

MINUTES OF THE DRAPER CITY COUNCIL MEETING HELD ON TUESDAY, OCTOBER 29, 2013, IN THE DRAPER CITY COUNCIL CHAMBERS, 1020 EAST PIONEER ROAD, DRAPER, UTAH

“This document, along with the digital recording, shall constitute the complete meeting minutes for this City Council meeting.”

PRESENT: Mayor Darrell Smith, and Councilmembers Bill Colbert, Bill Rappleye, Jeff Stenquist, Alan Summerhays, and Troy Walker

STAFF PRESENT: David Dobbins, City Manager; Russ Fox, Assistant City Manager; and Rachelle Conner, City Recorder

Study Meeting

1.0 Dinner

Business Meeting

6:09:06 PM

1.0 Action Item: Approving Resolution No. 13-54, Appointing Trustees to the SunCrest Owner’s Association Board to Act on Behalf of Draper City.

6:09:30 PM

1.1 Russ Fox, Assistant City Manager, indicated when the City purchased SunCrest last year, they became the Master Developer of SunCrest because of the development agreement that existed. The Council is currently on the Owner’s Association Board because they are the Trustees. It has been a goal of the Council to appoint other people to the Board as Trustees. The Owner’s Association (OA) went through a process to bring names to the Council for their review. He invited Tod Bean, Community Manager for the SunCrest Association, to review the process for the Council.

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1.2 Tod Bean, 5065 South 1000 East, Murray, reviewed the selection process the Board of Trustees used in coming up with the three names to forward to the City Council. He advised on September 18, 2013, the Board of Trustees met and made a motion to appoint three residents to the SunCrest Board of Trustees. After that meeting, the SunCrest OA sent out an email blast requesting nominees for the nominating committee and for candidates for the Board. On October 1, 2013, they conducted a nominating committee meeting in which eleven candidates were presented to the committee for selection as the voting delegates.

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1.3 Councilmember Stenquist requested clarification that the nominating committee selected the candidates. Mr. Bean noted there were eleven candidates, and the committee selected nine. Councilmember Stenquist then asked who was on the nominating committee and

whether it was the voting delegates that made up the committee. Mr. Bean clarified that they could be voting delegates or residents of the SunCrest OA. The Board solicited volunteers. Councilmember Stenquist asked whether everyone that volunteered was selected, and Mr. Bean said they were.

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1.4 Mr. Bean then continued saying that of the eleven candidates that submitted their applications, nine were chosen by the committee to present to the voting delegates. Of the two that were not chosen, one was out of state and not living in SunCrest at the time. On October 8, 2013, the OA conducted a "Meet the Candidates" night. The voting delegates were presented, and the candidates were provided questions concerning issues that deal with SunCrest. The voting delegate had emailed the questions to Mr. Bean prior to the meeting. The meeting went for approximately two hours. The voting delegates stayed to vote, and the selection process was completed after that. The nine candidates that were presented were--Amy Baird, Ben Crandall, Doug Fowler, Lisa Holcomb, Aimee Hudak, David James, Doyle Judd, Larry Nilssen, and Tim Mawhinney. The three chosen were Amy Baird, Doyle Judd, and Aimee Hudak.

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1.5 Councilmember Stenquist asked whether everyone at SunCrest had the opportunity to vote. Mr. Bean clarified it was just the voting delegates that voted. Not everyone that was a voting delegate was selected to vote in this process because he has had a difficult time getting a quorum to attend in the past. He contacted past voting delegates and asked them to represent their neighborhoods, and there were others that were voting delegates that were running as Board candidates, so other past voting delegates were chosen for them. It was seen as a conflict of interest to have the candidates that were voting delegates being allowed to vote for themselves for the Board. There were other voting delegates there that he had received emails from that stated they could be a voting delegate if needed.

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1.6 Tim Mawhinney, 15579 Mercer Court, said he wanted to make the City Council aware of a number of things that were irregular about this election process. In some instances proxies were appointed for people who already had proxies that were coming. In one instance, a gentleman had a proxy that he had selected that did not get to vote because another proxy, selected by a candidate, voted for him. In another instance, one of the candidates actually had decided not to have a proxy for himself, and a current board member selected a proxy to vote who in turn voted against this candidate. There were also people that showed up to vote that were neither delegates or proxies, and they were allowed to vote.

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1.7 Christine McClory, 2031 Eagle Crest Drive, said she met with Mr. Bean and the SunCrest attorney and went over the election process. She said this for her is a principle issue. There are some in the room that might think she has an ax to grind; however, she is just a red-blooded American who figures if there is going to be an election, it should be

done right. She asked whether any of the Councilmembers knew that Draper staff was meeting with the SunCrest attorney. She noted if they did not, it is a problem for them to make a decision without having all of the information. Mayor Smith asked whether her concerns were addressed when she met with Mr. Bean and the attorney. She indicated it was a question again because they are not an independent entity at this point. The attorney felt he had to take these issues to the Board; however, he was actually meeting with City officials. At that point, it was under advisement, and the residents could only assume it was being discussed in a serious way. The residents did have ideas of how this could be resolved. A simple re-vote of the actual legitimate votes could have been conducted. The concern is not about individuals. It is about getting the process correct. It is about justice, and they want to get it right. She feels sad that as a community they cannot be proud of their election at this point.

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1.8 Mayor Smith asked Mr. Fox whether Doug Ahlstrom was in the meeting with him and the SunCrest attorney. Mr. Fox stated he was. Mayor Smith then asked where this was left as far as being resolved. Mr. Fox responded that as the Declarant, the City Council is making the appointment to act as Trustees on the Board. The City Council can appoint whoever they want. The decision staff had with the OA attorney was that there was a process put together with a nominating committee. The City Council had agreed with the process. The City Council has been presented with these names to act on behalf of the Council. Both attorneys have agreed that there is nothing wrong with the process. The City Council can look at this as a recommendation of the nominating committee but can still appoint whoever they want.

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1.9 Mayor Smith indicated the City Council did not want to remain on the Board for a long period. They just did what they had to do for a while. The residents were anxious to see the City's elected officials removed from the Board and have someone in the community fill the Board seats. He said he assumed that the residents would be thanking the City Council for getting to this point; instead, they are here to express their concern about the process.

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1.10 Mr. Mawhinney said that is correct. The residents want the City Council to be aware that during this process, there were irregularities, and the residents would like the City Council to make sure the candidates that are selected were selected through a process that was not corrupt. There were irregularities during the election, and Mr. Mawhinney said he has a huge list of them. The residents understand the Councilmembers have a right to select the Trustees, and the residents appreciate the City Council letting the homeowners be on the Board. However, they want the City Council to consider that during this time of elections, they want the process to be proper. If something was corrupt with the election in the City of Draper, they would want to redo the election. That is what he is asking for here. He would like the correct voting delegates and their correct proxies to re-vote.

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1.11 Councilmember Colbert noted there are at least two sides to this issue. He said he would like Mr. Bean to give his side of this.

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1.12 Councilmember Summerhays clarified for the record that he did know there was a meeting that Mr. Fox was attending in reference to this, but he did not know exactly what the meeting was about or who he was meeting with from SunCrest.

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1.13 Mr. Bean wanted it made clear that this was not an election. It was a selection process. He read a statement from the SunCrest attorney, which stated, "Despite the use of and references made to voting delegates, quorum, election, and so forth, the entire purpose of the process undertaken by the SunCrest OA was to involve as many community members as possible to provide Draper City with a slate of candidates from which they could chose or determine not to chose for appointment to the SunCrest Board. If this had been an actual election, at the annual meeting, there would have been proxies involved in that; however, in this case, they wanted to make sure there were as many people there that were represented in selecting the candidates to present to the Declarant. Whether the City Council chooses those names or not is totally up to Draper City."

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1.14 Councilmember Stenquist asked whether the process they went through is different than what they would do in June at their annual meeting. Mr. Bean replied that at least ten of the voting delegates would not have been able to attend the meeting either because they moved or resigned or had other responsibilities. They followed the outline in the Bylaws and governing documents in order to make this selection process.

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1.15 Councilmember Rappleye said it is his understanding that there will be another election in June. Mr. Bean stated that is correct. They will still go through a nominating committee; however, that will be an election rather than a selection process. Mr. Bean said that in the past he has had trouble getting voting delegates to the meetings to achieve a quorum. He sent out emails about this meeting and only received a few responses. They wanted as much representation from the community members as possible.

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1.17 Councilmember Colbert asked how this will work in June if the City is not the Declarant. Mr. Bean said it is his understanding that as soon as the Master Agreement is completed, those units under the current agreement will go away and the Declarant would go away as well. Mr. Colbert then asked whether these appointments are just for seven months. Mr. Bean stated that is correct.

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1.18 David Dobbins, City Manager, stated the City is the Declarant until they no longer hold enough lots to count towards the seats they hold. Once they change the number of remaining units to be built, it automatically reduces the number of seats the Declarant has. The City could change it to where the City Council does not have any seats if they wanted.

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1.19 Mr. Mawhinney petitioned the Council to stay on the Board or have another selection process rather than select people that were part of an election with irregularities.

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1.20 Ms. McClory noted if any of the Council is interested, they could present the actual information that was corroborated with the attorney and Mr. Bean. The Council would then have full disclosure in terms of what the neighbors are talking about.

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1.21 Councilmember Summerhays moved to continue this item until November 12, 2013, to find out what happened with this process. Councilmember Rappleye seconded the motion.

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1.21 A roll call vote was taken with Councilmember Summerhays, Councilmember Rappleye, and Councilmember Stenquist voting yes. Councilmember Colbert and Councilmember Walker voted no. The motion carried with a majority vote of 3-2.

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1.22 Mr. Dobbins noted the City Council has continued these three names to the next meeting. So, absent some other information, the Council will have the same names for the next agenda.

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1.23 Councilmember Colbert stated most of the Board members are here and said they wanted to give more input to SunCrest residents during this process. Mr. Dobbins stated the City, as Declarant, can appoint anyone they want to the Board. The next meeting is November 12, 2013. One option is to give the City Council all of the names that were submitted. Councilmember Walker said they should just continue with what was on the agenda tonight.

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1.24 Councilmember Rappleye said all he wants is to make sure whatever the City is doing at SunCrest is the right thing. There are a lot of questions here. He is not sure anything was done wrong; however, he wants to look at it.

2.0 Adjournment

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2.1 A motion to adjourn was made by Councilmember Summerhays and seconded by Councilmember Colbert. The motion carried unanimously.