

Approved March 27, 2018

MINUTES OF THE DRAPER CITY COUNCIL MEETING HELD ON THURSDAY, MARCH 15, 2018, IN THE DRAPER CITY COUNCIL CHAMBERS, 1020 EAST PIONEER ROAD, DRAPER, UTAH

PRESENT: Mayor Troy K. Walker, and Councilmembers Mike Green, Tasha Lowery, Alan Summerhays, Marsha Vawdrey, and Michele Weeks

EXCUSED: None

STAFF PRESENT: David Dobbins, City Manager; Mike Barker, City Attorney; Rachelle Conner, City Recorder; John Eining, Police Chief; Russ Fox, Assistant City Manager; Christina Oliver, Community Development Director; Bryan Thatcher, Fire Marshall

APPEALS

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** Mayor Walker welcomed everyone to the meeting, and explained the process for the appeal. Each appellant will have 15 minutes for their presentation, and if they would like to reserve part of their time for rebuttal, they need to decide that upfront.

Graden Jackson, Little Dutch Boy, stated he would like to reserve three minutes for rebuttal.

Rob Merrill, appellant, stated he would like to reserve one minute for rebuttal.

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1.0 Land Use Administrative Appeal: Moda Lone Peak Site Plan and Conditional Use Permit, at the Request of Kelle Land and Little Dutch Boy Bakery to Appeal the Approvals Granted by the Planning Commission Regarding the Moda Lone Peak Site Plan and Conditional Use Permit. The Property is 2.01 Acres in the TC (Town Center) Zone and is Located at Approximately 12332 South 970 East.

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1.1 Dan Boles, Planner, explained the City has received an appeal application for the Planning Commission approvals of the Moda Lone Peak Conditional Use Permit and Site Plan. The property is located at 12332 South 970 East. The Planning Commission reviewed the project at their January 25, 2018 meeting, where they approved the CUP, and Site Plan including two deviations, and forwarded a positive recommendation to the City Council for a Plat Amendment to the Draperville plat. The City Council has yet to hold a hearing on the Plat Amendment due to the appeal at hand. At the hearing they also heard similar applications from the same developer for the Moda Town Center project, which has also been appealed. Between the two applications the Planning Commission hearings lasted for two hours and thirty minutes, wherein the Planning Commission discussed the proposals and added conditions to the approvals, as denoted in bold in the conditions of approval list

below. Mr. Boles then presented a list of 15 conditions of approval, as well as a list of findings that were referenced by the Commission when making their recommendation to the Council.

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1.2 Mr. Jackson, appellant, presented aerial images of the bakery and project in question, as well as a copy of the Draperville plat. He said if they are relying on the Draperville plat, there is now a road that runs through the center of the bakery by five feet, and in some places seven feet. He said the bakery was approved 70 years ago on the very edge of 970 East. Additionally, properties across the street were also approved with the Draperville plat.

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1.3 Mr. Baird, attorney for developer, stated he has an objection to the record presented by Mr. Jackson. Mayor Walker asked Mr. Baird to hold his objection until after Mr. Jackson finished his presentation.

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1.4 Mr. Jackson continued his presentation. He said if the site plan is approved, there will be a road encroaching the bakery by five feet. Since the building was constructed 70 years ago, the location for the edge of the road must be assumed. The site plan that was approved is five to seven feet too far east. Mr. Jackson subsequently presented a drawing depicting why this issue is critical. He said there is significant truck traffic in the area because it is in the Light Manufacturing (LM) zone; trucks deliver raw materials and haul off commercial product daily. In order for trucks to maneuver the area, they need the entire width of the road in question. He said based on what has been approved, angled parking has been pushed into the road by an additional five to seven feet, and this would seriously impede the bakery's operations. Mr. Jackson explained there has been significant discussion with members of Draper City's staff and Planning Commissioners, and he believes professional opinions and insights back this appeal. For the last 50 years that the subject property has been in the LM Zone, trucks have either been using 970 East as an access or they have been utilizing the easement located to the west of 970 East. Another issue that has been raised on this item pertains to parking; it has been stated that for the past 50 years, employees have been parking on the west side of 970 East. Mr. Jackson said this is partially true, and he showed an image on Google maps showing how this parking has occurred. He said if these cars are parked to the south of the fire hydrant, then the employees have come to know where trucks need access in order to make turns. He said another issue is the bakery has created noise for the past 50 years, and will continue to create noise, given that it is located in a manufacturing zone. He said if people are living adjacent to the subject property and they complain about the noise, it is important to note that regardless of those complaints the bakery will continue its operations. Mr. Jackson explained the standards for approving conditional use permits, based on Draper City Code, include the following: providing parking, loading space, pedestrian circulation, and impacts on preexisting properties in the area. He said there are potential solutions to these issues and he has reached out to the developer on the matter; however, the developer has

not returned his calls. He summarized his report and said for the reasons outlined, the item should be remanded to the Planning Commission.

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- 1.5 Rob Merrill and Kelle Land, appellants, explained their appeal is based on unmitigated risk based on the laws and regulations they found to apply to this project. He said he wished to review several fire code violations.

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- 1.6 Mr. Baird again objected to the record being presented. Mayor Walker stated Mr. Baird will have a chance to voice his objection when the presentation is finished.

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- 1.7 Mr. Merrill pointed out memorandums on the plat dated March 6, 2018, which was how the project received approval. All of the information included in the staff report is tied to these memorandums. Mr. Merrill explained with regards to fire codes, the access road with the fire hydrant shall be a minimum of 26 feet wide, and there should be two accesses for each structure. There is also a dead-end road provision, and an alleyway does not meet the access code for fire apparatuses. Mr. Merrill said inside the development, there was no discussion pertaining to sprinklers. Other developments in the area were required to have a 26-foot wide access road, and none of the roads through the subject project met this minimum requirement.

Mayor Walker said Mr. Merrill's remarks pertained to Item #2, and at this point in the meeting they should only be discussing items pertaining to Item #1. He then responded to some questions posed by a member of the audience with regards to the appeal process.

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- 1.8 Mr. Baird said with regards to Item #1, the fact that a suit has been filed invalidates Mr. Jackson's first three grounds for this appeal. The Planning Commission and City Council are not charged by State Law with determining private property rights. Presently, the Council is being asked to rule in favor of the appellants' property rights, which Mr. Baird said was inappropriate. He said conditional use permits are not subject to appeals. He explained the issues with boundary lines are not the types of conditions that can be imposed or proposed; they are simply issues of civil law as to where the property line is located. He said the only unique issue with which they are dealing is noise. The question pertaining to noise is whether or not the proposed use creates any reasonably anticipated, detrimental effects. Mr. Merrill said the only reasonably anticipated, detrimental effects to which Mr. Jackson previously referred, is relative silence. He said Mr. Jackson's complaint was that the apartment building would be quieter than the bakery; therefore, the bakery is somehow prejudice because of the quietness. He said it cannot be speculated that a resident might complain about potential violation to the City's noise ordinances. Mr. Baird concluded his remarks by stating he could not find anything in Mr. Jackson's arguments that constituted as being detrimental conditions caused by his client's project.

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- 1.9 Mr. Jackson began his rebuttal by expressing his disagreement with Mr. Baird's comments pertaining to conditional use permits. He said he did not hear similar arguments from Mr. Baird regarding his proposed site plan improvements. The standards he recited earlier give the Council a basis to defer the matter back to the Planning Commission. Mr. Jackson disagreed that this was an issue pertaining to private property rights. He said by the City's standards, they need to assess the impacts the project will have on truck traffic throughout the area, which is the reason for the appeal. As part of this process, they have had an engineer review the project to determine exactly how it will impact the bakery. Mr. Jackson said the current site plan could technically shut down his business. He noted that he had his own survey conducted which he submitted to the City. In preparing this appeal, Mr. Jackson said he has relied on City Code Section 9-5-080 as a guiding document.

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- 1.10 Councilmember Summerhays said 970 East used to be a one-way road and it did not cross the railroad tracks. He recalled sometime in the 1960s, it became a two-way road, which may have created some of the existing issues mentioned earlier. He briefly discussed the type of trucks that access the property.

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- 1.11 Councilmember Green said his understanding is the purpose of the appeal is to review whether or not the site plan complies with the City's ordinances. He said the City ordinance for the Town Center (TC) Zone is found in Draper City Code Section 9-11-090. He said this section of code has an extensive list of requirements pertaining to site plan requirements. The requirements include the following: a maximum density of 25 units per acre, multifamily housing is prohibited on the ground floor, no less than 50% of the ground floor shall contain commercial office uses, and the setbacks must be 15 feet. In addition, there are several requirements pertaining to parking, architecture, etc. He said nobody reviewed these criteria in their presentations. He was not persuaded by the argument of the bakery needing space for trucks to turnaround; this is an issue that the bakery needs to resolve through private lawsuit and claims. He said while a prescriptive easement is a claim the appellant can use, this is not a claim that should be reviewed by the City Council. Councilmember Green also stated he is also not convinced that there is evidence showing the project meets the TC Zone requirements, either.

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- 1.12 Councilmember Weeks asked if according to City Code, a project must fit within the existing neighborhood. She said if the project does move forward, it will be detrimental to the bakery. She further inquired if this was one of the criteria the Council needed to assess when reviewing project proposals. Mr. Boles responded by referencing several sections of Code that list different types of project requirements. He explained that after reviewing City Code, the Planning Commission approved the conditional use permit and deviation requests, with several conditions.

Councilmember Summerhays asked for clarification on what exactly was approved by the Planning Commission. Mr. Boles explained the deviation requests were for landscaping and sidewalk requirements.

Councilmember Weeks asked if the project would create a negative impact on the community, and whether or not the answer to this question needed to be given more weight. Russ Fox, Assistant City Manager, explained there are standards for approval for site plans and conditional use permits, including language stating the site plan shall conform to all applicable standards. Consideration should also be given to traffic, safety, landscaping, advertising, drainage, irrigation, buffering, location, serviceability, etc. He said each of these areas also have subcategories.

Mr. Boles also referenced the purpose statement included in Section 9-11-090, which discusses the preservation of the existing conditions of an area, including its historic and natural features. He subsequently read through the language of the referenced section. Councilmember Weeks said based on this section, a proposal needs to support the existing businesses, fields, etc. Mr. Boles said this indication is made in the purpose statement; however, it is not a specific standard.

Mr. Barker added the law requires that specific standards are met, which does not necessarily include goals expressed in a purpose statement. He noted with regards to the conditional use permit, the code was amended in 2010. Therefore, the City has adopted proper standards based on the Land Use, Development, and Management Act (LUDMA). He then referenced Section 9-5-080, Subsection E 1-4, where it lists eight factors that the Planning Commission should review and consider when determining whether a proposal can be approved with conditions or should be denied.

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1.13 Councilmember Vawdrey asked if the Council is looking beyond the deviations granted by the Planning Commission, or if they are just assessing whether or not the deviations are appropriate. Mr. Barker said this was part of the Council's consideration. He explained the burden of the appeal is on the appellant; it is their responsibility to show that the Planning Commission's decisions were incorrect, whereas it is the Council's job is to determine whether or not their decisions were correct.

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1.14 Councilmember Green said from a structural position, the appellant has the burden of proof, and the standard of review is for correctness. The weight of evidence is substantial evidence, and substantial evidence is based upon anything that is contained in the record. Anything that is not in the record is not permissible to be reviewed. Mr. Barker concurred, and said these are the rules outlined in Draper City's Municipal Code. Councilmember Green said there is a conditional use permit that was granted by the Planning Commission for a multifamily use within the TC Zone. Additionally, they need to determine whether or not the site plan conforms to the zoning ordinance, as purported. Mr. Barker confirmed this was correct.

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- 1.15 Councilmember Lowery expressed concerns with the title, and she inquired as to how this will play out in the future. Mr. Barker noted a complaint was also filed in district court to determine the boundaries of the road. Depending on the court rulings, one of the appellant's claims is that over the course of the last 50 years, trucks have been going onto private property to the west and established a prescriptive easement. A prescriptive easement, he explained, is an area that is used through open and notorious use.

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- 1.16 Councilmember Weeks said since they do not know where the road is located, would this affect setbacks. Mr. Barker said it is his understanding that staff used the County's records to determine that the right-of-way in question is roughly seven feet.

Brien Maxfield, Engineer, explained staff requires the applicant to prepare information by a licensed surveyor. Based on the information provided by the applicant, staff did not find any issues.

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- 1.17 Councilmember Summerhays said the main problem is, if the court rules in Little Dutch Boy's favor, there would be an encroachment issue. Mr. Barker said Mr. Jackson's contention is that the Draperville plat requires an 82.5 foot right-of-way, and the Moda proposal does not comport with the eastern boundary line.

Mr. Maxfield said the Draperville plat was established before 1900, and it defined the right-of-way based on rods. However, it just gave a general width; it did not label each and every right-of-way. He explained the process that would need to take place in order to determine where the property boundaries were located. This situation is unique where it is a local street that has on-street parking. The property records on the County website show that there is approximately 76 feet of existing right-of-way, and the adopted local standard is a 60-foot right-of-way. The City determined they did want to vacate any right-of-way, but they would maintain the right-of-way that is recorded by the County. He said staff did not determine whether or not the right-of-way is 82.5 feet. Councilmember Summerhays asked if there was any way of verifying this information. Mr. Maxfield said it would take a licensed surveyor to review the property records to make a determination.

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- 1.18 Assuming the bakery prevails in court, Councilmember Green wanted to know if such a ruling will adversely affect the City for approving a site plan. Furthermore, he asked what steps would be taken next. Mr. Barker said the only evidence before the Council tonight, and what was presented to the Planning Commission, is what the County records show as being the width of the right-of-way in question. The final plat for the Moda project will be required to reflect the true roadway width. The Council will not be able to approve a final plat until it reflects accurate information. There was further deliberation on the matter.

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1.19 Councilmember Weeks said in the memorandum included in the staff report, the findings for approval were listed on page 2 of the document. Finding #7 stated "...the proposed use will not have a deleterious economic impact on the surrounding area." She said as per Mr. Jackson's presentation, the Moda project will have a negative impact on his business in the surrounding area. However, Mr. Baird has made argument to the contrary. She asked Mr. Barker to address the issue. Mr. Barker said Draper has adopted the State's standard for approving conditional use permits. City Code addresses the nine findings listed in the staff report. Councilmember Weeks said she was also concerned with the eighth finding as well, which states "...safeguards can be provided to ensure adequate facilities and public services and lessen impact on adjacent properties." Mr. Barker said if the Planning Commission felt the project would have had a deleterious effect, they could have imposed a condition in order to address the issue.

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1.20 Councilmember Summerhays asked if a condition could be imposed pertaining to truck traffic in the area. Mr. Boles said the Planning Commission could have done this; however they did not. The Planning Commission imposed 15 conditions on the project. None of the conditions pertained specifically to the economic conditions of the area.

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1.21 Mr. Fox described the language included in the Council packet pertaining to truck access and turnaround space. Depending on the court's ruling, the on-street parking spaces that currently exist may be impacted.

Councilmember Weeks asked if the bakery's parking was currently limited. Christina Oliver, Community Development Director, said the on-street parking is considered as part of development impact in the area.

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1.22 Mayor Walker said a motion was needed to either approve or deny the appeal. He explained the process for moving forward.

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1.23 Councilmember Weeks said the court date has a lot to do with whether or not the plat will work. She asked if it would be possible for the Council to push their findings until after the court has made a ruling about the road. Mayor Walker said the Council could make whatever motion they feel will pass.

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1.24 Councilmember Green said he is torn on this issue. He referenced Title 9, Chapter 5, and Section 010, which listed several factors of analysis. He said there are four or five of the elements included in the conditional use permit with which he is not sure are factually present. However, at the same time, he feels the site plan meets all necessary requirements. Councilmember Green stated he does not like how the commercial on the bottom is connected to the apartments on the top. Additionally, some of the evidence presented was

not in the record. He suggested the Council take a break to consider the evidence before making a decision.

Mayor Walker cautioned the Council not to gather and discuss this item during the break; all discussion and voting should take place publicly.

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1.25 Councilmember Green moved to take a 10 minute break. Councilmember Lowery seconded the motion.

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1.26 Those voting aye: Councilmembers Green, Lowery, Summerhays, Vawdrey and Weeks. The motion passed unanimously.

** *The City Council took a break at 6:18 p.m.*

** *The meeting resumed at 6:29 p.m.*

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1.27 Mr. Barker clarified the types of motions that can be taken on this item, based on City Code.

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1.28 Councilmember Weeks said there are two different issues with this item: the conditional use permit and the site plan. As such, she would not mind separating the motions.

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1.29 Councilmember Green said the two items are connected. The TC code requires a multifamily to be approved along with a conditional use permit. He explained the maximum density is 12 units, and they meet that requirement. Additionally, multifamily is prohibited on the ground floor, and they meet this requirement as well. They have no less and no more than 50% of the ground floor for commercial. Councilmember Green said whether or not they meet parking requirements seems ambiguous. He subsequently reviewed requirements for setbacks, building height, horizontal and vertical variations, building orientations, transparency on the ground floors when facing public or private roads; in his opinion, the developer met all of these conditions as well. His one concern goes back to the conditional use permit and discrepancies between the records presented to the Planning Commission and City Council.

Councilmember Weeks said she had concerns with the conditional use permit, specifically whether or not the 50% commercial requirement was being met.

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1.30 Councilmember Green moved to deny the appeal and uphold the decision of the Planning Commission, based upon the evidence in the appeal and in the record; the

evidence has been met based only upon that which is included in the record. Councilmember Vawdrey seconded the motion.

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1.31 Mayor Walker asked whether the motion included directing the City Attorney to draft the decision letter.

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1.32 Councilmember Green and Councilmember Vawdrey agreed to include that language in the motion.

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1.33 Councilmember Vawdrey said she cannot find compelling evidence to grant the appeal. She said she wishes the developer would be more sensitive to the architecture in the TC Zone.

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1.34 Councilmember Summerhays concurred with Councilmember Vawdrey's remarks. He said parking on a public street was not enough to change his vote; he had to go by the law on this issue, and blocking the road was not legal.

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1.35 Those voting aye: Councilmembers Green, Lowery, Summerhays, and Vawdrey. Councilmember Weeks voted no. The motion carried with a majority vote of 4 to 1.

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2.0 Land Use Administrative Appeal: Moda Town Center Site Plan and Conditional Use Permit, at the Request of Kelle Land to Appeal the Approvals Granted by the Planning Commission for the Moda Town Center Site Plan and Conditional Use Permit. The Property is Located on a 1.74 Acre Site at 12553 South Fort Street in the TC (Town Center) Zone.

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2.1 Jennifer Jastremsky, Planner, explained the City has received an appeal application for the Planning Commission approvals of the Moda Town Center Conditional Use Permit and Site Plan. The Planning Commission reviewed the project at their January 25, 2018 meeting, where they approved the CUP, and Site Plan including two deviations, and forwarded a positive recommendation to the City Council for a Plat Amendment. The City Council has yet to hold a hearing on the Plat Amendment. At the hearing they also heard similar applications from the same developer for the Moda Lone Peak project, which has also been appealed. The final conditions of approval included 17 conditions. One of these conditions states "...all commercial buildings [must] have a business license in order to occupy." This was added to ensure the ground floor remains commercial and does not turn into another living space. Ms. Jastremsky said the applicant was made aware that staff would not support a shared parking agreement, and that they would have to comply with the parking standards within the zoning ordinance. The applicant fully complied with those

standards, and they have provided 91 parking spaces (90 are required as per code). They also made sure all building entrances were oriented towards parking, as required within the TC Zone. In regards to elevations, the applicant proposed modern-style design which is not permitted in the TC Zone. She then described the building's elevations, building projections and color variations and said they comply with the TC Zone. Reviews were conducted by Public Works, Planning, Engineering, Fire, Geotechnical consultants, and Parks and Recreation prior to being sent to the Planning Commission. The Moda Town Center Site Plan was found to meet the code by all of these departments. The Historic Preservation Committee also reviewed the plans prior to the Planning Commission, as a recommending body. Further review by the Building Department will occur with the building permit application. One of the findings listed in the staff report states the residential uses in and of themselves seems to be an appropriate use within the town center zone as a way to provide critical mass to support businesses and office uses. Ms. Jastremsky subsequently reviewed the approved deviations as follows:

Landscaping: The Town Center Zone's "Old Growth" ordinance requires either preserving mature trees of four-inch caliper or larger or replacing trees that cannot be saved caliper per caliper. The Code requires a minimum of 15% landscaping and one tree per every 400 square feet of open space or landscaping. The Moda Lone Peak site plan provides 24% open space and the Moda Town Center provides 31% open space. In exchange for providing the extra open space, the applicant requested a reduction in the number of trees required, as the more landscape they provided the more trees would need to be provided to meet the one tree per 400 square feet. Moda Lone Peak is designed to have 76 trees on a 2.01-acre site (one tree per 274 square feet), and Moda Town Center is designed to have 65 trees on a 1.74-acre site (one tree per 378 square feet).

Sidewalks: The applicant requested a deviation to the requirement of having sidewalks on both sides of every street. The applicant demonstrated how it met the conditions of the sidewalk deviation ordinance, and the Planning Commission approved the deviation for both Moda Lone Peak and Moda Town Center with the conditions that a sidewalk be placed in one particular location on each site plan. The Planning Commission found that both sites were very walkable and agreed that it was undesirable to have sidewalks in the garage alley ways.

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2.2 Rob Merrill and Kelle Land, appellants, said they believe this appeal is valid for several reasons. He said the project posed unmitigated risks, challenges and detrimental effects on the neighborhood. He presented several fire code violations, and explained that with the fire hydrant in the area the road width shall be a minimum of 26 feet. The building height also requires this particular width. Mr. Merrill said there is a dead-end road that requires a turnaround provision because it exceeds the code requirements. In addition, there are alleyways that do not accommodate fire apparatuses. There is an automatic sprinkler provision for commercial on the bottom floor, and this has not yet been discussed. With a fire hydrant, the access road shall be a 30-foot minimum, and the access does not meet this requirement based on what is depicted on the site plan. Mr. Merrill reviewed the minimum spacing standards as required by UDOT. He said for public roads there is a 300-foot

spacing requirement, whereas private roads require 150 feet of space. He said the proposed development does not meet either of those requirements, and this should have been considered as part of the Planning Commission's assessment. Mr. Merrill said a traffic study was not appropriately conducted for this project; a study is needed based on the negative impacts a project may have on existing developments in the area. He noted that the area in question is already heavily congested by traffic. The study should include appropriate peak times and indicate whether or not there are schools in the area. He explained while a traffic study was submitted with the application, the areas that were assessed did not accurately convey the traffic that exists throughout the development. Mr. Merrill said precedent has been set in this area, and he provided other examples of projects where a traffic study was required. The Moda project would be located directly in the middle of Draper Elementary School's designated safe walking route, and this issue was not even considered as part of the application. Mr. Merrill explained there was still an error in the calculation for the necessary parking units. He said based on City Code, there should have been more parking stalls provided than what was shown on the site plan. Mr. Merrill then discussed the minor collector street and right-of-way width requirements. He said there are unmitigated, detrimental effects with regards to surrounding properties, and Mr. Merrill read from the Planning Commission meeting minutes dated January 25, 2018. He noted open space and landscape violations as per City Code Chapter 32, Section 9-32-030. He said the CC&Rs will cause confusion and legal issues for both the HOA and Draper City due to the vagueness of the language contained therein. Mr. Merrill explained there are path of travel requirements as part of the ADA, and he said those items were not even mentioned with the application. For the reasons described, he requested this item be remanded back to the Planning Commission.

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2.3 Mr. Baird said the packet the Council received tonight was not submitted to the Planning Commission, and therefore was not in the record at that time.

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2.4 Mr. Merrill stated he had an objection to Mr. Baird's last comment.

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2.5 Mr. Baird again stated the evidence presented tonight was not presented to the Planning Commission. However, what was presented for the record at the Planning Commission meeting was that City staff considered all aspects of City Code when forwarding a recommendation. He explained before a final plat is recorded and a building permit is issued, every project element needs to be approved in detail; therefore, all of the complaints listed by Mr. Merrill are premature. Mr. Baird said the notice of appeal is seven pages, and none of those pages reflect what actually was stated in Mr. Merrill's presentation tonight. They did not explain why the Planning Commission and staff were wrong in their decision; rather, they simply do not like the project. He continued that a traffic study was done for both properties. He said it is the appellants' responsibility to prove that the Planning Commission was wrong, and they have not done that. Mr. Baird explained there is a specific opinion regarding private property rights and whether or not the language in the purpose statement can be considered. He referenced a case wherein a Planning

Commission in another city had denied an application based on a purpose statement. The ombudsman who reviewed the case ended up ruling in favor of the developer because a purpose statement cannot be used as a basis of denial. He explained there is no basis of denial for this conditional use permit because all of the Code requirements have been met. Mr. Baird requested that if an issue arises during the Council's deliberations, they allow him an opportunity to explain the answer from a legal standpoint.

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2.6 Mr. Merrill explained from his point of view, the Code is not being met. He expressed disagreement with the remarks made by Mr. Baird. He noted there were 632 individuals who signed a petition to voice their opposition to this project as well.

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2.7 Councilmember Green asked staff to clarify the parking requirement for this project. Ms. Jastremsky said the site has 91 parking spaces and the number required was broken up based on residential and commercial uses. For residential, staff calculated 54 spaces. Commercial was broken down by retail and office spaces, and they determined a need for 22 and 14 parking spaces, respectively, for a grand site total of 90. Councilmember Green asked why commercial was broken down to retail and office, and said the numbers seemed arbitrary. Ms. Jastremsky said there is nothing in the Code to help guide how to break up commercial uses.

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2.8 Councilmember Weeks said the project was proposed as a live/work community. She asked if in order to live in the community, one has to work in the community as well. Furthermore, she asked if business licenses are required of all tenants as well. Ms. Jastremsky answered affirmatively; the intent is for business owners operating on the ground floor to have a living space on the top floor. She further explained each living unit will have its own retail space. Councilmember Weeks asked how many apartments are in each unit, and Ms. Jastremsky noted there are 24 residential units. The TC Zone states the ground floor must be no less than 50% commercial; parking must also be provided on the ground floor.

Ms. Oliver said the individuals living in the residential spaces may rent out the commercial spaces on the ground floor (for commercial uses). Therefore, it will not necessarily be the same people operating businesses on the ground floor as those who are living upstairs. Councilmember Weeks said she was under the impression that the opposite would be true. Ms. Oliver said the intent is for commercial and residential spaces to be occupied by the same person, but there is nothing written to indicate their inability to rent out the spaces to other tenants.

With regards to fire access, Ms. Jastremsky stated the retail entrance is in the front and the garage will come in from the back. Councilmember Weeks asked if there is a restroom on the ground floor. Ms. Jastremsky noted the site plan presented tonight does not show one.

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2.9 Councilmember Summerhays asked how the commercial and residential spaces will be separated within the building. Ms. Jastremsky said there is a common entrance from the outside that goes into the work space, and then another door separating the work space from the apartments on the top floor.

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2.10 Councilmember Weeks explained that based on this design, anybody can enter the work area which eliminates any type of security. Ms. Jastremsky said this was correct, and explained the design itself may prevent a resident from leasing the commercial space to another business. She clarified when customers are coming through the business, they will be entering the commercial space and the residential living area.

Councilmember Weeks then asked about the traffic study, and wanted to know if the Planning Commission had ample time to review it before voting. She also wanted to know the details of the study—what time of day and at what point in the year it was conducted. She was also concerned about safety, provided the building is in the middle of the safe walking route for nearby schools. Mr. Maxfield said Draper City has developed a traffic impact study wherein threshold guidelines have been established. He said based on the size of the project, a traffic study was not required. However, the developer provided one anyway. Councilmember Weeks again asked if the study was reviewed by the Planning Commission prior to voting, and Mr. Maxfield said no.

Bryan Thatcher, Fire Marshal, said he reviewed this project and took all Code requirements into consideration. He did have concerns with the applicant's first two submittals. The placement of hydrants and road widths were all taken into consideration during his review. Regarding the fire hydrant and the lane, the top portion of the lane is approximately 158 feet. He said the Fire Code is very ambiguous; it allows for a number of concessions and trade-offs and the Fire Marshal is able to determine what will and will not work. Councilmember Weeks asked if the ground floor will have sprinklers installed. Mr. Thatcher answered affirmatively.

[7:22:19 PM](#)

2.11 Councilmember Green asked about open space; the allegations are the open space violates Chapter 32, Section 9-32-030 Part E. Ms. Jastremsky said the landscaping and open space of the project meets the TC Zone requirements, which requires a minimum of 15%. She noted the applicant is providing 31% landscaping and open space. The appellant is assessing landscape and open space as two separate items. However, within the City's Code definitions these two terms are synonymous.

Councilmember Green asked about fencing on the property, and said he understands that the fence in question is not mitigating the problem. Ms. Jastremsky explained the Planning Commission required fence be located along the entire eastern property line. She noted there is also a line of trees on the adjacent properties on the same property line, for which she presented several images. The discussion at the Planning Commission meeting was whether or not they could put in a fence without damaging the neighbors' trees. Ultimately,

the Commission decided if it turns out the trees will be damaged, the applicant will then have the ability to apply for an amended site plan.

Councilmember Green said he was not sure whether or not the concept of the buildings matched the area. Ms. Jastremsky said to keep in mind the surrounding homes are zoned TC.

[7:25:51 PM](#)

2.12 Councilmember Weeks raised the issue of the modern-style building style, versus the historical feel that is intended for the TC Zone. Ms. Jastremsky said while the intent of the TC Zone was to have traditional-style buildings, there isn't any language contained therein prohibiting or requiring a specific architectural style.

Councilmember Weeks was concerned over the sidewalks being only on one side of the road, especially because there is a school nearby. Ms. Jastremsky said when the Planning Commission reviewed the sidewalk deviation they were concerned about walkability. The only areas that do not have sidewalks are along alleys. She said there is sidewalk along Fort Street and crosswalks that serve the fronts of each building. A condition of approval is that one of the buildings needs to shift up a few feet to allow for a sidewalk extension.

Councilmember Weeks asked if there was also an issue with trees on this appeal. Ms. Jastremsky said a deviation on trees also took place for this item and she reviewed the trees that will be included in the landscaping plans. Councilmember Weeks questioned the applicant's inability to provide all of the required trees, given the amount of open space on the property. Ms. Jastremsky explained something the TC Zone does not do well is it does not account for the actual canopy of trees. Councilmember Weeks stated there are several aspects of the site plan with which she disagrees because she doesn't feel it meets the intent of the zone. The City has given the developer some leeway on trees, but the developer is not returning the favor with regards to architecture.

[7:30:58 PM](#)

2.13 Councilmember Vawdrey asked if the street parking disappeared, and if so are the lost parking spaces accommodated for elsewhere on the site plan. Mr. Maxfield clarified the street parking did not disappear. Rather, the project is dedicating right-of-way to meet the 33-foot, half width requirement on minor collector streets. The exhibit referenced is the plat, and the parking that is out in a public right-of-way is not particularly depicted on a plat.

[7:32:02 PM](#)

2.14 Councilmember Lowery said she is still concerned with traffic safety and peak school times. She asked if Councilmember Weeks felt her concern had been addressed with regards to this issue, and Councilmember Weeks responded in the negative. Councilmember Weeks continued by stating concerns related to the width of the collector street, the sidewalks and added traffic. Councilmember Lowery mentioned having recently attended an event at the nearby school, and the traffic during a peak time was intense. She said a meeting with the school is in order with regards to this project.

Councilmember Weeks expressed concerns regarding ADA compliance. Ms. Jastremsky noted ADA standards are reviewed with the building permit.

[7:34:15 PM](#)

2.15 Mr. Maxfield added staff does assess whether or not rights-of-way and sidewalks comply with ADA standards. A comment was subsequently made that the City cannot impose a traffic study requirement because according to Code, the size of the development does not warrant one. Mr. Maxfield explained the City may require a traffic study at the discretion of the City Council. There is a threshold in the City's standards which automatically triggers the requirement.

[7:35:05 PM](#)

2.16 Mr. Dobbins asked what the Code specifically states regarding traffic studies. Mr. Maxfield referenced language stating multifamily development proposals require traffic studies for sites that are five acres or more in size. Traffic impact study design guidelines are also published on the City's website.

Councilmember Green requested a specific citation. There was subsequent review of the item.

[7:37:18 PM](#)

2.17 Councilmember Green moved to grant the appeal and require the developer to conduct a traffic impact study pursuant to Chapter 932, 0-10. The item shall then be remanded to the Planning Commission for review and consideration. Councilmember Lowery seconded the motion.

There was further deliberation regarding the nature of Councilmember Green's motion. Mayor Walker suggested the Council take a break to consider the language of the motion.

[7:39:04 PM](#)

2.18 Councilmember Green moved to take a 10-minute break. Councilmember Weeks seconded the motion.

[7:39:18 PM](#)

2.19 Those voting aye: Councilmembers Green, Lowery, Summerhays, and Weeks. Councilmember Vawdrey voted no. The motion carried with a majority vote of 4 to 1.

** *The City Council took a break at 7:39 p.m.*

** *The meeting resumed at 7:50 p.m.*

[7:51:48 PM](#)

2.20 Councilmember Green moved to remand the site plan back to the Planning Commission to look at the traffic study that has been done to determine whether or

not the study has any negative effects, and if so, whether or not those negative effects can be mitigated by any changes to the site plan. The motion failed for lack of a second.

[7:52:50 PM](#)

2.21 Councilmember Weeks expressed concerns with the following: (1) whether or not the traffic study was conducted during the school's peak hours, (2) fire safety, (3) parking issues, and (4) trees.

[7:53:39 PM](#)

2.22 **Councilmember Weeks moved to remand this back to the Planning Commission to review the following: the fire department, the traffic study during school hours, whether or not parking meets City Code requirements for retail on the ground floor per foot, and the trees.**

There was subsequent deliberation regarding the intent of Councilmember Weeks's motion.

[7:55:07 PM](#)

2.23 **Councilmember Green amended his motion to remand this matter back to the Planning Commission to review a traffic study that takes into account the peak school hours and in the proper area to see if the traffic study has an impact on the neighborhood and school students. Councilmember Lowery seconded the motion.**

[7:55:49 PM](#)

2.24 Mr. Barker stated the "proper areas" terminology is ambiguous and he requested specificity to this matter. Councilmember Lowery clarified the area in question pertains to the school and the location of the development.

[7:56:26 PM](#)

2.25 **Mayor Walker restated the motion as follows: one issue will be remanded back to the Planning Commission in order for a new traffic study to be conducted that takes into account the school zone area, peak hours for school drop-off and pick-up, and how this might impact the safe school walking plan. The rest of the appeal is denied.**

[7:57:05 PM](#)

2.26 Councilmember Weeks said there are other issues in the appeal she feels are important. If she votes no to Councilmember Green's motion, she wanted to know if this will still give her the ability to question some of the other issues if the motion does not get passed.

Mayor Walker suggested Councilmember Weeks consider amending the motion currently on the table. Councilmember Green then reviewed the legal justification of his motion.

[7:58:29 PM](#)

2.27 **Councilmember Weeks moved to amend the current motion to include the direction that the Planning Commission look at the parking spaces to make sure they are**

adequate for the amount of retail on the ground floor. Councilmember Lowery seconded the motion.

[7:59:39 PM](#)

2.28 Councilmember Lowery said parking needs are difficult to gauge because they do not know exactly how the building will be occupied, which has resulted in an arbitrary number of parking spaces. Mr. Fox again reviewed how staff came up with the number of parking stalls for the development.

[8:02:12 PM](#)

2.29 Mayor Walker called for a vote on Councilmember Weeks's amendment. Those voting aye: Councilmember Weeks. Those voting no: Councilmember Green Councilmember Lowery Councilmember Vawdrey, and Councilmember Summerhays. The motion failed due to lack of a majority vote.

[8:03:00 PM](#)

2.30 Mayor Walker called for a vote on Councilmember Green's motion. Those voting aye: Councilmember Green and Councilmember Lowery. Those voting no: Councilmember Summerhays, Councilmember Vawdrey, and Councilmember Weeks.

[8:03:19 PM](#)

2.31 Councilmember Vawdrey moved to deny the appeal for the Moda Town Center. Councilmember Summerhays seconded the motion.

[8:03:32 PM](#)

2.32 Those voting aye: Councilmembers Lowery, Summerhays, and Vawdrey. Councilmember Green and Councilmember Weeks voted no. The motion carried with a majority vote of 3 to 2.

[8:03:51 PM](#)

2.33 Mayor Walker noted the Council recently imposed a moratorium on the TC Zone for the next six months.

[8:05:01 PM](#)

3.0 **Adjournment**

[8:05:22 PM](#)

3.1 Councilmember Summerhays moved to adjourn the meeting. Councilmember Weeks seconded the motion.

[8:05:28 PM](#)

3.2 A roll call vote was taken with Councilmembers Green, Lowery, Summerhays, Vawdrey, and Weeks voting in favor. The motion passed unanimously.

[8:05:29 PM](#)

3.3 The meeting adjourned at 8:05 p.m.