

**E. ORDINANCE 2020-03 – FIRST READING – AN INTRODUCTION OF AN ORDINANCE VACATING CERTAIN STREET RIGHT-OF-WAY ALONG NORTH SYCAMORE STREET LOCATED WITHIN THE CITY OF FRUITA FOR PUBLICATION OF PUBLIC HEARING ON JUNE 2, 2020**

Mayor Kincaid opened the public hearing on the Consent Agenda. After Mr. Vassen confirmed that there were no public comments, Mayor Kincaid closed the public hearing and invited the Council to ask questions, comment, remove Consent items for further discussion or make a motion to approve.

Councilor Buck explained that because the City had heard some concerns about the vacation of the North Sycamore right-of-way, she wanted to reiterate that all the Council was currently doing was setting a hearing date for the Council to hear the full project on June 2, 2020.

- **COUNCILOR LEONHART MOVED TO APPROVE THE CONSENT AGENDA AS PRESENTED. COUNCILOR KREIE SECONDED THE MOTION. THE MOTION PASSED WITH SIX YES VOTES.**

**7. PUBLIC HEARINGS**

**A. QUASI-JUDICIAL HEARINGS**

**1) DWELL PUD CONCEPT PLAN APPROVAL – DAN CARIS, PLANNING & DEVELOPMENT DIRECTOR**

Mayor Kincaid explained the quasi-judicial public hearing process and gave the public meeting attendees instructions on how to virtually participate. The Mayor also pointed out that there were written public comments received by staff in the last two days that would be read into the record.

Planning & Development Director Dan Caris gave a PowerPoint presentation on the Dwell PUD Concept Plan application - a request for a 70-lot subdivision consisting of over approximately 8.8 acres with density of 7.95 dwelling units per acre with 53 attached units and 17 detached units located at 1136 17 ½ Road and 796 N. Maple Street in a Community Residential Zone. The overall plan contains four filings with a mix of attached and detached housing types and approximately 1.59 acres of open space.

Mr. Caris reviewed all dates and methods of legal notices of public hearings on the project, the project description, the Planned Unit Development (PUD) process, zoning map, aerial photograph of the subject property, concept drawings and data concerning traffic impacts. The primary access is proposed to be off Wildwood Drive, which is an existing stub from the Wildwood Acres Subdivision as well as North Maple, otherwise known as 17 ½ Road.

All internal streets within the subdivision are proposed to have 25 feet of asphalt with a detached sidewalk on one side landscaped between the street and the sidewalk. There's also a proposed alley access that will provide primary access for 21 of the units. In addition, there are 1.59 acres of open space, which is nearly 20% of the overall acreage and will contain benches, trails and playground

equipment. A large park is centrally located in the subdivision and approximately 50% of the homes will have views of this park.

Since the applicant is proposing a Planned Unit Development zone, a rezone application will need to be submitted along with or prior to the Preliminary PUD Plan application to ensure the property is zoned accordingly.

City Engineer Sam Atkins reviewed the traffic impacts based upon the ITE Trip Generation Manual and the proposed access points of the proposed subdivision. He concluded that there would not be a tremendous amount of additional traffic that will be generated within the subdivision, although there will be additional traffic on collector streets, which is where the City wants them.

Mr. Caris then provided an overview of the fifteen (15) Land Use Code approval criteria that, according to staff, the project has either met or can be met and the portions of the Fruita Master Plan to which the project conforms. He pointed out that the range of lot sizes that are being proposed go up to 7.9 dwelling units per acre and it is staff's position that Fruita's Comprehensive Plan and future Land Use Map support that kind of density in that area. Staff believes that the development will create some housing alternatives or mixes that the City doesn't otherwise presently have.

At the Planning Commission meeting, there were a number of concerns from members of the public and members of the Planning Commission regarding building height, parking, affordability of the homes, density, fencing and universal building design. Mr. Caris acknowledged that staff had also received written comments the previous day and even earlier in the same day as the public hearing.

Mr. Caris stated that staff recommends approval of the proposed Dwell PUD Concept Plan application with the condition that all review comments and issues identified in the Staff Report are adequately resolved with the Preliminary PUD Plan application.

City Attorney Paul Wisor explained that a PUD application is different from the typical application because the applicant is looking to step outside the zoning criteria within the Land Use Code and essentially negotiate with the City Council looking for flexibility to find a development that works for the developer and the City within the broad concepts of the Comprehensive Plan. He advised that with this type of application, the Council has greater flexibility to ask questions, provide input or suggestions and encouraged them to do so because the developer is going to expend a significant amount of resources in order to move forward.

Mr. Robert Jones, II with Vortex Engineering entered a PowerPoint presentation into the record as the owner's representative. The presentation consisted of Mr. Jones' review of a location map, the City's future Land Use Map (contained in the newly adopted Comprehensive Plan), zoning map, concept drawings and (Concept) Site Plan. He emphasized that the recently adopted Comprehensive Plan has the property classified as residential with four to eight dwelling units per acre and the goal of the Land Use classification was to encourage infill development such as the subject property to make more efficient use of existing infrastructure and a variety of housing types.

Mr. Jones' also presented his report on examples of the types of housing that may be built, proposed Dwell PUD Standards, analysis of proposed deviations, approval criteria and Review Agency and public comments. Proposed deviations from the Fruita Land Use Code include:

- Minimum Lot Area: (2,900 sf for single-family detached homes and 2,100 sf for single-family attached homes designed for modern row houses that are consistent with urban design)
- Front Yard Setback: Front yards set at 15 feet (with a consistent streetscape in order to bring the homes closer to the street to create a greater sense of community)
- Side Yard Setback: No deviation
- Rear Yard Setback: No deviation
- Maximum Lot Coverage: (40% for single-family detached homes and 60% maximum for single-family attached homes)
- Maximum Height: 40 feet is being proposed for both single-family detached and attached homes and 16 feet is being proposed for accessory structures.

Mr. Jones stated that the following relevant Land Use Code sections have been addressed and that the Dwell PUD meets or can meet all of the individual criterion for them:

- Section 17.11.020(B): Adjustments
- Section 17.15.060(C 1-5): Sketch Plan Review
- Section 17.13.060(B): Rezone
- Section 17.17.010: General Purpose
- Section 17.17.030 (1-4): Planned Unit Development and compliance with Titles 8, 9, 12, 13 and 15

Mr. Jones affirmed that all review comments have either been addressed or will be addressed through the subdivision review process. He added that at the time he prepared his presentation, no public comments had been received, but he understood that some had been received by staff very recently.

At the March 10, 2020 meeting, the Fruita Planning Commission made a recommendation of approval to the City Council with conditions after a finding that the Dwell PUD meets or can meet the approval criteria of the Fruita Land Use Code.

Mr. Jones requested approval of the Dwell PUD Concept Plan.

Mayor Kincaid opened the public hearing by reading into the record three (3) separate written public comments received by staff the preceding day (May 18, 2020):

	Name	Address	Summary of Comments
1.	Laura Cantrell	520 Hazel Circle Fruita, CO 81521	<ul style="list-style-type: none"><li>• Density is too high</li><li>• Setbacks are too short from street</li><li>• Buildings are too tall (looking down on Sabil Dr.)</li><li>• Buildings are too close together</li></ul>

			<ul style="list-style-type: none"> <li>• Streets are too narrow</li> <li>• Houses are too small</li> </ul>
2.	Sue Holmes	775 Hall Street Fruita, CO 81521	<ul style="list-style-type: none"> <li>• Number of housing units should be reduced</li> <li>• Consider restricting density to R 4 maximum</li> <li>• Setbacks should be wider or longer</li> <li>• Streets should be widened</li> <li>• Driveways should be lengthened</li> <li>• Maximum height of homes should be no more than that of surrounding homes in neighborhood</li> <li>• Parking is too limited; does not allow for more than one car per household, large vehicles or visitors</li> </ul>
3.	Jason Haire	Orchard Valley Subdivision, Fruita (exact address not given)	<ul style="list-style-type: none"> <li>• Increased traffic burden on N. Maple Dr.</li> <li>• Bridge crossing LSW might not be capable of supporting weight</li> <li>• Increase risk to pedestrians (particularly children) on bridge</li> <li>• Asked if LVFPD had been consulted regarding required fire flows, hydrant(s) and emergency vehicle access</li> <li>• Asked if owner and/or staff have considered appropriate layout for improved access and suitable safer construction materials or methods</li> </ul>

Deputy City Clerk Deb Woods noted that there was one additional written public comment that staff had received earlier in the day (May 19, 2020) and she read it into the record.

	Name	Address	Summary of Comments
4.	Doug & Helen Robinson	512 Hazel Circle Fruita, CO 81521	<ul style="list-style-type: none"> <li>• Two-story homes will affect their privacy and view immensely.</li> <li>• Suggested having the perimeter that backs up to all existing houses as a common area first with landscaping and sidewalk, then add the street and houses.</li> <li>• Suggested reducing number of homes by one-third.</li> <li>• “Look” of development does not blend in and will look out of place.</li> </ul>

			<ul style="list-style-type: none"><li>• Consider having outer perimeter contain “small ranches” of affordable housing for aging community.</li><li>• Proposed housing not affordable.</li><li>• Proposed community will ruin their sense of “small town-feel.”</li><li>• Development feels like American “greed.”</li></ul>
--	--	--	---

Mayor Kincaid asked if there were any further comments from the public. Management Analyst Shannon Vassen noted that Zoom meeting attendee Sherry White has raised her hand to speak, but due to technical difficulties, Sherry’s comments were not heard.

Mayor Kincaid asked Mr. Jones for his rebuttal to the written comments that were read into the record. Mr. Jones responded that in his opinion and in terms of the concept of density, this type of project is exactly what the Comprehensive Plan envisions after the City and community underwent the entire process of establishing the Plan and its goals for the City.

Mr. Jones continued that concerning parking, the Dwell PUD project exceeds the Land Use Code requirements for parking and the parking pods that were developed to the northwest and south of the park weren’t required but were added as an amenity. The project consists of 29 parking spaces in the one parking area alone and the homes would have garages as standard for single-family attached and detached structures.

Mr. Jones stated that he had no concerns about the durability of the bridge on 17 ½ Road and that the Lower Valley Fire Department did review the Dwell PUD project and provided comments, which were already addressed by Vortex Engineering.

Concerning the concept of some kind of perimeter landscape instead of a more centralized park theme, Mr. Jones said that the central park was done in an effort to have as many units as possible directly face the park. He added that the perimeters to the north and south of the subject property are primarily single-family detached units just like those that exist to the north and south on the other side of the fence. On the east side, there will be single-family attached because those are duplex units which frequently coexist with single-family detached structures.

Mr. Jones addressed the comments about affordable housing and “ranches” by saying that these were already integrated into the project; there will be homes that will be as small as 1,000 square feet and will range up to 2,500 or 2,600 square feet maximum. He reiterated that one of the goals in the Comprehensive Plan is to provide a wider variety of housing types, which is what the Dwell PUD will do.

Mayor Kincaid called upon the Council members for their questions and input.

Councilor Breman asked what the current maximum building height is for the Community Residential zone. Mr. Caris answered that it is 35 feet.

Councilor O'Brien asked Mr. Jones what the sale price and monthly rent of the homes will be. Mr. Jones responded that the price range of the homes has not yet been established, but because there will be smaller homes within the project, the sale prices will be reflective of that.

Councilor O'Brien said she needs to know this information in order to make a decision. City Attorney Paul Wisor explained that the Land Use Code speaks to "attainable housing," but it doesn't really define exactly what that means, so it is tough within a PUD context to mandate that there is a price point at which houses are going to be sold. He wondered if Mr. Jones could provide some sort of a range or estimate in house pricing, even if he couldn't do it at this meeting. He added that this wasn't incumbent upon the applicant at this point given that it was just a Concept Plan.

Councilor O'Brien asked if the developer has an intention to create attainable housing or if the developer is just trying to maximize the number of units on a lot for capital gain. Mr. Jones replied that in all reality, the market is what will determine sale price of structures and homes. He reiterated that the homes of 1,000 square feet will have pricing that will be reflective of that, but that it was too soon to establish home sales price ranges right now.

Councilor O'Brien asked how many units will be in the 1,000-square foot range and how many will be in the 2,500-range. Mr. Jones responded that at this point, that is also unknown but that the developer does want to provide attainable housing with the project.

Councilor O'Brien noted that Mr. Jones had said in his presentation that there will be the possibility for rentals to happen in the subdivision. Mr. Jones said this was to allow homeowners to have Vacation Rentals by Owners (VRBOs).

Mr. Caris added that there could be more discussion about the City's short-term rental regulations when the project is in the zoning stage.

Mayor Kincaid said he had just received a text from Sherry White (who was attempting to join the meeting virtually earlier) and she wanted him to read the following into the record:

"Mr. Kincaid, My name is Sherry White. For some reason, I cannot get through via the computer or phone, I'm not sure what's going on. I just wanted to basically concur with the three letters that were written. I thought the last two in particular were particularly eloquent, well-studied and addressed many of the points of concern that I have. And I am sincerely hoping that our Planning Commission and City Council would take a very hard look at this development as now presented. (Mayor Kincaid said he asked Sherry for her address for the record) Yes, certainly I would like for it to be read for the record and I'm so sorry about that. Anyway, my address is 231 Ponderosa Drive in Orchard Valley East."

Mr. Jones did not have any rebuttal for Ms. White as she basically concurred with the other public comments that he had already addressed.

Hearing no further public comments, Mayor Kincaid closed the public hearing. He returned to the City Council for their questions and/or comments.

Councilor Kreie said that he likes the idea of a new subdivision that allows short-term rentals outside of the downtown and the idea that the development could bring attainable housing. He also liked the style and density of the houses, noting that he went there to see how views might be impacted and he didn't really see too much of an issue. He asked if the developer might be building three-story houses considering the Concept Plan proposes that they are going to be 40 feet in height. Mr. Jones said that there would not be any three-leveled houses but with the pitches of the roofs proposed, fitting them in under 35 feet becomes a real struggle.

Councilor Kreie stated that based on the types of architecture shown and descriptions provided in Mr. Jones presentation, he is excited about the project. He also liked the infill aspect versus building on the outside edges of Fruita, but acknowledged that the short-term rental component would be something the Council would need to further discuss down the road.

Mr. Jones asked if it was City Council's opinion that building a three-story development would be detrimental if it was kept underneath the 40 feet. Councilor Kreie said it really wasn't that; he just wondered if the height was proposed as such to give the developer some flexibility. He added that he spoke to several people who don't want any tall structures there and so he wondered how important the extra five feet are.

Councilor Harvey pointed out that in the past, the City has stressed trying to "feather" the boundaries of new developments so that they are of similar height and size lots to those that are directly adjacent to them. He said that he is also excited to see something different for Fruita and that there's probably a market for those smaller lots, but he wondered if they are going to get snatched up by people that live in Denver or Aspen that just want to buy vacation homes or VRBOs.

Councilor Leonhart said she had the same concerns as the Planning Commissioners and the Council members that had already spoken about such as the height issue. She pointed out that she has lived on both Hazel Circle, Sabil Drive and in Orchard Valley Subdivision, so she is very familiar with the area.

Councilor Leonhart continued that she sees it as a great, innovative project that really connects to the Fruita Comprehensive Plan. She asked if the last PUD that the Council saw was Windsor Park. Mr. Caris responded that the last one was actually the Gewont Townhomes PUD Subdivision and prior to that it was many of the projects that were done between 2005 and 2008 with the final filing of Adobe Falls in the south Fruita area.

Councilor Leonhart recalled how Windsor Park was so different but turned out to be an okay place that provides opportunities in housing. She added that the City really needs to furnish smaller houses and yards and that the houses she lived in in Orchard Valley were 1,200 square feet, which is still a pretty small footprint, so she sees the Dwell PUD as being very compatible and that the parking issues are going to be okay.

Councilor Leonhart also said that she foresaw potential traffic issues in the future on K.6 Road at the section where there are county properties on the north side and no sidewalk. Mr. Jones responded that it is likely that the traffic on J 6/10 Road will increase, but that it will be relatively minimal. Councilor Leonhart thanked Mr. Jones for putting forth the project because although different, the City really needs it.

Councilor Buck said she thinks the property is the perfect space for a project of this density and that it will be very unique and popular. She said she wants to see a change on the perimeter lots to reduce the building height from 40 feet. She also wants to know what kind of fill dirt would be used to raise those lots because this could add to the height and when somebody is looking down into someone else's backyard, that destroys a person's sense of home and place more than anything. Councilor Buck noted that she had no problems with 40-foot heights on interior structures where there could be a feathering effect implemented, but that the perimeter homes should be shorter for sure and perhaps even be required to be ranch-style homes to minimize the impact.

Councilor Buck added that her only other concern was the short-term rental component. She wondered if there could be something in the covenants that the HOA could enforce to ensure that there are not several absentee landowners using homes strictly as VRBOs because that could lead to properties not being taken care of. Mr. Wisor advised that the PUD Guide could disallow short-term rentals but Councilor Buck said she did not want to prohibit them, either, and then wondered if there could be a covenant stipulation that absentee homeowners would not be allowed to participate in the HOA. Mr. Wisor advised that this would be difficult to do.

Mayor Kincaid asked if the park would be maintained by the City or the HOA. Mr. Jones answered that as designed, the park would be owned and maintained by the HOA.

Mayor Kincaid asked for confirmation that all of the 2+ units would be on the interior of the project. Mr. Jones confirmed this to be true and added that limiting the perimeter homes to 35 feet in height could be incorporated into the plan. He also pointed out (addressing Councilor Buck's second concern) that it is absolutely necessary for VRBOs to be kept up because they depend upon good comments, ratings and reviews, so he did not foresee that as being an issue with the development.

Mayor Kincaid said he agreed with the perimeter houses having lower height restrictions. He said he liked all the parking, trails and connectivity but did not want to see any three-story structures as part of the development. Otherwise, he thought the architectural style fits very well and that the project will be new and unique.

Councilor Kreie asked if the Land Use Code would allow for the building of a 35-foot tall house eight feet away from the property line if the subject property were zoned Community Residential (CR). Mr. Caris responded that in the CR zone, what is allowed is a 16-foot total side setback with a maximum building height of 35 feet. For example, lots can split the difference with an 8-foot side setback, or provide a maximum of 11 feet on one side setback and a minimum of 5 on the other side setback.

Councilor Kreie pointed out that there are many houses on the outer edge of the existing developments that have mature trees that are much taller than 40 feet, so he thinks there are some areas where a two-story home can still work and still provide plenty of privacy.

Councilor Breman commended Mr. Jones and his team, saying he feels that they captured the spirit of the Comprehensive Plan quite well and added that it will be interesting to see how much the 1,000-square foot homes will be with market-driven pricing.



Councilor Buck reiterated that in her opinion, the Council should encourage ranch-style homes, especially when the density is being increased so much compared to existing neighborhood homes. She said she would like to see homes that are even a lot shorter than 35 feet tall encouraged while allowing the 40-foot homes that are not adjacent to existing structures to be built in the center of the subdivision.

Councilor O'Brien said she would still like more information on how many of the homes will be 1,500 to 2,000-square feet and asked if any other Council members were interested in putting conditions on short-term rentals because she thinks there are other concerns and considerations besides keeping them up.

Councilor Kreie asked if the City would be revisiting short-term rentals in the Land Use Code update soon and if the issue could be addressed for this project then.

City Manager Mike Bennett responded that staff does have short-term rentals listed as a section of the Land Use Code that will be addressed in the update, but that discussions in the past have been focused more on Fruita's downtown core and not in HOA- or covenant-based subdivisions.

Mr. Caris explained that the Council didn't really need to look at conditions yet because that would be taking place as a part of the zoning application in the future. He said quite frankly, PUDs make their own rules and with an underlying zone of CR, the Council would be seeing all the applications for each short-term rental anyway. Mr. Bennett agreed and added that the applicant is mainly seeking feedback and guidance in order to design the project to bring it back to the Council again. Mr. Wisor agreed that there was no need to adopt any conditions right now but that it is helpful for the applicant to know which direction the Council is heading and where they will be coming from in the future.

Councilor Breman said it was clear that there was some consternation about short-term rentals and asked Mr. Jones if either allowing or denying them would impact the design of the project moving forward. Mr. Jones responded that he would prefer to reserve the right of allowing short-term rentals just like the right anyone else who owns a home in the City of Fruita has and reiterated what Mr. Caris had said about the Council having to see Conditional Use Permit applications for each VRBO anyway. He added that he would assume that the Council would enact amendments to the Municipal Code if the members felt like the City was getting too many of them.

Councilor Breman again asked if the VRBO issue impacts the designing of the project. Mr. Jones said that it is important to the project because a potential buyer should be able to do what they want with their home as a homeowner. He stated that the developer is not planning to keep homes to turn into short-terms rentals and that he is a local, long-time Fruita resident with an excellent reputation for building quality developments. Mr. Jones added that allowing short-term rentals is an important part of the business model for the proposed development.

- **COUNCILOR BUCK MOVED TO APPROVE THE PROPOSED DWELL PLANNED UNIT DEVELOPMENT CONCEPT PLAN WITH THE CONDITION THAT ALL REVIEW COMMENTS AND ISSUES IDENTIFIED IN THE STAFF REPORT BE ADEQUATELY**

**RESOLVED WITH THE PRELIMINARY PLAN APPLICATION WHICH WILL INCORPORATE PERIMETER HOMES THAT ARE MORE COMPATIBLE WITH EXISTING ADJACENT RANCH HOMES (IN HEIGHT) AND INTERIOR HOMES HAVING THE 40 FEET (IN HEIGHT) EXEMPTION.**

Councilor Breman asked for clarification on the motion that the perimeter homes either be less than 35 feet or max out at the current zone requirement of 35 feet. Councilor Buck responded that because the density would be doubled, she was asking for less than 35 feet in height.

- **COUNCILOR KREIE SECONDED THE MOTION. THE MOTION PASSED WITH SIX VOTES.**

## **8. ADMINISTRATIVE AGENDA**

### **A. COVID-19 UPDATE**

#### **1) FINANCIAL UPDATE – MARGARET SELL, FINANCE DIRECTOR/CITY CLERK**

City Clerk/Finance Director Margaret Sell provided the financial update. Mayor Kincaid noted that he and the Council members received a copy of her PowerPoint presentation earlier in the day. Mrs. Sell reviewed the following:

#### **GENERAL FUND:**

- 2019 additional revenues of just under \$1 million and reductions in expenses of \$1.5 million (\$317,000 of these reductions have been re-appropriated for use in 2020 for completion of projects and equipment purchases)
- City sales tax for the month of March was up 47%.
- Use tax on motor vehicles was down about 6% in March over the prior year.
- Use tax on building materials saw a 317% increase but a 55% decrease in April.
- County sales tax is down 5% in March.
- Increase of \$165,000 in sales tax revenues for March over last year
- Sales tax revenues increase in March of 2020 due to oil and gas activity
- Strong growth shown in grocery, drug, liquor and hardware stores of about 48% in March of 2020 compared to 2019
- Losses in revenues compared to prior years in communications, other services, rental & leasing and restaurants/fast food, utilities and lodging
- An additional \$22,000 in sales tax revenue for the month of March 2020 in remote sales (online retail)
- \$435,000 identified by staff in expense reductions and/or savings in the 2020 General Fund Budget consisting of \$175,000 in personnel services, \$130,000 in other expenses, purchased services \$67,000, capital \$54,000 and supplies \$8,300 - \$8,900