

Approved November 13, 2018

MINUTES OF THE DRAPER CITY COUNCIL MEETING HELD ON TUESDAY, OCTOBER 30, 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 (joined the meeting via telephone), and Michele Weeks

STAFF PRESENT: David Dobbins, City Manager; Mike Barker, City Attorney; Rachelle Conner, City Recorder; Russ Fox, Assistant City Manager; and Christina Oliver, Community Development Director

Special Business Meeting

1.0 Call to Order: Mayor Troy K. Walker

2.0 Consent Items

a. Approval of October 16, 2018, City Council Meeting Minutes

b. Re-approval of Resolution #18-60 and #18-62, Annexing Edelweiss Phases 5 and 6 into the Traverse Ridge Special Service District.

2.1 Councilmember Green moved to approve the Consent Items. Councilmember Summerhays seconded the motion.

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

3.0 Public Hearing: Provide Local Consent for a Full-Service Restaurant Alcohol License for H&H G3 LLC dba Gourmandise The Bakery located at approximately 12300 South 725 East

3.1 Christina Oliver, Community Development Director, this application is for a full-service restaurant alcohol license. They have two other locations in the Salt Lake area which are full-service with their restaurant and bakery. The City Code does not limit the number of full-service licenses within the city. The location is in the former Bake 360 building. The application meets all of the requirements for this type of license.

3.2 Councilmember Summerhays asked whether they are getting rid of Bake 360. Ms. Oliver explained that Bake 360 sold their location to The Gourmandise.

Councilmember Summerhays then asked who owns the business. Ms. Oliver explained the applicant is Vernon Hansen.

3.3 Vernon Hansen, applicant, explained he opened a similar business downtown Salt Lake in 2006. This business will have the exact same model. They acquired Bake 360, which also had a full-service alcohol license. Alcohol is 1.5% of their total sales downtown.

- 3.4 Councilmember Lowery noted it is her understanding that the applicant got some of the recipes from Bake 360. Mr. Hansen indicated that is correct and they will be making some of the pastries.
- 3.5 **Mayor Walker opened the public hearing. No one came forward to speak, so Mayor Walker closed the public hearing.**
- 3.6 **Councilmember Green moved to provide local consent for a full-service restaurant alcohol license to The Gourmandise Bakery. Councilmember Lowery seconded the motion.**
- 3.7 **A roll call vote was taken with Councilmembers Green, Lowery, Summerhays, Vawdrey, and Weeks voting in favor. The motion passed unanimously.**
- 4.0 **Public Hearing: Provide Local Consent for a Bar Establishment Alcohol License for Leatherheads Sports Grill LLC, Applicant, Leatherheads Sports Grill LLC, is applying for a Bar Establishment Alcohol License at a New Location at Approximately 12147 South State Street**
- 4.1 Ms. Oliver explained in the past, staff has included information in the staff packet that could be classified as private, so that information will no longer be included with the agenda packet.
- Ms. Oliver then noted this application is for a bar establishment alcohol license for Leatherheads Sports Grill. The applicant is the current owner of that business, and this is a secondary location. They purchased the old Thai Siam restaurant and will be moving to that location. She reminded the City Council that bar establishment licenses are limited to 8 in Draper City, of which 7 are general and one is required to be in a hotel. There has been a question of whether this will be a secondary bar establishment.
- 4.2 Councilmember Weeks noted there is a restaurant in the Hidden Valley Shopping Center, and they told her they gave up their bar. She thought they only had one bar license that these people were using, but she guessed there was another bar license available for Leatherheads to pick up. She asked if this is correct.
- Ms. Oliver stated there are currently 4 licenses being used—Donkey Tails, All Star Bowling, Leatherheads, and the Cliff. There are 3 general licenses available and one for a hotel.
- Councilmember Weeks then questioned how many licenses will be left if they give a bar license to this individual and the next one. Ms. Oliver replied they will have one left unless Leatherheads decides to close their other operation.
- 4.3 Councilmember Green stated he did not understand there were two locations. He thought they were just moving locations, and that presents some concerns to him. Councilmember Lowery stated that was her understanding as well.

Russ Fox, Assistant City Manager, noted one of the operators of Leatherheads had originally talked about doing something at both locations. They did purchase the Thai Siam building and will move Leatherheads over there. They still might be keeping both locations and turning it into a full-service restaurant, but in order to comply with the Division of Alcohol and Beverage Control (DABC) rules, they cannot just move the existing license to this location.

- 4.4 Mayor Walker asked whether it is possible that they can operate two bars with the way this is set.

Mr. Fox clarified that most likely they will transfer the bar license from Leatherheads to this location due to the limited number of licenses in the State. He is not sure what the availability of those are.

Mike Barker, City Attorney, noted the DABC met that day, and there were five applicants for two licenses. There was one license granted and one was held in reserve for rural Utah.

- 4.5 Mayor Walker opened the public hearing. No one came forward to speak, so Mayor Walker closed the public hearing.**

- 4.6 Jay Gibb, applicant, advised his intent is to transfer the existing license to the new location.

- 4.7 Councilmember Green moved to provide local consent for a bar establishment alcohol license to Leatherheads Sports Grill. Councilmember Weeks seconded the motion.**

- 4.8 Councilmember Vawdrey asked for clarification that the applicant said he is only going to have one bar, but he is asking for a second license. She indicated she is having a difficult time hearing all of the speakers over the phone.

Mayor Walker explained his intention is to transfer his existing license to this building; however, the DABC does not allow that without them receiving local consent first for the new building.

- 4.9 Councilmember Lowery asked what is going to happen to the original location.

Mr. Gibb advised the original location will be going up for lease. The property owner has a few businesses interested in that location. They are interested in getting Leatherheads out so they can increase the lease rate. The lease will end January 1st. He indicated he does not want another bar in Draper. He has another license in Salt Lake that they would like to bring to the south, but the property owner of their current location is interested in getting them out due to the lower lease rate. He said he wanted to get the license and own their own building, but he wanted to keep it close to their original location.

4.10 A roll call vote was taken with Councilmembers Green, Lowery, Vawdrey, and Weeks voting in favor. The motion passed unanimously. Councilmember Summerhays abstained from the vote.

4.11 Councilmember Summerhays asked what name the DBAC will list the license under. Mr. Gibb indicated it will be under his wife's name, Jeni Rasmussen.

5.0 Action Item: Approve Voluntary Operational Agreement and Provide Local Consent for a Bar Establishment Alcohol License for SGR LLC dba Seabird

5.1 Councilmember Summerhays recused himself from the discussion and vote, due to this being a new location and a new business.

** *Councilmember Summerhays left the meeting at 5:52 p.m.*

5.2 Ms. Oliver advised this is a bar establishment local consent application, as well as an operational procedures agreement for Seabird. The applicant is requesting the City enter into an agreement with them. This application meets all of the requirements for the license. The voluntary operational agreement that has been proposed to the City would limit the alcohol sales in the establishment to 11:00 p.m. and the business would close at 12:00 a.m. Further, the applicant has put forward that the organization would ensure that 50 percent of sales would be food related.

5.3 Councilmember Weeks asked whether they will stop selling alcohol on Friday and Saturday at 11:00 p.m. Ms. Oliver indicated there is no stipulation to days. Whenever they are open, they would stop selling alcohol at 11:00 p.m.

5.4 Jameel Gaskins, applicant, introduced himself.

5.5 Councilmember Weeks noted Donkey Tails does not have any restrictions on it, and that was passed in 2008. Mayor Walker seconded that motion, and Tasha also passed it through the Planning Commission. The City Council also just approved another bar license with no restrictions. She expressed concerns that the City is placing restrictions on this establishment whereas they do not have restrictions on a City Councilmember having a bar license. She asked the applicant why they would put these restrictions on themselves, because to stop selling alcohol at 11:00 p.m. on Friday and Saturday could hurt their business. She asked why he is not going for the whole license as everyone else in the State has.

Mr. Gaskins stated he cannot comment on the previous votes; however, his agreement was in response to some of the concerns outlined by the community. In an effort to meet in the middle with the community and still operate their business, they are addressing those concerns.

Councilmember Weeks asked whether they were denied previously, or if it did not go to a vote. Mr. Gaskins replied it did not go to a vote.

- 5.6 Councilmember Green indicated Councilmember Weeks was present at the meeting, and she did not make a motion either. Councilmember Weeks responded that some of the Councilmembers were missing. Councilmember Green stated there were 4 members present.
- 5.7 Councilmember Lowery clarified that she has never been on the Planning Commission. Councilmember Weeks explained she meant Marsha was on the Planning Commission.
- 5.10 Councilmember Green moved to provide local consent for a bar establishment alcohol license with the approval of a voluntary operational agreement. Councilmember Lowery seconded the motion.**
- 5.11 Councilmember Vawdrey expressed appreciation to the applicant for their willingness to listen to the concerns of the residents and to work towards mitigating the issues. This has been a long and difficult process, but she appreciates the efforts.
- 5.12 Mayor Walker stated the applicant was very interested in taking the community input and trying to fit in. This is a different location than is normal for a bar establishment. He applauded the applicant's willingness to listen to the neighbors. He stated he has been doing this for a long time, and he can count on one hand the number of times they have had that many neighbors concerned about a bar license.
- 5.13 Councilmember Weeks stated her concern with the application prior to this was that they did not have a kitchen. The Council wanted to make sure they had a kitchen, and it changed her point of view when the kitchen was added. She said she is saddened that he did add a kitchen, and he has had to make all of these restrictions to make sure it got passed. It saddens her because other City Councilmembers do not have to do that. Her biggest concern, and why she did not make a motion previously, is that he did not have a kitchen.

Mayor Walker clarified bar establishments are not required to have a kitchen. Councilmember Weeks stated she knows that; however, that was their main concern when they were voting on it previously. The fact that he added a kitchen changed her point of view of the application.

Councilmember Green expressed his opinion that he does not think that has any relevancy to anything. There is a statute that says if they have food, it is a restaurant and it is a 70/30 split, and if they do not, they do not have to have any food. Not having any food caused that part of the community to be upset because it could create more second and third order effects. As a City Councilmember, he has to recognize those effects and cannot just make decisions based upon now. The second and third order effects are being addressed by these restrictions.

Councilmember Weeks stated she felt the kitchen would have addressed some of the mitigating factors. Councilmember Green asked how that would address them.

Councilmember Weeks explained if they have food, they have things available for individuals to eat, and therefore, when they eat, their alcohol level is not as high. She expressed her concern about them not having a kitchen before, and now she is expressing her concern that they are putting extra regulations on this individual, when they did not on a City Councilmember. Councilmember Green clarified that these restrictions are voluntary, and not one member of this City Council demanded those.

Councilmember Weeks said she believes he was working with a member of the City Council to address some of the concerns. She agreed that these restrictions are voluntary. She is just establishing her point of view that he has to do more to get his bar license than she thinks other people have to do.

Councilmember Green stated this is based upon the geography and location of his business, and that Councilmember in question is not even present.

Mayor Walker indicated Councilmember Weeks could have moved to approve the license when it was previously heard. Councilmember Weeks said she did not like the fact that he did not have a kitchen, so she did not make a motion.

5.14 Councilmember Vawdrey stated that every application requires local consent, and the City Council is allowed to look at every application and vote the way they feel.

5.15 Councilmember Lowery reiterated to the applicant that the Council appreciates his efforts to mitigate the concerns of the community. That is wonderful, and she appreciated the applicant coming back again and again, and his effort to meet with the Council and come to this compromise. She thanked the applicant.

5.16 Mayor Walker called for the vote. A roll call vote was taken with Councilmembers Green, Lowery, Vawdrey, and Weeks voting in favor. The motion passed unanimously.

5.17 Mike Barker, City Attorney, asked if that motion was to approve the local consent and the agreement to which Councilmember Green stated yes.

** *Councilmember Summerhays returned to the meeting at 6:01 p.m.*

6.0 Action Item: Resolution #18-82, A Resolution of the Draper City Council Giving Notice of Pending Amendments to the Major Manufacturing (M2) Zone Pertaining to the Mineral Extraction Use in Draper City Municipal Code and Directing City Staff to Initiate the Process to Amend the City Code Consistent with this Resolution. This Proposed Text Change Would not Affect the Established Legal Rights of any Current Mineral Extraction Operations

6.1 Russ Fox, Assistant City Manager, indicated the State Code authorizes cities to enact and modify land use controls, specifically in this case, land use extractions. State Code Section 10-9a-509 allows the City to place any applications that come into the City on hold while

staff is working to amend their ordinance pertaining to this issue. The Code change would have to go through the Planning Commission process for their recommendation and then to the City Council for their final approval. The passage of this resolution would direct staff to move forward to remove Mineral Extraction as a conditional use in the M2 Zone.

- 6.2 Councilmember Weeks asked Mr. Barker to pull up State Code Section 65a-6-1. Councilmember Weeks read from the Code and expressed concern that the direction to staff would only address mineral extraction, but she would also like to include sand and gravel mining or extraction. Mr. Barker clarified that the City Code's definition includes that extraction of sand and gravel. The definition is different than the state's definition.

Councilmember Weeks then indicated Tooele County is currently addressing additional regulations regarding mining/quarry sand and gravel excavation operations which include currently permitted and non-conforming uses. She asked whether they can address some of those issues as well when they are going through this process. She expressed her opinion that Tooele County is doing a great job addressing the many issues that come with having mine and gravel pits in their area. She read some of the proposed restrictions.

Councilmember Green stated the Division of Oil, Gas and Mining (DOGMA) already regulates those operations, so it has already been preempted. Councilmember Weeks stated this is what Tooele County is doing right now.

- 6.3 Councilmember Lowery moved to approve Resolution #18-82. Councilmember Green seconded the motion.**

- 6.4 Mayor Walker asked if there was any further discussion.

- 6.5 Councilmember Weeks said there are many things that need to be discussed and when another Councilmember brings them up it is fine, but when she brings them up, she gets shut down. It appears there are two separate standards. Mayor Walker indicated he is just following the Meeting Rules. Councilmember Weeks said when she asks for a continuance on a motion Mayor Walker denies her but when Councilmember Lowery asks for it she gets it. She said she has examples of that.

Mayor Walker noted when a motion is made, the rules require they address the motion, which he does every time. He indicated Councilmember Weeks is welcome to make her comments at this time.

Councilmember Weeks stated she is just saying they should give the Planning Commission and City Council even more power when addressing this issue, but clearly the City Council does not want to discuss it so she will go with the motion that is on the stand.

Mayor Walker indicated Councilmember Weeks can make a separate motion if she wanted to.

6.6 Councilmember Weeks moved to amend the motion to include additional updates and regulations governing all mining, quarry, sands and gravel excavation operations, including both current, permitted and non-conforming uses. Councilmember Green seconded the motion

6.7 Councilmember Weeks then stated it seems like if they are going to discuss it, they should really discuss it and really improve the air quality within Draper City.

6.8 Councilmember Green indicated he is skeptical of the legal grounds and the legal theories because he thinks that has been preempted both Federally by the Clean Air Act and the State, but he is happy to look into exploring it.

6.9 Councilmember Lowery advised she agrees with Mr. Green here, and she thinks there are things to look into. She is curious about the law on this matter and how much the City Council can do retroactively about things that have already been permitted. Mr. Barker indicated he is not prepared to offer an opinion at this meeting.

Mayor Walker advised they can pass the amendment and add it to this resolution. The City Council can vote on the resolution. Ms. Weeks has made her motion to amend it to add this language to the resolution that is in front of them. If the City Council is done discussing, he will call for a vote on it.

6.10 Mayor Walker called for a vote on Councilmember Weeks's amendment. A roll call vote was taken with Councilmembers Green, Lowery, Summerhays, Vawdrey, and Weeks voting in favor. The motion passed unanimously.

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

7.0 Adjournment

7.1 Councilmember Green moved to adjourn the meeting. Councilmember Summerhays seconded the motion.

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

7.3 The meeting adjourned at 6:13 p.m.