

**FRUITA CITY COUNCIL
IN PERSON AND VIRTUAL MEETING
FEBRUARY 1, 2022
7:00 P.M.**

1. CALL TO ORDER AND ROLL CALL

Mayor Kincaid called the regular meeting of the Fruita City Council to order at 7:01 p.m. The meeting was held both in person and with virtual access provided through Zoom.

Present:

Mayor Joel Kincaid
City Councilor Karen Leonhart
City Councilor Kyle Harvey
City Councilor Ken Kreie (virtually)
City Councilor Heather O'Brien
City Councilor Matthew Breman

Excused Absent:

Mayor Pro Tem Lori Buck

City staff present:

City Manager Mike Bennett
Assistant to the City Manager Shannon Vassen
City Clerk/Finance Director Margaret Sell
Deputy City Clerk Deb Woods
Planning and Development Director Dan Caris
City Engineer Sam Atkins
Parks and Recreation Director Marc Mancuso
City Planner Henry Hemphill
City Attorney Mary Elizabeth Geiger

Also present:

Fruita 8/9 School Principal Jason Plantiko
Fruita 8/9 School Student of the Month Reagan Geer
Fruita 8/9 School Teacher of the Month Pete Ray
Members of the public (in-person and virtually)
IndiBuild Principal and founder Kim Pardoe
IndiBuild Housing Authority and Development Specialist Sam Betters
Shop Works Planner Alisha Hammet
Vortex Engineering Engineer Steve Swindell
Apex Consulting Engineers Traffic Engineer Eric Marcus

2. MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE

Mayor Joel Kincaid called for a moment of silence for all faiths and beliefs to have a silent prayer. He then led in the Pledge of Allegiance.

3. AGENDA – ADOPT/AMEND

- **COUNCILOR BREMAN MOVED TO APPROVE THE AGENDA AS PRESENTED. COUNCILOR LEONHART SECONDED THE MOTION. THE MOTION PASSED WITH FIVE YES VOTES.**

4. PROCLAMATIONS AND PRESENTATIONS

A. PRESENTATIONS – FRUITA TEACHERS AND STUDENTS OF THE MONTH FOR FEBRUARY 2022: FRUITA 8/9 SCHOOL

Mayor Kincaid stood in front of the dais and read statements written by Principal Jason Plantiko for student Reagan Geer and teacher Pete Ray, who were chosen as Fruita 8/9 School's Student and Teacher of the Month for February 2022. The Mayor gave them each a copy of the statement written about them by the Principal, a certificate, a day pass to the Fruita Community Center and an "I-heart-Fruita" pin. Photos were taken of them with the Council members.

B. PRESENTATION – FRUITA YOUTH ACTION COUNCIL HIGHLIGHTS AND GOALS FOR 2022

Fruita Youth Action Council (FYAC) President Riar Roberts and four other members of the board introduced themselves and gave the Council an update on their membership and events and plans for the future. Riar thanked Councilor Leonhart for being the FYAC's liaison and Brittany Kline with Parks and Recreation for being their advisor.

5. PUBLIC PARTICIPATION

Mr. Matt Barber, 334 Crystal Court, stated that he and his wife have spent a good amount of time looking into all the things that the Council and staff do and go through and they just wanted to thank them for that. He added thanks for opening the meeting up with a moment of silence and offered his prayers for the meeting.

There were no other comments from the public.

6. CONSENT AGENDA

- A. MINUTES – A REQUEST TO APPROVE THE MINUTES OF THE JANUARY 4, 2022 REGULAR CITY COUNCIL MEETING**
- B. LIQUOR LICENSE RENEWAL – A REQUEST TO APPROVE THE RENEWAL OF A HOTEL AND RESTAURANT – MALT, VINOUS AND SPIRITUOUS LIQUOR LICENSE FOR EL TAPATIO LOCATED AT 402 JURASSIC AVE.**
- C. LIQUOR LICENSE TRANSFER OF OWNERSHIP – A REQUEST TO APPROVE THE TRANSFER OF OWNERSHIP ON A BEER AND WINE LIQUOR LICENSE FOR CAMILLA'S KAFFE LOCATED AT 206 E. ASPEN AVE.**

D. RESOLUTION 2022-03 – A RESOLUTION SUPPORTING A GRANT APPLICATION TO THE COLORADO DEPARTMENT OF TRANSPORTATION FOR THE SECOND ROUND OF THE REVITALIZING MAIN STREETS PROGRAM FOR SOUTH MESA STREET IMPROVEMENTS

Mayor Kincaid opened the Consent Agenda to public comments. Hearing none, he closed the public hearing and referred the Consent Agenda to the Council.

- **COUNCILOR BREMAN MOVED TO APPROVE THE CONSENT AGENDA AS PRESENTED. COUNCILOR O'BRIEN SECONDED THE MOTION. THE MOTION PASSED WITH FIVE YES VOTES.**

7. PUBLIC HEARINGS

A. QUASI-JUDICIAL HEARINGS

1) NEW LIQUOR LICENSE APPLICATION – A REQUEST TO APPROVE A NEW HOTEL & RESTAURANT – MALT, VINOUS & SPIRITUOUS LIQUOR LICENSE AND SIDEWALK RESTAURANT PERMIT FOR MIKE'S FAMOUS CHICKEN LOCATED AT 233 E. ASPEN AVENUE

Deputy City Clerk Deb Woods gave staff's presentation. She noted that for considering the issuance of a new liquor license, pursuant to state statute, the City Council shall consider two factors: 1) the needs of the neighborhood (and the desires of the adults inhabitants), and 2) the character of the applicants. Regarding the character of the applicants, she stated that staff completed background checks, both of which came back clear with all law enforcement agencies. Concerning the needs of the neighborhood, the applicant submitted a survey signed by 36 individuals who all responded that they would support the issuance of the liquor license.

Ms. Woods noted that the applicants had also filed for a Sidewalk Restaurant Permit with the City and that the paperwork was not included in the Council packet, therefore, she supplied hard copies of it on the dais for the Council members prior to the Council meeting.

Ms. Woods pointed out that Exhibits A through F of the Preliminary Findings prepared by staff were not included in the Council packet because the Colorado Bureau of Investigation (CBI) had implemented a campaign to enforce applicant's privacy rights related to the use, dissemination, confidentiality, and security of criminal history records for non-criminal justice purposes. She stated that those records can only be viewed by authorized personnel and cannot even be stored electronically.

Ms. Woods provided the dates and times of the public notices for the public hearing, as well as staff's recommendation of approval of the new Hotel and Restaurant Liquor License and Sidewalk Restaurant Permit for Mike's Famous Chicken located at 233 E. Aspen Avenue.

Ms. Woods noted that applicants Mike and Jamie Williams were present in the audience. They did not have anything to add.

Mayor Kincaid opened the public hearing. Hearing no comments from the public, he referred the matter to the City Council.

- **COUNCILOR LEONHART MOVED TO APPROVE THE ISSUANCE OF A HOTEL AND RESTAURANT – MALT, VINOUS AND SPIRITUOUS LIQUOR LICENSE AND SIDEWALK RESTAURANT PERMIT FOR MIKE’S FAMOUS CHICKEN, LLC DBA MIKE’S FAMOUS CHICKEN LOCATED AT 233 E. ASPEN AVENUE. COUNCILOR HARVEY SECONDED THE MOTION. THE MOTION PASSED WITH FIVE YES VOTES.**

2) ORDINANCE 2022-07 – 2ND READING – AN ORDINANCE GRANTING A MAJOR AMENDMENT TO THE BURENHEIDE PLANNED UNIT DEVELOPMENT (PUD) GUIDE TO INCREASE RESIDENTIAL DENSITY AND ALLOWED RESIDENTIAL LAND USES IN A PORTION THEREOF

STAFF PRESENTATION

Planning and Development Director Dan Caris gave staff’s presentation on the major amendment to the Burenheide Planned Unit Development (PUD), otherwise known as the Fruita Mews project. He noted that staff had received several public comments since the Council packet had been sent out the previous Friday, that those comments had been forwarded to the Council members via email and that the comments would become a part of the permanent record.

Mr. Caris stated that the project narrative that had been submitted specifically states the purpose and financial vehicle for which the project was being proposed. First, the project narrative states that the Mews is a “mixed income housing to create quality, attainable solutions for people that are between 30% and 120% of Area Median Income (AMI),” and that the financing vehicle would include an application to the Colorado Housing Finance Authority (CHFA).

Mr. Caris listed the deviations (adjustments) to the Planned Unit Development zone being requested as follows:

1. Site Plan and Subdivision applications be reviewed and approved administratively by staff (no public hearing process)
2. Access circulation - Any development exceeding two hundred fifty (250) average daily trips (ADT), or twenty-five (25) units shall have a minimum of two (2) fully platted ingress/egress points (dedicated rights-of-way) and applicant was proposing just one fully platted ingress/egress point
3. Reduction in required parking spaces from 150 to 75

Mr. Caris stated that staff had gone through the review criteria in Section 17.19.060(A) of the Fruita Land Use Code (LUC) and subsequently determined that the application was found to either be in compliance with them and the intent of the Fruita Comprehensive Plan – *Fruita in Motion* or that they were not relevant to the application being proposed.

Mr. Caris reviewed the methods, dates and buffer area for the notices to the public for the public hearing. He added that staff had received no review comments from review agencies and that the public comments were either included in the Council packet or had just recently been emailed to the Council to also become part of the record.

At the December 14, 2021 Planning Commission meeting, the Commission voted four to one to recommend approval of the application to the City Council. The no vote was due to traffic concerns and other statements that Mr. Caris said were included in the Planning Commission minutes in the Council packet. Mr. Caris recommended that the Council approve Ordinance 2022-07 on Second Reading.

APPLICANT PRESENTATION

Alisha Hammet, a planner with Shop Works Architecture, 301 W. 45th Ave., Denver, Colorado, introduced herself as the applicants' representative on behalf of the developer, Indibuild. She then introduced Kim Pardoe with Indibuild, who provided information about the development company Indibuild, who teamed up with Vortex Engineering, Shop Works, Ryan Construction and two consultants who helped with Indibuild's tax credit application and market study on the Fruita Mews project.

Ms. Hammet gave a quick review of the project, summarizing that the development partners believe that it is within the public's interest by providing much needed workforce housing for teachers, nurses, firefighters, police officers and other working people who have a difficult time finding attainable housing in Fruita. She added that the PUD amendment meets the City's approval criteria and furthers the vision set forth in the Fruita Comprehensive Plan.

Mayor Kincaid opened the public hearing.

PUBLIC COMMENTS

John Rodwick, residing in the Village at Country Creek Subdivision in Fruita, stated that he has lived in Fruita for over fifteen years, is a retired psychologist, former University Dean and College Vice President, active in AARP and also a board member of the City's Livability Commission. He continued that earlier in the day, he received a very interesting email from the Colorado National Monument Association that read:

"Do you want to help Colorado National Monument in a significant way? Do you have an extra room or know of an apartment or house for rent? Colorado National Monument is hiring seasonal and permanent employees, but these employees are having a hard time finding an affordable place to live in the Grand Valley. Maybe you can help or know someone who can."

Mr. Rodwick said that he has seen these kinds of emails before and that he is also aware that the hospitals, educational school systems and other non-profits in the area are also equally trying to find housing for their employees. He continued that the City of Fruita became part of the "Designated Livable Community Initiative" of AARP a few years ago and as part of that initiative, the City has also agreed to at least begin to address any of the eight dimensions of livability; one of which is affordable housing. Mr. Rodwick said he came to the Council meeting to reinforce and support the Fruita Mews

project because he believes it is consistent with what the City is trying to accomplish and that he believes that the program that they are developing for this particular initiative certainly has merit.

Former School District #51 Chief Operations Officer **Phil Onofrio** (retired), 2301 Grande Cache, Grand Junction (Redlands), stated that he helped IndiBuild's Kim Pardoe find the subject property and that she loved it the minute she saw it. He continued when he was with the School District, they had a hard time finding teachers and that part of the problem is low pay and part of the problem is housing. The District was able to increase its starting teacher pay to about \$40,000 per year so that two teachers could rent one of the Mews houses and still qualify for a subsidy. Mr. Onofrio said it was important for Mesa County to find a way for its teachers, firefighters and others to be able to live in our communities.

Dave Karisny, 917 Squire Court, Fruita, said that the Fruita Mews is a multi-million dollar project that is using tax credits that can only guarantee the quality of the development for the next fifteen years. He expressed concerns about what the development will look like in forty years - who will own it and who will manage it. He said it could easily take up the Housing Authority's entire resources and urged everyone to look at the long-term needs of maintenance and management of the project.

Tom McNamara, 1768 Waters Lane, Fruita, said that in 2019, the average home price in Mesa County was \$277,000 and that two years later in 2021, that price went up to \$427,000. He stated that according to Mesa County's and Fruita's statistics, the Average Median Income (AMI) is approximately \$55,000 as of 2021. Mr. McNamara contrasted that with the AMI in 2019, which was \$53,000, and then calculated that there has been a \$200,000 increase in home value, but only a \$2,000 increase in income on average. He added that of the approximate 150 homes that are available in Mesa County, 1.2% are available for rent. Mr. McNamara said his daughter pays \$1,600 per month on a teacher's pay, so she has to drive for Door Dash in order to make ends meet. He noted that Family Health West, School District 51 and the Fruita Chamber of Commerce all realized that there is a huge gap that exists between the affordable home and the unaffordable home, and that the gap has actually closed here in Fruita – there is no affordability. Mr. McNamara strongly urged the Council to support the project and make the Fruita Mews development a "stepping stone" to future development in Fruita because he thinks it is going to be a trend for anyone in the workforce.

Michael Handley, 1646 Myers Lane, Fruita, said that he thinks everyone recognizes the need for affordable housing in Fruita and that he very much supports the direction the Council and staff are taking toward it, including the down payment assistance program. Mr. Handley expressed many concerns, however, that the Fruita Mews project would bring too much traffic and congestion like he experienced in Texas. He summarized his statements by saying that he would be very disappointed to see a high density project approved in his neighborhood since he and his wife very intentionally chose a place to live in Fruita that was all zoned low density when they moved in. He asked why the City went through the effort of updating its Master Plan if the City was just going to ignore it and allow high density projects in residential areas whenever they come along.

Lou Mudd, 126 S. Maple Street, Fruita, said he's been a Fruita resident for sixteen years. He stated that there are a number of people who want to live in Fruita, but there is a lack of housing. Mr. Mudd said the Mews project was an opportunity to help provide a decent place to live for 50 different dwellings, even though it was high density. He said that things change and if the City doesn't allow for housing for the people who work here, in his opinion, things are changing for the worst. Mr. Mudd

said he hoped the Council would vote in favor of the development so that people who aren't at the high income levels can afford to put some money aside so they can afford a down payment on a house in Fruita sometime down the road.

Jose Fernandez, 1745 N 3/10 Road, stated that his daughter goes to the new Monument Ridge Elementary School and the cars line up about 30 minutes before school is out and are lined up already out to 18 ½ Road by the time the 4:00 bell rings. He said he understands the need for the Mews project, but he disagrees with the proposed location. Mr. Fernandez stated that he is a plumber by trade and works with several different contractors doing dirt work, including for Monument Ridge Elementary and across the street for that development. He said about a week ago or so, Fruita residents took away the opportunity for a similar development that was to help with the same need, but again, it wasn't in a good location. Mr. Fernandez said there are several locations that can be developed closer to town but not on a one-way street that is already densely populated. He added that the proposed development would not only introduce 50 more residents, but also 50 more families that do not live in Fruita yet and everyone who lives here now wishes the existing City Market were bigger. Mr. Fernandez reiterated his position that the project being proposed was in the wrong place.

Hearing no further comments from the public, Mayor Kincaid closed the public hearing.

APPLICANT REBUTTAL

Shop Works Architecture Planner Alisha Hammet referred to the concerns about the project being a high-density development and stated that according to Fruita's Comprehensive Plan, the area is designated as residential, four to eight dwelling units per acre and they were actually proposing seven dwelling units per acre, which is under the maximum density and within the recommended range for future land use for that area. She asked for confirmation on this from the City's Planning & Development Director Dan Caris, which she received.

Ms. Hammet requested Traffic Engineer Eric Marcus to address traffic concerns and discuss the Traffic Study that was submitted to staff. She noted that when the Traffic Engineer was done speaking, she was going to ask Kim Pardoe to talk about what happens after the fifteen years in the Low-Income Housing Tax Credit (LIHTC) process.

Eric Marcus with Apex Consulting Engineers stated that his firm prepared the Traffic Study for the Fruita Mews project. He refuted the earlier comments about the long wait times on K.4 Road.

Mr. Marcus stated that K.4 Road is not a one-way street and has about a 36-foot wide paved section, which is literally three lanes of roadway. He said there's enough room for two lanes and a center turn lane if that was wanted to allow people to get in and out of the parking lot more easily.

Mr. Marcus explained how Traffic Studies are done using "peak hour" periods. He said the school drop off time on 18 ½ Road is between 8:00 and 9:00 a.m., which is actually at the very tail end of the peak morning hour traffic. He added that commuters are going to miss the school traffic all together when the bell rings at 4:00 p.m. because the peak hour traffic in the evening is between 5:00 and 6:00 p.m.

Mr. Marcus noted that Traffic Studies must all be done the same way and must project 20 years into the future; the Metropolitan Planning Organization tells them what the future traffic volumes can be expected on each major roadway.

Mr. Marcus stated that with all of the growth that is anticipated on the 20-year horizon, the level of service at the most-used intersection of K.4 Road and 18 ½ Road still has a level of service where the average wait is going to be about 18 seconds on average. He said he's not saying that someone won't ever wait longer than that, but an intersection isn't even considered as failing until wait times are closer to the 60-second range.

Mr. Marcus concluded that the Traffic Study showed it wasn't necessary to add a left turn lane because there are so few cars turning to the north that it just doesn't really make a lot of sense. Additionally, when the streets are widened, it takes longer for pedestrians to cross the street. Mr. Marcus said that in order to keep the intersection safe for pedestrians, the City is better off having a narrower street and the traffic will still run at a safe and comfortable level for everyone.

Ms. Kim Pardoe with the development company IndiBuild responded to Mr. Karisny's question about what happens in fifteen years with the project. She said that it is actually now year seventeen when the investor has to be removed from the partnership and typically, the developer will just stay involved in the property and refinance it. She said there are instances where the developer can offer a Housing Authority or qualifying non-profit a right of first refusal and give them an option to buy the property for basically exit taxes, or a far less amount of money than market value. Ms. Pardoe said that is a negotiated term. She added that most of the developers that she's ever worked with have always stayed with the property and refinanced it.

This concluded the applicants' rebuttal(s) and Mayor Kincaid turned the matter over to the City Council for their questions, comments or concerns.

END OF PUBLIC HEARING

COUNCIL, STAFF AND APPLICANT REPRESENTATIVES DISCUSSION

Councilor Leonhart asked if there had been any considerations for integrating solar into the project. Ms. Pardoe responded that the project was currently all electric but they would like to look into solar as IndiBuild does have an environmental consultant by the name of Group 14, who is very well respected in the state. She added that IndiBuild is using high-efficiency HVAC systems that use a little more than Zero Energy, and that if they do move forward with solar, they will definitely be reaching different green levels.

Councilor Leonhart said she feels like the way the City has managed and planned for the future and the way in which the community has responded, people in Fruita want to be welcoming; they don't want to turn people away because they can't afford it. She added that for her, it means creating as many opportunities for that as possible and doing it with quality and well-managed projects. Councilor Leonhart said it is heartbreaking that teachers make so little and can't afford to live here. She added that she drove out to the property to look at it and that there's so much space between where the project will be and where Brandon Estates is located, so she feels that is sort of a non-issue at this point.

Councilor Breman asked what the heights of the townhomes will be and Alisha Hammet said they will be 26 feet, 8 inches from the base to the peak of the roof.

Councilor Harvey noted that he saw in the packet that there were Memorandums of Understanding (MOUs) with School District 51 and Family Health West and he asked how can the City ensure that the project will serve the people who need the housing. He also referred to the range of 30% to 120% of AMI (Average Median Income) and said he wondered if the project would really have units available at 30% of AMI (which he figured out to be approximately \$412 per month for someone not cost-burdened). Councilor Harvey wanted to know what legal assurances the City would have.

Ms. Pardoe responded that IndiBuild has Affirmative Marketing MOUs with the School District and Family Health West as they are the largest employers in the County and largest employers in the City respectively in order to share the vacancies and marketing information with them so that they will know which units are available on the property.

Councilor Harvey reiterated that the range of AMI is so huge that he still wondered how many out of the 50 units would be at 30% of AMI. Ms. Pardoe said IndiBuild is still figuring that out but that she could say roughly that about 24 of them will be at 60% because of the way the financing works. She added that smaller amounts of them would be at 30%, 40% and 50% and the rest will depend on what the state agency requires, but she estimated that roughly six units would go up to 120% of AMI.

Councilor Breman asked what would happen if someone were to get a raise and go above 120% of AMI. Ms. Pardoe said she didn't have the answer to that.

City Attorney Mary Elizabeth Geiger suggested that a condition could be written into the Ordinance that the applicant must enter into an agreement with the City concerning AMI and the number of units that would be designated for each percentage of AMI. She added that all the applicant's written and verbal representations could be a condition of approval.

Councilor Kreie noted that parking was a big issue for the project with the Planning Commission and others who sent in written comments and that he also feels like 1.5 parking spaces per residence seems a little short, so he imagined that there would be a bunch of cars parked somewhere where it might become a problem for nearby residents and people trying to get their kids to school. He said that in the rendering, it looked like there was quite a bit of space for parking and asked if there was any reason why the applicant wouldn't consider adding at least a couple of parking spaces per residence/unit.

Ms. Hammet responded that in affordable housing developments, developers typically see (even in communities like Fruita) that the typical ratio is .85 parking spaces per unit for projects between 30% and 80% AMI. She continued that they were providing 75 parking spaces total, so if there were six units that were between 80% and 120% AMI and each unit had two (2) parking spaces, it would equate to 72 parking spaces total, which is still below the 75 that were actually being provided. Ms. Hammet assured the Council that Shop Works Architecture has a lot of experience with parking ratios and studies and because parking is driven by the demographics, she was very comfortable anticipating that people within the range of 30% to 80% AMI will have one vehicle and that higher than 80% AMI will be able to afford two vehicles.

Councilor O'Brien expressed concern about the one entrance into the development (although she acknowledged that future development could create additional ones) and asked staff to respond to those concerns.

Planning & Development Director Dan Caris explained that this was why it was included in the request for adjustments and that in order to hit those AMIs to serve the community, there were going to be requests to modify certain requirements of the Land Use Code. He added that it was true that the City has held everyone else to the requirement of having two access points, but that future development would very likely help to alleviate that.

City Engineer Sam Atkins agreed that the area was very likely to develop out and forcing the location now to have two access points could restrict the rest of how the property develops in the future, so it was kind of a toss-up whether the Council would want to require both accesses at this point.

Steve Swindell with Vortex Engineering added that there really weren't any other areas for additional connection without buying some additional, strange piece of land and orphaning another piece of land. There was further discussion about where an additional access point could potentially be located, but no resolution of the issue was found and there were no amendments to anything being proposed. Ms. Hammet further explained that adding another access point would result in a huge additional cost. She added that they (the applicant's representatives) believe there was safe circulation within the site.

There was discussion about the five (5) options listed in the coversheet in the Council packet that was prepared by staff, and in particular, option five, which essentially stated that the Council would approve the PUD but the applicant could not submit the subdivision/site plan until after July 1, 2022. Mr. Swindell stated that there were some problems with the CHFA process, which is why the applicant was requesting administrative approval. City Attorney Geiger pointed out that the zoning of a PUD would go into effect on July 1 if the Council chose option five. Mr. Swindell said that because of the way the process works, Vortex was not in the design stage yet and then they would need to go through the City's planning process prior to the start of construction.

Mr. Sam Betters with IndiBuild, 4275 Terryall Court, Loveland, Colorado stated that the reason that they were asking for some fast tracking on the project was because their application was just submitted to CHFA earlier that day. He recalled that there were probably 35 other applications and estimated that maybe 11 of those applications would get funded, so it is a very competitive process. Mr. Betters continued that CHFA was not only going to look at the quality of the project being presented, but also on the community itself; whether the community was accepting of the project and whether it had readiness to proceed. Mr. Betters stated that IndiBuild's concern was that if they could not show that they were ready to start working on the project in a timely fashion, they would have trouble competing for the funds. He added that the credits would probably be awarded by May 15th.

Mr. Betters said he felt that the application was ready and that they would be able to compete for the funds if they could obtain the Council's approval at this time. He added that if they couldn't get the Council's approval, it was not going to go well.

Mayor Kincaid asked for confirmation that it was the Council's role to approve the PUD zoning but not the issue of whether or not the applicant was going to receive the financing. Attorney Geiger stated that this was accurate and advised the Council that if they were to approve the application, it should be

with the condition that the applicant enter into an agreement with the City prior to the development permitting that the applicant will restrict the rental amounts to between 30% and 120% of AMI. She said whether they get the funding or not, the applicant was still obligated to provide those units at that price.

Ms. Hammet stated that once credits are awarded, her design team would have 18 months to get a building permit, so it would mean that they would be “off to the races” to design the site development plan, subdivision plat and construction document drawings to get the permit. She said Shop Works and CHFA are very motivated to make sure people are following through on their investment that something will be built in under two years. Ms. Hammet called the time crunch “critical” for the design team to move quickly once the credits are awarded.

Mayor Kincaid asked if the applicant was going to require that the people who rent at Fruita Mews work in Fruita. Kim Pardoe responded that that can’t be done because it is not “fair housing.”

City Manager Mike Bennett said the project does have merit in addressing housing for those with certain levels of income, but he wanted to make sure that the Council was comfortable with the exceptions that were being requested. He added that if the Council approves the zoning of the subject property with the requested exceptions, but the applicant is not successful in receiving the CHFA funding (or some other means of funding) to do the project, the entitlements would still be there. He wanted to make sure the Council was aware of that.

Mr. Bennett asked City Attorney Geiger how the City would ensure that the project doesn’t turn into a different type of project other than that of an affordable/attainable housing project if not funded, but the agreement that she mentioned had been created. He said his understanding was that the applicant and the City’s future Housing Authority are “Special Limited Partners.” He asked the applicant whether that assumes or requires (if anything) of the Fruita Housing Authority in the future and what was needed or planned to be asked of the City from a financial commitment in the future if the applicant is to receive CHFA funding.

Ms. Hammet responded that if the Council were to approve the PUD, the City would also be approving the Site Plan as designed/drawn in the PUD. She continued that if the project was not funded, someone would either have to build it as designed in the PUD or they would have to amend the PUD through the Planning/public process.

Mr. Caris confirmed that what Ms. Hammet stated was true. He added that the separate agreement that had been discussed would not affect the zoning Ordinance.

Ms. Hammet stated that if they were awarded the CHFA tax credits, the applicant would enter into an agreement with the City to make sure that the rents are between 30% and 120% AMI for the term length of the CHFA loan.

Mr. Caris clarified that the options available to the City Council in staff’s coversheet were arrived at because of the affordability and without the affordability, staff would not have looked at the adjustments in the same way. He said this was part of the reason why staff was recommending approval and why the five options were listed; staff likes to “marry” those options to the affordability and not just have a Site Plan that has one access that then becomes a free market development.

Ms. Hammet agreed. She asked Sam Betters to respond to the City Manager's questions that were asked earlier.

Mr. Betters noted that Mr. Bennett had referred to an "SLP," ("Special Limited Partner"). He stated that once the Fruita Housing Authority has been created, IndiBuild/Fruita Mews would like to enter into a Special Limited Partnership Agreement with the Housing Authority, which would provide some special advantages for both the project and for him as the developer. He said it would also provide the opportunity for the City to control the development and have a say in how it is run.

Mr. Betters provided his employment history. Before he agreed to participate with Kim Pardoe on the Fruita Mews project (and up until 2018), he was the Executive Director of the Loveland Housing Authority. He had that position for 37 years and during that time, he had the opportunity to do a number of these type of developments both as a Housing Authority independently and also alongside a private developer. Mr. Betters described how there are advantages for both the private developer and the Housing Authority to enter into Special Limited Partnerships and explained that the expectations of a Special Limited Partner are things that are negotiated; there could be silent partners only there for tax purposes or if a partner wanted to have anything more to say, then that would be determined and spelled out in the Partnership Agreement from the beginning. Mr. Betters said it could even be that a partner wants to be involved in the management, take over the management and/or eventually become the owner of the project; all those points are to be negotiated. He said if he is the Housing Authority, he eventually wants to own the project because he thinks it's an important community asset and that is what he would like to offer to the Housing Authority.

Mr. Bennett asked if CHFA was basing any of their decision making on the assumption that the Housing Authority will be a SLP on the project. Mr. Betters responded that the most important question for CHFA is whether the project will perform. He continued that CHFA would be asking whether the Housing Authority is a Special Limited Partner because if it is, then the property gets removed from property tax rolls. He said CHFA will ask how the applicant could be expected to pay the property taxes if the Housing Authority isn't a member of that partnership. Mr. Betters said they (the applicant) had to "model that" as well for CHFA in their application.

Councilor Breman asked if there was an expectation within the application that the Fruita Housing Authority, for which the City didn't even have by-laws yet, will eventually enter into an Agreement. Mr. Betters said there was not an expectation; there was a hope. He added that if the City decides that they don't want to be a part of that, he could still do the project without it.

Councilor O'Brien pointed out that Fruita's Housing Authority is so new that Council members are still trying to wrap their brains around what it means to have one. She added that she wanted to do her due diligence for her community and that it felt like a minute ago, it seemed like everyone agreed that the City and the applicant could make a Special Limited Partnership "a go." Mayor Kincaid said there were still a few questions, but that he would be okay with using May 15th as the date the applicant could not submit the subdivision/site plan until afterwards. He also said he thought the project should not be administratively approved; it should come back through the public process.

Mr. Betters responded that this was what they were trying to avoid because it would create a problem for them in competing with the other applications (having additional public review). Mayor Kincaid asked why that would be an issue. Mr. Betters responded that when CHFA makes the award of the

credits, they want to know that the project is now within the control of the developer and that the developer would not be subject to additional public review; that all that would need to be done is that the project will need to comply with City Codes/planning guidelines and be able to subsequently obtain a building permit. Mr. Betters stated that if there is any doubt that there is an issue with being able to get a building permit, CHFA is going to pass on the project.

Councilor Leonhart said she thought the project was going through the public process right then. Mayor Kincaid asked why the project would be different from what the City normally does or whether there would only be administrative review. Mr. Caris answered that the zoning would happen but pointed out that the applicants had requested the Site Plan and the final Subdivision Plat be approved administratively.

Mayor Kincaid cautioned the Council that if they allowed this Site Plan/Subdivision Plat to be approved administratively, then the next one that comes along could use it as a precedent to allow others to be approved administratively as well. He asked the City Attorney if that was accurate. Attorney Geiger said that every land use application is different, so somebody may come in and argue that, but the City still has no obligation to do it (allow for administrative approval) the next time just because it was done in this instance.

Councilor O'Brien said she imagined that the reason that the Council might consider making the concessions is because the project is so unique. Attorney Geiger stated that the reason the adjustments were even being considered is because of the affordable housing component; otherwise, the City would be requiring two (2) parking spaces per unit, two (2) entrances and public review. She said these are the three items that are different from a typical land use development application and it is because of the affordable housing component.

Councilor Kreie asked if the Special Limited Partnership Agreement would be so detailed as to call out how many units there must be for each percentage in the range of 30% to 120% of AMI. Attorney Geiger said she didn't anticipate it getting into that much detail, but only because of the applicant's statement earlier that they don't know yet exactly how many units would make up the various AMI percentages. She added that it sounded like there would be around 24 units that would be in the 60% range, but beyond that, there would be some above and some below; they just don't really know that mix yet. Attorney Geiger said she didn't know that the City or Housing Authority would want to hold that mix to always be the same because it would likely depend on the demand, which could change.

Councilor Kreie asked how it would be set up so that the project will in reality accept all AMI percentages, including the lower ones. Mr. Betters responded that once the developer is awarded the tax credits, they have to enter into an Agreement with CHFA specifically identifying the number of units at 30%, 40%, 50% and 60% and this is recorded in what is called a "Land Use Restriction Agreement," which is set in stone for forty years.

Mr. Caris said it was his understanding that the Council would not want to enter into an agreement until the credits were actually awarded and that the City should be careful about saying that they've entered into an agreement because there was still an assumption that the credits are going to be approved by CHFA. He asked Mr. Betters if that was correct. Mr. Betters responded that it was correct and that once the credits are approved, IndiBuild would be happy to enter into any agreement with the City of Fruita that is consistent with their (unintelligible) application.

Mr. Caris stated that there had been discussion about the Ordinance having some percentage of AMI.

Attorney Geiger said that her suggestion had been to put into the Ordinance that “applicant will enter into an agreement with the City to limit rental prices to 30% to 120% of AMI.” She said that what she just heard was that IndiBuild would not enter into such an agreement if they do not get the CHFA funding.

Ms. Pardoe stated that IndiBuild would prefer that it be restricted by the City at the same time that IndiBuild is restricted by their other agencies because it just makes it cleaner.

Attorney Geiger attempted to clarify it for the Council, saying that what the applicant was saying is that what they could agree to, if they did not get funding at all, that they would not be entering into an agreement to limit the rents, and so then, it goes back to the discussion earlier about having a PUD that has been approved as is and the applicant does not have that guarantee. She asked IndiBuild if she was clear about that.

Attorney Geiger continued that her suggestion had been to have the applicant enter into an agreement regardless. Ms. Pardoe responded that she does not own the property, so she can't enter into an agreement on a property she doesn't own and she can't restrict the use of the property to the owner. She added that the timing was essential in that IndiBuild could not enter into a covenant on the property until they at least own it and then secondly, it makes a lot more sense to do a restrictive covenant on the property (unintelligible) recording all the other ones so that it doesn't get in the way of the financing. Ms. Pardoe said that she was going to buy the property if the tax credits are awarded in May. She said she didn't understand the July 1st date.

Ms. Hammet concurred that the Purchase Agreement would be contingent on the CHFA credits being awarded. She said they had to show CHFA that they are development ready, which includes the zoning.

Ms. Hammet continued that CHFA would be looking for an administrative approval process so that they know building permits can be pulled in 18 months. She said if there were additional public hearings in that 18 months, that is a huge risk for CHFA. Ms. Hammet said the land deal was kind of the same way; the land is under contract with the hopes that IndiBuild can get the level of entitlement they need so that they can prove to CHFA that they can get the credits and once those are awarded, then everything moves forward. She stated that it is a little bit tricky with the way that the financing works.

There was discussion about the timeline of the approval of the zoning and the subdividing. Mr. Caris noted that there was pretty significant motivation if someone is awarded tax credits to get a project done within an expeditious period of time. He said he did not think it would be anywhere outside of 45 to 60 days for a Subdivision Plat and the Site Plan could be in conjunction with that and take a little longer.

Ms. Geiger advised that it would be 45 to 60 days after May 15th, which is when the applicant would know if they have the money and would have the paperwork ready to submit.

Councilor Harvey said his concern was more about a situation where the applicant didn't get the CHFA funding. He pointed out that the requested modifications would live with the PUD zoning, but he

wondered if the applicant could do the project exactly the same with having VRBOs. He asked if there was a way to put in a contingency (to prevent that).

Attorney Geiger stated she was trying to include in the Ordinance language about the applicant entering into an agreement with the City regarding the AMI but she thought she heard the applicant say that wasn't something they could live with because they don't want to enter into that agreement unless they are awarded the CHFA funding. She explained that the City would be in limbo until May 15th about whether the project is actually going to happen as presented.

IndiBuild's attorney Alex Gano (present virtually) stated that he wanted to explain why he thought IndiBuild's preference was for Option #2 (presented by staff as:

"Granting a major amendment to the Burenheide Planned Unit Development (PUD) Guide to increase residential density and allowed residential land uses in a portion thereof with the condition that the subdivision/site plan and zoning be specific to the application proposed and furnished with a subdivision Plat and allow the subdivision and site plan to be reviewed and approved administratively.")

IndiBuild's Attorney Gano said that the reason the applicant needed the zoning approved immediately was to have a competitive CHFA application. He said they also need an administrative Subdivision process in order to be competitive with their CHFA application; however, he thought that the applicant would be willing to include a condition of approval that either as a Plat Note or as a condition prior to pulling building permits, that the applicant must enter into a long-term affordability covenant in favor of the City. He said that couldn't be done yet because they don't own the land. He suggested that the Council make a motion to approve Option #2 but add in a requirement that the agreement be granted to the City before the applicant ever starts building or have it as a condition of the Subdivision Plat in order to give the City the assurances that it needs.

City Attorney Geiger said that is what she was suggesting, but that it didn't solve the issue of having a situation where the zoning was awarded but the CHFA funding was not awarded and there still would be zoning in place without any affordable housing component, which she thought is what Council was concerned about.

Attorney Gano wondered if there could be a condition in the Ordinance that the affordability covenant must be in place as a condition of, for example, building permits. City Attorney Geiger argued that if IndiBuild was unsuccessful in getting the tax credits and someone else buys the property, they will have to live with the fact that they now have property that is burdened by the affordability. She added that it wasn't the City's job to negotiate the real estate deal, but that was sort of the conundrum.

Charles Burenheide said he didn't necessarily want the property burdened with continual PUDs and things that need to be changed every time someone wants to look at doing something with the property. He referred to Option #2 and the zoning be approved specific to IndiBuild's application that was being proposed, which contains all the requirements for the affordability reasons. He said if the zoning didn't get approved, although he appreciated everybody's work and help on it, he was not in a situation where he was going to take the land and sell it to an apartment complex that wouldn't be providing what his Dad wanted in terms of affordable housing for teachers, policemen, firemen and people that can be in the community but can no longer afford houses here. He said he would go even further to say that if

the PUD didn't get approved, the PUD could go back to the existing PUD it is now, or going back to a PUD that he discussed a couple of years ago when the school was put in.

Mr. Burenheide concluded by saying that if the biggest concern was that the property would be sold to someone else after the PUD gets put into place but the funding doesn't get approved, he could assure everyone that wouldn't happen because he was not going to sell the property for some other kind of project that doesn't conform to the proposed application.

City Manager Mike Bennett requested a ten-minute recess to talk to City Attorney Geiger.

Mayor Kincaid called for a ten-minute recess at 9:45 p.m. He called the meeting back to order at 9:59 p.m.

City Attorney Geiger noted that the applicant had indicated that they were agreeable with Option #2 (in staff's coversheet in the Council packet) which states:

"Granting a major amendment to the Burenheide Planned Unit Development (PUD) Guide to increase residential density and allowed residential land uses in a portion thereof with the condition that the subdivision/site plan and zoning be specific to the application proposed and furnished with a subdivision Plat and allow the subdivision and site plan to be reviewed and approved administratively."

Attorney Geiger noted that Option 2 would include approval of the PUD Guide as presented with one entrance, 75 parking spaces and administrative review of the Subdivision and Site Plan. She suggested adding a condition that the site-specific Site Plan and Subdivision Plat would need to be submitted to the City within 120 days (past May 15th when CHFA funding is awarded) or the zoning would revert back to the current existing zoning on the parcel.

Mayor Kincaid requested to hear from the applicant's attorney on the proposed approval with conditions.

IndiBuild's attorney Alex Gano said he liked the proposed motion but asked if the condition of filing the Site Plan and Subdivision Plat be moved to July 15th. He pointed out that the applicant would need time to engineer the plat.

Attorney Geiger said she thought the City felt like that was something the applicant would be working on between now and May 15th. She said she realized it could be "all for naught" (if funding wasn't approved), but that it was a risk the City felt the applicant could undertake. She countered with either May 20th or June 15th.

Ms. Hammet stated that it takes six to eight weeks for them to engineer a Site Plan and get the submittal in the door. She said typically, the developer won't release consultants to start on design until those credits are awarded or else they are on the hook for paying the consultants. Ms. Hammet said they would be billing IndiBuild for that time, so she was just trying to be nice to her client and that this was just the reality of it.

Ms. Hammet continued that typically, credits are awarded, the design team has a kick-off meeting immediately, gets to work and then within six to eight weeks, they will have a first submittal. She asked if this was amenable to both the City and the developer (IndiBuild), adding that she thought they could get it done by July 15th.

Attorney Geiger said that the Subdivision Plat would have to be submitted by July 15th, which would not require the engineering. Ms. Hammet said they could definitely get a Subdivision Plat in by July 15th.

Attorney Geiger asked what the timeframe would be for actually deed restricting the property once the CHFA tax credits were awarded. IndiBuild's attorney responded that it would be done at closing.

Attorney Geiger noted that staff had thought about suggesting that the Subdivision Plat would include a Plat Note with a reference to the Reception Number of the recorded deed restriction, but if the deed restriction is not getting recorded until everything closes, that requirement doesn't work.

The applicant agreed to, upon credits being awarded, submit a Subdivision Plat by July 15th to show intent.

Attorney Geiger noted that there also needed to be the condition that if the Subdivision Plat is not submitted by July 15th, the zoning would revert back to the existing zoning.

Mr. Betters stated that if the credits were awarded, the closing on the Partnership Agreement could possibly happen before the end of this year, but a more likely closing is probably around this same time (first of February) of next year (2023) and that the applicant anticipates closing on the property on May 31st.

- **COUNCILOR O'BRIEN MOVED TO ADOPT ORDINANCE 2022-07 – AN ORDINANCE GRANTING A MAJOR AMENDMENT TO THE BURENHEIDE PLANNED UNIT DEVELOPMENT (PUD) GUIDE TO INCREASE RESIDENTIAL DENSITY AND ALLOWED RESIDENTIAL LAND USES IN A PORTION THEREOF WITH THE CONDITION THAT THE SUBDIVISION SITE PLAN AND ZONING BE SPECIFIC TO THE APPLICATION PROPOSED AND FURNISHED WITH A SUBDIVISION PLAT AND ALLOW THE SUBDIVISION AND SITE PLAN TO BE REVIEWED AND APPROVED ADMINISTRATIVELY. SUCH SUBDIVISION PLAT MUST BE SUBMITTED ON OR BEFORE JULY 15, 2022, AND IF SUCH SUBDIVISION PLAT IS NOT SUBMITTED BY THEN, THE ZONING OF THE PROPERTY WILL REVERT BACK TO THE CURRENT ZONING OF THE BURENHEIDE PUD. COUNCILOR LEONHART SECONDED THE MOTION. THE MOTION PASSED WITH FIVE YES VOTES.**

Councilor Harvey asked about the City's liability with the development having one entrance. City Engineer Sam Atkins stated that when that topic came up early on in the process, staff got with the Lower Valley Fire Department and they had no concerns based on the fact that they are fitting the buildings with indoor sprinkler systems. He added that he didn't see where the City would have any liability.

Councilor Breman stated that he voted yes on the motion based on all the work that had gone into the City's Comprehensive Plan and all discussion held prior to the motion.

B. LEGISLATIVE HEARINGS

There were no Legislative public hearings on the agenda.

8. ADMINISTRATIVE AGENDA

There were no Administrative Agenda items.

9. CITY MANAGER'S REPORT

City Manager Mike Bennett noted that the coming Saturday was when the Chamber was holding its Annual Awards Banquet and asked if any of the Council would like to attend. None of the Council members were available to attend except for Mayor Joel Kincaid, who suggested that the City Manager ask if any City staff would like to go.

10. COUNCIL REPORTS AND ACTIONS

COUNCILOR KEN KREIE

Ken reported that the Downtown Advisory Board met and had a good discussion. He said there was someone there who wanted to apply for appointment to the board. Fred Martinez (Suds Brothers Brewery co-owner) proposed the idea of having a locals' night in downtown Fruita and the board also talked about having another Pabor Day in the spring.

Ken also reported that the Associated Governments of Northwest Colorado (AGNC) did not meet in January but would be meeting in February.

COUNCILOR KAREN LEONHART

Karen reported that at the Police Commission meeting, they discussed how Sergeant Kevin Paquette will be retiring this year, so the department is preparing for different promotions.

Karen also reported that she attended the Museums of Western Colorado (MWC) board meeting and the MWC is going through a process of accreditation, which requires an Emergency Action Plan, so she connected them with Chief Krouse and Jim Jackson, a Police Commissioner who has experience with doing emergency plans with the National Park Service. Karen added that the MWC is doing well.

Karen added that it was great seeing the youth earlier at the start of the Council meeting.

MAYOR JOEL KINCAID

Joel reported that the Fruita Tourism Advisory Council meeting in January was canceled and that he had the Fruita Area Chamber of Commerce Board of Directors meeting coming up.

Joel also requested that staff purchase two more wireless microphones for the Council Chambers.

With no further business before the Council, Mayor Kincaid adjourned the meeting at 10:19 p.m.

Respectfully submitted,

Debra Woods
Deputy City Clerk
City of Fruita