slide, pointing towards the top right.

# Additional Code Concerns:

## 9.15.200 Driving or Riding on Sidewalk. (1937)

It shall be unlawful for any person to drive a self-propelled vehicle or team, or lead, drive or ride any animal upon any sidewalk, except across a sidewalk at established crossings.

- *Self-propelled vehicle a problematic definition (not defined in Provo City Code or Utah State Code)*
- *These action are already prohibited in Utah Code Sections 41-6a-1702 and 72-7-105*

## 9.32.020: Riding a Bicycle, Skateboard or Roller Skates on the Sidewalk. (1987)

(1) No person shall ride a bicycle, skateboard or roller skates upon a sidewalk contiguous to University Avenue between 400 North Street and 100 South Street, and on a sidewalk contiguous to Center Street between 100 East Street and 500 West Street.

(2) The City Traffic Engineer is authorized to erect signs on any sidewalk or roadway prohibiting the riding of bicycles thereon by any person and when such signs are in place no person shall disobey the same.

(3) Whenever any person is riding a bicycle upon a sidewalk, such person shall yield the right-of-way to any pedestrian and shall give audible signal before overtaking and passing such pedestrian.

- *(2) is repetitive to the proposed ordinance change*
- *(1) and (3) can be included in the new proposed ordinance change*

# **Replace three ordinances with a single ordinance:**

## **9.32.170– Micromobility Devices**

Refer to ordinance exhibit

# PROVO MUNICIPAL COUNCIL STAFF REPORT



**Submitter:** MGRIFFITHS  
**Department:** Recorder  
**Requested Meeting Date:** 01-01-2018

**SUBJECT:** An ordinance granting FIF Utah LLC DBA Utah Broadband a nonexclusive franchise to operate a telecommunications network in Provo, Utah. (23-039)

**RECOMMENDATION:** Council approval for franchise agreement needed. Requested for the work and council meeting on April 18.

**BACKGROUND:** FIF Utah (aka Utah Broadband, a high-speed internet provider) asked Engineering for a permit to run conduit in the City. We subsequently discovered that they also intend to sell service to Provo City residents. A franchise agreement with the City is therefore required. We provided a template, which FIF filled out and signed. Per City ordinance, the agreement requires Council approval and the Mayor's signature.

**FISCAL IMPACT:**

**PRESENTER'S NAME:** Matthew Griffiths, Assistant City Attorney

**REQUESTED DURATION OF PRESENTATION:** 10 minutes

**COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:**

**CITYVIEW OR ISSUE FILE NUMBER:** 23-039



40 one hundred twenty (120) days after the passage of this ordinance by the City, this ordinance and  
41 the rights granted herein shall be null and void.

42

43

44 PART II:

45

46 A. If a provision of this Ordinance conflicts with a provision of a previously adopted  
47 ordinance concerning the same franchising act as described herein, this Ordinance shall  
48 prevail.

49

50 B. This ordinance and its various sections, clauses and paragraphs are hereby declared to be  
51 severable. If any part, sentence, clause or phrase is adjudged to be unconstitutional or  
52 invalid, the remainder of the ordinance shall not be affected thereby.

53

54 C. The Municipal Council hereby directs that this Ordinance remain uncodified.

55

56 D. This ordinance shall take effect immediately after it has been posted or published in  
57 accordance with Utah Code 10-3-711, presented to the Mayor in accordance with Utah  
58 Code 10-3b-204, and recorded in accordance with Utah Code 10-3-713.

59

60 END OF ORDINANCE.

**PROVO CITY AND UTAH BROADBAND  
TELECOMMUNICATIONS FRANCHISE AGREEMENT**

THIS FRANCHISE AGREEMENT is made and entered into on March 17, 2023 by and between the City of Provo, Utah, (hereinafter "City") and FIF Utah, LLC, a Delaware limited liability company, dba Utah Broadband (hereinafter "Company").

WITNESSETH:

WHEREAS, Provo City Code Chapter 6.24 "Telecommunications Rights-of-Way" provides for the use of the City's Rights-of-Way for the installation, construction, and maintenance of systems in the City's Rights-of-Way,

WHEREAS, the Company desires to provide certain telecommunication services within the City and in connection therewith to establish a telecommunications network in, under, along, over, and across present and future streets, alleys, easements, and Rights-of-Way of the City, consisting of telecommunication lines, cables, and all necessary appurtenances; and

WHEREAS, the City, in exercise of its ownership rights over and in the public streets, alleys, easements, and Rights-of-Way, believes that it is in the best interest of the public to provide to the Company and its successors a non-exclusive franchise to operate its business within the City; and

WHEREAS, the City and the Company have negotiated an arrangement whereby the Company may provide its services within the City, pursuant to the terms and conditions outlined in this Agreement and in Provo City Code Chapter 6.24, and subject to the further reasonable regulation under its police and other regulatory power;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, and other good and valuable consideration, City and Company agree as follows:

**ARTICLE I**

**FRANCHISE AGREEMENT AND ORDINANCE**

- 1.1 Agreement.** Upon approval by the City Municipal Council, this Franchise Agreement shall be deemed to constitute a contract by and between City and Company.
- 1.2 Ordinance.** Previously, the City adopted Chapter 6.24 "Telecommunications Rights-of-Way" (the "Ordinance"), and such Ordinance is incorporated herein by reference and made an integral part hereof.

- 1.3 Grant of Franchise.** The City hereby grants to Company and its successors and assigns the non-exclusive right, privilege, and franchise (the "Franchise") to construct, maintain, and operate a telecommunications network (hereinafter "Network") in, under, along, over, and across the present and future streets, alleys, easements and Rights-of-Way of the City. The Franchise does not grant to the Company the right, privilege or authority to engage in the community antenna (or cable) television business although nothing contained herein shall preclude the Company from (1) permitting those lawfully engaged in such business to utilize Company's facilities within the City for such purposes, or (2) from providing such service if an appropriate Franchise is obtained and all other legal requirements have been satisfied. If state or federal law permits Company to operate an open video system without obtaining a separate franchise from City to provide video services, Company nevertheless acknowledges that Chapter 6.22 of the Provo City Code regulates and governs the provisions of multichannel video services, and in providing video services to Customers within City, Company shall be subject to the customer service and consumer protection provisions of that Chapter.
- 1.4 Financial Capability.** Company warrants that it has the financial capability to construct, maintain, and operate a telecommunications network and to otherwise comply with the provisions of this Agreement.
- 1.5 Relationship; Joint Facilities Agreement.** Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in a manner that would indicate any such relationship with the other. The Franchise does not grant Company the right to use City poles, conduit, or other facilities. The use of such facilities shall be governed by a separate Pole Attachment and Conduit Occupancy Agreement.
- 1.6 Records Inspection.** The records of the Company pertaining to the reports, plans, designs, and payments required by this Franchise, including, but not limited to, any records deemed necessary or useful by the City to calculate or confirm Gross Revenues, as defined herein, shall be open for inspection by the City and its duly authorized representatives at all reasonable business hours of the Company, provided Company is given reasonable notice. Such records may be copied by the City and the copies may be removed from the premises, provided that reasonable arrangements are made to protect the confidentiality of such records.
- 1.7 Definitions.** The words, terms, and phrases which are used herein and in the Ordinance shall have their ordinary plain meaning unless the word, term, or phrase is expressly defined herein. Words, terms, and phrases which are not specifically defined herein, but are defined in 47 U.S.C. ' 153, or its successor, shall have the technical meaning provided by that section as of the date of this agreement. The following words, terms, and phrases when used herein shall have the following meanings:

"City Council" means the Provo City Municipal Council.

"Customer" means a person or user of the Company's telecommunications Network who lawfully receives telecommunications services or other services therefrom with the Company's authorized permission, including, but not limited to, other companies utilizing Company's Network to provide services to customers of those companies.

"Gross Revenues" means any and all revenues of the Company derived from the sale of telecommunications services to its Customers within the City, without regard to the billing address of the Customer; and to the extent such services utilize the herein-referenced fiber-optic, copper, or other cable; except that the term "Gross Revenue" shall not include revenue from sources excluded by law, or revenue derived by the Company from services provided to its parent, subsidiaries of its parent, or affiliated companies of the Company.

"Network" means a Network of telecommunications lines and cables (including without limitation fiber-optic and copper lines and cables), together with necessary and desirable appurtenances (including underground and above-ground conduits and structures, poles, towers, wire, and cable) for its own use for the purpose of providing telecommunications services to the City, the inhabitants thereof, and persons and corporations beyond the limits thereof.

"Public Improvement" means any existing or contemplated public facility, building, or capital improvement project, including without limitation streets, alleys, sidewalks, sewer, water drainage, Right-of-Way improvements, poles, lines, wires, conduits, and Public Projects.

"Public Project" means any project planned or undertaken by the City or any governmental entity for construction, reconstruction, maintenance, or repair of public facilities or improvements, or any other purpose of a public nature.

"Rights-of-Way" includes present and future City streets, alleys, rights-of-way, and public easements, including easements dedicated in plats of the City.

## ARTICLE II

### TERM AND RENEWAL

- 2.1 Term and Renewal.** The Franchise granted to Company shall be for a period of five (5) years commencing on the date this Agreement is executed, unless this Franchise be sooner terminated as herein provided. At the end of the initial five (5) year term the Franchise may be renewed by Company upon the same terms and conditions as contained in this Agreement, so long as Company is in compliance with the provisions of this Agreement, for an additional five (5) year term, by providing to the City's representative, not less than ninety (90) calendar days before the expiration of the initial franchise term, written notice of Company's intent to renew. If the statutory limit imposed on the Franchise Fee by Utah Code ' 11-26-1 et seq., or any successor provision, is changed, the parties shall amend, upon its renewal, this Agreement to conform to the new statutory limit.
- 2.2 Rights of Company Upon Expiration or Revocation.** Upon expiration of the Franchise, whether by lapse of time, by agreement between Company and the City, or by revocation or forfeiture thereof, the Company shall have the right to remove any and all of its facilities, but in such event, it shall be the duty of the Company, immediately upon such removal, to restore the streets, avenues, alleys, and other public ways and grounds from which such facilities are removed to as good condition as the same were before the removal was effected.
- 2.3 Rights of City Upon Expiration or Revocation.** Upon expiration of the term of this Franchise, forfeiture, or lawful revocation of this Franchise, and if no renewal or extension thereof is agreed upon, Company may, at the discretion of the City Council, be required, in part or entirely, to remove all its wires, poles, fixtures, and other facilities or equipment installed or used in the enjoyment of the Franchise. Alternatively, the removal, or sale of such facilities and equipment may be directed, limited, or conditioned by the City by agreement or through means of other lawful municipal power or right. The City may continue to invoke any or all provisions of this Franchise against Company or any successor entity enjoying de facto franchise privileges after expiration or revocation. The City and the Company will work together to take all other actions deemed necessary and proper by the City to accommodate the transition to any successor as may be in the best interest of the City or its inhabitants and the Company.

## ARTICLE III

### CONSIDERATION AND PAYMENT

- 3.1 Franchise Fee.** For and in consideration of the Franchise, and as fair and reasonable compensation to the City for the use by the Company of the City's Rights-of-Way, the

Company agrees:

- a. To pay to the City an annual franchise fee (the "Franchise Fee"), in an amount equal to, and consisting of, the municipal telecommunications license tax (the "Municipal Telecommunications Tax") authorized pursuant to the Utah Municipal Telecommunications License Tax Act, Title 10, Chapter 1, Part 4, Utah Code Annotated 1953, as amended, and imposed and levied pursuant to Provo City Code, Chapter 5.07, (collectively the "Municipal Telecommunications Tax Laws"). Such Franchise Fee shall be calculated in the manner provided in the Municipal Telecommunications Tax Laws, and shall be paid by the Company to the Utah State Tax Commission, as agent for the City under an Interlocal Cooperation Agreement by and among the City, the Utah State Tax Commission, and others, at the times and in the manner prescribed in the Municipal Telecommunications Tax Laws, and any rules and regulations promulgated thereunder. Compliance by the Company with the terms and provisions of the Municipal Telecommunications Tax Laws, and any rules and regulations promulgated thereunder, shall satisfy all requirements of this Agreement with respect to the calculation and payment of the Franchise Fee.
- b. Notwithstanding the provisions of Section 3.1(a) above, the Franchise Fee shall be calculated and payable as described therein only so long as the Company and the services provided within the City by the Company by means of the Company Facilities are subject to the Municipal Telecommunications Tax. In the event all or any portion of the Company Facilities ceases to be used by the Company to provide services subject to the Municipal Telecommunications Tax, the Company shall pay, in lieu of the Franchise Fee, a charge with respect to such portion of the Company Facilities, payable from and after the (i) the date Company ceases to provide such services, or (ii) the date the Municipal Telecommunications Tax ceases to apply to the services provided by the Company, which shall be calculated in the same manner as the charge then imposed by the City on other Companies occupying the Right-of-Way with similar facilities, and which do not provide telecommunication services subject to the Municipal Telecommunications Act. The City and the Company agree to negotiate in good faith any amendments to this Agreement as shall be necessary to accommodate a change in the Municipal Telecommunications Tax Laws, including payment provisions; provided such new or changed provisions shall conform substantially with the provisions contained in any permits held by other similarly situated companies.

**3.2 Reconciliation.** Within 30 calendar days after the filing of any report or the making of any payment, or within such reasonable additional time as the City may request, the City shall examine such report or payment, determine the accuracy thereof, and, if the City finds any errors, report such errors to the Company for correction. If the Franchise Fee as paid shall be found deficient, the Company shall promptly remit the difference, and if the Franchise Fee as paid shall be found excessive, the City shall promptly refund the

difference. In the event of a disagreement, the Company shall make payment under protest pending the resolution of the dispute between the parties or through the courts. Neither payment of the Franchise Fee nor failure to make such investigation shall be deemed to estop the City or the Company in any way or prevent subsequent investigation by either and collection or return of any amount properly due. No acceptance of any payment by the City shall be construed as a release of, or an accord or satisfaction of, any claim the City might have for further or additional sums payable under the terms of this Agreement for the performance of any other obligation of the Company hereunder.

- 3.3 Extensions Not Statute of Limitation or Repose.** The aforesaid 30-day notice period is not intended and shall not act as a statute of limitation or repose, which limitation periods shall be governed by Utah Law.
- 3.4 Delinquency.** Any payment not paid when due shall be subject to a delinquency penalty charge often percent (10%) of the payment. Failure to make any payment and penalty charges within thirty (30) calendar days of the applicable payment date shall constitute breach of the terms of the this Agreement and constitute just cause for termination, and such unpaid amount shall bear interest until paid at the rate of an additional ten percent (10%) per annum until paid.
- 3.5 Revenue Report Following Termination.** In the event this Agreement or the Franchise should be terminated, forfeited, or determined to be void or invalid by any order or decree by a court of competent jurisdiction, the Company, not later than thirty (30) calendar days following such termination, forfeiture, or determination, shall submit to the City a report prepared as before required, showing the Gross Revenues of the Company for the time elapsed since the last period for which the Company has paid the Franchise Fee. Coincidental with the submission of the report, the Company shall pay to the City the Franchise Fee due and owing to the City for such period.
- 3.6 Audits.** For the purpose of verifying the correct amount of the franchise fee, the books and records of Company pertaining thereto shall be open to inspection or audit by duly authorized representatives of Provo City at all reasonable times, but not more than once a year, upon giving reasonable notice of the intention to inspect or audit said books and records. The Company agrees to reimburse the City the reasonable costs of an audit if the audit discloses that the Company has paid ninety-five percent (95%) or less of the compensation due the City for the period of such audit. In the event the accounting rendered to the City by the Company herein is found to be incorrect, then payment shall be made on the corrected amount within thirty (30) calendar days of written notice, it being agreed that the City may accept any amount offered by the Company, but the acceptance thereof by the City shall not be deemed a settlement of such item if the amount is in dispute or is later found to be incorrect.

## ARTICLE IV

## USE AND RELOCATION OF FACILITIES IN THE PUBLIC RIGHT-OF-WAY

- 4.1 Franchise Rights to Use the Public Right-of-Way.** The Company shall have the right to use the public Rights-of-Way within the City to construct and maintain its Network subject to the conditions set forth in this Agreement, including the provisions of Chapters 6.24 and 15.11 of the Provo City Code, which are hereby incorporated by reference; provided, however, that the Company shall not, pursuant to this Agreement, place any new poles, mains, cables, structures, pipes, conduits, or wires on, over, under, or within any Right-of-Way, City park, pleasure ground, or other recreational area currently existing or developed in the future without a permit from the City Representative. Nothing contained herein shall preclude the City from granting a revocable permit for such purpose. In addition, Company shall have the right to utilize any easements across private property granted to the City for utility purposes, provided the City's written permission is obtained in each case and the documents granting such easements to the City authorize such use. Company specifically understands and acknowledges that certain City easements and Rights-of-Way may be prescriptive in nature, and that nothing in this Franchise extends permission to use the easement or Right-of-Way beyond the extent that the City may have acquired, and such easements and Rights-of-Way may be subject to third party prior or after-acquired interests. Company is cautioned to examine each individual easement and Right-of-Way and the legal arrangement between the City and adjacent property owners. The City assumes no duty or obligation to defend any interest in any easement or Right-of-Way and Company remains solely responsible to make any arrangements required as a result of other persons claiming an interest in the City easement or Right-of-Way.
- 4.2 Company Duty to Relocate; Subordination to City Use.** Whenever the City, for any lawful public purpose, shall require the relocation or reinstallation of any property of the Company or its successors in any of the streets, alleys, Rights-of-Way, or public property of the City, it shall be the obligation of the Company, upon notice of such requirement and written demand made of the Company, and within a reasonable time thereof, but not less than thirty (30) calendar days, to remove and relocate or reinstall such facilities as may be reasonably necessary to meet the requirements of the City. Such relocation, removal, or reinstallation by the Company shall be at no cost to the City; provided, however, that the Company and its successors and assigns may maintain and operate such facilities, with the necessary appurtenances, in the new location or locations without additional payment, if the new location is a public place. Notwithstanding the foregoing, the duty of the Company to install or relocate its lines underground shall be subject to the provisions of paragraph 5.3 below. Any money and all rights to reimbursement from the State of Utah or the federal government to which the Company may be entitled for work done by Company pursuant to this paragraph shall be the property of the Company. The City shall assign or otherwise transfer to the Company all rights the City may have to recover costs for such work performed by the Company and shall reasonably cooperate with the Company's efforts to obtain reimbursement. In the event the City has required

the Company to relocate its facilities to accommodate a private third party, the City shall use good faith to require such third party to pay the costs of relocation. Notwithstanding anything to the contrary herein, the Company's use of the Right-of-Way shall in all matters be subordinate to the City's use of the Right-of-Way for any public purpose. The City and Company shall coordinate the placement of their respective facilities and improvements in a manner which minimizes adverse impact on each other. Where placement is not otherwise regulated, the facilities shall be placed with adequate clearance from such Public Improvements so as not to impact or be impacted by such Public Improvements.

**4.3 Duty to Obtain Approval to Move Company Property; Emergency.** Except as otherwise provided herein, the City, without the prior written approval of the Company, shall not intentionally alter, remove, relocate, or otherwise interfere with any Company facilities. However, if it becomes necessary (in the judgment of the Mayor, City Council, City Engineer, Fire Chief, Police Chief, Energy Director, or their designees) to cut, move, remove, or damage any of the cables, appliances, or other fixtures of the Company because of a fire, emergency, disaster, or imminent threat thereof, these acts may be done without prior written approval of the Company, and the repairs thereby rendered necessary shall be made by the Company, without charge to the City. Should the City take actions pursuant to this section, the Company shall indemnify, defend, and hold the City harmless from and against any and all claims, demands, liens, or liability for (a) loss or damage to the Company's property and/or (b) interruptions of telecommunications services provided by the use of or through the Company's property (including telecommunications services provided by the Company to the Company's Customers), whether such claims, demands, liens, or liability arise from or are brought by the Company, its insurers, the Company's Customers, or third parties. If, however, the City requests emergency funding reimbursement from federal, state or other governmental sources, the City shall include in its request the costs incurred by the Company to repair facilities damaged by the City in responding to the emergency. Any funds received by the City on behalf of Company shall be paid to the Company within thirty (30) business days.

**4.4 Dedication of Facilities.** In consideration of this Agreement, the Company shall, during the term of this Agreement, provide City with the exclusive use of four (4) strands of single mode fiber (dark fiber) in its fiber optic cables which are located within the City, excluding drop cables to individual buildings or customer premises.

## ARTICLE V

### PLAN, DESIGN, CONSTRUCTION, INSTALLATION OF COMPANY FACILITIES

**5.1 Coordination of Construction and Joint Use.** On or before February 28, May 31, August 31, and November 30 of each calendar year, or such other date the Company and City may agree upon from year to year, the Company's and the City's representatives will

meet (the "Quarterly Coordination Meeting") for the purpose of exchanging information and documents regarding future construction of Company's facilities within the City, with a view toward coordinating their respective activities. Documents and information to be exchanged shall include, without limitation, engineering drawings or other detailed maps of the proposed locations of construction or installation of telecommunication facilities. The Company, and the City Energy Director shall thereafter in good faith exchange other information and documents regarding the proposed construction for the purpose of coordinating the joint and respective activities within the City. Any significant construction or installation of new facilities by the Company or other franchised telecommunication companies not presented at the Quarterly Coordination Meeting shall only be commenced upon approval of the City Energy Director. Upon request, information regarding future capital improvements involving land acquisition or construction or installation of telecommunication facilities shall be treated with confidentiality as governed, and to the extent authorized, by City ordinance and the Government Records Access and Management Act.

## **5.2 Conditions of Public Utility Easement, Right-of-Way and Street Occupancy.**

- a. Except as provided below, the Company shall not erect, authorize, or permit others to erect any poles within the streets of the City for the operation of Company's Network, but shall use the existing poles and facilities of the City Energy Department and other telecommunication providers under such terms as the Company negotiates with City and these other entities in separate "joint facilities" agreements. City shall cooperate with Company in its negotiating with other telecommunication providers.
- b. The Company may request, in writing, that it be authorized to erect poles or place conduit or other facilities within the streets of the City for the operation of its Network. Such consent shall be entirely discretionary with the City and shall be given upon such terms and conditions as the City Council, in its sole discretion, may prescribe, which shall include a requirement that the Company perform, at its sole expense, all tree trimming required as a result of the Company's presence to maintain the line or facilities clear of obstructions. With respect to any poles or wire-holding structures that the Company is authorized to construct and install within the City, a public utility or public utility district serving the City may, if denied the privilege of utilizing such pole or facility by the Company, apply for such permission to the City Council. If the City Council finds that such use would enhance the public convenience and would not unduly interfere with the Company's present and future operations, the City Council may authorize such use subject to such terms and conditions as may reasonably be agreed between the parties. Such authorization shall include the condition that the public utility district pay to the Company any and all actual and necessary costs incurred by the Company in permitting such use, and shall indemnify the Company and City from and against any claims or causes of action brought about due to such use.

c. No cables, equipment, or wires for construction, maintenance, and operation of the Network shall be installed or the installation thereof commence on any existing pole within the City until the proposed location, specifications, and manner of installation of such cables, equipment, and wires are set forth upon an engineering drawing, plot, or map showing the existing poles, streets, alleys, or highways where such installations are proposed. The drawing, plot, or map shall be submitted to the City Engineer and the City Energy Director and reviewed for approval or disapproval within a reasonable time in writing. Such approval shall not be unreasonably withheld. The Company shall have the sole responsibility for diligently obtaining, at its own cost and expense, all permits, licenses or other forms of approval or authorization necessary to construct, maintain, upgrade or repair the system, including but not limited to any necessary approvals from persons and/or the City to use private property, easements, poles and conduits.

d. If, in the conduct of its business, the Company is required to locate facilities in the streets of the City, other than facilities that may be attached to utility poles, the nature of such facilities shall be disclosed to the City for prior review and approval as to the need thereof and as to the location within the street. The installation shall be made under such conditions as the City Engineer shall prescribe.

e. The Company, at its own expense, may, and is solely responsible to, trim trees overhanging the public Rights-of-Way of the City to prevent the branches of such trees from coming in contact with the Company's wires and cable. Prior to the Company attempting to trim trees upon and overhanging streets, alleys, sidewalks and public places of the City, the Company shall obtain approval from, and be under the supervision of, the City official to whom such duties have been or may be delegated in accordance with the applicable provisions of the municipal code of the City. Company shall immediately remove the trimmings and restore the area to its previous condition.

f. The Company, on the request of any person holding a building moving permit issued by the City, shall temporarily raise or lower its wires to permit the moving of such building. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Company may require such payment in advance. The City agrees to provide prior written notice of the necessity to move the wires as far in advance as possible; provided in no event shall the City give less than forty-eight (48) hours advance notice. In the event of a disagreement between the Company and the holder of a permit, such disagreement shall be resolved by the City.

**5.3 Duty to Underground.** The Company shall be required to comply with the rules and regulations of the Public Service Commission in regard to the installation of underground

lines. In addition, the Company shall comply with rules and regulations adopted by the City for the placement of newly constructed Network lines underground; provided, however, Company shall only be required to place newly constructed Network lines underground to the extent that underground placement is also required of all other existing and newly constructed lines of other telecommunication companies at that location with the City. If all other electric utilities or telephone utilities are located or relocated underground in any place within the City after the Company has installed its facilities, the Company shall thereafter remove and relocate its facilities underground in such places. Where utilities are underground, the Company may locate certain equipment above ground upon a showing of necessity and with the written approval from the City.

**5.4 Company Duty to Comply with Rules and Regulations.** Facilities located on, upon, over, and under property in which the City has an ownership interest shall be constructed, installed, maintained, cleared of vegetation, renovated, or replaced in accordance with such rules and regulations as the City may issue. The Company shall acquire permits in accordance with such rules and regulations and the City may inspect the manner of such work and require remedies as may be necessary to assure compliance. It is understood that this work involves the health, safety, and welfare of the community, and from time to time, must be done under circumstances that may make prior acquisition of a permit infeasible.

**5.5 Compliance with Pollution Laws.** Company shall ensure that its facilities within the City meet the standards required by applicable federal and state air and water pollution laws. Upon the City's request, the Company shall provide the City with a status report of such measures.

**5.6 Compliance with Applicable Laws.** All telecommunications lines, poles, towers, pipes, conduits, equipment, property, and other structures or assets installed, used, maintained, relocated, or dismantled under color of this Agreement shall be so installed, used, operated, tested, maintained, relocated, or dismantled in accordance with applicable present and future federal, state, and City law and regulations, including but not limited to the most recent editions of the National Electrical Code, the National Electrical Safety Code, and the Fiber Optic Cable Installation Standard of the Telecommunications Industry Committee, or such substantive equivalents as may hereafter be adopted or promulgated. It is understood that the standards established in this paragraph are minimum standards and the requirements established or referenced in this Agreement may be additional to or stricter than such minimum standards.

**5.7 Location to Minimize Interference.** All lines, poles, towers, pipes, conduits, equipment, property, structures, and assets of the Company shall be located so as to minimize interference with the use of streets, alleys, Rights-of-Way, and public property by others and shall reasonably avoid interference with the rights of owners of property that abuts any of said streets, alleys, Rights-of- Way, or public property.

**5.8 Repair of Damage.** If during the course of work on its facilities, the Company causes damage to or alters any street, alley, Rights-of-Way, sidewalk, utility, Public Improvement, or other public property, the Company (at its own cost and expense and in a manner approved by the City) shall promptly and completely restore such street, alley, Rights-of- Way, sidewalk , utility, Public Improvement or other public property to its previous condition, in accordance with applicable City ordinances, policies, and regulations relating to repair work of similar character to the reasonable satisfaction of the City. Except in case of emergency, the Company, prior to commencing work in the public way, street, or public property, shall make application for a permit to perform such work from the City Engineer or other department or division designated by the City. Such permit shall not be unreasonably withheld. The Company shall abide by all reasonable regulations and requirements of the City for such work.

**5.9 Guarantee of Repairs.** For a period of one year following the completion of the repair work performed pursuant to Section 5.8, the Company shall maintain, repair, and keep in good condition those portions of said streets, alleys, Rights-of- Way, or public property restored, repaired, or replaced to the satisfaction of the City.

**5.10 Safety Standards.** The Company's work, while in progress, shall be properly protected at all times with suitable barricades, flags, lights, flares, or other devices as are reasonably required by applicable safety regulations , or standards imposed by law including, but not limited to, signing in conformance with the Federal and State of Utah manuals on Uniform Traffic Control Devices.

**5.11 Supervision by the City.**

a. The Company shall construct, operate, and maintain the Network within the City in strict compliance with all laws, ordinances, rules, and regulations of the City and any other agency having jurisdiction over the operations of the Company.

b. The Company's Network and all parts thereof within the City shall be subject to the right of periodic inspection by the City; provided that such inspection shall be conducted at reasonable times and upon reasonable notice to the Company.

**5.12 Company's Duty to Remove Its Network.**

a. The Company shall promptly remove, at its own cost and expense, from any public property within the City, all or any part of the Network when one or more of the following conditions occur:

(1) The Company ceases to operate the Network for a continuous period of twelve months, and does not respond to written notice from the City within thirty (30) days after receiving such notice following any such cessation, except when the cessation of service is a direct result of a natural or man-made disaster;

- (2) The Company fails to construct said Network as herein provided and does not respond to written notice from the City within thirty (30) days after receiving such notice following any such failure;
- (3) The Franchise is terminated or revoked pursuant to notice as provided herein; or
  - (4) The Franchise expires pursuant to this Agreement.
    - b. The Company's removal of any or all of the Network that requires trenching or other opening of the City's streets shall be done only after the Company obtains prior written notice and approval from the City.
    - c. The Company shall receive notice, in writing from the City, setting forth one or more of the occurrences specified in Subsection 5.12(a) above and shall have ninety (90) calendar days from the date upon which said notice is received to remove or abandon such facilities.

**5.13 Notice of Closure of Streets.** Except in cases of emergency, the Company shall notify the City not less than three (3) working days in advance of any construction, reconstruction, repair, or relocation of facilities which would require any street closure which reduces traffic flow to less than two lanes of moving traffic. Except in the event of an emergency, as reasonably determined by the Company, no such closure shall take place without prior authorization from the City. In addition, all work performed in the traveled way or which in any way impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected as required by Section 5.10, above.

## ARTICLE VI

### POLICE POWER

- 6.1 Reservation of Police Power.** The City expressly reserves, and the Company expressly recognizes, the City's right and duty to adopt, from time to time, in addition to the provisions herein contained, such ordinances and rules and regulations as the City may deem necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties.
- 6.2 Other Regulatory Approval.** The Company and the City shall at all times during the life of this Franchise, comply with all federal, state, and City laws and regulations and with such reasonable and lawful regulation as the City now or hereafter shall provide, including all lawful and reasonable rules, regulations, policies, resolutions and ordinances

now or hereafter promulgated by the City relating to permits and fees, sidewalk and pavement cuts, attachment to poles, utility location, construction coordination, beautification, and other requirements on the use of the Right-of-Way. The terms of this Franchise shall apply to all the Company's facilities used, in whole or part, in the provision of telecommunications services in newly annexed areas upon the effective date of such annexation. Company shall provide no service regulated by the Federal Communications Commission (FCC) or Utah Public Service Commission (PSC) until it has received all necessary approvals and permits from said commissions. Nothing in this Agreement shall constitute a waiver of either party's right to challenge any portion of this Agreement which is not in accordance with applicable federal, state and local laws.

## ARTICLE VII

### CITY REPRESENTATIVES

- 7.1 Mayor's Duties and Responsibilities.** The Mayor is hereby designated as the "City Representative" with full power and authority to take appropriate action for and on behalf of the City and its inhabitants to enforce the provisions of this Agreement and to investigate any alleged violations or failures of the Company to comply with said provisions or to adequately and fully discharge its responsibilities and obligations hereunder. The Mayor may delegate to others, including but not limited to, the City Attorney, City Engineer, City Finance Director, and City Energy Director, the various duties and responsibilities of City Representative. The failure or omission of the Mayor or the Mayor's designee(s) as City Representative to act shall not constitute any waiver or estoppel.
- 7.2 Company Duty to Cooperate.** In order to facilitate such duties of the City Representative, the Company agrees to allow the City Representative reasonable access to any part of the Company's Network within the City's public Rights-of-Way.
- 7.3 City Financial Review.** With regard to financially related matters, the Mayor or the Mayor's designee, as City Representative may undertake a financial review of Company's payment of its Franchise fees and other fees and obligations under this agreement. The failure or omission to conduct a financial review shall not constitute any waiver or estoppel.
- 7.4 No Waiver or Estoppel.** Neither the City nor the Company shall be excused from complying with any of the terms and conditions of this Agreement by any failure of the other or any of its officers, employees, or agents, upon any one or more occasions, to insist upon or to seek compliance with any of such terms and conditions.

## ARTICLE VIII

## **TRANSFER OF FRANCHISE**

- 8.1 Written Approval Required.** The Company shall not transfer or assign the Franchise or any rights under this Agreement to another entity, unless the City shall first give its approval in writing, which approval shall not be unreasonably withheld or delayed. Any attempted assignment or transfer without such prior written consent shall constitute a Default of the Franchise. In the event of such a Default, City shall proceed according to the procedure set forth in this Agreement, and any applicable state or federal law.
- 8.2 Procedure for Obtaining Approval for Transfer.** At least ninety (90) calendar days before a proposed assignment or transfer of Company's Franchise is scheduled to become effective, Company shall petition in writing for the City Council's written consent for such a proposed assignment or transfer. The City will not unreasonably withhold its consent to such an assignment or transfer. However, in making such a determination, the City Council may consider any or all of the following:
- (a) experience of proposed assignee or transferee (including conducting an investigation of proposed assignee or transferee's service record in other communities);
  - (b) qualifications of proposed assignee or transferee;
  - (c) legal integrity of proposed assignee or transferee;
  - (d) financial ability and stability of the proposed assignee or transferee;
  - (e) the corporate connection, if any, between the Company, and proposed assignee or transferee; and
  - (f) any other aspect of the proposed assignee's or transferee's background which could affect the health, safety, and welfare of the citizenry of the City as it relates to the operation of a telecommunications network.
- 8.3 Certification of Assignee.** Before an assignment or transfer is approved by the City Council, the proposed assignee or transferee shall execute an affidavit, acknowledging that it has read, understood, and intends to abide by the applicable Franchise Agreement and all applicable laws, rules, and regulations.
- 8.4 Effect of Approval.** In the event of any approved assignment or transfer, the assignee or transferee shall assume all obligations and liabilities of Company, except an assignment or transfer shall not relieve the Company of its liabilities under the Franchise Agreement until the assignment actually takes place, unless specifically relieved by federal, or state law, or unless specifically relieved by the City Council at the time an assignment or transfer is approved.
- 8.5 Transfer Upon Revocation by City.** Company and City agree that in the case of a lawful revocation of the Franchise, at Company's request, which shall be made in its sole discretion, Company shall be given a reasonable opportunity to effectuate a transfer of its

Network to a qualified third party. City further agrees that during such a period of time, it shall authorize the company to operate pursuant to the terms of its prior Franchise; however, in no event shall such authorization exceed a period greater than six (6) months from the effective date of such revocation. If at the end of that time, Company is unsuccessful in procuring a qualified transferee or assignee of its Network which is reasonably acceptable to the City, Company and City may avail themselves of any rights they may have pursuant to federal or state law; it being further agreed that Company's continued operation of its Network during the six (6) month period shall not be deemed to be a waiver, nor an extinguishment, of any rights of either the City or the Company. Notwithstanding anything to the contrary set forth herein, neither City nor Company shall be required to violate federal or state law.

**8.6 Abandonment of Facilities by Company.** The Company, with the written consent of the City, may abandon any underground facilities in place, subject to the requirements of the City. In such an event, after receiving the written consent of the City, the abandoned Network shall become the property of the City, and the Company shall have no further responsibilities or obligations concerning those facilities.

## ARTICLE IX

### ACCEPTANCE BY THE COMPANY OF FRANCHISE

**Company Duty to Approve Franchise Agreement.** If the Company has not duly executed this Agreement prior to the City Council's adoption of the corresponding ordinance, then within sixty (60) calendar days after the effective date of the City Council's adoption of the ordinance, the Company shall execute this Agreement and file an unqualified acceptance of the ordinance in writing with the City Recorder of the City in a form approved by the City Attorney; otherwise, this Agreement and any ordinance adopted relating thereto and all rights granted hereunder shall be null and void.

## ARTICLE X

### EXTENSION OF CITY LIMITS

**Annexations.** Upon the annexation of any territory to the City, all rights hereby granted and the Franchise shall extend to the territory so annexed to the extent the City has authority. All

facilities owned, maintained, or operated by the Company located within, under, or over streets of the territory so annexed shall thereafter be subject to all terms hereof.

## ARTICLE XI

### EARLY TERMINATION OR REVOCATION OF FRANCHISE

**11.1 Grounds for Termination.** The City may terminate or revoke this Agreement and all rights and privileges herein provided for any of the following reasons:

- a. The Company fails to make timely payments of the Franchise Fee as required under Article III of this Agreement and does not correct such failure within thirty (30) business days after written notice by the City of such failure;
- b. The Company, by act or omission, materially violates a duty or obligation herein set forth in any particular within the Company's control, and with respect to which redress is not otherwise herein provided. In such event, the City, acting by or through its City Council, may determine, after hearing, that such failure is of a material nature, and, thereupon, after written notice giving the Company notice of such determination, the Company, within thirty (30) calendar days of such notice, shall commence efforts to remedy the conditions identified in the notice and shall have ninety (90) calendar days from the date it receives notice to remedy the conditions. After the expiration of such ninety-day period and failure to correct such conditions, the City may declare the Franchise forfeited, and, thereupon, the Company shall have no further rights or authority hereunder; provided, however, that any such declaration of forfeiture and termination shall be subject to judicial review as provided by law, and, provided further, that in the event such failure is of such nature that it cannot be reasonably corrected within the ninety-day time period provided above, the City shall provide additional time for the reasonable correction of such alleged failure if the reason for the non-compliance was not the intentional or negligent act or omission of the Company;
- c. The Company becomes insolvent, unable, or unwilling to pay its debts; is adjudged bankrupt; or all or part of its facilities should be sold under an instrument to secure a debt and is not redeemed by the Company within thirty (30) calendar days; or
- d. In furtherance of the Company policy or through acts or omissions done within the scope and course of employment, a director or officer of the Company knowingly engages in conduct or makes a material misrepresentation with or to the City that is fraudulent or in violation of a felony criminal statute of the State of Utah.

- 11.2 Reserved Rights.** Nothing contained herein shall be deemed to preclude the Company from pursuing any legal or equitable rights or remedies it may have to challenge the action of the City.

## ARTICLE XII

### INSURANCE AND INDEMNIFICATION

- 12.1 No City Liability.** Except as otherwise specifically provided herein, the City shall in no way be liable or responsible for any loss or damage to property, including financial or other business loss (whether direct, indirect, or consequential), or any injury to or death of any person that may occur in the construction, operation, or maintenance by the Company of its lines and appurtenances hereunder, except to the extent of the City's negligence or willful misconduct.
- 12.2 Company Indemnification of City.** The Company shall indemnify, and at the City's option defend, and hold the City, and the officers, agents and employees thereof, harmless from and against any and all claims, suits, actions, liability and judgments for damages or otherwise harmless from and against claims, demands, liens, and all liability or damage of whatsoever kind on account of, or arising from, the exercise by the Company of the rights related to this Agreement, or from the operations of the Company within the City, and shall pay the costs of defense plus reasonable attorneys' fees. Said indemnification shall include, but not be limited to, the Company's negligent acts or omissions pursuant to its use of the rights and privileges of this Agreement, including construction, operation, and maintenance of telecommunications lines and appurtenances, whether or not any such use, act, or omission complained of is authorized, allowed, or prohibited by this Agreement.
- 12.3 Notice of Indemnification.** The Company shall give prompt written notice to the City of any claim, demand, or lien that may result in a lawsuit against the City. City shall give written notice to Company promptly after City learns of the existence of Claim for which City seeks indemnification; provided, however, the failure to give such notice shall not affect the rights of City, except and only to the extent the Company is prejudiced by such failure. The Company shall have the right to employ counsel reasonably acceptable to the City to defend against any such Claim. If such counsel will represent both the Company and City, there may be no conflict with such counsel's representation of both. Company must acknowledge in writing its obligation to indemnify the City for the entire amount of any Loss relating thereto. No settlement of a Claim may seek to impose any liability or obligation upon the City other than for money damages. If Company fails to acknowledge in writing its obligation to defend against or settle such Claim within fifteen (15) days after receiving notice thereof from the City (or such shorter time specified in the notice as the circumstances of the matter may dictate), the City shall be free to

dispose of the matter, at the expense of Company (but only if indemnification is adjudged to be proper), in any way in which the City deems to be in its best interest. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend, or hold the City harmless to the extent any claim, demand, or lien arises out of or in connection with a breach by the City of any obligation under this Agreement or any negligent or otherwise tortious act or failure to act of the City or any of its officers or employees or agents.

- 12.4 Insurance.** Company shall file a certificate of insurance with the City, and at all times thereafter maintain in full force and effect at its sole expense, an acceptable policy or policies which have one of the three highest or best ratings from the Alfred M. Best Company of liability insurance, including comprehensive general liability insurance. The policy or policies shall name as additional insured the City, and in their capacity as such, its officers, agents and employees. Policies of insurance shall be in the minimum single limit amount of two million dollars (\$2,000,000) per occurrence. The insurer or insurers shall be authorized to write the required insurance in the State of Utah. The policy or policies of insurance shall be maintained by the Company in full force and effect during the entire term of the Franchise. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of the Company or for other reasons, except after thirty (30) calendar days advance written notice mailed by the insurer to the City, and that such notice shall be transmitted postage prepaid.
- 12.5 City's Right to Intervene.** In any suit in which the City is named as a party and seeks indemnification from the Company, and in which the City in its own reasonable discretion believes that a conflict of interest with Company exists, the City shall have the right to provide its own defense in connection with the same. In such event, in addition to being reimbursed for any such judgment that may be rendered against the City which is subject to indemnification hereunder, together with all court costs incurred therein, the Company shall reimburse the City for all reasonable attorney's fees, including those employed by the City in such case or cases, as well as all reasonable expenses incurred by the City by reason of undertaking the defense of such suit or suits, whether such suit or suits are successfully defended, settled, compromised, or fully adjudicated against the City.
- 12.6 No Creation of a Private Cause of Action.** The provisions set forth herein are not intended to create liability for the benefit of third parties but is solely for the benefit of the Company and the City. In the event any claim is made against the City that falls under these indemnity provisions and a Court of competent jurisdiction should adjudge, by final decree, that the City is liable therefore, the Company shall indemnify and hold the City harmless of and from any such judgment or liability, including any court costs, expenses, and attorney fees incurred by the City in defense thereof. Nothing herein shall be deemed to prevent the parties indemnified and held harmless herein from participating in the defense of any litigation by their own counsel at their own expense. Such

participation shall not under any circumstances relieve the Company from its duty of defense against liability or paying any judgment entered against such party.

- 12.7 Performance Bonds and Other Surety.** To ensure completion of the Company's performance of its obligations hereunder, Company shall furnish to the City a performance bond, that is substantially similar in form to the surety guarantee bond that is attached hereto as Exhibit 1, from an insurer or guarantor that is acceptable to the City.

## **ARTICLE XIII**

### **REMEDIES**

- 13.1 Duty to Perform.** The Company and the City agree to take all reasonable and necessary actions to assure that the terms of this Agreement are performed.
- 13.2 Remedies at Law.** In the event the Company or the City fail to fulfill any of their respective obligations under this Agreement the City or the Company, whichever the case may be, shall have a breach of contract claim and remedy against the other in addition to any other remedy provided by law, provided that no remedy that would have the effect of amending the specific provisions of this Agreement shall become effective without such action that would be necessary to formally amend the Agreement.
- 13.3 Third Party Beneficiaries.** The benefits and protection provided by this Agreement shall inure solely to the benefit of the City and the Company. This Agreement shall not be deemed to create any right in any person who is not a party and shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party (other than the permitted successors and assigns of a party hereto).
- 13.4 Force Majeure.** The Company shall not be held in default or noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control, but the Company shall not be relieved of any of its obligations to comply promptly with any provision of this Franchise contract by reason of any failure of the City to enforce prompt compliance. Nothing herein shall be construed as to imply that City waives any right, payment, or performance based on future legislation where said legislation impairs this contract in violation of the United States or Utah Constitutions.

## ARTICLE XIV

### NOTICES

**City and Company Designees and Addresses.** Unless otherwise specified herein, all notices between the City and the Company pursuant to or concerning this Agreement or the Franchise shall be delivered to (or to such other offices as the City or Company may designate by written notice to the other Party):

City:

Provo City Corporation  
445 West Center Street  
Provo, UT 84601  
Attention: Finance Department

Company:

FIF Utah, LLC  
14015 S Minuteman Dr  
Draper Utah 84020

**With copies to (which shall not constitute notice):**

Provo City Attorney's Office  
445 West Center Street  
Provo, UT 84601  
Attention: City Attorney

**With a copy to (which copy will not constitute notice):**

AND

Provo City Energy Department  
PO Box 658  
Provo, UT 84603  
Attention: Energy Department Director

## ARTICLE XV

### CHANGING CONDITIONS

**Meet to Confer.** The Company and the City recognize that many aspects of the telecommunications business are currently the subject of discussion, examination, and inquiry by different segments of the industry and affected regulatory authorities, and that these activities may ultimately result in fundamental changes in the way the Company conducts its business. In recognition of the present state of uncertainty respecting these matters, the Company and the

City each agree, on request of the other during the term of this Agreement, to meet with the other and discuss in good faith whether it would be appropriate, in view of developments of the kind referred to above during the term of this Agreement, to amend this Agreement or enter into separate, mutually satisfactory arrangements to effect a proper accommodation of any such developments.

## ARTICLE XVI

### AMENDMENT AND GENERAL PROVISIONS

- 16.1 Duty to Negotiate.** At any time during the term of this Agreement, the City, through the City Council, or the Company may propose amendments to this Agreement by giving thirty (30) calendar days written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, shall negotiate, within a reasonable time, in good faith in an effort to agree upon mutually satisfactory amendment(s).
- 16.2 Written Approval to Amend Agreement Required.** No amendment or amendments to this Agreement shall be effective until mutually agreed upon by the City and the Company, and an ordinance or resolution approving such amendments is approved by the City Council.
- 16.3 Entire Agreement.** This Agreement and all attachments hereto represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof, and can be amended, supplemented, modified, or changed only by the written agreement of the parties, including the formal approval of the City Council.
- 16.4 Governing Law.** This Agreement and any action related to this Agreement will be governed the laws of the State of Utah.
- 16.5 Joint Drafting.** The Parties acknowledge that this Agreement has been drafted jointly by the Parties and agree that this Agreement will not be construed against either Party as a result of any role such Party may have had in the drafting process.

## ARTICLE XVII

### SEVERABILITY

- 17.1 Conditions.** If any section, sentence, paragraph, term, or provision of this Agreement or the Ordinance is for any reason determined to be or rendered illegal, invalid, or superseded by other lawful authority including any state or federal, legislative, regulatory, or administrative authority having jurisdiction thereof or determined to be unconstitutional, illegal, or invalid by any court of competent jurisdiction, such portion

shall be deemed a separate, distinct, and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term, or provision hereof or thereof, all of which shall remain in full force and effect for the term of this Agreement and the Ordinance or any renewal or renewals thereof, except for Article III hereof. The parties do not waive their right to assert that the obligations contained herein, including those obligations contained in Article III arise as a matter of contract and are not otherwise conditioned.

- 17.2 Conflicts.** In the event of a conflict between any provision of this Agreement and the Ordinance, the provisions of the Ordinance in effect at the time the Agreement is entered into shall control.
- 17.3 Fee Article Non-Severable.** Article III hereof is essential to the adoption of this Agreement, and should it be challenged by the Company or determined to be illegal, invalid, unconstitutional, or superseded, in whole or in part, the entire Agreement and the Franchise shall be voided and terminated, subject to the following provisions of this Article. In the event of a judicial, regulatory, or administrative determination that Article III is illegal, invalid, unconstitutional, or superseded, such termination shall be effective as of the date of a final appealable order, unless otherwise agreed upon by the City and the Company. In the event of any legislative action that renders Article III unconstitutional, illegal, invalid, or superseded, such termination shall be effective as of the effective date of such legislative action.
- 17.4 Waiver of Non-Severability.** Notwithstanding the foregoing, if the City stipulates in writing to judicial, administrative, or regulatory action that seeks a determination that Article III is invalid, illegal, superseded, or unconstitutional, then a determination that Article III is invalid, illegal, unconstitutional, or superseded shall have no effect on the validity or effectiveness of any other section, sentence, paragraph, term, or provision of this Agreement, which shall remain in full force and effect.
- 17.5 Lease Terms Upon Termination.** In the event this Agreement is terminated pursuant to Section 17.3 hereof, the City grants to the Company a lease according to the same terms and conditions as set forth in this Agreement. Accordingly, the Company shall pay, as fair market rental value, the same amounts, at the same times, required for the payment of the Franchise Fee pursuant to Article III hereof and be bound by all other terms and conditions contained herein; provided, however, that in no event shall the Company be obligated to pay a higher percentage of Gross Revenues derived from the sale of telecommunications services within the City than is paid by other telecommunication companies serving within the City.

IN WITNESS WHEREOF, this Franchise Agreement is executed in duplicate originals as of the date first set forth above, to become effective on that date.



# PROVO MUNICIPAL COUNCIL STAFF REPORT



**Submitter:** SWILMOTH  
**Department:** Development Services  
**Requested Meeting Date:** 04-18-2023

**SUBJECT:** An ordinance amending Provo City code to prohibit the issuance of administrative approvals for noncompliant properties or businesses. (PLOTA20230048)

**RECOMMENDATION:** To be heard at the April 18, 2023 Work & Council Meeting. Please see supporting documents.

**BACKGROUND:** Provo City Development Services is proposing amendments to Section 17.03.100 of the Provo City Code. The proposed amendments have been developed through working with the City Administration and Provo Legal Department; and would be applicable citywide.

The proposed amendments add “administrative approvals” to the title and goes on to improve and clarify the language to allow the City to withhold approvals for properties that have been found to have a current code violation.

**FISCAL IMPACT:**

**PRESENTER’S NAME:** Aaron Ardmore (801) 852-6404 aardmore@provo.org

**REQUESTED DURATION OF PRESENTATION:** 10 min

**COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:**

**CITYVIEW OR ISSUE FILE NUMBER:** PLOTA20230048

1 ORDINANCE 2023-.

2  
3 AN ORDINANCE AMENDING PROVO CITY CODE TO PROHIBIT THE  
4 ISSUANCE OF ADMINISTRATIVE APPROVALS FOR NONCOMPLIANT  
5 PROPERTIES OR BUSINESSES. (PLOTA20230048)  
6

7 WHEREAS, it is proposed that Provo City Code Chapter 17.03 (Administrative  
8 Abatement) be amended to address the issuance of municipal permits and administrative  
9 approvals for properties, businesses, and other applications where there is a current violation of  
10 city ordinances; and

11  
12 WHEREAS, Provo City Code Section 17.03.100 currently prohibits the issuance of  
13 various licenses and permits in situations where there is a violation of City ordinances; and  
14

15 WHEREAS, it is proposed that Provo City Code Section 17.03.100 be amended to clarify  
16 and expand the prohibition on the issuance of licenses and permits, and require that the City also  
17 not process any requests or applications, proceed with any review or approval process, or grant  
18 an approval of any type in relation to a property, business, use, or structure where a notice of  
19 violation has been issued; and  
20

21 WHEREAS, on March 22, 2023, the Planning Commission held a duly noticed public  
22 hearing to consider the proposed amendment, and after such meeting, the Planning Commission  
23 recommended approval to the Municipal Council by a vote of 5:0; and  
24

25 WHEREAS, on April 18, 2023, the Municipal Council met to ascertain the facts  
26 regarding this matter and receive public comment, which facts and comments are found in the  
27 public record of the Council's consideration; and  
28

29 WHEREAS, after considering the facts presented to the Municipal Council, the Council  
30 finds that (i) Provo City Code Section 17.03.100 should be amended as set forth below in order  
31 to prohibit the issuance of certain municipal permits and administrative approvals, and (ii) such  
32 action furthers the health, safety, and general welfare of the citizens of Provo City.  
33

34 NOW, THEREFORE, be it ordained by the Municipal Council of Provo City, Utah, as  
35 follows:  
36

37 PART I:  
38

39 Provo City Code Section 17.03.100 is hereby amended as follows:  
40

41 **17.03.100 Prohibition Against Issuance of Municipal Permits and Administrative Approvals.**  
42

43 The City shall withhold business licenses; permits for kennels; ~~any~~ permits or approvals for any  
44 alteration, repair, or construction pertaining to any existing or new structures or signs on the property;  
45 ~~or~~ and any permits or approvals pertaining to the use and development of the real property or the  
46 structure where a violation is located. Where a notice of violation has been issued, the City shall not  
47 process any requests or applications, proceed with any review or approval process, or grant an approval

48 [of any type in relation to the property, business, use, or structure with which the violation is associated.](#)  
49 The City shall withhold such permits [and approvals](#) until a notice of compliance has been issued by the  
50 Director. The City shall not withhold permits [or approvals when](#) necessary to obtain a notice of  
51 compliance or to correct serious health and safety violations.

52

53 PART II:

54

55 A. If a provision of this ordinance conflicts with a provision of a previously adopted  
56 ordinance, this ordinance shall prevail.

57

58 B. This ordinance and its various sections, clauses and paragraphs are hereby  
59 declared to be severable. If any part, sentence, clause or phrase is adjudged to be  
60 unconstitutional or invalid, the remainder of the ordinance shall not be affected  
61 thereby.

62

63 C. The Municipal Council hereby directs that the official copy of the Provo City  
64 Code be updated to reflect the provisions enacted by this ordinance.

65

66 D. This ordinance shall take effect immediately after it has been posted or published  
67 in accordance with Utah Code 10-3-711, presented to the Mayor in accordance  
68 with Utah Code 10-3b-204, and recorded in accordance with Utah Code 10-3-713.

69

70 END OF ORDINANCE.



# Planning Commission Hearing Staff Report Hearing Date: March 22, 2023

**\*ITEM #2** Provo City Development PLOTA20230048 Services requests an Ordinance Text Amendment to Section 17.03.100 (Prohibition Against Issuance of Municipal Permits) to add language for administrative approvals. Citywide Application. Aaron Ardmore (801) 852-6404 aardmore@provo.org

**Applicant:** Provo City Development Services

**Staff Coordinator:** Aaron Ardmore

**Relevant History:** Provo City Legal has been working with Development Services staff and Administrative staff on developing stronger regulatory language for properties in violation of City Codes.

**Summary of Key Issues:**

Section 17.03.100 comprises the authority of the City to withhold permits, licenses, and other approvals for properties that have been found to be in violation of City Codes.

Current code only relates to “municipal permits” pertaining to the use and development on property in violation.

The proposal adds “administrative approvals” to the list of items the City may withhold for such properties.

The language has also been amended to provide more clarity on the process of withholding a city approval or permit.

**ALTERNATIVE ACTIONS**

1. **Continue** to a future date to obtain additional information or to further consider information presented. *The next available meeting date is April 12, 2023, at 6:00 P.M.*

2. **Recommend Denial** of the requested Ordinance Text Amendment. *This action would not be consistent with the recommendations of the Staff Report. The Planning Commission should state new findings.*

**Staff Recommendation:** That the Planning Commission recommend approval of the proposed text amendments to the City Council.

## **OVERVIEW**

Provo City Development Services is proposing amendments to Section 17.03.100 of the Provo City Code. The proposed amendments have been developed through working with the City Administration and Provo Legal Department; and would be applicable citywide.

The proposed amendments add “administrative approvals” to the title and goes on to improve and clarify the language to allow the City to withhold approvals for properties that have been found to have a current code violation.

## **FINDINGS OF FACT**

The text amendments being proposed are to help clarify standards for approvals on land use and development applications for the public and City Staff to encourage resolution for those properties that have been found to be in violation of City Code. As with all text amendments, the City must present findings related to Section 14.020.020(2) criteria to determine consistency with the General Plan. Section 14.020.020(2) establishes criteria for the amendments to the zoning title as follows:

**(Staff response in bold type)**

(a) Public purpose for the amendment in question.

**Staff response: To clarify regulations and give the City staff authority to withhold approvals as a way to resolve code violations on properties within Provo City.**

(b) Confirmation that the public purpose is best served by the amendment in question.

**Staff response: The language proposed has been crafted by Provo City Legal and will best serve the public purpose stated above.**

(c) Compatibility of the proposed amendment with General Plan policies, goals, and objectives.

**Staff response: Chapter Three of the General Plan identifies goals in land use. Specifically, this amendment relates to goal 3a, to “simplify zoning and codes to be more user friendly” and also helps to “further establish Provo as an attractive, healthy, and high-functioning city” as staff finds ways to resolve violations on private properties.**

(d) Consistency of the proposed amendment with the General Plan’s “timing and sequencing” provisions on changes of use, insofar as they are articulated.

**Staff response: There are no timing and sequencing issues related to this request.**

(e) Potential of the proposed amendment to hinder or obstruct attainment of the General Plan's articulated policies.

**Staff response: The proposed amendments will not hinder or obstruct attainment of any of the General Plan policies.**

(f) Adverse impacts on adjacent land owners.

**Staff response: There should be no adverse impacts on land owners as a result of these amendments, but land owners should see improved enforcement of violations.**

(g) Verification of correctness in the original zoning or General Plan for the area in question.

**Staff response: Not applicable.**

(h) In cases where a conflict arises between the General Plan Map and General Plan Policies, precedence shall be given to the Plan Policies.

**Staff response: No such conflict exists.**

## **CONCLUSIONS**

Staff have brought forward these amendments to strengthen and clarify codes relating to approving additional permits or licenses to properties in violation. Staff hope that the proposed enhancements to this section will enable staff to help rectify issues in a more efficient manner.

## **ATTACHMENTS**

1. Proposed Amendments

## ATTACHMENT 1 – PROPOSED AMENDMENTS

### 17.03.100 Prohibition Against Issuance of Municipal Permits and Administrative Approvals.

The City shall withhold business licenses; permits for kennels; ~~any~~ or approvals for any alteration, repair, or construction pertaining to any existing or new structures or signs on the property; ~~or and~~ any permits or approvals pertaining to the use and development of the real property or the structure where a violation is located. Where a notice of violation has been issued, the City shall not process any requests or applications, proceed with any review or approval process, or grant an approval of any type in relation to the property, business, use, or structure with which the violation is associated. The City shall withhold such permits and approvals until a notice of compliance has been issued by the Director. The City shall not withhold permits or approvals when necessary to obtain a notice of compliance or to correct serious health and safety violations.

Provo City Planning Commission

# Report of Action

March 22, 2023

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\*ITEM 2 Provo City Development Services requests an Ordinance Text Amendment to Section 17.03.100 (Prohibition Against Issuance of Municipal Permits) to add language for administrative approvals. Citywide application. Aaron Ardmore (801) 852-6404 aardmore@provo.org PLOTA20230048

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The following action was taken by the Planning Commission on the above described item at its regular meeting of March 22, 2023:

## RECOMMENDED APPROVAL

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

Motion By: Robert Knudsen

Second By: Jeff Whitlock

Votes in Favor of Motion: Robert Knudsen, Jeff Whitlock, Lisa Jensen, Raleen Wahlin, Melissa Kendall

Lisa Jensen was present as Chair.

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

### TEXT AMENDMENT

The text of the proposed amendment is attached as Exhibit A.

### STAFF PRESENTATION

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

### CITY DEPARTMENTAL ISSUES

- The Coordinator Review Committee (CRC) has reviewed the application and given their approval.

### NEIGHBORHOOD MEETING DATE

- City-wide application; all Neighborhood Chairs received notification.

### NEIGHBORHOOD AND PUBLIC COMMENT

- This item was City-wide or affected multiple neighborhoods.

### CONCERNS RAISED BY PUBLIC

Any comments received prior to completion of the Staff Report are addressed in the Staff Report to the Planning Commission. Key issues raised in written comments received subsequent to the Staff Report or public comment during the public hearing included the following: None

**PLANNING COMMISSION DISCUSSION**

Key points discussed by the Planning Commission included the following: The Planning Commission discussed the proposal, stating it was logical and will be helpful for staff to better enforce city codes. Lisa Jensen also had staff provide an example of how the language would be applied.



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Planning Commission Chair



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Director of Development Services

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

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

Administrative decisions of the Planning Commission (items not marked with an asterisk) **may be appealed** by submitting an application/notice of appeal, with the required application and noticing fees to Development Services, 445 W Center Street, Provo, Utah, **within fourteen (14) calendar days of the Planning Commission's decision** (Provo City office hours are Monday through Thursday, 7:00 a.m. to 6:00 p.m.).

BUILDING PERMITS MUST BE OBTAINED BEFORE CONSTRUCTION BEGINS

EXHIBIT A

**17.03.100 Prohibition Against Issuance of Municipal Permits and Administrative Approvals.**

The City shall withhold business licenses; permits for kennels; ~~any~~ permits or approvals for any alteration, repair, or construction pertaining to any existing or new structures or signs on the property; ~~or~~ and any permits or approvals pertaining to the use and development of the real property or the structure where a violation is located. Where a notice of violation has been issued, the City shall not process any requests or applications, proceed with any review or approval process, or grant an approval of any type in relation to the property, business, use, or structure with which the violation is associated. The City shall withhold such permits and approvals until a notice of compliance has been issued by the Director. The City shall not withhold permits or approvals when necessary to obtain a notice of compliance or to correct serious health and safety violations.

## ITEM 2\*

Provo City Development Services requests an Ordinance Text Amendment to Section 17.03.100 (Prohibition Against Issuance of Municipal Permits) to add language for administrative approvals.

***Citywide Application***

PLOTA20230048

# Proposal



## **17.03.100 Prohibition Against Issuance of Municipal Permits and Administrative Approvals.**

The City shall withhold business licenses; permits for kennels; ~~any~~ permits or approvals for any alteration, repair, or construction pertaining to any existing or new structures or signs on the property; ~~or~~ and any permits or approvals pertaining to the use and development of the real property or the structure where a violation is located. Where a notice of violation has been issued, the City shall not process any requests or applications, proceed with any review or approval process, or grant an approval of any type in relation to the property, business, use, or structure with which the violation is associated. The City shall withhold such permits and approvals until a notice of compliance has been issued by the Director. The City shall not withhold permits or approvals when necessary to obtain a notice of compliance or to correct serious health and safety violations.



# PROVO MUNICIPAL COUNCIL STAFF REPORT



**Submitter:** SWILMOTH  
**Department:** Development Services  
**Requested Meeting Date:** 04-18-2023

**SUBJECT:** An ordinance approving the petition to annex approximately 106 acres of property located at approximately 225 S 950 E. East Bay Neighborhood PLANEX20220317

**RECOMMENDATION:** To be heard at the April 18, 2023 Work & Council Meeting. Please see supporting documents.

**BACKGROUND:** This item is an annexation request for property located at 2800 S 750 E. The total acreage is approximately 106.19 contiguous acres. The subject area is located just south of the Timpanogos Golf Club. Interstate 15 lies immediately to the west and 950 East lies immediately to the east. The Pacific States industrial property lies immediately east of 950 East. Springville City lies immediately to the south of the subject property. The property lies approximately one-half mile north of 1400 North in Springville City.

**FISCAL IMPACT:**

**PRESENTER'S NAME:** Brandon Larson, (801) 852-6408, jblarsen@provo.org

**REQUESTED DURATION OF PRESENTATION:** 10 min

**COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:**

**CITYVIEW OR ISSUE FILE NUMBER:** PLANEX20220317



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to be unconstitutional or invalid, the remainder of the ordinance shall not be affected thereby.

- C. This ordinance shall take effect immediately after it has been posted or published in accordance with Utah Code 10-3-711, presented to the Mayor in accordance with Utah Code 10-3b-204, and recorded in accordance with Utah Code 10-3-713.

END OF ORDINANCE.

# Exhibit A



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•  
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0 0.05 0.1 0.2 mi

Author: Provo City      Date: 3/14/2023

This map is for graphical representation only and not for construction or defining feature locations.

**\*ITEM 1** Tara Riddle requests annexation of approximately 106 acres located at approximately 2800 S 750 E. The subject property lies adjacent to the East Bay Neighborhood. Brandon Larsen (801) 852-6408 PLANEX20220317

## **OVERVIEW**

This item is an annexation request for property located at 2800 S 750 E. The total acreage is approximately 106.19 contiguous acres. The subject area is located just south of the Timpanogos Golf Club. Interstate 15 lies immediately to the west and 950 East lies immediately to the east. The Pacific States industrial property lies immediately east of 950 East. Springville City lies immediately to the south of the subject property. The property lies approximately one-half mile north of 1400 North in Springville City.

The proposed annexation is located within “Area Two” on the city’s Annexation Policy Map. A portion of Appendix C: Annexation Map and Policies sets forth the following regarding “Area Two”:

*“Area Two is bounded by I-15 on the west, existing Provo City limits on the north and east, and the Provo/Springville City Boundary Agreement Line on the south. The General Plan Map calls for an Industrial designation for land between 950 East on the west and Tracy Hall Parkway on the east, and between the Provo/Springville City Boundary Agreement Line on the south and to approximately Lakeview Parkway on the north. A Parks, Recreation, and Open Space designation is prescribed for the area lying between I-15 on the west and 950 East on east, and the Provo/Springville City Boundary Agreement Line on the south and to the southern boundary of the Provo Bay Addition to the north. Provo City has electrical lines in this area and has extended sewer lines as far south as the Timpanogos Golf Course. Water and sewer line extensions would be required to continue annexation south of the Timpanogos Golf Course and east of the railroad tracks.”*

§14.02.080 provides the following regarding the zoning of annexed property: *“any property in the process of annexation, or annexed to or consolidated to Provo City subsequent to the effective date of this Section, shall be deemed to be classified in accordance with the lowest density zone allowed by the land use designation set forth for the subject property in the Provo City General Plan.”*

The subject land has a *Parks, Recreation, and Open Space* land use designation, as per the General Plan Map. The lowest density zone allowed per this land use designation is the *Open Space, Park, and Recreation (OSPR)* Zone. This OSPR Zone is a desirable zone for this property considering the subject land generally appears to be vacant land, inundated with water, and habit for waterfowl.

The Coordinator’s Review Committee reviewed the subject annexation and had no issues with it. There are no development plans associated with this application. The city desires to bring this land into its boundaries to better patrol it. There appear to be no plans to extend utilities to the subject property.

## **FINDINGS OF FACT**

- The subject property is within “Area Two” of the Provo City Annexation Policy Map.
- The majority of the subject land is designated as “Parks, Recreation, and Open Space” on the Provo City General Plan Map.

- The Open Space, Parks, and Recreation Zone is the desired zone for this property, which is in harmony with the policies of the General Plan.
- Utilities are not proposed to be extended to this property through this proposal.

### **CONCLUSIONS**

In its review and evaluation of this request, Development Services Staff believes the proposed annexation is substantially consistent with the adopted Annexation Plan, the General Plan Map, and will be a benefit to Provo City.

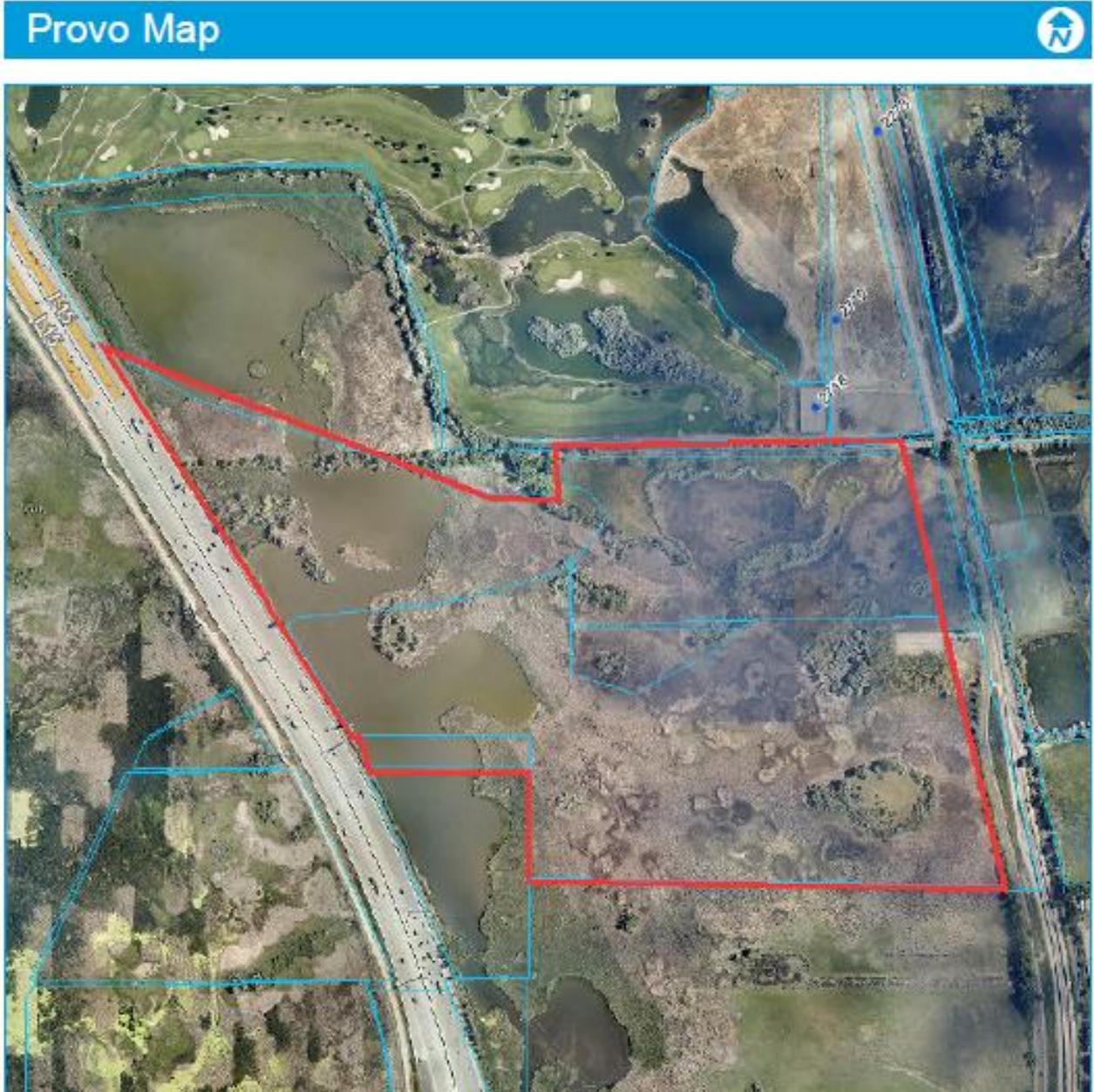
### **RECOMMENDATION**

***Recommend Approval*** to the Municipal Council of the proposed Scotty Dog Annexation of approximately 106.19 acres, located at approximately 2800 S 750 E.

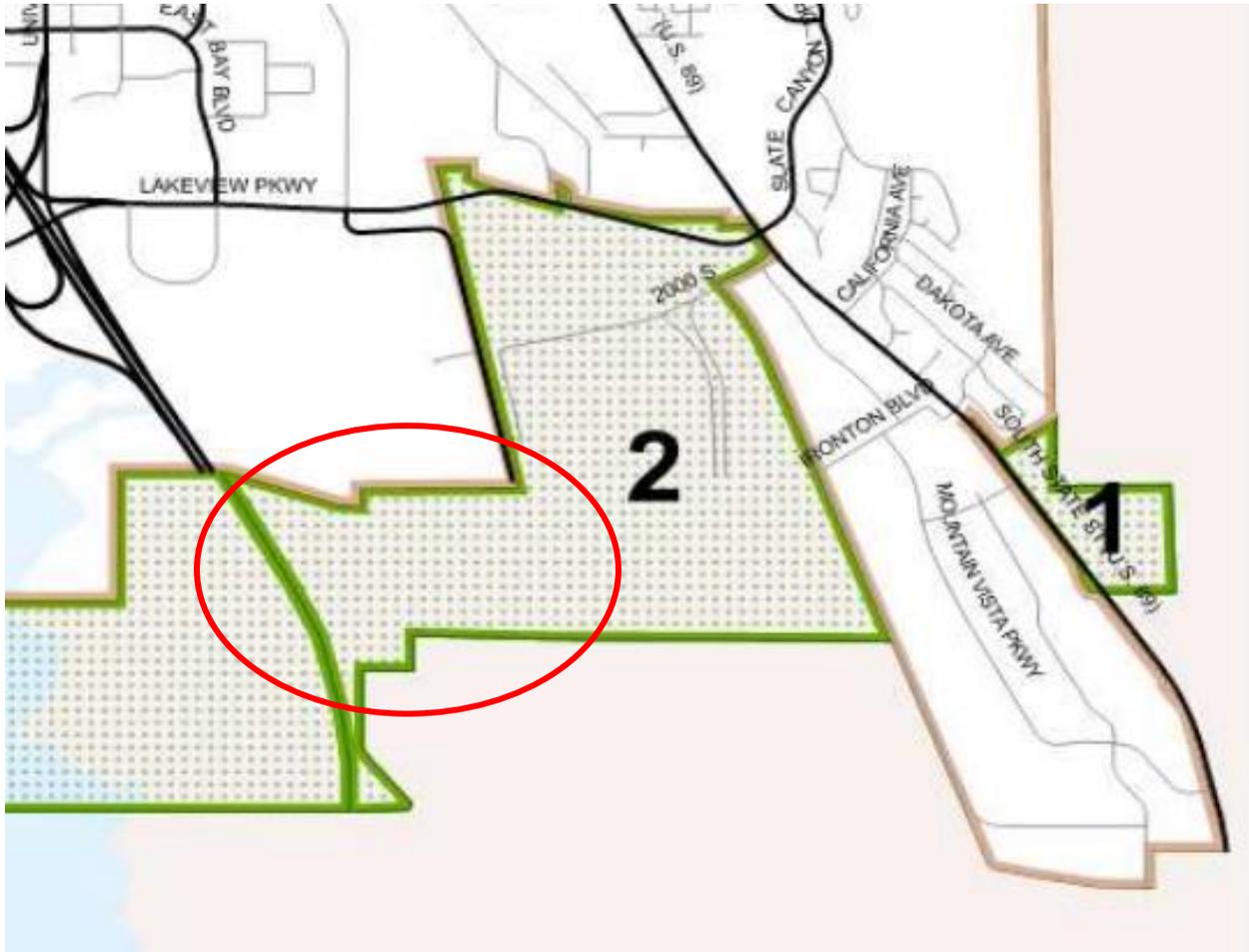
### **ATTACHMENTS**

1. Location Map
2. Annexation Policy Map
3. Annexation Plat Map
4. General Plan Map

**Attachment 1: Location Map**



**Attachment 2: Annexation Policy Map**





**Attachment 4: General Plan Map**



Provo City Planning Commission

# Report of Action

March 22, 2023

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\*ITEM 1 Tara Riddle requests annexation of approximately 106 acres located at approximately 2800 S 750 E. The subject property lies adjacent to the East Bay Neighborhood. Brandon Larsen (801) 852-6408  
PLANEX20220317

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The following action was taken by the Planning Commission on the above-described item at its regular meeting of March 22, 2023:

## RECOMMENDED APPROVAL

On a vote of 5:0, the Planning Commission recommended that the Municipal Council approve the above-noted application.

Motion By: Robert Knudsen

Second By: Raleen Wahlin

Votes in Favor of Motion: Lisa Jensen, Melissa Kendall, Robert Knudsen, Jeff Whitlock, and Raleen Wahlin.

Lisa Jensen was present as Chair.

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

### **LEGAL DESCRIPTION FOR PROPERTY TO BE ANNEXED**

- The property to be annexed is described in the attached Exhibit A.

### **STAFF PRESENTATION**

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

### **CITY DEPARTMENTAL ISSUES**

- No city department issues were raised.

### **NEIGHBORHOOD AND PUBLIC COMMENT**

- The District Chair was not present or did not address the Planning Commission during the hearing.

### **CONCERNS RAISED BY PUBLIC**

- No members of the public commented or raised concerns at this meeting.

### **APPLICANT RESPONSE**

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

- The applicant was not present.

### **PLANNING COMMISSION DISCUSSION**

Key points discussed by the Planning Commission included the following:

- Commissioner Kendall asked staff what the tax impact to the citizens would be for the proposed annexation. Staff stated any tax impact would be minimal considering the size of the annexation area compared to the rest of the city.
- Commissioner Kendall questioned why not bring in the rest of Annexation Policy Area #2 with the proposed land (staff had shown a picture of Annexation Policy Area #2 to the Planning Commission). Staff explained that some or all the rest of Policy Area #2 may be proposed for annexation in the near future. However, there may be environmental/industrial concerns with some of this land, so the city will want to be judicious in annexing this area.
- Commissioner Knudsen wanted to know what plans the city has for this property if it is annexed. Staff explained the city has no development plans for the subject property.
- The Planning Commission acted to recommend approval of the proposed annexation to the City Council. The vote was 5-0.



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Planning Commission Chair



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Director of Development Services

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

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

Administrative decisions of the Planning Commission (items not marked with an asterisk) **may be appealed** by submitting an application/notice of appeal, with the required application and noticing fees to the Development Services Department, 445 W Center Street, Provo, Utah, **within fourteen (14) calendar days of the Planning Commission's decision** (Provo City office hours are Monday through Thursday, 7:00 a.m. to 6:00 p.m.).

BUILDING PERMITS MUST BE OBTAINED BEFORE CONSTRUCTION BEGINS

EXHIBIT A

BEGINNING AT A POINT LOCATED S89°22'23"W ALONG THE SECTION LINE 1022.78 FEET AND SOUTH 1314.42 FEET FROM THE NORTHEAST QUARTER CORNER) OF SECTION 19, TOWNSHIP 7 SOUTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN; THENCE S13°15'29"E 39.37 FEET; THENCE S13°15'56"E 696.40 FEET; THENCE S13°11'33"E 1154.92 FEET; THENCE N89°00'00"W 1992.88 FEET; THENCE N00°00'01"W 462.67 FEET; THENCE N90°00'00"W 670.91 FEET; THENCE N18°15'00"W 139.15 FEET; THENCE N89°59'04"W 17.00 FEET; THENCE N31°34'29"W 543.79 FEET; THENCE S58°12'19"W 33.04 FEET; THENCE N31°46'29"W 1129.32 FEET; THENCE N89°59'57"E 88.92 FEET; THENCE S72°16'19"E 1324.06 FEET; THENCE S85°13'57"E 248.87 FEET; THENCE N00°32'04"W 214.07 FEET; THENCE N89°28'11"E 1603.10 FEET TO THE POINT OF BEGINNING.

AREA: 4,625,542 SQ. FT. OR 106.19 ACRES

## ITEM 1\*

Tara Riddle requests annexation of approximately 106 acres located at approximately 2800 S 750 E. The subject property lies adjacent to the East Bay Neighborhood.

***Citywide Application***

**PLANEX20220317**

# Vicinity

## Scotty Dog Annexation



### Lines

■ Override 1

□ Parcel



0 0.125 0.25 0.5 mi

Author: Provo City

Date: 2/14/2023

This map is for graphical representation only and not for construction or defining feature locations.

# Site

## Scotty Dog Annexation



### Lines

■ Override 1

□ Parcel

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0 0.05 0.1 0.2 mi

Author: Provo City

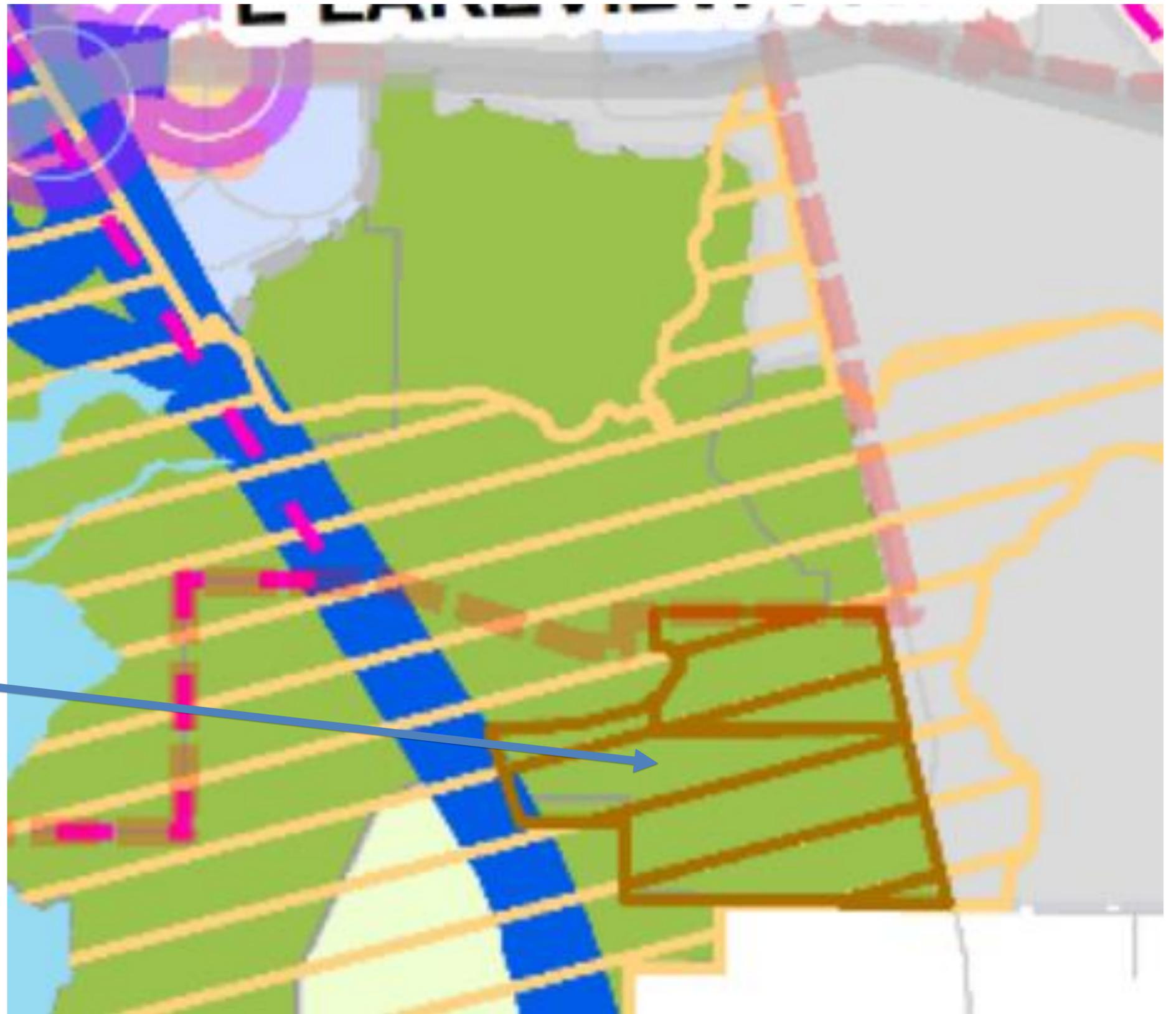
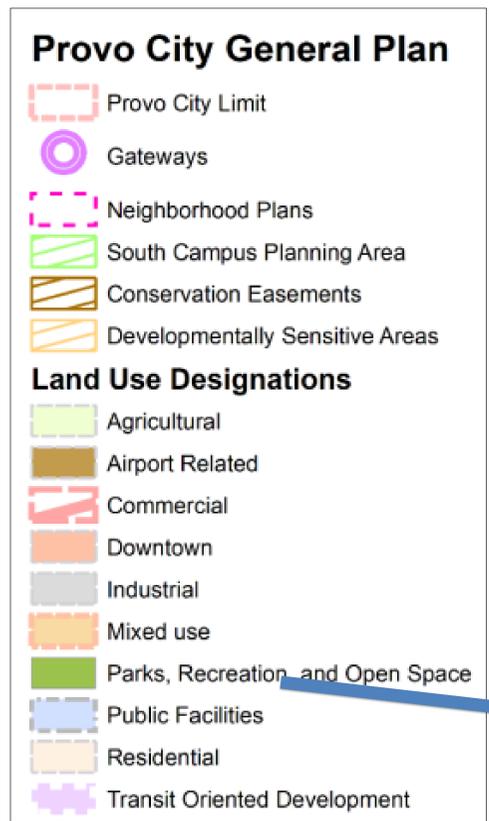
Date: 2/14/2023

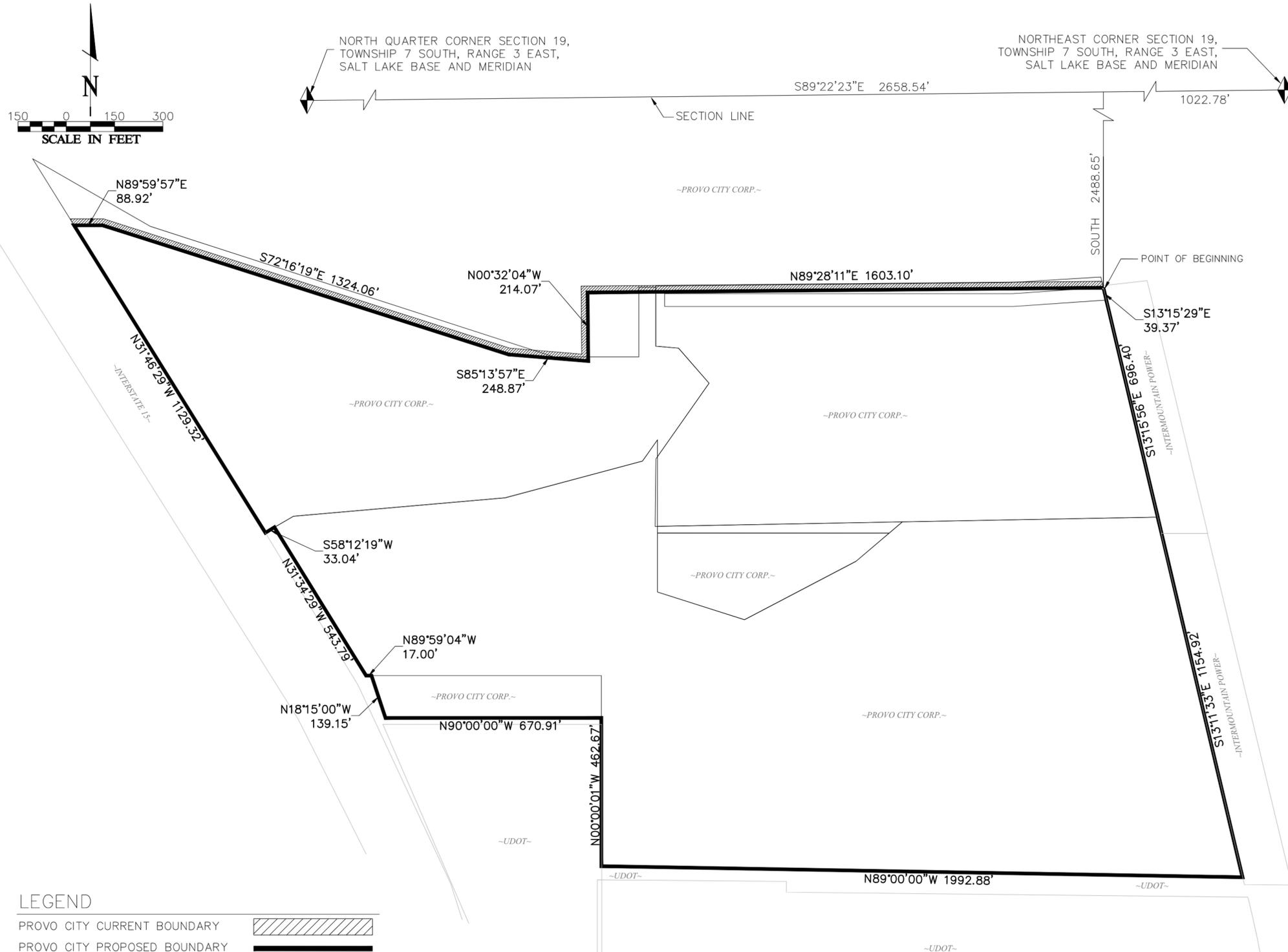
This map is for graphical representation only and not for construction or defining feature locations.

# Annexation Policy Map



# General Plan Map





**LEGEND**

PROVO CITY CURRENT BOUNDARY	
PROVO CITY PROPOSED BOUNDARY	
PROVO CITY PARCELS INCLUDED	
ADJACENT PARCELS	

PREPARED BY:  
 CHAD HILL, PLS  
 PROVO CITY  
 1377 S. 350 E  
 PROVO, UTAH 84606  
 (801) 852-6746

**SURVEYOR'S CERTIFICATE**

I, CHAD J. HILL, DO HEREBY CERTIFY THAT THIS IS A TRUE AND ACCURATE MAP OF THE TRACT OF LAND TO BE ANNEXED TO PROVO CITY, UTAH COUNTY, UTAH.

**BOUNDARY DESCRIPTION**

BEGINNING AT A POINT LOCATED S89°22'23"W ALONG THE SECTION LINE 1022.78 FEET AND SOUTH 1314.42 FEET FROM THE NORTHEAST QUARTER CORNER) OF SECTION 19, TOWNSHIP 7 SOUTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN; THENCE S13°15'29"E 39.37 FEET; THENCE S13°15'56"E 696.40 FEET; THENCE S13°11'33"E 1154.92 FEET; THENCE N89°00'00"W 1992.88 FEET; THENCE N00°00'01"W 462.67 FEET; THENCE N90°00'00"W 670.91 FEET; THENCE N18°15'00"W 139.15 FEET; THENCE N89°59'04"W 17.00 FEET; THENCE N31°34'29"W 543.79 FEET; THENCE S58°12'19"W 33.04 FEET; THENCE N31°46'29"W 1129.32 FEET; THENCE N89°59'57"E 88.92 FEET; THENCE S72°16'19"E 1324.06 FEET; THENCE S85°13'57"E 248.87 FEET; THENCE N00°32'04"W 214.07 FEET; THENCE N89°28'11"E 1603.10 FEET; THENCE S13°15'29"E 39.37 FEET; THENCE S13°15'56"E 696.40 FEET; THENCE S13°11'33"E 1154.92 FEET TO THE POINT OF BEGINNING.

AREA: 4,625,542 SQ. FT. OR 106.19 ACRES

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BASIS OF BEARING: ALONG THE SECTION LINE S89°22'23"W

CHAD J. HILL  
 PROFESSIONAL LAND SURVEYOR  
 LICENSE NO. 7837685-2201

DATE \_\_\_\_\_

---

**ACCEPTANCE BY MAYOR**

THIS IS TO CERTIFY THAT I, MICHELLE KAUFUSI, MAYOR OF PROVO CITY, HAVE RECEIVED A REQUEST THAT SAID TRACT OF LAND SHOWN HEREON, BE ANNEXED TO THE CITY OF PROVO AND THAT A COPY OF THE ORDINANCE HAS BEEN PREPARED FOR FILING HERewith ALL IN ACCORDANCE WITH THE UTAH CODE ANNOTATED (1979) 10-1-04 AND 10-02-401 THROUGH 423, (AS REVISED) AND THAT WE HAVE EXAMINED AND DO HEREBY APPROVE AND ACCEPT THE ANNEXATION OF THE TRACT AS SHOWN AS A PART OF SAID CITY AND THAT SAID TRACT OF LAND IS TO BE KNOWN HEREAFTER AS THE

SCOTTY DOG ANNEXATION.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2022.

MICHELLE KAUFUSI - MAYOR

ATTEST: \_\_\_\_\_  
 RECORDER

---

**ACCEPTANCE BY COUNTY SURVEYOR**

THIS PLAT HAS BEEN REVIEWED BY THE COUNTY SURVEYOR AND IS HEREBY CERTIFIED AS A FINAL LOCAL ENTITY PLAT, PURSUANT TO UTAH CODE ANNOTATED 17-23-20 AMENDED.

\_\_\_\_\_  
 ANTHONY CANTO  
 UTAH COUNTY SURVEYOR

DATE \_\_\_\_\_

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**PROVO CITY ENGINEER APPROVAL**

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, A.D. 2022.  
 BY THE PROVO CITY ENGINEER.

\_\_\_\_\_  
 GORDON HAIGHT - PROVO CITY ENGINEER

---

**DEVELOPMENT SERVICES DIRECTOR APPROVAL**

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, A.D. 2022.  
 BY THE PROVO CITY DEVELOPMENT SERVICES DIRECTOR.

\_\_\_\_\_  
 BILL PEPPERONE - DEVELOPMENT SERVICES DIRECTOR

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**ANNEXATION PLAT**

**SCOTTY DOG ANNEXATION**

\_\_\_\_\_ PROVO CITY, \_\_\_\_\_ UTAH COUNTY, UTAH  
 SCALE: 1" = 150 FEET

ortgage







Provo Wetland Wildlife  
Protection Area  
Visit by Appointment  
801-852-6606

TO:

UTAH LIEUTENANT GOVERNOR'S OFFICE  
350 North State Street, Suite 220  
P.O. Box 142325  
Salt Lake City, Utah 84114-2325

**NOTICE OF IMPENDING BOUNDARY ACTION**  
*Scotty Dog Annexation to Provo City*

Please take notice of the Provo City Scotty Dog Annexation. The Annexation was approved by Ordinance No. \_\_\_\_\_, and was adopted on the \_\_\_\_ day of \_\_\_\_\_, 2023, by the Provo City Council, as per § 10-2-407(6), UCA. As required by § 67-1a-6.5(3)(e)(i), UCA, we certify that Provo City has met all requirements for approval of the Annexation. Accordingly, we request the Lieutenant Governor to issue a certificate of annexation, as per § 67-1a-6.5(2), UCA.

As per §10-2-425(3) & (4)(b), UCA, the subject annexation shall become effective on the \_\_\_\_ day of \_\_\_\_\_, 2023, the date of the Lieutenant Governor's issuance of a certificate of annexation.

**ATTEST:**

**PROVO CITY COUNCIL:**

\_\_\_\_\_  
Heidi Pepinos, City Recorder

\_\_\_\_\_  
Katrice MacKay, Chair

# PROVO MUNICIPAL COUNCIL STAFF REPORT



**Submitter:** SWILMOTH  
**Department:** Development Services  
**Requested Meeting Date:** 04-18-2023

**SUBJECT:** An ordinance amending Zone Map classification of approx. 0.84 acres of real property, located at 141 E 500 N, from Residential Conservation (RC) to Medium Density Residential (MDR) & authorizing a related dev. agreement. Joaquin Nbhd. (PLRZ20220343)

**RECOMMENDATION:** To be heard at the April 18, 2023 Work & Council Meeting. Please see supporting documents.

**BACKGROUND:** Nathan Turner is requesting approval of a concept plan for overall site improvements over five properties and conversion of a single-family home on one of the properties in the Joaquin neighborhood, along 500 North. Specifically, the request is to improve landscaping throughout the five properties and install a volleyball court, fire pit, picnic areas, and basketball court. The concept plan also includes the conversion of the single-family home at 141 East 500 North to a two-family dwelling and adding the additional parking for that new unit on the northeast corner of the site. To enable these changes and to conform with the neighborhood plan Mr. Turner has also requested a zone change from the RC zone to the MDR zone.

The existing site has some nonconformities with the MDR zone that would continue to exist with the concept plan provided, including parking and setbacks. While there is a long-range concept plan submitted there is no timeline or plans from this owner to move forward with redevelopment of the corner in the near future. Staff did some preliminary evaluation of the long-term concept plan for a twenty-seven-unit, three-story apartment building that could fit on the property and comply with MDR zone standards. However, for the purpose of this application, staff is only evaluating and providing information on the immediate concept plan.

**FISCAL IMPACT:**

**PRESENTER'S NAME:** Aaron Ardmore (801) 852-6404 aardmore@provo.org

**REQUESTED DURATION OF PRESENTATION:** 10 min

**COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:**

**CITYVIEW OR ISSUE FILE NUMBER:** PLRZ20220343

ORDINANCE 2022-

AN ORDINANCE AMENDING THE ZONE MAP CLASSIFICATION OF APPROXIMATELY 0.84 ACRES OF REAL PROPERTY, GENERALLY LOCATED AT 141 EAST 500 NORTH, FROM RESIDENTIAL CONSERVATION (RC) TO MEDIUM DENSITY RESIDENTIAL (MDR) AND AUTHORIZING A RELATED DEVELOPMENT AGREEMENT. JOAQUIN NEIGHBORHOOD. (PLRZ20220343)

WHEREAS, it is proposed that the classification on the Zone Map of Provo for approximately 0.84 acres of real property, generally located at 141 East 500 North (an approximation of which is shown or described in Exhibit A and a more precise description of which will be attached hereto as Exhibit B after the Zone Map has been updated), be amended from Residential Conservation (RC) to Medium Density Residential (MDR); and

WHEREAS, on March 22, 2023, the Planning Commission held a duly noticed public hearing to consider the proposal and after such hearing the Planning Commission recommended approval to the Municipal Council by a 5:0 vote; and

WHEREAS, the Planning Commission's recommendation was based on the project design presented to the Commission; and

WHEREAS, on April 18, 2023, the Municipal Council met to ascertain the facts regarding this matter and receive public comment, which facts and comments are found in the public record of the Council's consideration; and

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

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

PART I:

The Mayor is hereby authorized to negotiate and execute a development agreement as proposed by the applicant for this zone change, consistent with those commitments described in the concept plan and the representations made by the applicant and the applicant's representatives

41 in the Council Meeting of April 18, 2023 and in form substantially similar to the draft attached  
42 hereto as Exhibit C, an executed copy of which shall be attached hereto as Exhibit D after  
43 execution.

44

45 PART II:

46

47 The classification on the Zone Map of Provo, Utah is hereby amended from the Residential  
48 Conservation (RC) Zone to the Medium Density Residential (MDR) Zone for approximately 0.84  
49 acres of real property generally located at 141 East 500 North, as described herein. The effective  
50 date of this zone map change shall be the date of final execution of the development agreement  
51 described in Part I.

52

53 PART III:

54

55 A. If a provision of this ordinance conflicts with a provision of a previously adopted  
56 ordinance, this ordinance shall prevail.

57

58 B. This ordinance and its various sections, clauses and paragraphs are hereby declared to be  
59 severable. If any part, sentence, clause or phrase is adjudged to be unconstitutional or  
60 invalid, the remainder of the ordinance shall not be affected thereby.

61

62 C. The Municipal Council hereby directs that the official copy of the Zone Map of Provo City,  
63 Utah be updated and codified to reflect the provisions enacted by this ordinance.

64

65 D. Except as otherwise stated in Part II, this ordinance shall take effect immediately after it  
66 has been posted or published in accordance with Utah Code 10-3-711, presented to the  
67 Mayor in accordance with Utah Code 10-3b-204, and recorded in accordance with Utah  
68 Code 10-3-713.

69

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

77

78 END OF ORDINANCE

**EXHIBIT A – ZONE MAP**



**EXHIBIT B – LEGAL DESCRIPTION**

Commencing at the Northwest corner of lot 4, block 27, plat C, Provo city survey; East 12 rods; South 3 rods; West 3 rods; South 1 rod; West 9 rods; North 4 rods to the beginning; (.22 acres)

AND

Commencing at the Southwest corner of block 27, plat C, Provo city survey; North 8 rods East 5 rods; South 8 rods; West 5 rods to the beginning; (.25 acres)

AND

Commencing at the East 5 rod and North 6 rod from the Southwest corner of block 27, plat C, Provo city survey; East 3 rods; North 2 rods; West 3 rods; South 2 rods to the beginning; (.038 acres)

AND

Commencing at the East 5 rods from the Southwest corner of block 27, plat C, Provo city survey; North 6 rods; East 3 rods; South 6 rods; West 3 rods to the beginning; (.113 acres)

AND

Commencing at the Southeast corner of Lot 3, block 27, plat C, Provo city survey; North 9 rods; West 3 rods; South 1 rod; West 1 rod; South 8 rods; East 4 rods to the beginning. (.22 acres)

Totaling 0.84 acres

## Legal Description

- 1 - 542 N 100 E, Provo, UT 84606  
Parcel # 05:071:0008 (.22 acres)
- 2 - 520 N / 522 N / 524 N 100 E, Provo, UT  
Parcel # 05:071:0005 (.25 acres)
- 3 - 121 E 500 N, Provo, UT  
Parcels # 05:071:0017 & # 05:071:0018 (.15 acres)
- 4 - 141 E 500 N, Provo, UT  
Parcel # 05:071:0007 (.22 acres)

### EXHIBIT C – DRAFT DEVELOPMENT AGREEMENT

#### DEVELOPMENT AGREEMENT FOR Nathan Turner Rezone

141 East 500 North

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2023 (the “Effective Date”), by and between the CITY OF PROVO, a Utah municipal corporation, hereinafter referred to as “City,” and Nathan Turner, hereinafter referred to as “Developer.” The City and Developer are hereinafter collectively referred to as “Parties.”

#### RECITALS

A. Developer is the owner of approximately 0.84 acres of land located within the City of Provo as is more particularly described on EXHIBIT A, attached hereto and incorporated herein by reference (the “Property”).

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

C. Developer is willing to design and construct the Project in a manner that is in harmony with and intended to promote the long range policies, goals, and objectives of the City’s general plan,

zoning and development regulations in order to receive the benefit of vesting for certain uses and zoning designations under the terms of this Agreement as more fully set forth below.

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

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

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

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

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

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

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

## **AGREEMENT**

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

1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated into this Agreement, as a substantive part hereof.
2. Zoning. The Property shall be developed in accordance with (i) the requirements of the MDR Zone, (ii) all other features as generally shown on the Concept Plan, and (iii) this Agreement. The Developer shall not seek to develop the Property in a manner that deviates materially from the Concept Plan as permitted by the aforementioned zoning designations for the Property.
3. Governing Standards. The Concept Plan, the Vesting Ordinance and this Agreement establish the development rights for the Project, including the use, maximum density, intensity and general configuration for the Project. The Project shall be developed by the Developer in accordance

with the Concept Plan, the Vesting Ordinance and this Agreement. All Developer submittals must comply generally with the Concept Plan, the Vesting Ordinance and this Agreement. Non-material variations to the Concept Plan, as defined and approved by the City's Community Development Director, such as exact building locations, exact locations of open space and parking may be varied by the Developer without official City Council or Planning Commission approval. Such variations however shall in no way change the maximum density, use and intensity of the development of the Project.

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

a. That the site amenities will be built and maintained as shown in the attached concept plan (EXHIBIT B).

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

6. Vested Rights and Reserved Legislative Powers.

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

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

1. Developer Agreement. Future laws that Developer agrees in writing to the application thereof to the Project;

2. Compliance with State and Federal Laws. Future laws which are generally applicable to all properties in the City and which are required to comply with State and Federal laws and regulations affecting the Project;

3. Safety Code Updates. Future laws that are updates or amendments to existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes,

such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual of Uniform Traffic Control Devices or similar standards that are generated by a nationally or statewide recognized construction/safety organization, or by the State or Federal governments and are required to meet legitimate concerns related to public health, safety or welfare; or,

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

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

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

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

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

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

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

The rights and remedies set forth herein shall be cumulative.

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

To the Developer: \_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_

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

9. General Term and Conditions.

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

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

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

d. Third Party Rights. Except for the Developer, the City and other parties that may succeed the Developer on title to any portion of the Property, all of whom are express intended beneficiaries of this Agreement, this Agreement shall not create any rights in and/or obligations to any other persons or parties. The Parties acknowledge that this Agreement refers to a private

development and that the City has no interest in, responsibility for, or duty to any third parties concerning any improvements to the Property unless the City has accepted the dedication of such improvements

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

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

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

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

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

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

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

l. Approval and Authority to Execute. Each of the Parties represents and warrants as of the Effective Date this Agreement, it/he/she has all requisite power and authority to execute and deliver this Agreement, being fully authorized so to do and that this Agreement constitutes a valid and binding agreement.

m. Termination.

i. Notwithstanding anything in this Agreement to the contrary, it is agreed by the parties hereto that in the event the final plat for the Property has not been

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

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

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

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

11. Sale or Conveyance. If Developer sells or conveys parcels of land, the lands so sold and conveyed shall bear the same rights, privileges, intended uses, configurations, and density as applicable to such parcel and be subject to the same limitations and rights of the City as when owned by Developer and as set forth in this Agreement without any required approval, review, or consent by the City except as otherwise provided herein.

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

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

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

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

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

**CITY:**

CITY OF PROVO

ATTEST:

By: \_\_\_\_\_  
City Recorder

By: \_\_\_\_\_  
Mayor Michelle Kaufusi

**DEVELOPER:**

\_\_\_\_\_, a Utah limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF UTAH )

:ss

COUNTY OF UTAH )

On the \_\_\_\_ day of \_\_\_\_\_, 2023, personally appeared before me \_\_\_\_\_, who being by me duly sworn, did say that he is the \_\_\_\_\_ of \_\_\_\_\_, a Utah limited liability company, and that the within and foregoing instrument was signed on behalf of said limited liability company with proper authority and duly acknowledged to me that he executed the same.

\_\_\_\_\_  
Notary Public

Residing at:

**Exhibit A**

**Legal Description of the Property**

- 1 - 542 N 100 E, Provo, UT 84606  
Parcel # 05:071:0008 (.22 acres)**
- 2 - 520 N / 522 N / 524 N 100 E, Provo, UT  
Parcel # 05:071:0005 (.25 acres)**
- 3 - 121 E 500 N, Provo, UT  
Parcels # 05:071:0017 & # 05:071:0018 (.15 acres)**
- 4 - 141 E 500 N, Provo, UT  
Parcel # 05:071:0007 (.22 acres)**

# Exhibit B

## Concept Plan

LANDSCAPED AREA	13900 SF
TREES REQUIRED	7.1 PER 2000 SF
TREES PROVIDED	11 EXISTING TREES

	EXISTING TREE PROTECT AND PRESERVE
---	--



**Davis**  
Landscape  
Architecture  
8 OGDEN UT  
801.225.9596  
Consultant



Scale  
THIS PLAN IS A CONCEPTUAL DESIGN AND IS NOT TO BE USED FOR CONSTRUCTION. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE DESIGNER ASSUMES NO LIABILITY FOR ANY ERRORS OR OMISSIONS IN THIS PLAN.

Description  
 By  
 Date  
 For

Project Name:  
**NATE TURNER**  
 100 E 5000 N PROVO, UT, 84606  
 Sheet Title:  
**LANDSCAPE PLAN**

Date  
**02/15/2022**  
 Project Number  
**2022121601**  
 Sheet Number

**L 1.01**

**\*ITEM #4** Nathan Turner requests approval of a Zone Map Amendment from the RC (Residential Conservation) zone to the MDR (Medium Density Residential) zone in order to make site improvements over multiple properties and convert a single-family home to a two-family home, located at 141 East 500 North. Joaquin Neighborhood. Aaron Ardmore (801) 852-6404 aardmore@provo.org PLRZ20220343

## **OVERVIEW**

Nathan Turner is requesting approval of a concept plan for overall site improvements over five properties and conversion of a single-family home on one of the properties in the Joaquin neighborhood, along 500 North. Specifically, the request is to improve landscaping throughout the five properties and install a volleyball court, fire pit, picnic areas, and basketball court. The concept plan also includes the conversion of the single-family home at 141 East 500 North to a two-family dwelling and adding the additional parking for that new unit on the northeast corner of the site. To enable these changes and to conform with the neighborhood plan Mr. Turner has also requested a zone change from the RC zone to the MDR zone.

The existing site has some nonconformities with the MDR zone that would continue to exist with the concept plan provided, including parking and setbacks. While there is a long-range concept plan submitted there is no timeline or plans from this owner to move forward with redevelopment of the corner in the near future. Staff did some preliminary evaluation of the long-term concept plan for a twenty-seven-unit, three-story apartment building that could fit on the property and comply with MDR zone standards. However, for the purpose of this application, staff is only evaluating and providing information on the immediate concept plan.

The property surrounding the applicant's land is primarily zoned RC (Residential Conservation) with the exception of the Provo City Library to the west in the DT1 (General Downtown) zone. The uses on the same block as the concept area include the Campus Way Apartments (24 units), the Presidio Condos (14 units), the Fernwood Condos (21 units), the Newport Condos (10 units), the Bostonian Condos (20 units), two duplexes, and one, three-unit dwelling. In total the block (including the subject property) contains 107 residential units. Moving outside of the block the majority surrounding blocks are also zoned RC and have a mix of single-family homes, duplexes, and apartments buildings.

## **FINDINGS OF FACT**

1. The current zone for the properties is RC (Chapter 14.32, Provo City Code).
2. The proposed zone for the properties is MDR (Chapter 14.14B)
3. The General Plan for the properties is Residential – MDR.
4. The current density for the properties is eight (8) units/acre.
5. The proposed density for the properties is nine and a half (9.5) units/acre.
6. The current parking count for the site is twenty-six (26) spaces (3.7/unit).
7. The proposed parking count for the site is thirty (30) spaces (3.75/unit).
8. The required parking count is three (3) stalls per unit (Section 14.37, Provo City Code).

## **ANALYSIS**

Staff is supportive of the zone change because it meets the goals of the Joaquin Neighborhood Plan. Provo City Code Section 14.020.020(2) establishes criteria for staff to analyze amendments to the zoning title as follows: **(Staff response in bold type)**

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

(a) Public purpose for the amendment in question.

**Staff response: The applicant stated the public purpose for this amendment is to “allow for this area to be improved and revitalized, so that the parcels can be brought together to form a beautiful medium-density community for college student housing.” Staff would add that the zone change provides potential for more housing in an area with high demand.**

(b) Confirmation that the public purpose is best served by the amendment in question.

**Staff response: Staff believes that the proposed zone change and related concept plan do help to meet the stated purposes above.**

(c) Compatibility of the proposed amendment with General Plan policies, goals, and objectives.

**Staff response: Chapter Four identifies goals for housing related to the proposal, including “allow for different types of housing in neighborhoods and allow for a mix of home sizes at different price points”. The initial plans to convert a home to a duplex while improving the overall site helps to achieve this goal. Additionally, the Joaquin Neighborhood Plan states a goal to “amend the zoning map to be consistent with the future land use map.” This has been proactively done by staff for the CMU area without immediate development proposals, and this request is similar to that in that there are no immediate plans to redevelop the subject properties.**

(d) Consistency of the proposed amendment with the General Plan’s “timing and sequencing” provisions on changes of use, insofar as they are articulated.

**Staff response: There are no timing and sequencing provisions related to this request.**

(e) Potential of the proposed amendment to hinder or obstruct attainment of the General Plan’s articulated policies.

**Staff response: The proposed zone change will not hinder or obstruct attainment of the General Plan policies, but as noted above, will help to meet the goals of both the General Plan and the Joaquin Neighborhood Plan.**

(f) Adverse impacts on adjacent landowners.

**Staff response: Staff does not anticipate any adverse impacts on adjacent landowners, but neighbors should actually notice the property being beautified and managed in a positive way.**

(g) Verification of correctness in the original zoning or General Plan for the area in question.

**Staff response: Staff has verified the zoning and General Plan for the area.**

(h) In cases where a conflict arises between the General Plan Map and General Plan Policies, precedence shall be given to the Plan Policies.

**Staff response: There is no such conflict.**

In addition to Section 14.02.020(2) analysis, the General Plan identifies a set of questions to help staff and the City Council evaluate rezone applications for housing on page 45, as follows: **(staff responses in bold)**

- Would the rezone promote one of the top 3 housing strategies?
  - Promote a mix of home types, sizes, and price points
  - Support zoning to promote ADUs and infill development
  - Recognize the value of single-family neighborhoods

**Staff response: As noted earlier in this report, the proposal will help to promote a mix of home types, sizes, and price points through the variety of housing; and the MDR zone would potentially allow for ADUs.**

- Are utilities and streets currently within 300 feet of the property proposed for rezone?

**Staff response: Yes, in 500 North and 100 East.**

- Would the rezone exclude land that is currently being used for agricultural use?

**Staff response: Not applicable, there is no agricultural use near the proposal.**

- Does the rezone facilitate housing that has reasonable proximity (1/2 mile) to public transit stops or stations?

**Staff response: Yes, the closest transit stop at 600 N University Avenue is approximately 1/8 mile away.**

- Would the rezone encourage development of environmentally or geologically sensitive, or fire or flood prone, lands? If so, has the applicant demonstrated these issues can reasonably be mitigated?

**Staff response: No, there are no hazards on or near the subject properties.**

- Would the proposed rezone facilitate the increase of on-street parking within 500 feet of the subject property? If so, is the applicant willing to guarantee use of a TDM in relation to the property to reduce the need for on-street parking?

**Staff response: No, the site is parked at a rate higher than what code would require, providing 3.7 spaces per unit.**

- Would the rezone facilitate a housing development where a majority of the housing units are owner-occupied? Is the applicant willing to guarantee such?

**Staff response: No, this area of Joaquin is intended for student housing and as such would not be encouraging owner-occupancy.**

- Would the proposed rezone facilitate a housing development where at least 10% of the housing units are attainable to those making 50-79% AMI? Is the applicant willing to guarantee such?
- **Staff response: This is rental housing with market-rate rents.**

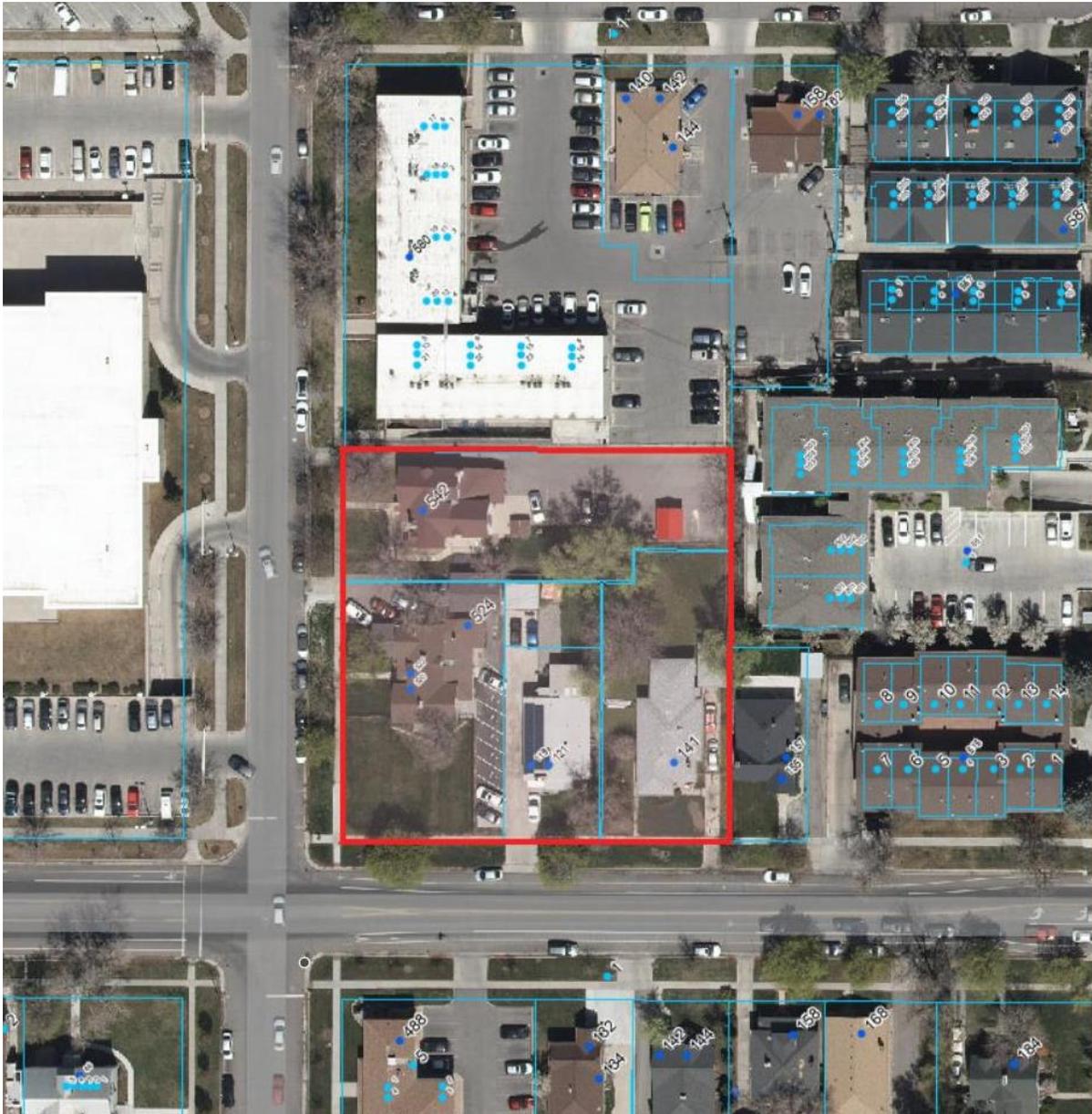
## **CONCLUSIONS**

Staff is pleased to see a portion of area planned for MDR zoning in the Joaquin Plan to be proposed for that zone. The short-term plan will result in an increase of amenities livability for the tenants of these properties. Adding trees and improving overall appearance while rezoning the site to meet the goals of the Joaquin Neighborhood Plan is supported by staff. When the time comes for the property to redevelop, staff is supportive and confident that the MDR zone will provide a good product and what is expected for this portion of the neighborhood.

## **ATTACHMENTS**

1. Area Map
2. Concept Plan
3. Joaquin Future Land Use Map
4. Applicants Statement
5. Neighborhood Meeting Report

ATTACHMENT 1 – AREA MAP



ATTACHMENT 2 – CONCEPT PLAN



ATTACHMENT 3 – JOAQUIN FUTURE LAND USE MAP

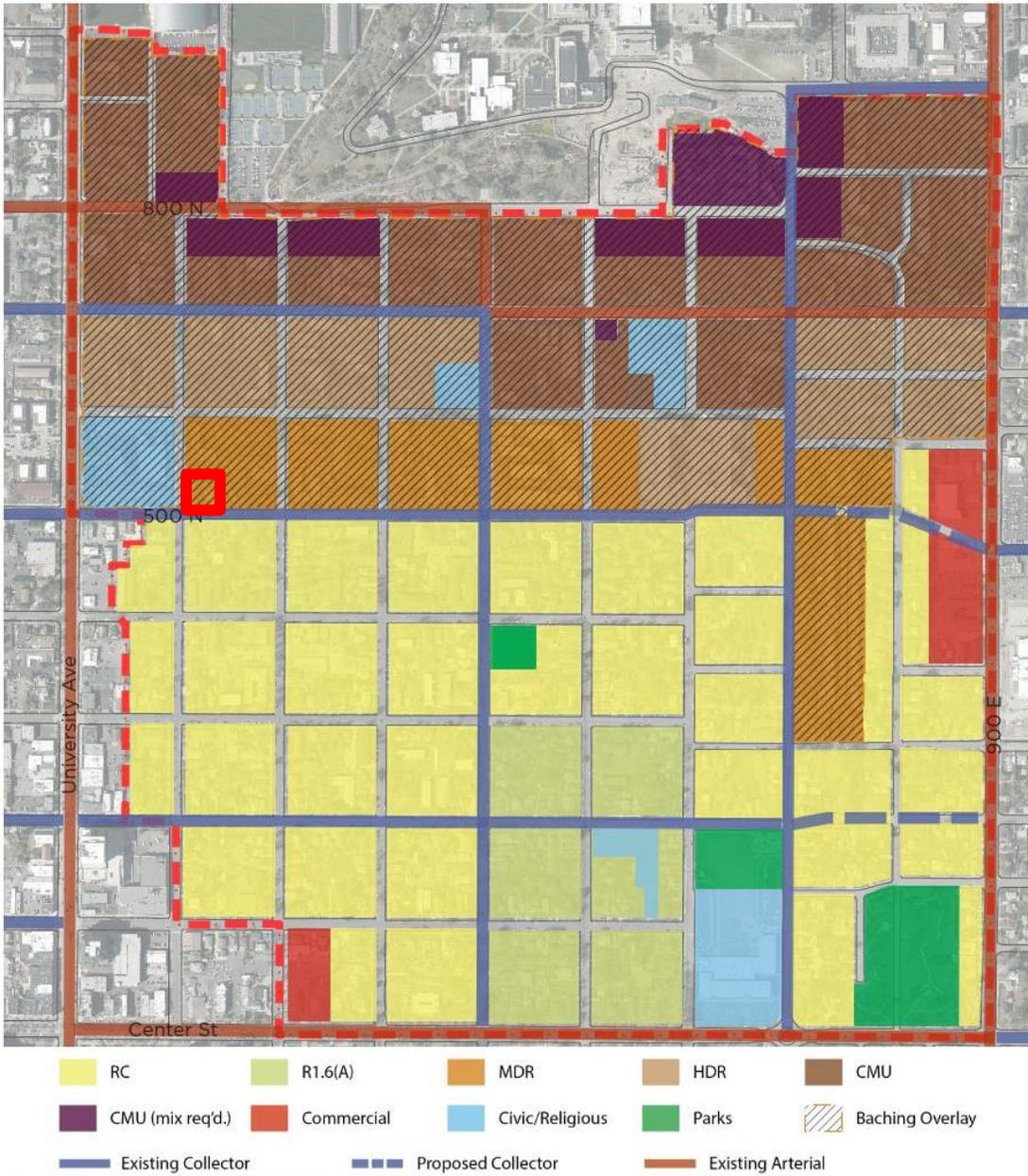


Figure 3.3 - Joaquin Neighborhood Future Land Use

## ATTACHMENT 4 – APPLICANTS STATEMENT

**Nate Turner**

141 E 500 N  
Provo, UT 84606

Phone: 801-835-3697

E-mail:  
[nateturner8@gmail.com](mailto:nateturner8@gmail.com)

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25 October 2022

Dear Provo City,

This is a petition to amend the zoning of 5 adjoining parcels located at the northeast corner at the intersection of 100 E and 500 N in Provo. A foregoing legal description of the specific parcels has been provided.

**Current Designation**

The current designation for each parcel is also summarized below as follows:

Parcel	Address	Current Zoning By Parcel
1	542 N 100 E	Single Family, or 6 singles
2	520 / 522 / 524 N 100 E	Legal Triplex
3	121 E 500 N	Single Family, w/ legal accessory apartment
4	141 E 500 N	Single Family

**Proposed Designation**

It is proposed that the current zoning be amended from a RC Zone (Residential Conservation Zone) to a MDR Zone (Medium Density Residential Zone), consistent with both the long-term plan for this area and the existing zoning of surrounding properties. Under the MDR classification, I am requesting that each parcel be recognized as follows:

Parcel	Address	Proposed Rezone By Parcel
1	542 N 100 E	Single Family, or 6 singles
2	520 / 522 / 524 N 100 E	Legal Triplex
3	121 E 500 N	Legal Duplex
4	141 E 500 N	Legal Duplex

In Exhibit A attached to this letter, you will see a copy of a page from the long-term Joaquin neighborhood plan, which indicates that the MDR Zone classification is consistent with the long-term plan for these parcels.

This rezone will allow for this area (the landscaping and existing structures) to be improved and revitalized, so that the parcels can be brought together to form a beautiful medium-density residential community for college student housing. In recent history these parcels have unfortunately been subject to neglect, causing an eyesore along

Provo's very visible 500 N thoroughfare. By allowing these parcels to be zoned as legal multifamily buildings, the property will be able to provide comfortable, affordable housing for many BYU/UVU students in a conveniently situated location in Provo. The newly remodeled landscape will provide residents ample green space and amenities for recreation as well as enough parking spaces for each resident to park his/her own vehicle on the property. This rezone will make these renovations possible, which will allow for better long-term upkeep of the properties, helping to maintain an appealing visual aesthetic of the land and existing structures.

It is proposed that the landscaping that connects these parcels be remodeled and the existing buildings be renovated expeditiously, with the intention of completing these property updates before the end of 2022 (except for certain landscaping items that cannot be completed until March or April of 2023).

#### Concept Plans

Accompanying this rezone application, you will find the following documents:

- General site plan for landscaping remodel
- Custom interior renovations plan to convert 141 E 500 N Provo, UT into a legal duplex with modern rough in and finishes
- Floor plan drawings for existing main floor and basement apartments of 121 E 500 N Provo, UT, which is to be converted to a legal duplex

Thank you in advance for taking the time to review this proposal. I enthusiastically look forward to this opportunity to beautify and revitalize this highly visible area of Provo.

Sincerely,

Nate Turner  
[nateturner8@gmail.com](mailto:nateturner8@gmail.com)  
801-835-3697

## ATTACHMENT 5 – NEIGHBORHOOD MEETING REPORT

**Neighborhood:** Joaquin

**Date & Time:** Tuesday, November 29, 2022; 7-8 PM

**Location:** Provo City Library

**Attendees:** 11 (NHC Leo Lines, Leo's wife, 3 Joaquin residents, Nathan Turner, Nathan's wife and 2 kids, Nathan's contractor, me)

**Topics:** Nathan Turner requests Concept Plan approval for site improvements over multiple properties and a conversion of a single-family home to a two-family home in a proposed MDR (Medium Density Residential) zone, located at 141 East 500 North, Joaquin Neighborhood (PLCP20220351); Nathan Turner requests approval of a Zone Map Amendment from the RC (Residential Conservation) zone to the MDR (Medium Density Residential) zone in order to make site improvements over multiple properties and convert a single-family home to a two-family home, located at 141 East 500 North, Joaquin Neighborhood (PLRZ20220343).

**Handouts:** attached (aerial view, current designation comparison with surrounding zoning, Joaquin Neighborhood future land use, site plan)

**Pros:** The Joaquin residents really liked all the green space and parking. They loved that it wasn't a huge apartment building.

**Cons:** The Joaquin residents were concerned about the safety of people backing out of the parking spaces onto 500 N (especially spaces 4-10). Leo suggested putting a hammerhead by parking space 3 (contractor said there might be a tree in the way and Chaz Addis loves that tree). Nathan said he used to live there, and it wasn't a problem backing out onto 500 N.

## ITEM 4\*

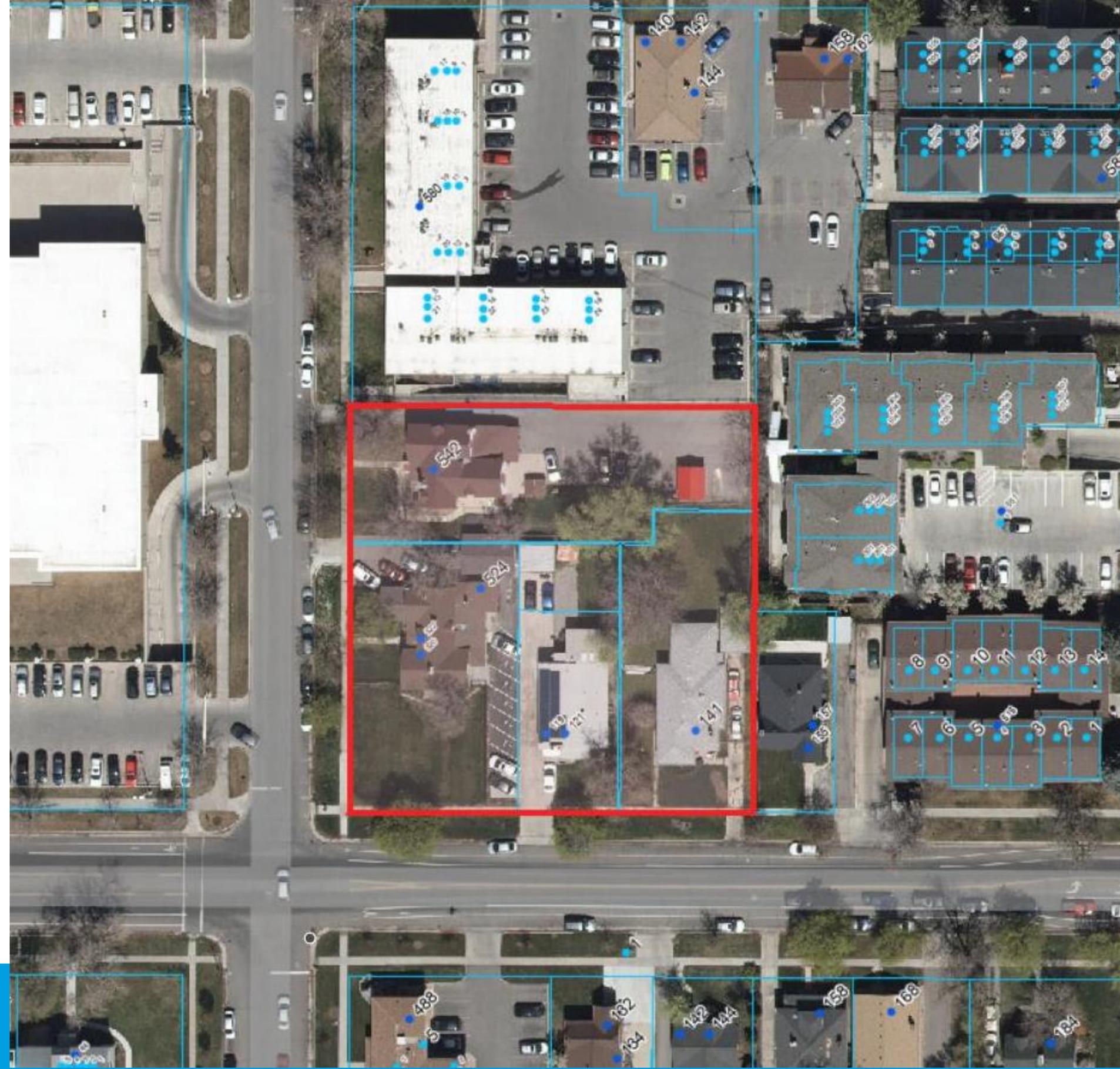
Nathan Turner requests approval of a Zone Map Amendment from the RC (Residential Conservation) zone to the MDR (Medium Density Residential) zone in order to make site improvements over multiple properties & convert a single-family home to a two-family home, located at 141 East 500 North.

***Joaquin Neighborhood***

PLRZ20220343

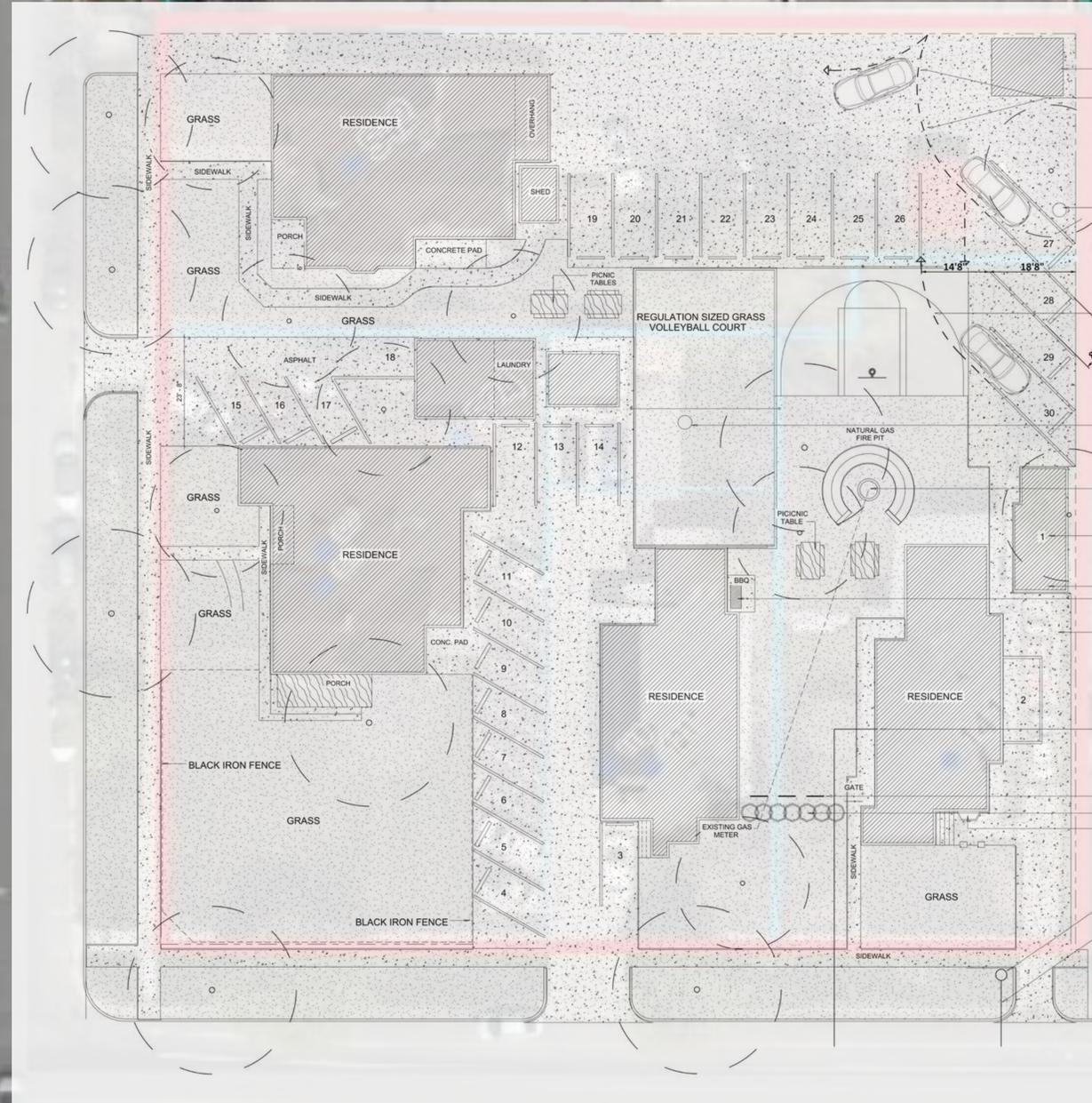
# 100 E 500 N

- Current Zone: RC
- Current # of Units: 7



# 100 E 500 N

- Current Zone: RC
- Current # of Units: 7
- Proposed Zone: MDR
- Proposed # of Units: 8
- Proposed Changes:
  - New Volleyball Court
  - New Basketball Court
  - New BBQ Area
  - Improved Landscape
  - Convert SFR to Duplex



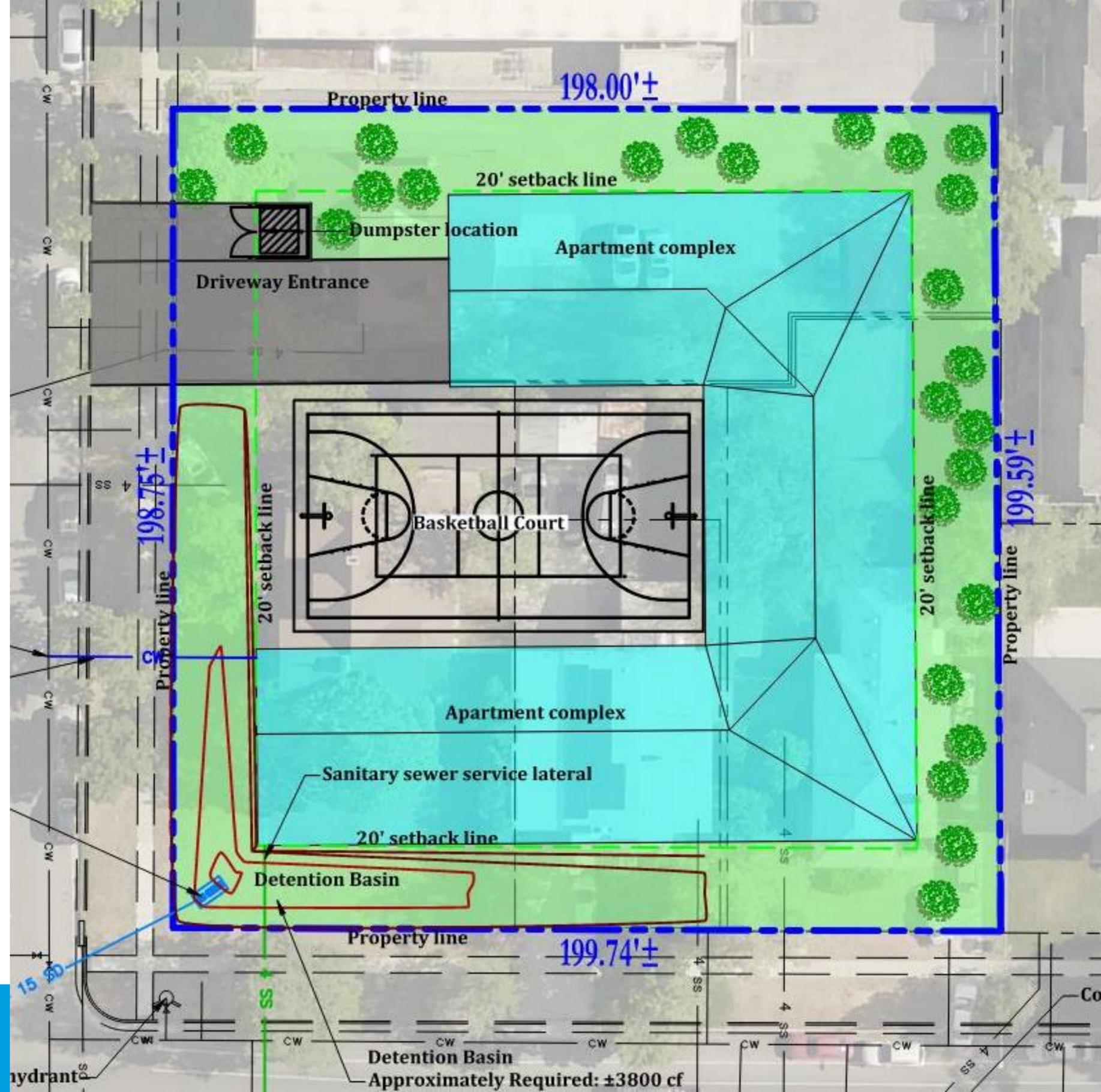
# 100 E 500 N

- Current Zone: RC
- Current # of Units: 7
- Proposed Zone: MDR
- Proposed # of Units: 8
- Proposed Changes:
  - New Volleyball Court
  - New Basketball Court
  - New BBQ Area
  - Improved Landscape
  - Convert SFR to Duplex



# 100 E 500 N

- Current Zone: RC
- Current # of Units: 7
- Proposed Zone: MDR
- Proposed # of Units: 8
- Long-Range Plan: MDR Apartment Complex



# 100 E 500 N



- Current Zone: RC
- Current # of Units: 7
- Proposed Zone: MDR
- Proposed # of Units: 8
- Long-Range Plan: MDR Apartment Complex

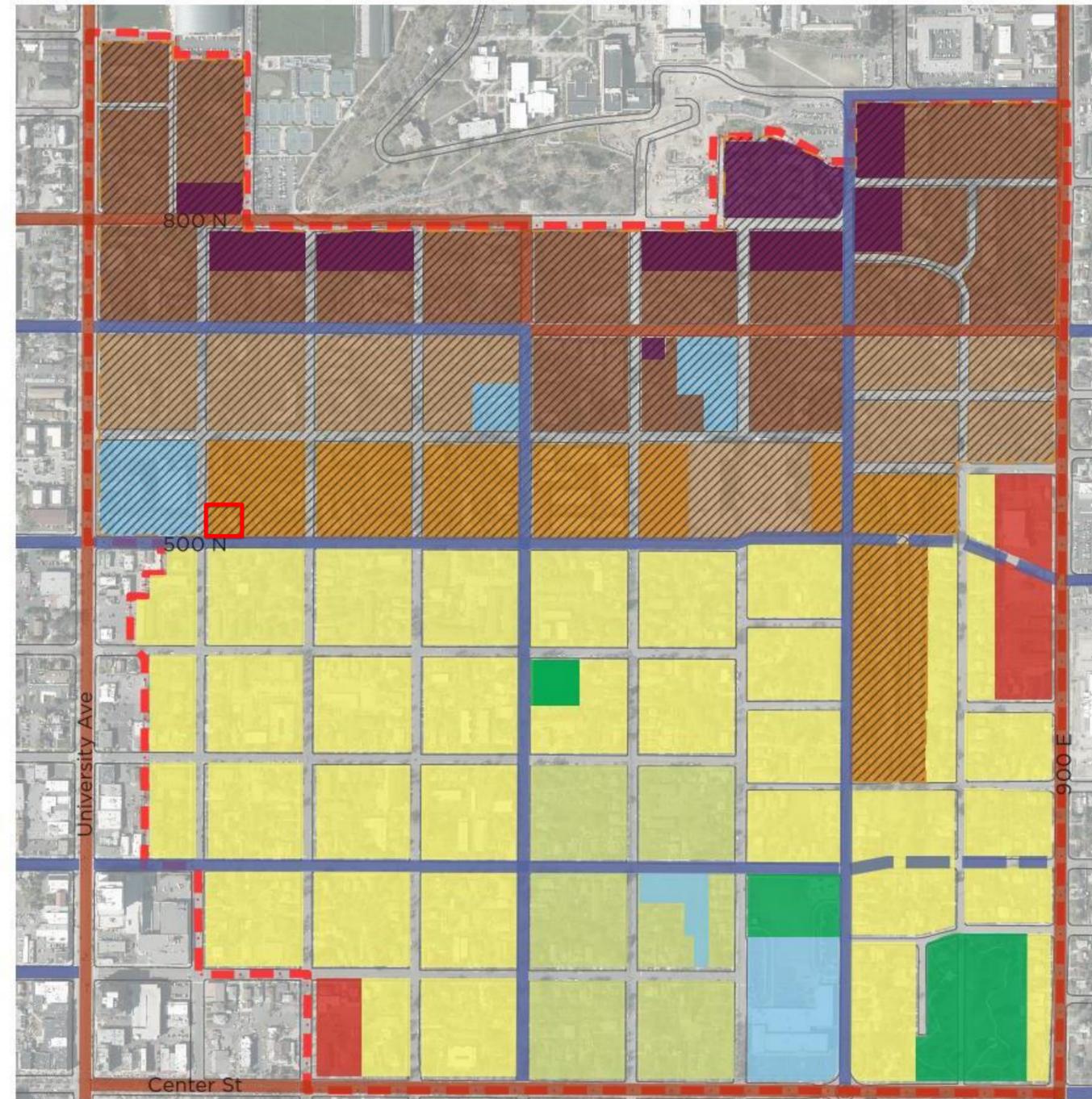


Figure 3.3 - Joaquin Neighborhood Future Land Use

Provo City Planning Commission

# Report of Action

March 22, 2023

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\*ITEM 4 Nathan Turner requests approval of a Zone Map Amendment from the RC (Residential Conservation) zone to the MDR (Medium Density Residential) zone in order to make site improvements over multiple properties and convert a single-family home to a two-family home, located at 141 East 500 North. Joaquin Neighborhood. Aaron Ardmore (801) 852-6404 aardmore@provo.org PLRZ20220343

---

The following action was taken by the Planning Commission on the above described item at its regular meeting of March 22, 2023:

## RECOMMENDED APPROVAL

On a vote of 5:0, the Planning Commission recommended that the Municipal Council approve the above noted application and suggested that the concept plan amenities are guaranteed.

Motion By: Raleen Wahlin

Second By: Jeff Whitlock

Votes in Favor of Motion: Raleen Wahlin, Jeff Whitlock, Lisa Jensen, Melissa Kendall, Robert Knudsen

Lisa Jensen was present as Chair.

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

### LEGAL DESCRIPTION FOR PROPERTY TO BE REZONED

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

### RELATED ACTIONS

The related concept plan (PLCP20220351) was approved by the Planning Commission (Item #3, March 22, 2023 hearing).

### APPROVED/RECOMMENDED OCCUPANCY

\*8 Total Units

### APPROVED/RECOMMENDED PARKING

\*30 Total parking stalls provided

### DEVELOPMENT AGREEMENT

- May apply with future approvals.

### STAFF PRESENTATION

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

### CITY DEPARTMENTAL ISSUES

- The Coordinator Review Committee (CRC) has reviewed the application and given their approval.

### NEIGHBORHOOD MEETING DATE

- A neighborhood meeting was held on 11/29/2022.

### NEIGHBORHOOD AND PUBLIC COMMENT

- The Neighborhood Chair was not present or did not address the Planning Commission during the hearing.

### CONCERNS RAISED BY PUBLIC

Any comments received prior to completion of the Staff Report are addressed in the Staff Report to the Planning Commission. Key issues raised in written comments received subsequent to the Staff Report or public comment during the public hearing included the following: None.

### APPLICANT RESPONSE

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

- Nathan Turner explained his desire for a cohesive community with future development potential. He stated that the duplex conversion allows him the funds to reinvest into amenities for the tenants.

### PLANNING COMMISSION DISCUSSION

Key points discussed by the Planning Commission included the following:

- The Commission confirmed the parking count for the properties and that no buildings are being demolished initially with the concept plan. The parking supply will be an improvement.
- The Commission had staff explain the nonconformities on the properties and that the zone change will help the property be able to improve and resolve nonconformities.
- The Planning Commission will see the future Project Plan when the properties are redeveloped.
- The request aligns with the General Plan and provides improved amenities. They are appreciative of the owner wanting to improve the existing property, he is essentially asking to improve the space and the possibilities of that are positive.
- The surrounding properties are already at MDR-type densities and the zone should work well in the block without adverse impacts.
- The Commission requested direction for how to guarantee the site improvements shown on the concept plan and made a strong recommendation to carry out amenities as shown at the hearing with the motion to recommend approval of the zone change.



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Planning Commission Chair



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Director of Development Services

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

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

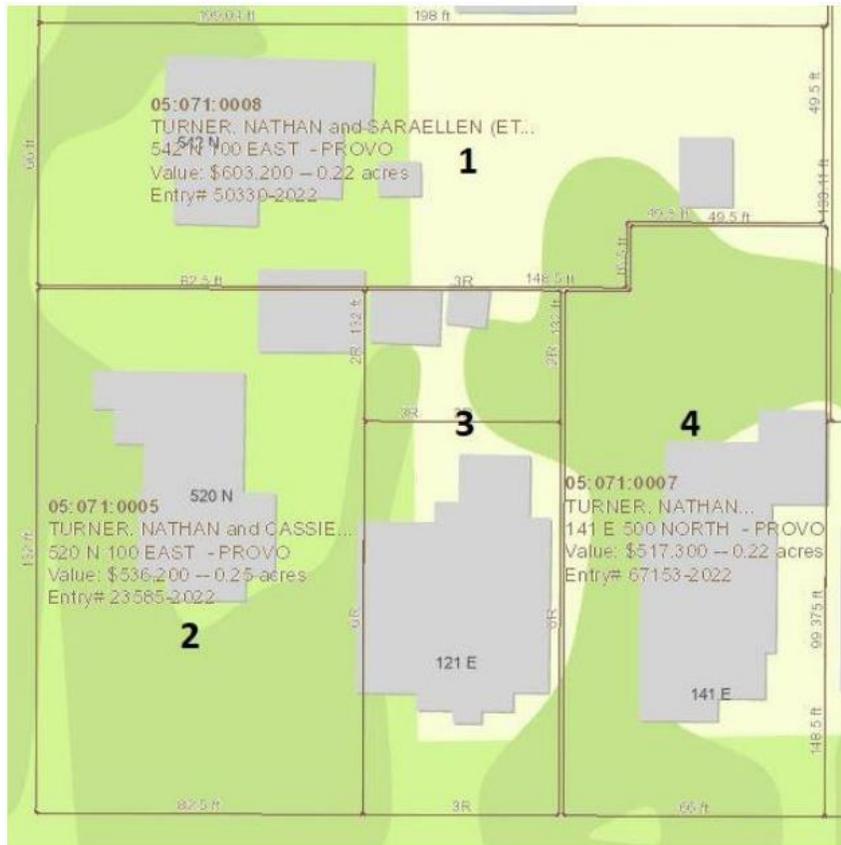
Administrative decisions of the Planning Commission (items not marked with an asterisk) **may be appealed** by submitting an application/notice of appeal, with the required application and noticing fees to Development Services, 445 W Center Street, Provo, Utah, **within fourteen (14) calendar days of the Planning Commission's decision** (Provo City office hours are Monday through Thursday, 7:00 a.m. to 6:00 p.m.).

BUILDING PERMITS MUST BE OBTAINED BEFORE CONSTRUCTION BEGINS

EXHIBIT A

**Legal Description**

- 1 - 542 N 100 E, Provo, UT 84606**  
**Parcel # 05:071:0008 (.22 acres)**
- 2 - 520 N / 522 N / 524 N 100 E, Provo, UT**  
**Parcel # 05:071:0005 (.25 acres)**
- 3 - 121 E 500 N, Provo, UT**  
**Parcels # 05:071:0017 & # 05:071:0018 (.15 acres)**
- 4 - 141 E 500 N, Provo, UT**  
**Parcel # 05:071:0007 (.22 acres)**





# PLRZ20220343 - Joaquin Neighborhood

April 13, 2023, 11:28 AM

## Contents

i.	Summary of statements	2
ii.	Individual statements	3

**PLRZ20220343 - Joaquin Neighborhood**

What do you think of the proposed Zone Map Amendment to make site improvements over multiple properties and convert a single-family home to a two-family home at 141 E 500 N?

## Summary Of Statements

**As of April 13, 2023, 11:28 AM, this forum had:**

Attendees:	7
Statements:	1
Minutes of Public Comment:	2

**Topic Start**

March 23, 2023, 12:51 PM

**Topic End**

April 12, 2023, 11:59 PM

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## PLRZ20220343 - Joaquin Neighborhood

What do you think of the proposed Zone Map Amendment to make site improvements over multiple properties and convert a single-family home to a two-family home at 141 E 500 N?

## Individual Statements

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### David Keller

inside City Boundary

March 30, 2023, 5:18 PM

The applicant showed his plans at a Joaquin Neighborhood meeting, fielded questions, and considered suggestions from neighbors in attendance. Neighbors at the meeting expressed their belief that the planned improvements and conversion of one single-family home to a two-family home fits very well with the Joaquin Neighborhood Plan.

# PROVO MUNICIPAL COUNCIL STAFF REPORT



**Submitter:** SWILMOTH  
**Department:** Development Services  
**Requested Meeting Date:** 04-18-2023

**SUBJECT:** An ordinance amending the Zone Map classification of approx. 0.48 acres of real property, located at 734 S Utah Ave, from Heavy Commercial (CM) to One Family Residential (R1.8). Provost Neighborhood. (PLRZ20230019)

**RECOMMENDATION:** To be heard at the April 18, 2023 Work & Council Meeting. Please see supporting documents.

**BACKGROUND:** Janet Dolen is requesting a Zone Map Amendment from the CM zone to the R1.8 zone for property that belongs to her family trust, at 735-737 South State Street and 734 South Utah Avenue. The proposed amendment is just for approximately six-thousand square feet of the CM zone to be converted to the R1.8 zone, matching the current zoning for the home at 734 S Utah Ave.

The reason for the amendment is to have the correct zoning align with a proposed realignment of the property lines belonging to the Lucille Moore Trust. A final subdivision application has gone through staff review and is ready for approval subject to this zone change being approved. This will allow the applicant to have clean lot lines for the subject parcels, and zoning that matches the use on the ground.

There is no development or concept plan with this rezone request, so staff did not complete an in-depth analysis of surrounding uses. Future owners would need to comply with the underlying zoning on the properties or request zone changes of their own. The property proposed for the zone change has been historically used for residential purposes, which can be seen from the aerial imagery showing fence lines and yard use. The existing uses are intended to continue, according to the applicant.

**FISCAL IMPACT:**

**PRESENTER'S NAME:** Aaron Ardmore (801) 852-6404 aardmore@provo.org

**REQUESTED DURATION OF PRESENTATION:** 10 minutes

**COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:**

**CITYVIEW OR ISSUE FILE NUMBER:** PLRZ20230019

ORDINANCE 2022-

AN ORDINANCE AMENDING THE ZONE MAP CLASSIFICATION OF APPROXIMATELY 0.48 ACRES OF REAL PROPERTY, GENERALLY LOCATED AT 734 SOUTH UTAH AVENUE, FROM HEAVY COMMERCIAL (CM) TO ONE FAMILY RESIDENIAL (R1.8). PROVOST NEIGHBORHOOD. (PLRZ20230019)

WHEREAS, it is proposed that the classification on the Zone Map of Provo for approximately 0.48 acres of real property, generally located 734 South Utah Avenue (an approximation of which is shown or described in Exhibit A and a more precise description of which will be attached hereto as Exhibit B after the Zone Map has been updated), be amended from Heavy Commercial (CM) to One Family Residential (R1.8); and

WHEREAS, on March 22, 2023, the Planning Commission held a duly noticed public hearing to consider the proposal, and after such hearing the Planning Commission recommended approval of the proposal to the Municipal Council by a 5:0 vote; and

WHEREAS, the Planning Commission's recommendation was based on the project design presented to the Commission; and

WHEREAS, on April 18, 2023, the Municipal Council met to ascertain the facts regarding this matter and receive public comment, which facts and comments are found in the public record of the Council's consideration; and

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

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

PART I:

The classification on the Zone Map of Provo, Utah is hereby amended from the Heavy Commercial (CM) Zone to the One Family Residential (R1.8) Zone for approximately 0.48 acres of real property generally located at 734 South Utah Avenue, as described herein.

41 PART II:

42

43 A. If a provision of this ordinance conflicts with a provision of a previously adopted  
44 ordinance, this ordinance shall prevail.

45

46 B. This ordinance and its various sections, clauses and paragraphs are hereby declared to be  
47 severable. If any part, sentence, clause or phrase is adjudged to be unconstitutional or  
48 invalid, the remainder of the ordinance shall not be affected thereby.

49

50 C. The Municipal Council hereby directs that the official copy of the Zone Map of Provo City,  
51 Utah be updated and codified to reflect the provisions enacted by this ordinance.

52

53 D. This ordinance shall take effect immediately after it has been posted or published in  
54 accordance with Utah Code 10-3-711, presented to the Mayor in accordance with Utah  
55 Code 10-3b-204, and recorded in accordance with Utah Code 10-3-713.

56

57 END OF ORDINANCE

**EXHIBIT A – ZONE MAP**



## EXHIBIT B – LEGAL DESCRIPTION

A PARCEL OF LAND THAT LIES FULLY WITHIN THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 7 SOUTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN. SUBJECT PARCEL CONTAINS 0.50 OF AN ACRE OF LOT 4 OF THE CHAPEL DOWNS PLAT "A" AS FOUND IN THE UTAH COUNTY RECORDER'S OFFICE MAP NO. 569 AND A PORTION OF THE WARRANTY DEEDS AS FOUND IN SAID OFFICE ENTRY NO'S. 38497:2021 AND 104557:2021. BASIS OF BEARING FOR SUBJECT PARCEL IS NORTH AS DETERMINED BY GPS OR S 89° 09' 39" W 2662.41 FEET BETWEEN THE EAST QUARTER CORNER AND THE CENTER CORNER OF SAID SECTION 7. SUBJECT PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS.

BEGINNING AT THE NORTHEAST CORNER OF LOT 4 OF THE CHAPEL DOWNS PLAT "A" AS FOUND IN THE UTAH COUNTY RECORDER'S OFFICE MAP NO. 569, SAID CORNER LIES 949.77 FEET S 89° 09' 39" W ALONG THE SECTION LINE AND 129.36 FEET SOUTH FROM THE EAST QUARTER CORNER OF SECTION 7, TOWNSHIP 7 SOUTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN; RUNNING THENCE ALONG SAID SUBDIVISION THE FOLLOWING (4) FOUR COURSES: (1) SOUTHERLY 94.23 FEET ALONG THE ARC OF A 270 FOOT RADIUS CURVE TO THE LEFT THROUGH A DELTA ANGLE OF 19° 59' 48" (NOTE: CHORD BEARS S 03° 51' 09" E 93.75 FEET (S 2° 57' E 93.76 FEET BY REOCR)), (2) S 78° 53' 48" W 106.70 FEET (N 79° 49' E BY RECORD), (3) S 15° 49' 12" E 38.60 FEET (S 14° 54' E BY RECORD), (4) S 73° 28' 48" W 69.01 FEET (S 74° 24' W BY RECORD) TO AN AGREED UPON BOUNDARY LINE; THENCE N 20° 35' 39" W 155.89 FEET TO AN OLD ESTABLISHED FENCE LINE AS CALLED OUT IN RECORD DESCRIPTION WARRANTY DEED ENTRY NO 38497:2021 AS FOUND IN THE UTAH COUNTY RECORDER'S OFFICE, THENCE ALONG SAID OLD ESTABLISHED FENCE LINE THE FOLLOWING (3) THREE COURSES, (1) N 69° 34' 38" E 35.72 FEET, (2) S 16° 07' 22" E 26.81 FEET, (3) N 77° 10' 48" E 61.25 FEET TO THE NORTHWEST CORNER OF SAID LOT 4; THENCE N 77° 10' 48" E 111.00 FEET (N 78° 06' E BY RECORD) ALONG SAID LOT 4 TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 20,920 SQUARE FEET OR 0.480 ACRES.



# Planning Commission Hearing Staff Report

## Hearing Date: March 22, 2023

**\*ITEM #6** Janet Dolen requests approval of a Zone Map Amendment from the CM (Heavy Commercial) zone to the R1.8 (One Family Residential) zone for a portion of residential property in order to complete a lot line adjustment, located at 737 S State Street. Provost Neighborhood. Aaron Ardmore (801) 852-6404 aardmore@provo.org PLRZ20230019

**Applicant:** Janet Lee Dolen

**Staff Coordinator:** Aaron Ardmore

**Property Owner:** Lucille S Moore Trust 02-05-2020 (ET AL)

**Parcel ID#:** 22:035:0022; 22:035:0023;  
36:070:0004; 22:035:0025

**Acreage:** 1.14 acres

**Number of Properties:** 3

**Number of Parcels:** 4

### **ALTERNATIVE ACTIONS**

1. **Continue** to a future date to obtain additional information or to further consider information presented. *The next available meeting date is April 12, 2023, at 6:00 P.M.*
2. **Recommend Denial** of the requested Zone Map Amendment. *This action would not be consistent with the recommendations of the Staff Report. The Planning Commission should state new findings.*

**Current Legal Use:** The legal uses for properties involved in the zone change include (1) a single-family home at 734 S Utah Ave, (2) an electronics supply outlet at 735 S State Street, and (3) a mixed-use building at 739 S State Street.

**Relevant History:** The applicant is part of the trust that oversees these properties. She applied for a final subdivision approval in 2022 to clean up the property lines of the five properties owned by Lucille Moore Trust. As part of that review, it was found the new lot lines for the home at 734 S Utah Ave. encompassed two different zones, the CM and R1.8. Staff directed her to request a zone change to align with the proposed lot line adjustments.

**Neighborhood Issues:** This was discussed at the February 9<sup>th</sup> District Four neighborhood meeting. Nobody at the meeting was opposed and it was stated that there would be no difference on the ground.

### **Summary of Key Issues:**

The applicant is trying to clean up property lines for her family.

The extension of the residential property boundary at 734 S Utah Avenue creates a zoning issue with two zones on one property.

The amendment from CM to R1.8 for the increased residential property conforms to the use of the land.

**Staff Recommendation:** That the Planning Commission recommend approval of the proposed zone change from CM to R1.8 to the City Council.

## **OVERVIEW**

Janet Dolen is requesting a Zone Map Amendment from the CM zone to the R1.8 zone for property that belongs to her family trust, at 735-737 South State Street and 734 South Utah Avenue. The proposed amendment is just for approximately six-thousand square feet of the CM zone to be converted to the R1.8 zone, matching the current zoning for the home at 734 S Utah Ave.

The reason for the amendment is to have the correct zoning align with a proposed realignment of the property lines belonging to the Lucille Moore Trust. A final subdivision application has gone through staff review and is ready for approval subject to this zone change being approved. This will allow the applicant to have clean lot lines for the subject parcels, and zoning that matches the use on the ground.

There is no development or concept plan with this rezone request, so staff did not complete an in-depth analysis of surrounding uses. Future owners would need to comply with the underlying zoning on the properties or request zone changes of their own. The property proposed for the zone change has been historically used for residential purposes, which can be seen from the aerial imagery showing fence lines and yard use. The existing uses are intended to continue, according to the applicant.

## **FINDINGS OF FACT**

1. The existing use of the property to be rezoned is residential.
2. The current zoning for the property is CM.
3. The proposed zoning for the property is R1.8
4. The proposed boundaries for the residential lot extension (734 S Utah Ave.) would meet all R1.8 standards, except for two small accessory sheds with nonconforming setbacks. (Chapter 14.10, Provo City Code)
5. The proposed boundaries for the commercial lot reduction (735 S State St.) would meet all CM standards. (Chapter 14.24, Provo City Code)

## **ANALYSIS**

Staff sees this zone map amendment request as a clean-up action. However, all rezone requests are required to be judged on specific criteria found in Section 14.02.020 of the Provo City Code to determine if the amendment is in the interest of the public and consistent with City goals and policies. The following guidelines from subsection 14.02.020(2) are used to make that determination: **(staff responses in bold)**.

(a) Public purpose for the amendment in question.

**Staff response: To better align the zoning to the use of the property for current and future owners.**

(b) Confirmation that the public purpose is best served by the amendment in question.

**Staff response: This small shift between the CM zone and the R1.8 zone will enable the property to be used to its full potential, benefiting the neighborhood and future owners of**

**the property.**

(c) Compatibility of the proposed amendment with General Plan policies, goals, and objectives.

**Staff response: This rezone request most closely aligns with land use goals in Chapter Three of the General Plan. Specifically, it helps to maintain “single-family home[s]” in key areas of the City as stated in goal 1a of the Land Use chapter.**

(d) Consistency of the proposed amendment with the General Plan’s “timing and sequencing” provisions on changes of use, insofar as they are articulated.

**Staff response: There are no timing and sequencing provisions related to this request.**

(e) Potential of the proposed amendment to hinder or obstruct attainment of the General Plan’s articulated policies.

**Staff response: The proposed rezone should not hinder or obstruct attainment of the General Plan’s policies since there will be no change in use or density of the properties.**

(f) Adverse impacts on adjacent land owners.

**Staff response: As stated above, since there is nothing changing on the ground there will not be any adverse impacts on adjacent land owners.**

(g) Verification of correctness in the original zoning or General Plan for the area in question.

**Staff response: Staff has verified the zoning and General Plan.**

(h) In cases where a conflict arises between the General Plan Map and General Plan Policies, precedence shall be given to the Plan Policies.

**Staff response: This rezone aligns with the policies of the General Plan.**

**CONCLUSIONS**

Adjusting the zone boundaries to fit the historic use of the property and proposed new lot lines will enable the owners to make the best use of their properties. Staff supports making this small adjustment between the two zones to allow the owners to make better use of the property now and provide cleaner properties for future sales.

**ATTACHMENTS**

1. Area Map
2. Current Zone Map
3. Proposed Zone Map
4. Applicant Statement
5. Property Photos

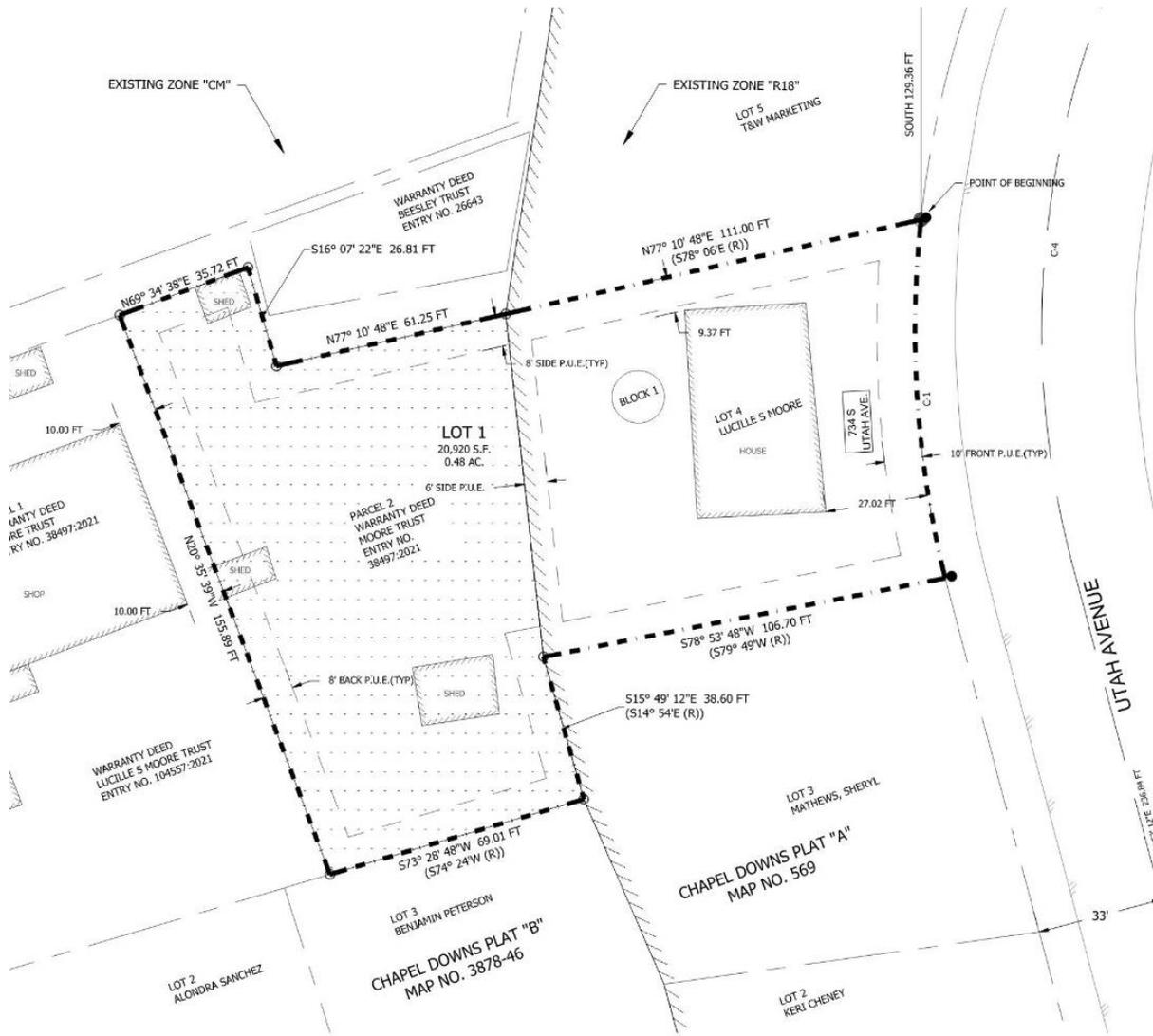
ATTACHMENT 1 – AREA MAP



ATTACHMENT 2 – CURRENT ZONE MAP



ATTACHMENT 3 – PROPOSED ZONE MAP



E 4)

## ATTACHMENT 4 – APPLICANT STATEMENT

Dear Planning Commissioners:

We are requesting a rezoning of approximately 0.48 acres located at 734 South Utah Avenue. The property is currently in a CM and R18 zone. The master plan calls for residential R18 in this area. The said property line has been adjusted to adjust two separate parcels. The newly adjusted parcel at 734 South Utah Avenue is proposed to be fully within said R18 residential zone while leaving the adjusted parcel at 735 S State Street in the CM zone.

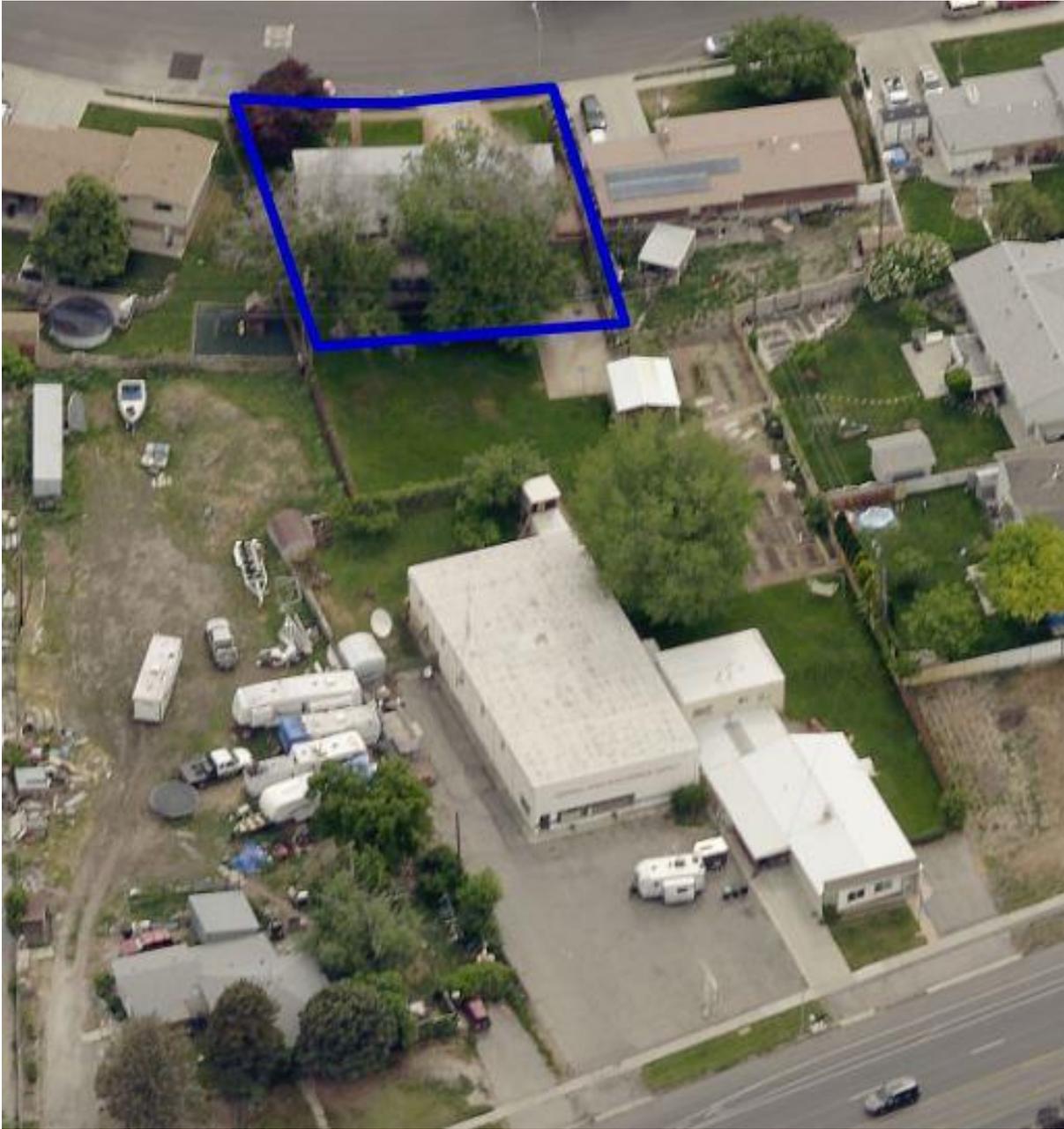
We believe the subdivision plat is consistent with the design guidelines and objectives of the south state street master plan and request your recommendation for the zone change and your approval of this site plan.

Sincerely,

Jan Dolen

ATTACHMENT 5 – PROPERTY PHOTOS





## ITEM 6\*

Janet Dolan requests approval of a Zone Map Amendment from the CM (Heavy Commercial) zone to the R1.8 (One Family Residential) zone for a portion of residential property in order to complete a lot line adjustment, located at 737 S State Street.

***Provost Neighborhood***

PLRZ20230019

# 734 S Utah Ave

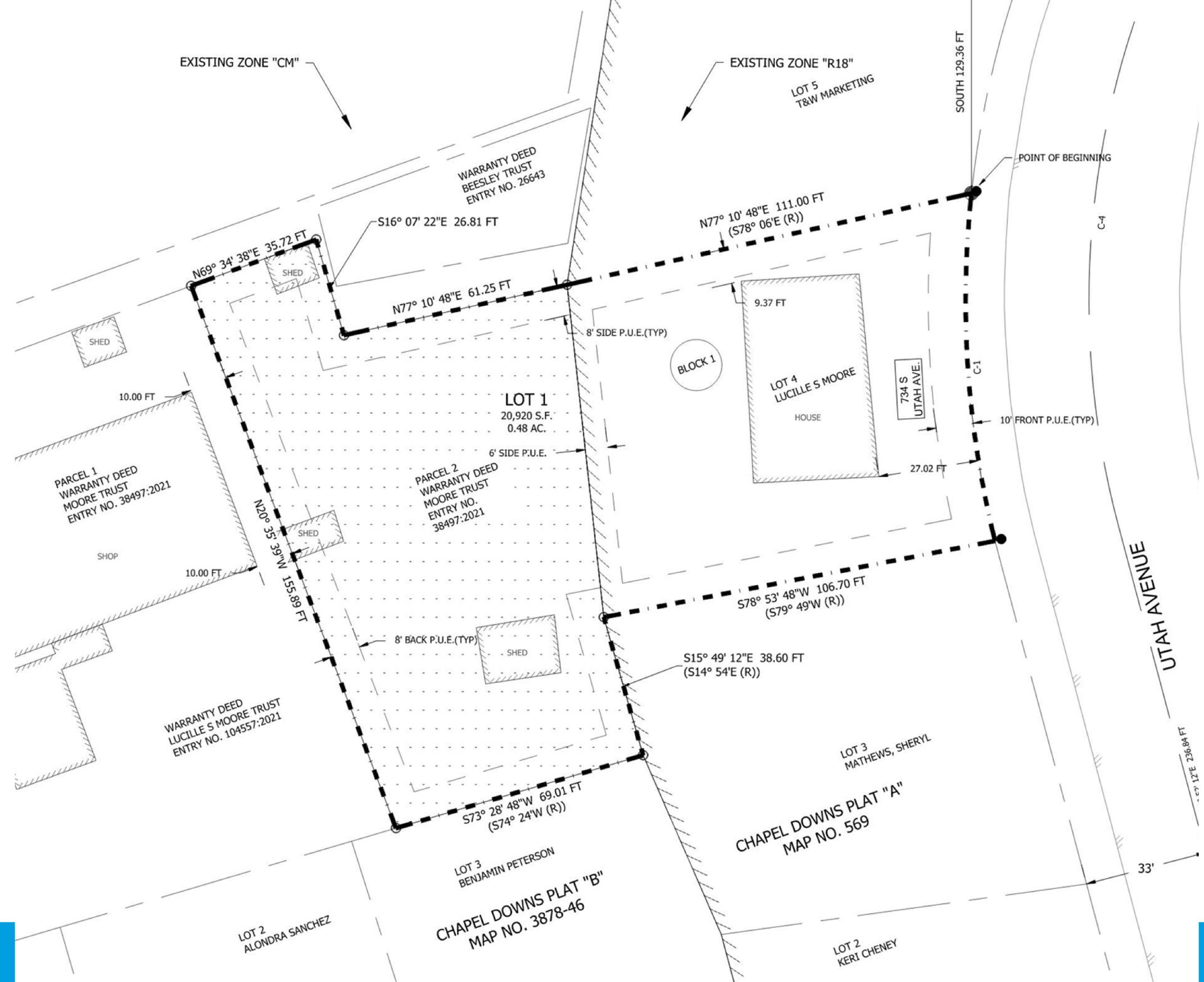
- Current Zone: R1.8 / CM





# 734 S Utah Ave

- Current Zone: R1.8 / CM
- Proposed Zoning: adjust boundary of R1.8 / CM
- Purpose: to align with use of properties and proposed plat.
- Proposal changes +/- 11,325 sq. ft. (0.26 acres) of CM to R1.8 zone



# 734 S Utah Ave

- Current Zone: R1.8 / CM
- Proposed Zoning: adjust boundary of R1.8 / CM
- Purpose: to align with use of properties and proposed plat.

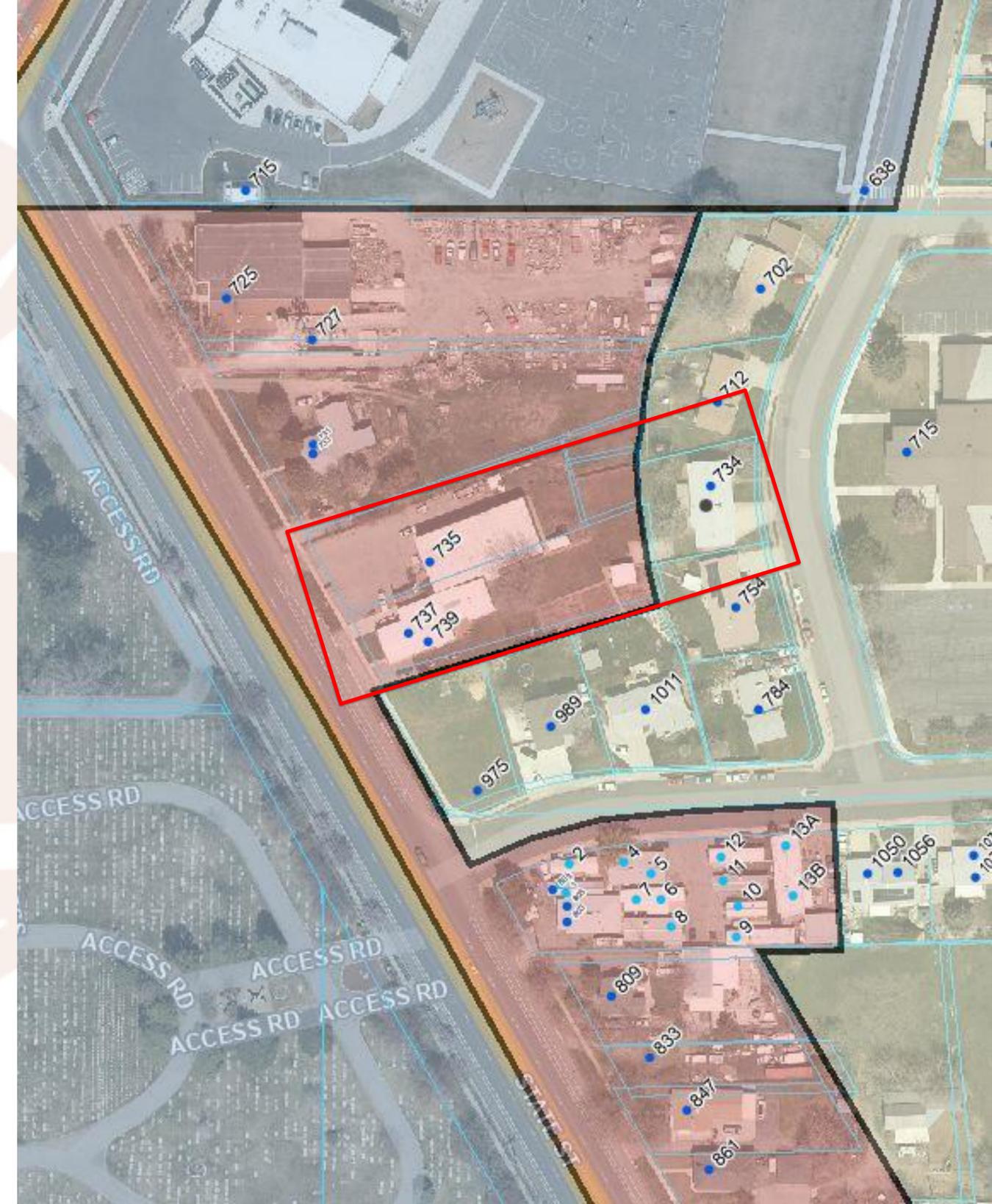
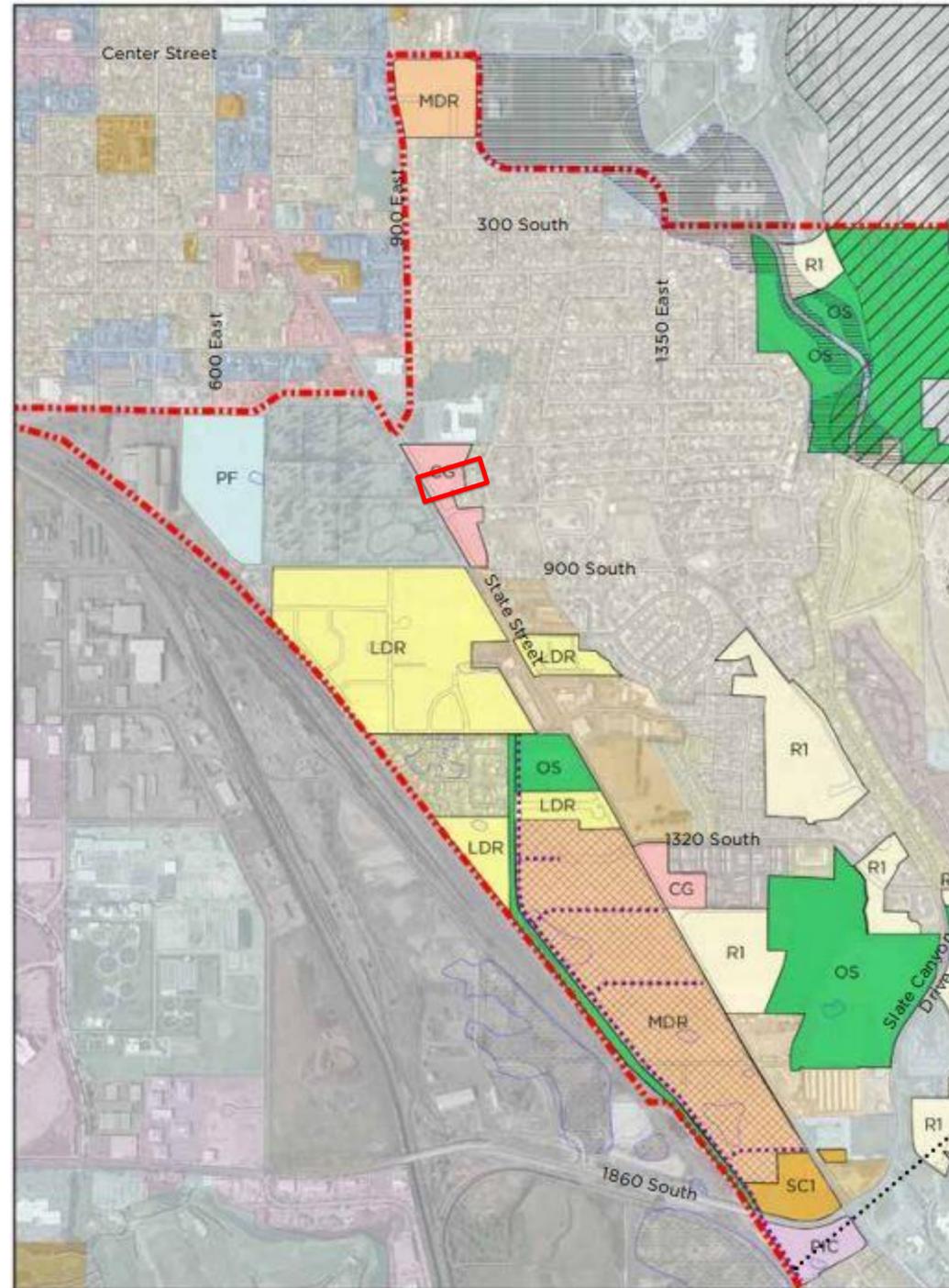


# 734 S Utah Ave

03

LAND USE

- Current Zone: R1.8 / CM
- Proposed Zoning: adjust boundary of R1.8 / CM
- Purpose: to align with use of properties and proposed plat.
- Future Land Use Map (Southeast Area Plan) and General Plan show area split between CG and Res



# 734 S Utah Ave

- Current Zone: R1.8 / CM
- Proposed Zoning: adjust boundary of R1.8 / CM
- Purpose: to align with use of properties and proposed plat.





Provo City Planning Commission

# Report of Action

March 22, 2023

---

\*ITEM 6 Janet Dolan requests approval of a Zone Map Amendment from the CM (Heavy Commercial) zone to the R1.8 (One Family Residential) zone for a portion of residential property in order to complete a lot line adjustment, located at 737 S State Street. Provost neighborhood. Aaron Ardmore (801) 852-6404  
aardmore@provo.org PLRZ20230019

---

The following action was taken by the Planning Commission on the above described item at its regular meeting of March 22, 2023:

## RECOMMENDED APPROVAL

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

Motion By: Robert Knudsen

Second By: Melissa Kendall

Votes in Favor of Motion: Robert Knudsen, Melissa Kendall, Lisa Jensen, Raleen Wahlin, Jeff Whitlock

Lisa Jensen was present as Chair.

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

### **LEGAL DESCRIPTION FOR PROPERTY TO BE REZONED**

The property to be rezoned to the R1.8 Zone is described in the attached Exhibit A.

### **STAFF PRESENTATION**

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

### **CITY DEPARTMENTAL ISSUES**

- The Coordinator Review Committee (CRC) has reviewed the application and given their approval.

### **NEIGHBORHOOD MEETING DATE**

- A neighborhood meeting was held on 02/09/2023.

### **NEIGHBORHOOD AND PUBLIC COMMENT**

- The Neighborhood Chair was not present or did not address the Planning Commission during the hearing.
- Neighbors or other interested parties were present or addressed the Planning Commission.

### **CONCERNS RAISED BY PUBLIC**

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

- Katherine Hall stated support from the neighborhood district via an email.
- Jenny Peterson stated her support for the request.

**APPLICANT RESPONSE**

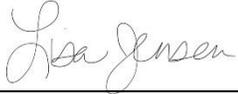
Key points addressed in the applicant's presentation to the Planning Commission included the following:

- Janet Dolen gave an overview of the history for the properties and the reasons for the request.

**PLANNING COMMISSION DISCUSSION**

Key points discussed by the Planning Commission included the following:

- The Commission confirmed with staff that the residential lot would not be able to be subdivided due to lot standards; they also confirmed that the setbacks would not cause any issues.
- The Commission appreciated the request and noted that it will set clear boundaries between the residential and commercial areas.



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Planning Commission Chair



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Director of Development Services

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

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

Administrative decisions of the Planning Commission (items not marked with an asterisk) **may be appealed** by submitting an application/notice of appeal, with the required application and noticing fees to Development Services, 445 W Center Street, Provo, Utah, **within fourteen (14) calendar days of the Planning Commission's decision** (Provo City office hours are Monday through Thursday, 7:00 a.m. to 6:00 p.m.).

**BUILDING PERMITS MUST BE OBTAINED BEFORE CONSTRUCTION BEGINS**

## EXHIBIT A

### BOUNDARY DESCRIPTION

A PARCEL OF LAND THAT LIES FULLY WITHIN THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 7 SOUTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN. SUBJECT PARCEL CONTAINS 0.50 OF AN ACRE OF LOT 4 OF THE CHAPEL DOWNS PLAT "A" AS FOUND IN THE UTAH COUNTY RECORDER'S OFFICE MAP NO. 569 AND A PORTION OF THE WARRANTY DEEDS AS FOUND IN SAID OFFICE ENTRY NO'S. 38497:2021 AND 104557:2021. BASIS OF BEARING FOR SUBJECT PARCEL IS NORTH AS DETERMINED BY GPS OR S 89° 09' 39" W 2662.41 FEET BETWEEN THE EAST QUARTER CORNER AND THE CENTER CORNER OF SAID SECTION 7. SUBJECT PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS.

BEGINNING AT THE NORTHEAST CORNER OF LOT 4 OF THE CHAPEL DOWNS PLAT "A" AS FOUND IN THE UTAH COUNTY RECORDER'S OFFICE MAP NO. 569, SAID CORNER LIES 949.77 FEET S 89° 09' 39" W ALONG THE SECTION LINE AND 129.36 FEET SOUTH FROM THE EAST QUARTER CORNER OF SECTION 7, TOWNSHIP 7 SOUTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN; RUNNING THENCE ALONG SAID SUBDIVISION THE FOLLOWING (4) FOUR COURSES: (1) SOUTHERLY 94.23 FEET ALONG THE ARC OF A 270 FOOT RADIUS CURVE TO THE LEFT THROUGH A DELTA ANGLE OF 19° 59' 48" (NOTE: CHORD BEARS S 03° 51' 09" E 93.75 FEET (S 2° 57' E 93.76 FEET BY REOCR)), (2) S 78° 53' 48" W 106.70 FEET (N 79° 49' E BY RECORD), (3) S 15° 49' 12" E 38.60 FEET (S 14° 54' E BY RECORD), (4) S 73° 28' 48" W 69.01 FEET (S 74° 24' W BY RECORD) TO AN AGREED UPON BOUNDARY LINE; THENCE N 20° 35' 39" W 155.89 FEET TO AN OLD ESTABLISHED FENCE LINE AS CALLED OUT IN RECORD DESCRIPTION WARRANTY DEED ENTRY NO 38497:2021 AS FOUND IN THE UTAH COUNTY RECORDER'S OFFICE, THENCE ALONG SAID OLD ESTABLISHED FENCE LINE THE FOLLOWING (3) THREE COURSES, (1) N 69° 34' 38" E 35.72 FEET, (2) S 16° 07' 22" E 26.81 FEET, (3) N 77° 10' 48" E 61.25 FEET TO THE NORTHWEST CORNER OF SAID LOT 4; THENCE N 77° 10' 48" E 111.00 FEET (N 78° 06' E BY RECORD) ALONG SAID LOT 4 TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 20,920 SQUARE FEET OR 0.480 ACRES.

**Katherine Hall | 3-22-23**

Neighborhood District 2 Chair

District has reviewed Ms. Dolan's request and whole heartedly give our support.

# PROVO MUNICIPAL COUNCIL STAFF REPORT



**Submitter:** TARAR  
**Department:** Development Services  
**Requested Meeting Date:** 04-18-2023

**SUBJECT:** A Resolution to place the vacant property known as a "proposed tennis court" in Block "A" Vivian Park Subdivision on the Surplus Property List.

**RECOMMENDATION:** Approval of the resolution to place a 0.12 acre parcel of ground located generally in the Vivian Park Subdivision along Fairfax Drive.

**BACKGROUND:** In 1970, Provo City received a deed for this subject property along with five (5) other lots to run a water line through the Vivian Park Subdivision. Since then, another water line was installed in the street, off of this location. Several years ago, we surplused and sold the other parcels for development. The subject property has been retained because it is not developable because of the designation of the property as a "Tennis Court" on the subdivision plat. We have now received an offer to purchase the property "as is" with the understanding that it cannot be developed. The departments have reviewed the potential sale of the property and there are no further needs of the city identified for the property, so it would be appropriate to surplus and sell. We have had the property appraised and it indicated the value of \$35,000 for this 0.12 acre parcel.

**FISCAL IMPACT:** Revenue of \$35,000

**PRESENTER'S NAME:** Tara Riddle

**REQUESTED DURATION OF PRESENTATION:** 10 Minutes

**COMPATIBILITY WITH GENERAL PLAN POLICIES, GOALS, AND OBJECTIVES:**

This property is located in Utah County. The purpose for which it was acquired has changed, so it would be appropriate to surplus and sell to rid the city of any maintenance responsibilities or liability on the property.

**CITYVIEW OR ISSUE FILE NUMBER:**

RESOLUTION 2023 -

Approved as to form: \_\_\_

A RESOLUTION TO PLACE THE VACANT PROPERTY KNOWN AS A  
“PROPOSED TENNIS COURT” IN BLOCK “A” VIVIAN PARK  
SUBDIVISION ON THE SURPLUS PROPERTY LIST.

WHEREAS, Provo City (the “City”) owns a 0.12 acre parcel of ground located generally in the Vivian Park Subdivision along Fairfax Drive and identified as a “Proposed Tennis Court” with the Utah County Tax ID # 54:037:0175, which is further described in Exhibit A and Exhibit B; and,

WHEREAS, this property is vacant and has not been identified for future use by Provo City; and

WHEREAS, Provo City is desirous of selling this property as an undevelopable parcel; and

WHEREAS, the Mayor has recommended that this parcel be placed on the surplus property list and sold subject to the conditions set in Provo City Code 3.04.030; and

WHEREAS, on April 18, 2023, the Municipal Council held a duly noticed public meeting to receive public comment and ascertain the facts regarding this matter, which facts and comments are found in the meeting record; and,

WHEREAS, after considering the Mayor’s recommendation, and facts and comments presented to the Municipal Council, the Council finds (i) the real Property described in Exhibit A should be added to the Surplus Property List for sale subject to the conditions set forth below, and (ii) the sale of such Property reasonably furthers the health, safety and general welfare of the citizens of Provo City.

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

PART I:

1. The real Property described in the attached Exhibit “A” is hereby placed on the Surplus Property list and the Mayor is authorized to dispose of the property by selling the property subject to the conditions in Provo City Code 3.04.030.

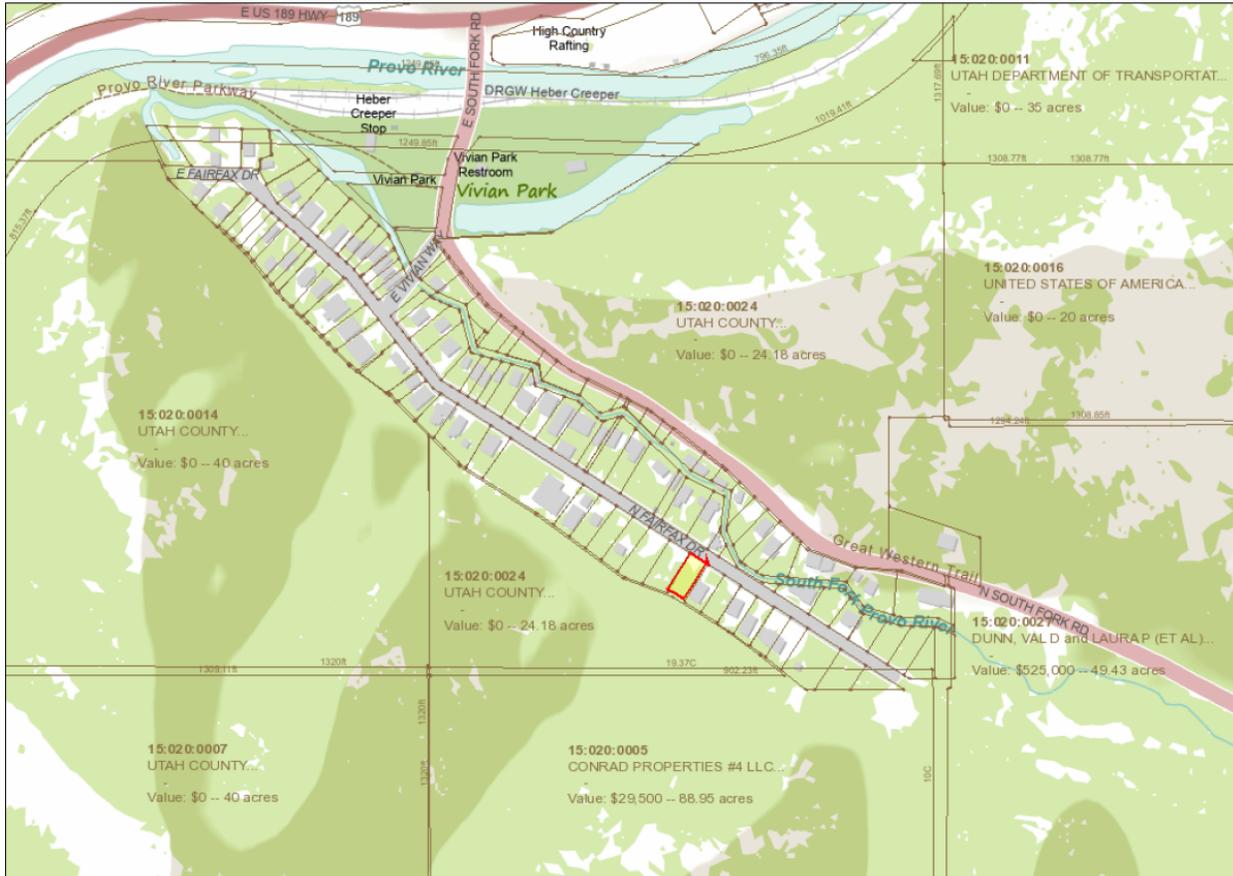
PART II:

This resolution shall take effect immediately.

END OF RESOLUTION.

## EXHIBIT A

Commencing at the Northerly corner of the intersection between the basketball corner and the corner of Lot 44, Block “A”, Vivian Park; thence along Fairfax drive northwesterly 55 feet; thence South 32° 27’ West 110 feet, more or less to the Southline of the Block; thence along said South line 69° 38’ East 20 feet; thence along said line South 58° East 28.16 feet to the Lot line of lot 44; thence along said lot line North 32° 27’ East 113.2 feet to the point of beginning.



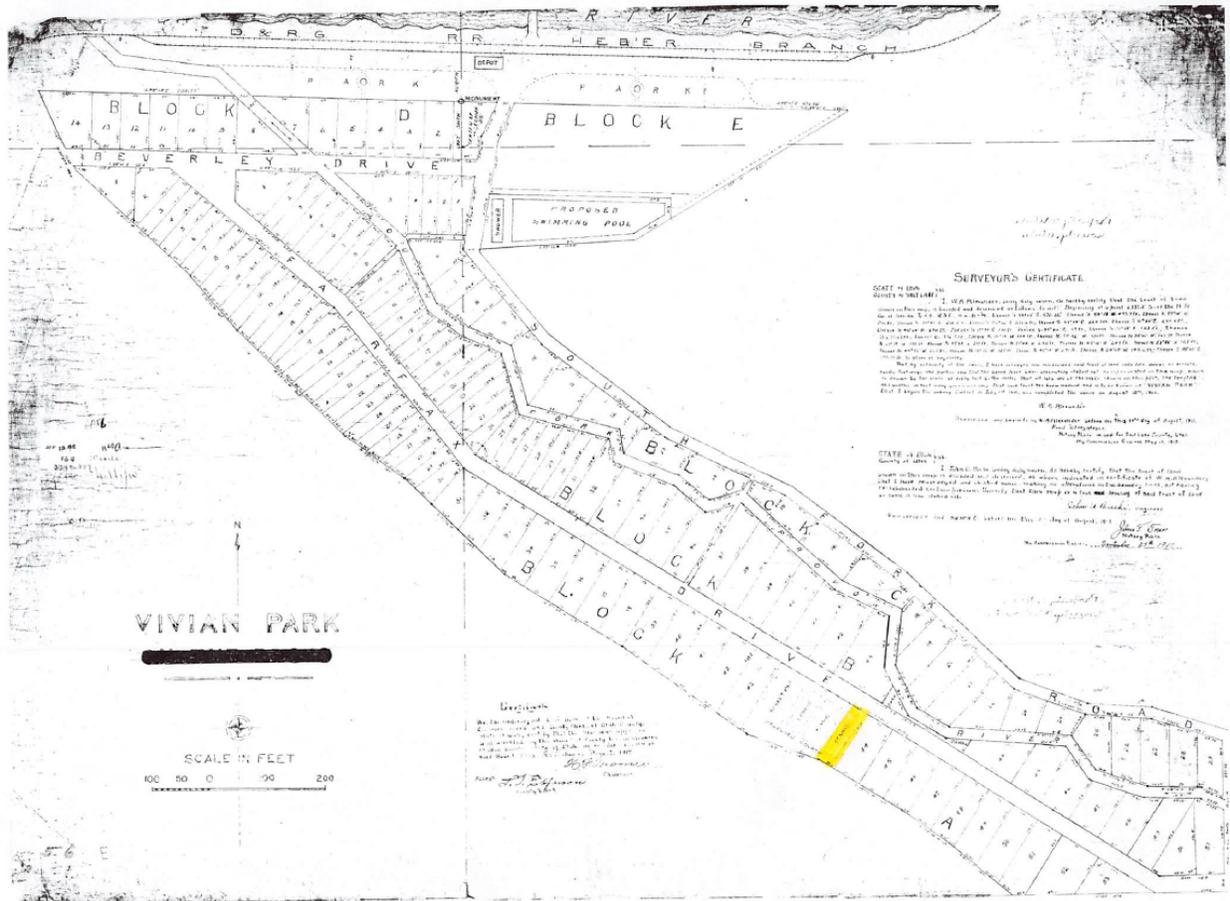
Utah County Parcel Map

This cadastral map is generated from Utah County Recorder data. It is for reference only and no liability is assumed for any inaccuracies, incorrect data or variations with an actual survey

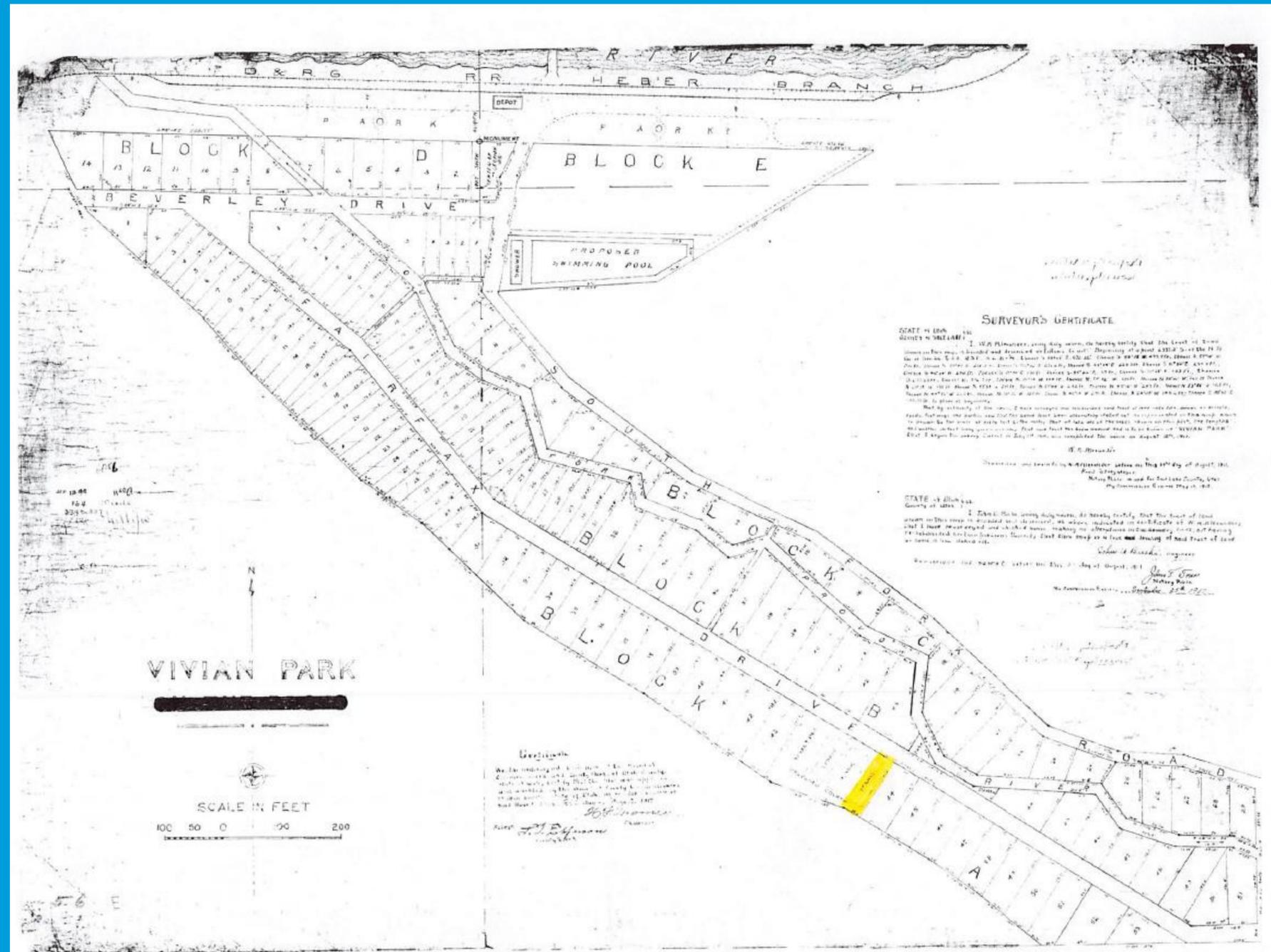
Date: 2/16/2023



EXHIBIT B



Subject Property was acquired along with several other lots in 1970 to accommodate a water line through Vivian Park



## History of Lots in Vivian Park

- The water line was upgraded and moved several years ago
- Departmental review indicated no future need for the property
- Other city-owned lots were surplus and sold in 1999

## Terms of Sale

- Sales price will be based on appraised value of \$35,000
- No city water will be provided to the lot
- No septic tank will be installed on the lot
- Buyer acknowledges that there is an abandoned water line on the property and that due to the dedication as a “proposed tennis court” on the subdivision plat, parcel cannot be developed into a residential lot



# Planning Commission Hearing Staff Report

## Hearing Date: March 22, 2023

**\*ITEM #5** Nathan Gagon requests an Ordinance Text Amendment to Section 14.34.320, Off-street Parking Across a Public Street or with an Intervening Property, to increase the allowed distance between the building and parking for downtown zones from 800 feet to 1100 feet. Downtown Neighborhood. Aaron Ardmore (801) 852-6404 aardmore@provo.org PLOTA20230036

**Applicant:** Nathan Rory Gagon

**Staff Coordinator:** Aaron Ardmore

### **ALTERNATIVE ACTIONS**

1. **Approve** the requested appeal. *This action would not be consistent with the recommendations of the Staff Report. The Planning Commission should state new findings.*

2. **Continue** to a future date to obtain additional information or to further consider information presented. *The next available meeting date is April 12, 2023, at 6:00 P.M.*

**Relevant History:** The applicant originally submitted for a business license for a dance hall/event center at 247 W Center Street on 10/25/22. The business application review sent on 12/1/22 identified the need for a Conditional Use Permit (CUP) for the proposed use. A CUP application was initially submitted on 12/19/22 but was incomplete. Staff noted missing submittal requirements through correspondence on 1/9/23 and 2/13/23, the later of which direction to a text amendment was given by staff. This proposed amendment was written and submitted on 2/15/23 as a way to try to make the business work. As recent as 3/9/23 staff has identified code violations on the subject property of illegal signage installed without a building permit.

**Neighborhood Issues:** This item has been scheduled for the March 30<sup>th</sup> District 5 Neighborhood meeting. Staff has not heard of any neighborhood issues at the time of this report.

### **Summary of Key Issues:**

The request relates to 247 W Center but would apply to any property in the DT1 or DT2 zone as described in Subsection 14.34.320(1)(a), Provo City Code.

The proposal is to extend the allowable off-site parking for a business from eight hundred feet (800') to eleven hundred feet (1,100') for this area. Staff has concerns about the ability to effectively use parking that is 1,100 feet away from a site.

**Staff Recommendation:** Staff recommends that the Planning Commission forward a negative recommendation to the City Council.

## **OVERVIEW**

Nathan Gagon is requesting a text amendment to Section 14.34.320 of the Provo City Code to extend the allowed distance between a business and its required off-street parking. The proposal stems from a pending business license (LCB202200882) and Conditional Use Permit (PLCUP20220400) for property at 247 W Center Street. The business owners at this address desire to open a dance hall/event center but are limited by the availability of off-street parking on the site.

Current code in Section 14.34.320 gives standards for off-street parking across a public street or with an intervening property, an allowance that can be granted through a conditional use permit. The standard maximum distance in the City is four hundred feet (400') from the business property line. However, sections of downtown (bounded by University Avenue, 200 South, 300 West, and 200 North) allow for an increased distance of eight hundred feet (800') from the business. The proposal is to extend that downtown exception for parking up to eleven hundred feet (1,100') away.

## **STAFF ANALYSIS**

Staff has concerns with the proposed amendment to off-site parking standards related to employee parking, public awareness, common practice, and need for the amendment.

First, with so many sites on historic Center street being limited as to on-site parking staff is concerned that employees will not use the assigned parking that is over two blocks away from their job, but rather use the on-street spaces along Center street and move their vehicles as needed to avoid tickets. Either that, or use adjacent neighborhood parking, limiting resident or visitor spaces on neighborhood streets.

Public awareness of an off-site parking setup so far away also gives staff concern. It may be difficult to alert all upcoming visitors of a business that the associated parking is in a parking garage over two blocks away. Some businesses may be able to notice on business websites and catch some planned visitors. However, the large number of patrons that drive downtown to go to downtown businesses may not have that notification, and even if there is information posted on the entry doors it is likely that the people have already found a spot nearby and would not be motivated to move their vehicles and walk back. There could be additional obstacles when the assigned off-street parking is a paid parking lot, as it is in the case of the applicant. People will typically try to find available free parking before paying for a spot.

Lastly, the text amendment may not be needed. There are alternative parking garages and surface lots within the current eight hundred foot (800') standard for the majority of downtown businesses, including 247 W Center Street. Working with parking lot property owners within the already approved area should be the first option. The standard of four hundred feet (400') in the majority of the city references the size of city blocks with each face of the standard block in Provo being approximately that length. Naturally, the downtown made an exception for two blocks away as it is a more walkable environment. Going over this one or two block standard seems to be out of the spirit of the code.

Provo City Code asks staff to evaluate text amendments against the criteria in Section 14.02.020(2). It states that the following guidelines shall be used to determine consistency with the General Plan: **(staff responses in bold)**

(a) Public purpose for the amendment in question.

**Staff response: The applicant has stated that the public purpose of the amendment is “to bring many people to Center Street. It will give more visibility to the surrounding businesses, and maybe even bring new customers/patrons to the city itself.” He goes on to say that “allowing the amendment for the downtown area, would 1) provide another option for current businesses looking for parking solutions [and] 2) Potentially be the factor for new wanted businesses in the area to have their business license approved, thus bring in further revenue for the city.”**

(b) Confirmation that the public purpose is best served by the amendment in question.

**Staff response: Staff doesn’t believe that the amendment serves the purpose stated. As noted in this report, there is sufficient parking within the current allowance of eight hundred feet (800’) for the applicants property and most others downtown. Additionally, referencing the analysis above, staff does not feel that the stated goals are met by this amendment.**

(c) Compatibility of the proposed amendment with General Plan policies, goals, and objectives.

**Staff response: Goals related to this request are found in the Economic Development Chapter of the General Plan. Specifically, goal 1 to “employ innovative approaches to promote local business and create community.” However, staff doesn’t feel that the approach proposed in this case would effectively help promote local businesses.**

(d) Consistency of the proposed amendment with the General Plan’s “timing and sequencing” provisions on changes of use, insofar as they are articulated.

**Staff response: There are no timing and sequencing provisions related to this request.**

(e) Potential of the proposed amendment to hinder or obstruct attainment of the General Plan’s articulated policies.

**Staff response: The proposed amendments may actually hinder business downtown if employees and users don’t actually use the off-site parking associated with the business, and instead clog downtown on-street parking.**

(f) Adverse impacts on adjacent land owners.

**Staff response: Staff thinks there is a risk of adverse impacts on adjacent business owners’ availability to on-street parking and adjacent residential property owners for on-street spaces for visitors near their homes.**

(g) Verification of correctness in the original zoning or General Plan for the area in question.

**Staff response: Staff has confirmed the zoning and General Plan.**

(h) In cases where a conflict arises between the General Plan Map and General Plan Policies, precedence shall be given to the Plan Policies.

**Staff response: There is no conflict in this case.**

**APPLICABLE ZONING CODES**

**14.34.320 Off-street Parking Across a Public Street or with an Intervening Property.**

In accordance with 14.37.080(1)(b) required parking shall not be located across a public street, or with an intervening property, except by conditional use permit approved by the Planning Commission, subject to the conditions set forth below:

(1) Off-street parking approved under this Section must be located such that the nearest property line of the lot is within four hundred (400) feet of the nearest property line of the lot containing the land use activity it serves, as measured along the shortest pedestrian route with the following exception:

(a) Portions of any DT zone located in an area bounded by University Avenue, 200 South, 300 West, and 200 North, and

(b) Parking to be provided may not be located further than eight hundred (800) feet from building to parking lot subject to the Planning Commission approval.

(2) The parking lot, if across the street from the main land use activity it serves, shall be located within two hundred (200) feet of a regulated intersection or approved crosswalk in the direction of pedestrian traffic.

(3) The applicant shall, at the applicant's own expense, submit a report from a qualified Traffic Engineer assessing the probable vehicular and pedestrian impacts from the off-site parking lot, and including any recommendations for the mitigation of safety concerns.

(4) The applicant shall assume the full liability, and responsibility for the lot, as well as any costs associated with improvements that may be required to enhance safety.

(5) If, after review by the Planning Commission staff, the Planning Commission finds that the off-site lot will not pose any significant traffic safety problems, and that it complies with all other provisions of this Title, the permit shall be granted.

**CONCLUSIONS**

Staff has made the case in this report to recommend denial of this proposed amendment. With concerns of employee parking, patron knowledge of assigned parking, and the common practices of people staff believe that the proposed amendment is not, in practice, effective. Additionally, the current standard has sufficient parking lots for downtown tenants to point to and/or create lease agreements with.

**ATTACHMENTS**

1. Proposed Amendment
2. Subject Property with 800-foot buffer

ATTACHMENT 1 – PROPOSED AMENDMENT

**14.34.320 Off-street Parking Across a Public Street or with an Intervening Property.**

In accordance with 14.37.080(1)(b) required parking shall not be located across a public street, or with an intervening property, except by conditional use permit approved by the Planning Commission, subject to the conditions set forth below:

(1) Off-street parking approved under this Section must be located such that the nearest property line of the lot is within four hundred (400) feet of the nearest property line of the lot containing the land use activity it serves, as measured along the shortest pedestrian route with the following exception:

(a) Portions of any DT zone located in an area bounded by University Avenue, 200 South, 300 West, and 200 North, and

(b) Parking to be provided may not be located further than ~~eight hundred (800)~~ **eleven hundred (1,100)** feet from building to parking lot subject to the Planning Commission approval.

(2) The parking lot, if across the street from the main land use activity it serves, shall be located within two hundred (200) feet of a regulated intersection or approved crosswalk in the direction of pedestrian traffic.

(3) The applicant shall, at the applicant's own expense, submit a report from a qualified Traffic Engineer assessing the probable vehicular and pedestrian impacts from the off-site parking lot, and including any recommendations for the mitigation of safety concerns.

(4) The applicant shall assume the full liability, and responsibility for the lot, as well as any costs associated with improvements that may be required to enhance safety.

(5) If, after review by the Planning Commission staff, the Planning Commission finds that the off-site lot will not pose any significant traffic safety problems, and that it complies with all other provisions of this Title, the permit shall be granted.

