

MINUTES OF THE DRAPER CITY PLANNING COMMISSION MEETING HELD ON THURSDAY, APRIL 27, 2023 IN THE DRAPER CITY COUNCIL CHAMBERS

PARTICIPATING: Andrew Adams, Chair
Commission Member Gary Ogden
Commission Member DeLaina Tonks
Alternate Commission Member Kendra Shirey
Alternate Commission Member Susan Nixon
Alternate Commission Member Tab Bingham

ABSENT: Craig Hawker, Vice-Chair
Commissioner Member Mary Squire
Commission Member Lisa Fowler

STAFF PRESENT: Jennifer Jastremsky, Planning Manager
Mike Barker, City Attorney
Spencer DuShane, Assistant City Attorney
Maryann Pickering, Planner III
Tevai Huanga, Planner
Fred Aergenter, Community Development Director
Brien Maxfield, Senior Engineer Manager
Amie Salazar, Office Manager

6:30 PM Business Meeting

Chair Andrew Adams called the meeting to order.

- 1. Action Item: Summerhays Landscaping Office Plat Amendment Approval Extension (Administrative Action).**
On the request of Ryan Summerhays, representing Summerhays Landscaping, for an extension to the April 28, 2022 approval for the Summerhays Landscaping Office Plat Amendment, located at approximately 134 East 12300 South and 12361 South Minuteman Drive. Application SUBD-12-2022. Staff contact is Jennifer Jastremsky, 801-576-6328, jennifer.jastremsky@draperutah.gov.

Planning Manager, Jennifer Jastremsky reported that the Planning Commission saw the application last year. It is a plat amendment to adjust the property just south of 12300 South and Minuteman Drive. The intent is to create two properties. There is currently a small office storage space for Summerhays Landscaping. The larger piece is planned for a hotel use. Each building will be located on a separate parcel. The request was approved in April of last year. The applicant has been working toward having the plat recorded. They had issues with South Valley Sewer District needing an additional easement added to the plat. They have been working with adjacent property owners to get that easement in place. They hope to have the plat recorded in the next few months but need a six-month extension in order to do that.

The applicant, Ryan Summerhays, was not present.

Commissioner Nixon had no issues with the proposal and stated that work on the project has been ongoing.

Motion: Commissioner Nixon moved to APPROVE the Plat Amendment Extension, as requested by Ryan Summerhays representing Summerhays Landscaping Office Plat Amendment Request, Application SUBD-12-2022, based on the finding listed in the memo dated April 27, 2023, as follows:

Finding:

That the applicant has shown good cause to obtain an extension and that substantial action has occurred towards acquiring the signatures to record the mylar

Second: Commissioner Tonks.

Vote: A roll call was taken with the Commissioners voting 5-to-0 in favor of the motion. Commissioners Tonks, Nixon, Shirey, Ogden, and Bingham voted “Aye”. The motion passed unanimously.

2. Public Hearing: Jared Ellsworth Home Occupation Conditional Use Permit (Administrative Action).

On the request of Jared Ellsworth for a Home Occupation Conditional Use Permit for a cottage business to create arts and crafts to sell locally. The property is located at 1048 E 13590 S. in the RA1 zone (Single Family Residential 40,000 ft² minimum area) zoning district. Application USE-005-2023. Staff contact is Tevai Haunga at 801-576-6522 or tevai.haunga@draperutah.gov

City Planner, Tevai Haunga, presented the Staff Report and stated that the applicant, Jared Ellsworth is seeking approval of a Home Occupation Conditional Use Permit for a cottage business in the RA1 Zone. He makes various arts and crafts to sell in the home. No customers or employees come to the home. A Vicinity Map was displayed that showed the land use as Residential Low Medium Density. Site photos of the property were displayed. The products to be sold include wooden ornaments, jewelry, and paintings. Ms. Haunga indicated that a few phone calls were received inquiring about clarification of the home occupation but no opposition.

Chair Andrew Adams opened the public hearing.

Kathy Kranz, a Canyon Breeze Lane resident, had concerns about noise as she was unsure what type of equipment will be used. She asked what types of arts and crafts will be made, more details about the operation if there will be a noise buffer, the hours of operation, and where on the property the activity will take place.

There were no further public comments. The public hearing was closed.

Mandy Ellsworth, the wife of the applicant, was present on behalf of the applicant. Mrs. Ellsworth stated that there will be no noise associated with the use. She stated that the activity involves crafts that her children want to make in order to participate in community events.

Motion: Commissioner Ogden moved to APPROVE the Home Occupation Conditional Use Permit as requested by Jared Ellsworth representing Application USE-005-2023 based on the finding and subject to the conditions listed in the Staff Reported dated April 12, 2023, as follows:

Conditions:

1. That all business requirements of the Draper City Engineering, Public Works Building, Business Licensing, Planning, and Fire Divisions are satisfied throughout the operation of the business.
2. A business license shall be maintained for the life of the business.
3. Customers are not allowed to come to the property.

Finding:

1. Reasonable mitigation measures can be placed on the conditional use to alleviate anticipated detrimental effects.

Second: Commissioner Bingham.

Vote: A roll call was taken with the Commissioners voting 5-to-0 in favor of the motion. Commissioners Tonks, Nixon, Shirey, Ogden, and Bingham voted “Aye”. The motion passed unanimously.

3. **Public Hearing: Lone Peak Court Lot 9 Plat Amendment (Administrative Action).**
On the request of Brandon Thomas for a Plat Amendment to Lot 9 of the Lone Peak Court Subdivision, covering 0.55 acres of land located at 366 East Brown Farm Ln. Application SUBD-212-2022. Staff contact is Jennifer Jastremsky, 801-576-6328, jennifer.jastremsky@draperutah.gov.

Ms. Jastremsky reported that this property is just north of 13800 South and east of 300 East. The land use is Residential Low Medium Density and RA2 Residential, Agricultural zoning with a small amount of RA1 zoning. The lot within the Lone Peak Court Subdivision, Lot 9, is just over 20,000 square feet. They have acquired properties to the south and are looking to incorporate them into the boundaries of their lot and the subdivision. The lot will go from 20,640 square feet in size to 24,008 square feet in size. A visual of the area was shown. The addition is being added to their backyard.

Commissioner Nixon asked if the additional parcel needs to be changed to the same zoning as the original parcel. Ms. Jastremsky responded that the Code does not require a zone change and that properties are allowed to have split zoning. If it were a piece that would be subject to development, it might create issues down the line with split zoning, but in this case, that will not be an issue. Both zones are single-family residential zones. The regulations remain the same for both zones.

The applicant, Brandon Thomas commented that he is just trying to clean up an awkward property line.

Chair Adams opened the public hearing. There were no public comments. The public hearing was closed.

Motion: Commissioner Nixon moved to APPROVE the Plat Amendment, as requested by Brandon Thomas for Lone Peak Court Lot 9, Application SUBD-212-2022, based on the following findings and subject to the conditions listed in the Staff Report Dated April 18, 2023, as follows:

Conditions:

1. That all requirements of the Draper City Engineering, Public Works, Building, Planning, and Fire Divisions are satisfied throughout the development of the site and the construction of all buildings on the site, including permitting.
2. Section 17-9-070 of the Draper City Municipal Code specifies that the approval of a Plat Amendment expires one year from the date of approval if the plat has not been recorded or construction of the required landscaping and infrastructure has not been commenced. The expiration of the approval. A maximum of one extension for a period of up to six months can be requested in writing to the Community Development Department prior to the date of expiration

Finding:

1. That there is good cause for the vacation or amendment; and no public street, right-of-way, or easement has been vacated or amended.

Second: Commissioner Bingham.

Vote: A roll call was taken with the Commissioners voting 5-to-0 in favor of the motion. Commissioners Tonks, Nixon, Shirey, Ogden, and Bingham voted "Aye." The motion passed unanimously.

4. Public Hearing: Porter Rockwell Lot 1 Plat Amendment (Administrative Action).

On the request of Zach Gordon, representing Vibe Homes, for a Plat Amendment to 0.36 acres of property located at 1308 East Outlaw Place. The application will reconfigure the storm drain easement on the property. Application SUBD-009-2023. Staff contact is Tevai Haunga, 801-576-6522, tevai.haunga@draperutah.gov.

Ms. Haunga presented the Staff Report and stated that the applicant, Zach Gordon is representing Vibe Homes and requesting approval for a Plat Amendment to reconfigure the storm drain on the property. A vicinity map was displayed. The property is off 1300 East in the Porter Rockwell subdivision. The land use is Residential Medium Density and the zoning is R3, Single-Family Residential, 13,000 square-foot minimum. Site photos were displayed to show the current location of the storm drain. Ms. Haunga stated that the applicant proposes that the storm drain easement be relocated east to west on the property to allow a single-family dwelling. Engineering has reviewed the plan and there was no concern.

Commissioner Tonks asked if the GIS and planning redline information provided in the packet was accurate. Ms. Haunga stated that it will be made accurate in the final plan as slight changes are needed for the final mylar.

Mr. Gordon was not present, however, the property owner Zach Ngawaka was present on Mr. Gordon's behalf. He stated they are trying to push the storm drain to the most outer limit possible to have more space to build a house. It will still contain the same volume of water and adhere to all the rules. It will just be longer and skinnier.

Chair Adams opened the public hearing. There were no public comments. The public hearing was closed.

Motion: Commissioner Tonks moved to APPROVE the Porter Rockwell Lot 1 Plat Amendment, as requested by Zach Gordon, Application SUBD-009-2023, based on the findings and subject to the conditions listed in the Staff Report dated April 12, 2023, as follows:

Conditions:

1. That all requirements of the Draper City Engineering, Public Works, Building, Planning, and Fire Divisions are satisfied throughout the development of the site and the construction of all buildings on the site, including permitting. That all requirements of the geotechnical report are satisfied throughout the development of the site and the construction of all buildings on the site.
2. Section 17-9-070 of the Draper City Code specifies that the approval of a Plat Amendment expires one year from the date of approval if the plat has not been recorded or construction of the required landscaping and infrastructure has not been commenced. The expiration of the approval. A maximum of one

extension for a period of up to six months can be requested in writing to the Community Development Department prior to the date of expiration.

Finding:

- 1. There is good cause for the vacation or amendment; and no public street, right-of-way, or easement has been vacated or amended.**

Second: Commissioner Bingham.

Vote: A roll call was taken with the Commissioners voting 5-to-0 in favor of the motion. Commissioners Tonks, Nixon, Shirey, Ogden, and Bingham voted "Aye." The motion passes unanimously.

5. Public Hearing: Towne Storage Draper Land Use and Zoning Map Amendments (Legislative Action).

On the request of Gary Free, representing Via Digital Solutions, a request to amend the land use designation from Neighborhood Commercial to Community Commercial and rezone from CN (Neighborhood Commercial) to CG (General Commercial) on approximately 2.38 acres for the properties located at approximately 11761 and 11757 S. 700 East. Application numbers: TEXTMAP-008-2023 and TEXTMAP-001-2023. Staff contact is Maryann Pickering at 801-576-6391 or maryann.pickering@draperutah.gov.

Due to a conflict of interest, Commissioner Nixon recused herself from the discussion and vote on the above item.

City Planner, Maryann Pickering, presented a project vicinity map and identified various points of interest. The current land use designation is Neighborhood Commercial and the current zoning is CN. The request is to change the land use designation from Neighborhood Commercial to Community Commercial, which would go along with the zoning map change from Neighborhood Commercial Zoning to General Commercial Zoning. If approved by City Council, the applicant has expressed a desire to construct a self-storage facility on the property. For public comment, Ms. Pickering received about 15 emails, all of which were in opposition to the project. The emails were forwarded to the Commissioners.

Ms. Pickering reported that currently, self-storage facilities are not permitted in the CN zone. This application is for a zoning and land use change that goes to the City Council for a final decision. A list was provided of any potential uses that could occur if the self-storage was not to be built. This site is the former location of the Home Sweet Home Kennel property, which was a dog boarding facility. It has been gone for a few years. The property borders the Sunset Ponds neighborhood with residential properties on the north and east side of the property.

Ms. Pickering identified the differences between the two zones. If rezoned, the proposed self-storage facility would require a Conditional Use Permit. In addition, if the area is rezoned vehicle sales, which are currently not permitted, would be permitted. Tattoo establishments, hotels, and

medical and dental would also be permitted. The Commission reviewed the types of uses that would be permitted if this area was rezoned.

David Peterson, representing Towne Storage, was present on behalf of the applicant, Gary Free. Mr. Peterson stated that he has responded to all of the emails received by staff. The hope was to address many of the concerns raised. Mr. Peterson reported that Towne Storage has been in business since 1994 and they have 32 facilities in three states. Six are currently in development. Their corporate headquarters are in Draper. Both the CEO and COO live in Draper. This site will be the first facility they have in Draper. They are unique because they integrate their storage facilities into the residential community. Mr. Peterson displayed photos of other facilities that show homes surrounding the facility. They are very cognizant that they build in and around communities. They make sure to landscape and design with that in mind. They intend to build a two-story design, a single building that will be fully landscaped. They know what they need to do to blend in with the community.

Of the 15 emails received, traffic and parking were major concerns. Traffic Studies were conducted for their Bluffdale and Phoenix facilities. Bluffdale has 362 units and is a traditional storage facility. Mr. Peterson reported that storage units are low generators of traffic. People drop their items off and then do not return every day. In the former study, the AM peak traffic was about seven visits and the PM peak was about 11 visits. In Phoenix, the peak was 11 visits in the AM and 15 in the PM. What that shows for Bluffdale is that it commiserates with a subdivision of three to 10 single-family homes. That is the traffic impact that a storage facility has. A retail facility in Phoenix on the same three-acre parcel would have 10 times the amount of traffic. He noted that that is universal across all the facilities. Their facilities typically generate the same amount of traffic as eight single-family homes.

Parking issues were also raised. Mr. Peterson stated that Towne Storage typically over parks its units. Most people pull up to the door closest to their unit, take care of business, and then move out. He commented that parking has never been an issue. 24/7 access was also a concern expressed in the emails. Towne Storage does not have 24/7 access except with very limited exceptions. Most of their units operate from 6 AM – 9 PM. A few operate from 7 AM – 10 PM. Most of the units are inside the building and there are no windows on the second story except for one. No one will be able to see into anyone's backyard. They also keep the facilities very well-lit but contain the lighting to the footprint of the building. Safety was of concern and security cameras are used. Each unit is individually alarmed with a unique code. The facility design results in minimum crime. Safety is of paramount importance and there are no areas where vagrants can hide out. Standing water was raised as another concern. Towne Storage will eliminate the standing water and they will landscape. He noted that their St. George facility received a Beautification Award.

Mr. Peterson reported that their projects fall more within NC Zone, however, because they are a self-service storage unit, they have to ask for the Community Commercial and a Conditional Use Permit under General Commercial zoning.

Chair Adams commented that these are not the typical structures that people drive into at all hours of the night playing music. They are only accessible on foot. Chair Adams asked about the size

of the structures. Mr. Peterson responded that some outside units can be accessed by vehicle but the bulk of the units are inside.

Chair Adams opened the public hearing.

Andrew Morgan was present representing the Sunset Ponds HOA and stated that they are opposed to the proposed zone change. In 2020, the two parcels were rezoned from Residential to Neighborhood Commercial. The Sunset Pond HOA supported this change because it would provide commercial use that supports the immediate residential area and aligns with the type of commercial properties in other CN designations along the mile stretch between 11400 South and 12300 South. The HOA acknowledges and supports maintaining the current CN designation because they have established the need for these types of businesses to support the immediate area. According to Draper City, the CN zone is intended to have a small trade area and meet nearby the day-to-day needs of nearby residents. The CG designation does not fit within the mile stretch zone and there are no CG designations anywhere within that mile stretch. He noted that there are very few CG zones in all of Draper. The few that exist do not fall within a predominantly Neighborhood and Light Commercial Zone. According to Draper City Code, the CG designation is intended to apply to existing commercial developments and should not be used for new commercial development unless specific topographical criteria have been met. Therefore, the designation does not seem appropriate for this location.

Mr. Morgan stated that the residents of the HOA are also concerned about the consistency of zoning and land use changes in the City. They are proud of their community but consistent and appropriate land use are of major concern. Towne Storage has requested a zone change to CG as well as a land use change from Neighborhood Commercial to Community Commercial. He noted that the next parcel immediately to the north of these two, owned by Federal Heights Holding, is looking for a decrease in the land use from Community Commercial to Neighborhood Commercial. Mr. Morgan stated that from a land use perspective, Federal Heights Holdings is doing the exact opposite of Towne Storage. The HOA residents asked for consistency and appropriate use in our area. Building size was also of concern. Mr. Morgan questioned how an 80,000-square-foot facility will look next to 2,000-square-foot homes.

Annie Daniels, who resides at 718 East Shady Lane, commented that the last time she spoke during a public hearing she felt that her comments were dismissed and the request she was opposed to was granted. She asked if there will be cameras as part of the project and if so where they will be pointed. She also asked about lighting and fencing. She has experience living next to a storage facility and she found that she could not park her cars on the street and there was a lot of theft. People often live there and the lack of bathroom facilities is an issue. It was not a pleasant experience. She noted that in Sunset Ponds there are several uses such as TRAX, and the Gateway Boys Home that bring in an element of crime. Many people wander off of TRAX through The Ponds. She questioned how much their neighborhood have to absorb.

Katherine Osborne a Sunset Ponds resident, stated that their home was one of the first built in Sunset Ponds. At that time, the entrance to Draper on 700 East was rural. Her concern was that the storage plan is not congruent with what the rest of 700 East looks like. She was uncomfortable

thinking that she will drive into Draper and see Towne Storage. She stated that there are too many other places in Draper and nearby where a storage facility would fit better such as near the liquor store. The proposed facility will be surrounded on three sides by homes and across the street are condos and townhomes. She thought it was a bad fit and questioned whether this was what they should add to the area between Sandy and Draper. She suggested the ambiance be considered.

Jennifer Morgan, Sunset Ponds resident, stated that setbacks are also of major concern. Draper City has already approved a 20-foot commercial building with a setback exception of 10 feet adjacent to a residential property on the south side of the subdivision. This has had serious marketability consequences for those residences and they are justified in having serious concerns about the marketability of over 15% of their neighborhood because of an 80,000-square-foot facility built literally in their backyards. Mr. Peterson mentioned that the facility will be well-lit. He also stated that they would be 12 feet up and pointed down. She did not see how an 80,000-square-foot building could not create light pollution. The backyards in Sunset Ponds are shallow and will be lit every night because their security fences are only six feet tall and the lights will be at 12 feet pointing down. Another issue was crime. Ms. Morgan stated that Inside Self Storage (“ISS”) is the largest self-storage trade association in the United States. Over the past 32 years, it has grown its brand to include a monthly magazine, the industry's largest conference and trade show, and provides industry education and news of happenings of the self-storage industry. In an article published on June 8, 2021, in *ISS Magazine* they recognized that self-storage facilities have long attracted a criminal element that is not limited to theft. Vandalism, assault, drug-related incidences, and homicides have occurred. It also states that there is no way to completely safeguard a business from misconduct. In addition, it does not matter if the facility is in a high-crime area or a better part of town. Regardless of any promise of security by Mr. Peterson/Towne Storage, this industry insider article clearly states that these facilities increase crime. Ms. Morgan urged the Commission to not drive people out of the neighborhood.

Mary Cresci, a Sunset Ponds resident since 1999, stated that she loves the community. When Draper City wanted to put a public restroom in Mehraban Wetland Park it was discussed at a City Council Meeting and they agreed with the residents that having a public facility there was not a good idea. The residents truly appreciated that. The Mehraban Wetlands is part of the community and no one has considered the wildlife. Several herds of deer roam the wetlands and have been seen in the fields where the storage unit facility is proposed. As a former educator, Ms. Cresci knows that many schoolchildren take field trips to the Mehraban wetlands and the route from the school to the wetlands could easily go by the proposed facility. She worried about the security and safety of children and wildlife. She supported keeping Draper as it is.

Valerie Marsh, a Sunset Ponds resident, was also a long-time resident. She shared the concerns mentioned but was also worried about being next to TRAX and vagrants coming into the storage facility. She also worries about 700 East, which is only a three-lane road. She noted that at certain times of the day, it is very difficult to turn south out of the subdivision. She questioned whether the owners of the facility would like to live next to a storage facility. She was opposed to the facility being located in a neighborhood area and preferred an office building.

Aubrey Howe, a Sunset Ponds resident, asked what would happen if the land is rezoned this way and the storage facility falls through. She stated that she lives directly behind the standing water. She asked what the immediate response be to that and if there was a plan to address it in the short term.

Joseph Beecroft, a Sunset Ponds resident, lives in a home directly bordering the property. He found the idea of looking out his back porch at a nearly two-acre building troubling. The surrounding property is rural horse land and residential and is outside the scope of what the property was originally intended. Mr. Beecroft did not feel Mr. Peterson had addressed most of their concerns via email and much of the data he provided was cherry-picked. There are many other items of concern, including the loss in value of the homes. It will affect approximately 60 homes in the area. The other issue that had not been addressed was that this property is a wetland. There is standing water six months out of the year that has to be mitigated properly. He stated that trees cannot simply be planted there and hope it goes away. The water will come and was something all were concerned about. The data overwhelmingly shows that self-storage facilities lead to greater incidences of vagrancy and crime and other issues they do not want to see in the neighborhood. Allowing the zoning is a slippery slope. Once the property is rezoned, there is no promise that what Mr. Peterson is proposing will be built. The property could be used for other purposes that are outside the control of the City and the neighbors. The concern should be preserving what exists.

Annette Gamero, a Sunset Ponds resident, stated that her backyard will essentially be a storage unit if the request is approved. If the storage unit addresses the standing water by adding dirt, it will raise them so that the water goes directly into the backyards and flood them out.

Chris Forest, an Auburn Fields resident, stated that he lives across the street from the subject property. He supports the storage facility and did not feel it will impact traffic.

There were no further public comments. Chair Adams closed the public hearing.

Mr. Peterson stated that the cameras are pointed along the perimeter and not into anyone's backyard. They are for the security of the building. There will also be cameras inside the facility, which limits the ability of anyone to live in the facility. The only way to enter the facility is with a key code. The doors are locked so the only way to get in is with a unique code. As a result, they know who is coming into the building and what unit they are accessing. If someone is living in a unit, it can be addressed within one day and will not be an issue. The codes do not work after 9 PM so anyone trying to exit after 9 PM will set off an alarm. The lights are 12 feet high and shielded. They also have a 40-foot setback and an eight-foot fence. Trees will be planted once the water situation is properly mitigated. There is a storm drain and water cannot be pushed onto adjoining properties. It is their responsibility to move the water appropriately. If it falls through, that is of concern but they have never had a plan fall through. Mr. Peterson could not address the issue of property values.

Chair Adams asked Ms. Jastremsky when the property was originally rezoned. Ms. Jastremsky commented that the original rezone was for an office building. The applicants ended up not

proceeding and sold the property. They eventually got a site plan for another office building. It was noted that ownership is the same for both parcels. An active application was scheduled for a public hearing in February for the lot north of the subject sites, an application from Federal Heights Holdings. The applicant contacted Ms. Pickering on the day of the hearing indicating that he would like to wait and put it on hold. He has one year to act on it and bring it back to the Commission. Ms. Pickering clarified that the zoning of the Federal Heights Holding property was to change from RA1 to CN. The applicant intended to change the Land Use Designation and downgrade it one level from the community parcel so that it would be Neighborhood Commercial. It is currently zoned RA1.

Chair Adams reported that the Planning Commission makes a recommendation to the City Council who will make the final decision on the matter. He pointed out that the zoning was changed to CN but no development has taken place on the site. He stated that a hotel use is not permitted but would be under the new zone.

Commissioner Bingham was concerned about changing the zoning because the end result is largely unknown. Chair Adams commented on the size of the parcel and stated that few properties are so large with accessibility to a major traffic artery.

Commissioner Tonks was concerned that what is proposed will adversely affect the adjacent property. She had serious concerns about changing the zoning as a result.

Motion: Commissioner Tonks moved that the Planning Commission forward a NEGATIVE recommendation to the City Council for the Towne Storage Draper Zoning Map Amendment, as requested by Gary Free, representing Via Digital Solutions, Application TEXTMAP-001-2023 based on the following findings:

1. The proposed amendment is not consistent with the goals, objectives, and policies of the City's General Plan.
2. The proposed amendment is not harmonious with the overall character of existing development in the vicinity of the subject property.
3. The proposed amendment is not consistent with the standards of any applicable overlay zone.
4. The proposed amendment is likely to adversely affect adjacent property.
5. The facilities and services intended to serve the subject property, including, but not limited to, roadways, parks and recreation facilities, police and fire protection, schools, stormwater drainage systems, water supplies, and wastewater and refuse collection, are inadequate.
6. The proposed land use map amendment does not comply with DCMC Sections 9-2- 020(F) and 9-5-060(D).

Second: Commissioner Bingham.

Vote: Commissioner Tonks-Aye, Commissioner Bingham-Aye, Commissioner Shirey-Aye, Commissioner Ogden-Nay. The motion passed 3-to-1. Commissioner Nixon did not participate in the vote.

Motion: Commissioner Tonks moved that the Planning Commission forward a NEGATIVE recommendation to the City Council for the Towne Storage Draper Land Use Map Amendment, as requested by Gary Free, representing Via Digital Solutions, Application TEXTMAP-008-2023 based on the following findings:

1. The proposed amendment is not consistent with the goals, objectives, and policies of the City's General Plan.
2. The proposed amendment is not harmonious with the overall character of existing development in the vicinity of the subject property.
3. The proposed amendment is not consistent with the standards of any applicable overlay zone.
4. The proposed amendment is likely to adversely affect adjacent property.
5. The facilities and services intended to serve the subject property, including, but not limited to, roadways, parks and recreation facilities, police and fire protection, schools, stormwater drainage systems, water supplies, and wastewater and refuse collection, are inadequate.
6. The proposed land use map amendment does not comply with DCMC Sections 9-2- 020(F) and 9-5-060(D).

Second: Commissioner Shirey.

Vote: Commissioner Tonks-Aye, Commissioner Bingham-Aye, Commissioner Shirey-Aye, Commissioner Ogden-Nay. The motion passed 3-to-1. Commissioner Nixon did not participate in the vote.

Ms. Jastremsky confirmed that the matter will be noticed again with yellow signage.

Commissioner Nixon rejoined the meeting.

6. Public Hearing: Ikea Text Amendment (Legislative Action)

On the request of Adam Bortz, representing IKEA Property Inc. for a Text Amendment to Draper City Municipal Code Section 9-18B concerning parking, signage, and the concept site plan for property located at approximately 67 West Ikea Way. Application

TEXTMAP-002-2023. Staff contact is Jennifer Jastremsky, 801-576-6328, jennifer.jastremsky@draperutah.gov.

Ms. Jastremsky presented the Staff Report and stated that the Commercial Special District (“CSD”) that IKEA is part of, includes the properties immediately surrounding the building. The text amendment will only impact the CSD area. The text amendment will impact parking, signage, and an update to the Concept Plan that is part of the CSD language. Currently, the CSD requires four parking stalls per 1,000 square feet for IKEA. The applicant is proposing to reduce that to 2 ½ stalls per 1,000 square feet, which is the standard retail parking requirement in the Code. An addition is proposed to the existing building as they are looking to expand to home delivery. The addition was to be 50,000 square feet and house and warehouse the home delivery section. It would not increase the floor area for customers. The proposed addition would require 1,440 stalls and 900 with the text amendment. This is important since with the addition they will be removing parking from the site and would be under the 1,400 stalls. IKEA will have 1,292 stalls remaining once they complete the addition, which is well over the 900 stalls but under what the current Code would require.

With respect to signage, the Code prohibits Electronic Message Centers (“EMC”). The proposed text amendment would allow wall signage to be EMCs on the principal building, which is IKEA. It would require all EMC signs to comply with the Code standards for EMCs.

The applicant, Adam Bortz stated that the intent is for there to be a one-way flow. They uphold the required distance for emergency vehicles on the road and have overlaid the turning radius as well. It was noted that the building is over 60 feet from the property line, which complies with the Fire Code.

Chair Adams opened the public hearing. There was no public comment. The public hearing was closed.

Motion: Commissioner Ogden moved that the Planning Commission APPROVE the Text Amendment as requested by Adam Bortz, representing IKEA Properties, Inc. for IKEA Text Amendment, Application TEXTMAP-002-2023, based on the findings listed in the Staff Report dated April 19, 2023, as follows:

Findings:

1. The proposed amendment is consistent with the goals, objectives, and policies of the City's General Plan.
2. The proposed amendment furthers the specific purpose statements of the zoning ordinance.
3. The proposed amendment is appropriate given the context of the request and there is sufficient justification for a modification to the zoning ordinance.

4. **The proposed amendment will not create a conflict with any other section or part of this title or the General Plan.**
5. **The potential effects of the proposed amendment have been evaluated and determined not to be detrimental to public health, safety, or welfare and represent an overall community benefit.**
6. **The proposed text amendment implements the best current, professional practices of urban planning, design, and engineering practices**

Second: Commissioner Nixon.

Vote: A roll call vote was taken with the Commissioners voting 5-to-0 in favor of the motion. Commissioner Tonks, Nixon, Shirey, Ogden, and Bingham voted “Aye”. The motion passed unanimously.

7. Training: Land Use Liability and Legislative Update.

Assistant City Attorney, Spencer DuShane, reported that Northern Monticello Alliance (“NMA”) is a group of landowners that sued and are currently in litigation with San Juan County. The applicant planned to develop a wind farm. The initial application was shy on facts so the County Planning Commission asked for more information. They came with more data about what could be done to mitigate the harmful effects. Tonight’s Conditional Use Permit application included someone asking about noise issues and other impacts. Conditional Use Permits or any type of deviation that is granted in the Code should be carefully considered in terms of impacts and how they can be mitigated. San Juan County Code permitted the use as a conditional use. The wind farm surrounded several property owners and the applicants claimed to be able to mitigate the harmful effects. They presented data on sounds and distance from residences. The wind farm described how they can mitigate the harmful effects of the use by buying out the property owners. They also claimed to have ways to mitigate the light flicker from the blades and sound. The Planning Commission agreed to grant approval if they did what they said they would do or if they mitigate the negative effects of light flicker and sound to the extent possible.

Mr. DuShane was confused since the wind farm presented substantial data yet the County Planning Commission only required that they do as much as possible, which is not quantifiable or specific. In the end, the wind farm did not buy out the NMA property because it is an unenforceable condition. NMA felt that the wind farm did not do as much as possible to mitigate the harmful effects and as a result, petitioned the Planning Commission to revoke the Conditional Use Permit. The Planning Commission held a hearing. The NMA was not able to speak at the meeting where they heard evidence. No findings of fact were made and it was tabled to the next meeting.

At the next meeting, without any findings of fact or additional discussion, the County indicated that they would not revoke the Conditional Use Permit. That is problematic since when the Planning Commission is going to make a decision, he and City Attorney, Mike Barker would prefer to see specific findings of fact. Mr. DuShane reported that San Juan County Code designates the

County Commission as the appeal body for Planning Commission decisions. NMA appealed to the County Commission, who initially reversed the Planning Commission's decision. The reason they said that the Planning Commission had to rehear the issue was because NMA did not have an opportunity to speak.

The wind farm did not like the County Commission's decision to remand the matter back to the Planning Commission and claimed that it was a \$100 million injury to revoke the permit. As a result, the County Commission met in a closed-door meeting because it involved litigation. In the end, they wrote a memo and determined not to revoke the permit. New findings of fact were presented at the County Commission Meeting, which was also problematic.

Mr. DuShane explained that appeals are only able to use what was on the record. The record included what had been submitted to the Planning Department and Planning Commission, public comments, and Commissioner comments. As a result, it was preferred that Commissioners have robust discussions about the issues presented. During the Towne Storage item that was presented earlier in the meeting, there had been a lot of discussion about the issues. The first person who commented during the public hearing shared clear comments that could be used as Findings of Fact.

Once the County Commission appeal was decided, the next appeal was to the District Court. NMA sued the County in the District Court and they argued that the initial Planning Commission decision not to revoke the Conditional Use Permit was arbitrary, capricious, and illegal, because it lacked substantial evidence on the record. NMA felt that the reversal of the initial decision by the County Commission was inappropriate because the County Commission is not allowed to hear additional facts. The County Commission could only hear facts from the original record. As for the outcomes, the District Court found that the decision not to revoke was arbitrary, capricious, and illegal because it lacked substantial evidence. There were no Findings of Fact from the Planning Commission. The District Court also agreed with NMA that the County Commission had acted improperly when it heard new information and reversed course.

Mr. DuShane explained that there were lessons to be learned from the example scenario shared. It helps to make specific comments about why a motion was being made. Information was available for reference in the Staff Report, which was helpful because it was part of the official record. He made that argument when Ikon Development appealed the Planning Commission's decision not to grant their deviation for sidewalks. Referencing the Staff Report was beneficial. If a Commissioner is going to make a motion it is wise to include something specific about the rationale for that motion. It is also important to stay engaged in conversations. In addition, he recommended that the Planning Commission not allow applicants to self-impose conditions that could not be enforced. With the wind farm example, the purchase of the NMA was difficult to enforce. The Planning Commission needs to list Conditions of Approval that are specific and enforceable.

There was discussion about the wind farm example and why the NMA purchase was not enforceable. Mr. DuShane explained that revoking a Conditional Use Permit was an enforcement mechanism. At that point in time, the wind turbines would have been up and running with people relying on them. It becomes messy to revoke a Conditional Use Permit when the use is already

occurring. It was noted that the NMA scenario also relied on a third-party cooperating with the sale of the property, which was not enforceable. Some Commissioners felt the Conditional Use Permit should not have been issued until there was compliance with the purchase. Mr. Barker clarified that this specific dispute had gone to the Court of Appeals. The Supreme Court backed the Court of Appeals. It was a very difficult situation. One problem with the Planning Commission's actions, in that case, was that they did not clearly state the Conditions of Approval when they issued the Conditional Use Permit. NMA tried to raise the issue that they were not bought out and the Supreme Court stated that it was not a condition. Both parties seemed to think it was a condition, but the Supreme Court found it was not. Whether or not the wind farm applicant needed to buy out NMA seemed to be open to debate.

Mr. Barker reiterated that the first issue in the sample scenario was that the Planning Commission did not clearly state the Conditions of Approval. The second issue was that there were no clear Findings of Fact as to what evidence supported their decision not to revoke the Conditional Use Permit. Commissioner Ogden wondered why both conditions were not followed through with the purchase of NMA property and the mitigation efforts. Mr. DuShane clarified that it was an either/or situation. Mr. Barker stressed the importance of learning from the example scenario. He explained that decisions could not be made based on a promise from an applicant. Even assuming that the wind farm said they would purchase the NMA properties, there was no legal obligation to do so.

Commissioner Ogden asked if enforceable Conditions of Approval need to be met before a Conditional Use Permit is granted. Mr. Baker clarified that a Conditional Use Permit would not be granted until the Conditions of Approval are met but that becomes complicated when the conditions are not specific or enforceable. In addition, certain issues only arise after projects are built and operational. The Commission discussed a previous Conditional Use Permit in Draper for a car wash on 12300 South. Ms. Jastremsky pointed out that there are very specific Conditions of Approval placed on the application. Those Conditions of Approval would need to be met when the applicant came in for the Site Plan and before a Building Permit is issued. It was noted that after each Planning Commission Meeting, a letter of approval is issued. It outlines what the applicant was approved to do and the conditions that need to be met before the use could occur.

Mr. Barker discussed situations where a developer volunteers to do something but it is not listed as a specific Condition of Approval. There are situations where the developer would volunteer something or agree to do something, but once approval is granted, an attorney is retained and there is a lawsuit for an illegal exaction. That is the reason it is important to be clear about Conditions of Approval and to always list enforceable conditions. It was reiterated that all Conditions of Approval should be specific, quantifiable, and enforceable.

If there is a situation where the Commission does not have enough information, an item can be tabled until additional information is obtained. Mr. DuShane reported that with the wind farm example, the Planning Commission asked questions about the sound levels and the light flicker. The applicant did not have that information so the item was tabled until more information could be provided. That was something the Planning Commission did correctly in that scenario. The applicant brought clear information back to the Commission. The Commission could have

approved the Conditional Use Permit if a specific type of motor on the turbine was used and the turbines were placed no closer than 0.62 miles from any given building or any planned building. Some specificity based on the additional information presented would have made a difference in the enforceability of the Conditions of Approval. However, the condition language was “as much as possible.” It was better to use the data presented and add specificity to avoid future issues.

Mr. DuShane explained that in the example scenario, there were issues during the revocation hearing. The Planning Commission did not state anything specific about what the wind farm had or had not done to mitigate light flicker and sound. The Commissioners wanted to know what would happen if the applicant provided data and that data was used to form the Conditions of Approval, but it was found that the data was not entirely accurate after the building is complete. Mr. DuShane explained that as long as the enforceable Conditions of Approval are met, it would not be possible to revoke the Conditional Use Permit. In that instance, the Planning Commission would have decided that certain conditions would mitigate the harmful impacts of the development. The Commissioners expressed concerns about the accuracy of the data provided by developers and applicants. Mr. DuShane pointed out that the Planning Commission does not want to indefinitely table items but it is also important that the data presented is proven and factual. He noted that Staff reviews everything that comes before the Planning Commission. In addition, when a Traffic Study is submitted with an application, the City sends it out for a third-party review.

The issue with the San Juan County Planning Commission and the revocation was that there were no specific Findings of Fact about why not to revoke the Conditional Use Permit. With the initial revocation hearing, many residents attended as there was interest in having the wind farm revoked. A decision was not made at that time and another meeting was held later. Few members of the public were present at the meeting where the decision was made. It might have been easier for the Commissioners to decide not to revoke the Conditional Use Permit without a lot of people present.

As for whether Draper City has ever revoked a Conditional Use Permit, Mr. DuShane recalled one instance. There was a preschool and the condition was that there would not be more than eight children in any one class but there were far more than that. Ms. Jastremsky explained that in that instance, a decision was made to submit an application and amend the Conditional Use Permit. That was ultimately approved and there had not been any issues since then. The ultimate goal was not revocation but to bring conditional uses in the community into compliance.

Mr. DuShane shared information about substantial evidence. It was a legal term that was defined in Utah Code 10-9A-103(68). According to the code, substantial evidence meant evidence that:

- Is beyond a scintilla; and
- A reasonable mind would accept it as adequate to support a conclusion.

In terms of whether a Condition of Approval is enforceable, a general rule of thumb was if a Commissioner has doubts, it is likely, not enforceable. However, it is always possible to ask the City Attorney for an opinion on the matter. Mr. DuShane reiterated that Conditions of Approval should be specific, quantifiable, and enforceable. He asked the Commissioners to remember those words when they review or suggest Conditions of Approval.

There was discussion regarding applicant presentations. For instance, whether Commissioners should ask questions during the presentation or wait until the Commissioner discussion afterward. Mr. DuShane suggested that Commissioners write down questions during the presentation and pose them at the end. He stressed the importance of everyone feeling that they had the opportunity to be heard. Mr. DuShane discussed difficult votes. Sometimes, a deferred decision makes sense, however, if an application is deferred there need to be specific findings shared. For example, in the wind farm case, the Commission could have outlined the ways the applicant did not mitigate the light flicker and sound to the extent possible. He noted that in subsequent meetings, it is advisable to reiterate what was discussed during the last meeting on the item. If findings were presented in the first meeting, those findings should be repeated in the second meeting.

Mr. Barker noted that it is best to assume that something contentious will be appealed. The Code states that an appeal is on the record so the Appeals and Variance Hearing Officer will only hear what happened during the meeting. There is no new evidence or testimony. If it is not in the Staff Report or discussed at the meeting it cannot be considered. That is why it is critical to have a robust discussion and make a clear statement about the reason for a motion. Ms. Jastremsky explained that the findings in the Staff Report are based on the criteria for approval and the findings based on the Code. Commissioners can, however, formulate findings that are not included in the Staff Report. Referencing the Staff Report in a motion would account for the base findings but it is likely best to use the model motion that includes an option for modification or addition.

Mr. Barker explained that the information shared is most relevant to Deviations and Conditional Use Permits. He felt that uses should be either permitted or not permitted to reduce the number of Conditional Uses in the code, but that was not currently the case. Mr. Barker next shared information about the Legislature with the Commission. The Legislature was making it clear that there is a desire for decisions to be made at the lowest level possible. He referenced Administrative Approvals.

The development community felt that too much asphalt is required on roadways. Originally, a bill was proposed that stated that a roadway cannot be requested that is in excess of 26 feet. Through negotiation, that number was now at 32 feet. Mr. Barker reported that this is placed in the exactions portion of the Land Use, Development, and Management Act (“LUDMA”). Every time the City requires a developer to dedicate improvements, those are exactions. Typically, internal roadways do not raise concerns but when there are roads that are adjacent to a development or connections, those could be exactions. There might be an amendment in the future to implement the bill requirements, however, he pointed out that there are 12 exceptions listed. That means there were options for the City.

The Legislature enacted two new sections of the Code dealing with the approval of subdivisions as well as the review of the applications. Those two sections of the Code apply to approvals for single-family dwellings, two-family dwellings, and townhomes. Mr. Barker explained that the Legislature wanted to see plats be approved at Staff level. He had spoken to a few City Attorneys and the conclusion was that neither the City Council nor the Planning Commission could approve a Final Plat. If plats were brought to the Planning Commission, it would only be for the

Preliminary Plat rather than the Final Plat. The City had until February 1, 2024, to implement the bill. If an application was in process before February 1, 2024, it would be taken through the current process. Mr. Barker explained that there was a bit of time to fine-tune the details and determine the best way to move forward.

There was a presentation at the Utah Land Use Institute conference that discussed the idea of Planning Commissions acting as planners rather than focusing on public hearings and code-based Site Plans. However, that would have implications in terms of public participation and the Commission as a whole. Mr. Barker explained that some policy discussions would take place internally and information would be brought back to the Planning Commission for review and recommendation.

Mr. Barker read from the presentation slide, which stated, “You cannot piggyback a moratorium and proceedings to amend the code.” State Law allowed the City Council to implement a moratorium, or temporary land use regulation, where there was a time-out period for up to six months to address an issue and amend the code. Applications for certain types of developments would not be accepted during that time. There was another section of the Code that allowed the City to declare that a certain issue would be studied. For example, the City could declare that setbacks would be studied and the ordinance would be amended. State Law allowed the City not to accept applications that relied on that particular piece of code during that time. There was a six-month time limit on that as well. The Legislature felt that some cities were piggybacking those, turning a six-month pause into a one-year pause. As a result, the Legislature made it clear that this was not allowed.

As for Development Agreements, the Legislature wanted cities to inform applicants about Development Agreements that restricted applicant rights. Mr. Barker shared an example scenario. There could be a storage unit application where the applicant promised to only place storage units on the parcel. The City could request a Development Agreement. Under the new bill, in the Development Agreement, there would be an exhibit with a Use Table that outlined all of the uses the applicant could have in the zone, but note that the Development Agreement was for one particular use. Discussions were had about previous Development Agreements. Mr. Barker explained that Development Agreements were useful if the developer wanted to forego a right or change a standard.

Landscaping bonds were discussed. Mr. Barker explained that Draper does not do this but some other cities require landscaping bonds for private landscape improvements. Ms. Jastremsky clarified that the only landscaping bonds done in the City were tied to occupancy. As an example, if an office building was built and ready to occupy in the winter, the landscaping could not be done until the weather was appropriate. In that case, the City would require a bond to be posted, and then temporary occupancy would be permitted. Once the landscaping had been added, there would be an inspection to make sure it met the approved plans, the bond would be released, and permanent occupancy would be approved. That would not impact residential landscaping bonds. Mr. Barker did not believe there would be a lot of changes in this instance, but he would look at the code and make sure that everything is in compliance. There may be an amendment to ensure there was clear implementation.

Mr. Barker discussed moderate-income housing. Ms. Jastremsky explained that the Moderate-Income Housing Plan had come before the Planning Commission for approval. When it was updated, it would be presented to the Planning Commission again. Each year, a report was done and the results of the report were presented as well. Mr. Barker noted that the Legislature found some cities were ignoring the reporting requirements. As a result, it had been made clear that if something was submitted and was not approved, the city had to make the necessary changes in order to receive approval. If this was not done, State funding could be lost and the city would be penalized \$250 per day until there was compliance. After a certain date, the penalty would increase to \$500 per day. The Legislature continued to make it clear to cities that moderate-income housing was a priority.

Internal accessory dwelling units (“I-ADU”) were reviewed. Mr. Barker explained that the definition of a primary dwelling included a garage that was both habitable space and connected with a common wall. If someone converted their garage space into an I-ADU, that was acceptable as long as it was habitable and was connected to a common wall. If it was a detached garage, it would not be considered an I-ADU and the I-ADU regulations would not apply. The City could not consider internal connectivity when it came to the approval of I-ADUs. Ms. Jastremsky explained that with an I-ADU, the City did not require internal connectivity, but it needed to be within the footprint of the home. The code did allow second kitchens, but if there was a second kitchen, there needed to be a connection. As an example, there could not be a deadbolt lock on the door between the basement and the main floor. The Commission further discussed I-ADUs. Mr. Barker explained that if raw ground was platted after October 1, 2021, there could be an I-ADU. It was a permitted use.

Ms. Jastremsky reported that the City website had a map that showed areas where accessory dwelling units (“ADU”) were prohibited. Street widths, lot sizes, and other criteria had been considered. State Law at that time allowed cities to take 25% of the residentially zoned land and prohibit I-ADUs. She noted that roads that were deficient and did not meet the minimum standards as well as private streets that were narrow and did not allow on-street parking were prohibited to have I-ADUs. However, with the subdivisions that came in after October 1, 2021, the City could not amend the map and add those. All of the standards for an I-ADU needed to be met and a permit needed to be issued, but it was not possible to prohibit the use based on the streets. The idea was to address the housing needs. That being said, she felt this created an equity issue with the houses that were currently on the map. Mr. Barker shared additional information about parking and I-ADUs. He noted that City Staff needed to make some clarifications about those standards and the driveway regulations.

As for the Land User Referenda, the Legislature passed a bill that stated, “Land use decisions are not referable if they are passed by a unanimous vote.” Mr. Barker noted that there may be constitutional issues with that. The constitution said that the Legislative power was shared between the Senate, the House, and the people. It was likely that the language would be challenged at some point. He shared information about noticing requirements. The Legislature stated that every approval would either be a Class A Notice or a Class B Notice. A chart would be created to outline which categories the various approvals fell into. For example, a Plat Amendment would

be listed as a Class B Notice. There would need to be a change to the City Code, so that amendment would come back to the Commission. Mr. Barker believed this was a positive change as it would streamline noticing throughout the State Code. It also removed the need for newspaper publication, which was becoming more outdated.

8. Adjournment.

Motion: Chair Adams moved to ADJOURN the Draper City Planning Commission Meeting. The motion passed with the unanimous consent of the Commission.

The meeting adjourned at 9:04 p.m.