

SOUTH JORDAN CITY
COMBINED CITY COUNCIL & PLANNING COMMISSION STUDY MEETING

March 7, 2023

Present: Mayor Dawn Ramsey, Council Member Patrick Harris, Council Member Don Shelton, Council Member Tamara Zander, Council Member Brad Marlor, Council Member Jason McGuire, Deputy City Manager Dustin Lewis, CFO Sunil Naidu, Director of Strategy & Budget Don Tingey, Director of Commerce Brian Preece, Associate Director of Parks Colby Hill, Director of Administrative Services Melinda Seager, City Attorney Ryan Loose, City Recorder Anna Crookston, GIS Coordinator Matt Jarman, Senior IS Tech Phill Brown, IT Director Jon Day, Director of Planning Steven Schaefermeyer, City Engineer Brad Klavano, Fire Chief Chris Dawson, Police Chief Jeff Carr, Director of Recreation Janell Payne, Meeting Transcriptionist Diana Baun, Communications Manager Rachael Van Cleave, Planning Commission Chair Michele Hollist, Planning Commissioner Nathan Gedge, Planning Commissioner Steven Catmull, Planning Commissioner Laurel Bevans, Planner Damir Drozdek, Assistant City Attorney Greg Simonsen, City Planner Greg Schindler

Absent: Planning Commissioner Trevor Darby

Others: Carol's iPhone, Bryan Farnsworth, Sam Bishop

4:48 PM
STUDY MEETING

A. Welcome, Roll Call, and Introduction: *By Mayor Dawn Ramsey*

Mayor Ramsey welcomed everyone present and introduced the meeting. She excused the City Manager Gary Whatcott who was away on city business.

B. Invocation: *By Mayor Dawn Ramsey*

Mayor Ramsey offered the invocation.

C. Mayor and Council Coordination

Council Member Zander shared that a resident approached her this morning about the Chalk Art at Summerfest and the advertised early judging time that discourages artists from participating.

Director of Recreation Janell Payne indicated that feedback was in her notes from the previous year, and she will discuss it with the Arts Coordinator to get it adjusted online.

Mayor Ramsey thanked all who were involved during this legislative session, and the council and staff briefly discussed how that session ended.

**D. Discussion/Review of Regular Council Meeting
Presentation Item**

- County Councilmember Sheldon Stewart.

Public Hearing Items

- Resolution R2023-12, Interlocal Cooperation Agreement with SLCO Elections Division.
- Ordinance 2023-01, Right-of-Way vacation along Grandville Avenue and Lake Avenue.
- Ordinance 2023-04, Re-adopt the City Standard Plans and Specifications.

Discussion & Potential Action Item

- Discussion of reconsideration of Rise Development Agreement.

E. Discussion Item

E.1. City Council and Planning Commission discussion.

Planning Commission Chair Michele Hollist brought up infill projects in Daybreak and the new master planned community coming in the future. She asked what lessons the council has learned from Daybreak and that process that could potentially be applied to this new development. She also asked about residents being verbally promised things by certain parties and being led to believe that conceptual materials are going to be the reality.

Mayor Ramsey noted that she and the council hear the same concerns from residents, and ultimately the city can't ensure every piece of marketing material is accurate, nor can the city make sure everyone reads their sales contracts and understands where these types of things are mentioned. If the development going into Daybreak is following the allowances set forth in the Master Development Agreement (MDA), she asked if having a public hearing is just making the process more frustrating.

Council Member Marlbor believes that the developers from early on had conceptual ideas that were shared, and the residents took those ideas as reality. He suggested discussing this with future developers and making sure they understand that whatever they mention to residents is going to be taken as fact. He also discussed hearsay and word of mouth comments brought up by residents in regards to new development.

Council Member McGuire noted that living in Daybreak for 15 years he has seen what is being described, and it's one of things that got him involved. Going forward, he would like to be able to hold developers to their usage commitments and find ways to help residents understand how the process works and what developers and property owners are entitled to do.

Council Member Zander brought up the concept of infill projects in Daybreak. In the rest of the city there are infill projects, but in Daybreak it is all part of the master plan. The developer of Daybreak will not necessarily be the developer for the annexed property, so there needs to be a message shared that these two projects are completely separate.

Council Member Shelton acknowledged that Daybreak did finally start putting up signs indicating where future development would be, but asked if there is any way something can be written into the development agreement that covers this issue more thoroughly and holds the developer accountable. With these long-term developments, it's not realistic to expect them to give a final plan at the beginning, but is there anything that can be done to keep the developer accountable.

Attorney Loose discussed the annexation and the next steps in that process, which includes a public hearing in an upcoming meeting, along with a brief history of Daybreak's development and how that development has shifted over the years based on market changes. The city can add requirements in the agreement, however the other party still has to agree to them; it also depends on how much control the city wants over the development.

Council Member Harris acknowledged that many times residents are promised things, but he questioned the city's role in this and how open or detailed they might want the agreement. The developer will respond that it's a long-term project and that they have no idea what the future demands will be for things like office space, so there needs to be some flexibility. Due to this, anything released as conceptual could change based on how demand changes over time. He also wants to make sure the city doesn't overstep and hold the developer to something that might not make sense in the future, with no options for adjustment. We should not be requiring things of this developer that we wouldn't require from another developer. Unfortunately, most of these issues are civil issues and need to be handled as such.

Commissioner Catmull questioned how anything more restrictive would be received by the legislature. To him, it feels like many of these people just want to be heard and have enough time to work through the issues; ten days doesn't always seem like a lot depending on how big of an impact, whether real or perceived, these situations can have. He suggested possibly brokering a listening session between Daybreak and this new master planned community for key influencers to listen and try to address some of these issues before a 10 day notice gets delivered.

Mayor Ramsey agreed that many of these people just want the opportunity to be heard. She wonders if the practice of having these public hearings for Daybreak where the planning commission's hands are tied is just setting up residents for disappointment since things have already been decided as part of the MDA.

Attorney Loose responded that the legislature made it very clear in SB174, which standardizes the process of taking the preliminary, and sometimes the final, plat process out of the legislative bodies' hands. He discussed the public hearing aspect of these decisions, asking the planning commission how valuable they feel the hearings are on a preliminary plat.

Chair Hollist said it's uncommon to have people comment during those hearings, and when they do it's almost always irrigation related. In terms of Daybreak, she believes there was only one time they were caught unaware by a water issue.

Commissioner Catmull gave a few examples, and noted that in one specific instance the public came informed. They understood the commission couldn't do anything, but they still wanted to vent and really wanted to fight for what they wanted. They thanked the commission for striving to listen to them and seek all the angles. Many times it does just feel like people want to be heard, even when they know the commission can't do anything.

Attorney Loose referred back to the original question, what can be done differently in the future master planned community that is coming, that isn't being done in Daybreak. What makes the Daybreak agreement unique is that it doesn't require them to bring their subdivision plats to the commission like the rest of the city. They have willingly followed the process the rest of the city has, but it actually exempts them from it. If the commission doesn't see huge value in that process, it might be worth requiring the developers to hold some kind of community meeting or open house with residents prior to submitting their final subdivision plats to the city. The city could also possibly send a planner or other staff to those meetings just to stay informed and find out what's going on. He then asked if that would be as good as having the public hearing in front of the commission.

Commissioner Gedge noted that they have had some applicants come forward, saying they had a community meeting, but none of the residents in attendance were aware of it. Would there be a way to enforce that and make sure those meetings are being advertised and held appropriately.

Attorney Loose said there are ways to ensure that, one being requiring all the community meetings be held at Station 64 or somewhere else that staff could verify they happened. He noted that this would only be for the new development, and that agreement is still being worked out. He asked if everyone felt that would help the residents more than the current process, because in the end this is about the residents and what gives them the most access to those who can change things. The developers don't let staff change their plats often, but if they get enough feedback they might change them themselves.

Mayor Ramsey added that there would be a better chance of change during direct discussions with the developer, versus in the public hearing setting since once it gets to that point, as long as it meets the MDA requirements the city has to approve the plans. She mentioned comments she has heard recently after the announcement of the ballpark from Daybreak residents, saying "they are ruining Daybreak because it's becoming so dense" and "why are they ruining Daybreak." She added that many of the replies on social media were from other Daybreak residents noting that this was all in the paperwork, and that those complaining should have paid more attention because things like density were addressed there. There is only so much that can be done about residents not doing their research and educating themselves, but she still wonders if the current public hearing process for Daybreak development is just giving grief to everyone in the process since things are already technically approved.

Attorney Loose added that with this new development, with the suggested requirements, they can give the residents what they think they are trying to get from the city.

Commissioner Bevans said there is value in both sides, the residents want to tell their city representatives what they think, but she does think there is bigger value in requiring the developers to hold those meetings and hear the community members out. Many times, when a controversial issue comes in, if the community members have already communicated with the developer, many of those issues can be resolved before they even reach the planning commission. There will always be people that want to come to their city representatives and be heard, but whether or not anything can be done is separate from their desire to be heard.

Council Member Zander asked if there is any precedence for any other cities doing it this way, as this would be a complete shift from our current process.

Attorney Loose said that no one else has a master planned community like ours, but many cities are taking the public hearing out of the administrative process.

Director Schaefermeyer said he knows of cities doing open house requirements before a public hearing, or just the open house requirement with no public hearing. He wished to address this directly because the prior developer of Daybreak had started to hold a limited number of open houses, and he thinks those helped because many times the city is just the middle man. The developer that owns the property is heavily involved in the HOA, and remains heavily involved in the residents' lives, so it is an awkward position for the city to be in. The city is asking the same questions the residents are in terms of what buildings will look like, but it's just a subdivision at a certain point and they don't always share that information. Larry H. Miller is very close to the residents in many ways, and when you have a master developer it gives you someone to hold responsible that the city has a relationship with and will be here for years versus a smaller subdivision where a developer comes in, builds, and leaves.

Attorney Loose doesn't believe we will see the same ownership pattern with this new development since this is so close to the mine and there are many more interests to protect. It appears that they are very invested in what is going on and they might not just be letting a development company take things over completely. The city council will always have public comment available during their meetings, where the public can come in and discuss anything not on the agenda; it is not hard for a resident to get a hold of people at the city to share their thoughts.

Mayor Ramsey added that the goal is not to cut off residents from sharing their thoughts. Her concern is with the way that process is currently set up, that it is so late in the game it doesn't matter what the public comes and says.

Attorney Loose noted the subdivision site plan will always be administrative, meaning it's subject to the rules on the books and the planning commission is essentially quality control. He asked everyone if the model being discussed would fit with the new community being discussed and the concerns raised during this discussion.

Chair Hollist likes the idea of requiring those public meetings. She feels that an important part of the planning commission meetings is those public hearings, and she doesn't know if they are

appropriate to keep in this case. The commission has discussed educating the public on what type of evidence needs to be brought, and what type of information can actually be considered.

Council Member Marlors still supports a meeting where the public has an opportunity to state an opinion or problem. He realizes most of what the commission does is administrative, but it gives the public an opportunity to speak. He also supports the open house idea as well. Having the opportunity to stand before public officials and state a problem, even if the commission only has administrative powers, has value. The commission can still respond that something does sound like a real problem and suggest the residents go before the city council during their public comment period to share those concerns with them. The commission can also remind the residents that in the minutes, the city council and staff are being made aware of what's going on when they review them.

Commissioner Catmull asked to go back to the original discussion and suggested that if there is a conceptual map change, that could be a trigger for something like an open house. That could become a way to educate and inform people on a longer term perspective.

Director Schaefermeyer referred back to a previous comment about Daybreak and tightening up what a land use is. It can be very broad, and that has allowed Daybreak to succeed in many ways; however, on the other hand it is hard when it's so broad that you can change from a church to townhomes. It's more about how staff defines the land uses, than necessarily having a situation trigger a response. Changing the land use would trigger a public meeting of some sort, but if they tightened up those definitions that would help in the long run.

Attorney Loose moved the discussion on to the Conditional Use Permit (CUP) process.

Attorney Simonsen gave a brief overview of the CUP process, including what is considered evidence of a detrimental effect. He posed the question of whether someone with a real estate license stating that something is going to affect property values in an area is sufficient to open the door for the planning commission to impose conditions, or even deny the conditional use permit. In specific cases, the supreme court of Utah has ruled that is not substantial evidence. That being said, if they had a certified appraiser come in and submit an appraisal that might be a different story. A past CUP in the city that he felt the planning commission handled especially well was the Kum & Go currently being built on Redwood Road. All the neighbors came in and read benzene articles, talked about the dangers with gas stations, and presented evidence about the noise. That sounds like substantial evidence that benzene can cause all these harms, but is that evidence enough to allow the commission to deny a CUP or impose conditions. With a CUP it still indicates a use, and the legislative body has said gas stations are a conditional use, so it has already been ruled that a gas station can go there. They are asking the planning commission to deny the CUP because no gas station can go there, but it has already been ruled by the legislative body that one can go there. The commission wisely did not impose conditions and approved the CUP. In regards to the noise, some substantial evidence might have been presented, and there was a condition imposed for a higher fence to help mitigate some of the harms. In the city code, in regards to conditional uses, it says "in addition to the application for a conditional use permit, the planning department may require other information or studies to address potential

detrimental effects of the proposed conditional use that have been reasonably anticipated by the city and its review of the application.” Staff is the first body to look at those detrimental effects and have the power to require studies and other things to bring more substantial evidence, which he thinks is one of the frustrations. Many of the citizens don’t understand what a conditional use permit is, so they don’t really come prepared with the kind of evidence they would need to prove a detrimental effect.

Attorney Loose noted that is the same with the subdivisions, they don’t come with the evidence as they don’t know what’s required. He then asked the commission and the council if they would be amenable to start looking at the conditional uses in the city, and instead of leaving them as a conditional use, making them a permitted use. Before doing that they would go in and put in the regulations for that permitted use. Then, the planning commission could give a recommendation on the change in the ordinance to take something from a conditional use to a permitted use with the specific restrictions before sending it to the council for an ordinance change. He suggested starting with conditional uses such as accessory buildings, drive-thrus, and ADUs.

Planner Schindler noted that the code is currently written with several regulations, and if they can’t meet those regulations they can go to the planning commission for a CUP. The simpler way to do it would be to say either you meet the regulations or you don’t.

Attorney Loose said the planning commission lives in the community and sees a lot. They are not dealing with some of the legislative items and they can move that effort on the land use front to go over those regulations.

Chair Hollist asked how they would then start to get feedback on the new things that need to be considered in the future if they work themselves out of that process.

Attorney Loose noted that he sees this more as expanding the commission’s job. As there are legislative and code changes there will be many things that need to be looked at. He would like to see the commission involved more on the land use side and maybe with some of the quality control functions.

Director Schaefermeyer noted that if the council decides this is a priority and it should be looked at, he is more than comfortable going to the commission and going through the current regulations. In the past, in regards to conditional uses, there were some changes to the structure of the code and the Uses chapter was created. At that time they had conversations regarding setting up a structure to get rid of conditional uses and one way they did that was through impact control measures. Certain things in certain zones would be required to provide more information without having to work through a conditional use permit.

Attorney Loose said one vision of the planning commission is that it is not as reactive of a body, it is much more involved in planning, reviewing our ordinances, reacting to the legislation on the application and keeping the city at the forefront.

Director Schaefermeyer noted that bringing difficult to deal with issues to the planning commission would be much more effective.

Mayor Ramsey suggested putting together a list of things the staff and the commission would like to see changed in the code and then bringing that list to the council.

Council Member Marlbor is in favor of moving towards the kind of change described above and he is interested in seeing what that means.

Council Member Zander loves hearing the feedback from the commission, it is valued and their perspective is important to the council.

Manager Lewis brought up short-term rentals and the planning commission's questions on that subject.

Attorney Loose shared a handout (Attachment A) with information compiled on short-term rentals. The number one thing about short-term rentals is that they are not allowed in owner-occupied situations in the city currently. The city however does not regulate short-term rentals in just a house for rent. This has not been regulated because 5-6 years ago when they became more popular they would pull a report called Air D&A, it only ever showed a few in the city and they were 60% occupied hardly ever. The only issue was that in one specific neighborhood someone rented a big house with many guests, and all the other big houses on the street had many guests at the same time, which led to a fight about who should get to park closer. At that time, that issue was fairly infrequent. In more recent times, we are seeing a bus pull up to a house and 30-40 young athletes go in who are involved in some sort of tournament in the area. We are also starting to see some public safety issues with the short-term rentals along with louder parties.

Chief Carr confirmed that they have had some assaults and a couple shootings at these short-term rentals.

Attorney Loose added that in the 11th Circuit they have banned the short-term rentals entirely, however we live in the 10th Circuit so that doesn't apply to us. There is nothing from the supreme court, on it and when you get into housing there are some mine paths to walk. One option, regulation wise, is what North Salt Lake is doing by only allowing short-term rentals where the owner lives on the property. That may reduce some of the public safety issues with the owner being on the property. There are also regulations involving listings, but the hardest part is enforcement. About 5-6 years ago a state law was passed that said cities could pass any regulation they wanted, but in enforcement the city couldn't use the listing as proof. Some cities were actually going online, booking the rental, and once the confirmation came back there was a transaction to use as evidence. However, it turned out that wasn't allowed. It is also very hard to get someone who has rented the property once to come back in the future to be evidence in court, and it's hard to get the neighbors in to testify as that's usually considered hearsay. Staff will do their best to figure out ways to enforce the code but he noted that many resort communities like St. George, Moab and Springdale have been facing this for a while and it's starting to hit us more and change some of the dynamics of our neighborhoods. He asked for the council and

commission members to look over Attachment A and send him any suggestions they might have in terms of what might work regulation wise, keeping in mind that the hardest part is going to be the enforcement.

Attorney Simonsen noted that Salt Lake City bans those rentals, and they were enforcing that by going after the people listing their homes on those sites within the city. He personally thinks the ban from using that evidence is probably unconstitutional by limiting cities from getting to the truth. This has never been challenged or appealed, and anyone attempting to use that as evidence has had it thrown out by the judge.

Council Member Harris left the meeting.

Attorney Loose said that Salt Lake does allow those rentals in districts where other lodging uses are permitted, they just aren't allowed in primarily residential areas.

Mayor Ramsey said that in talking with other communities, they are all handling it differently. She referenced a specific street in the city where busses pull up and drop off entire teams, and it seriously frustrates the residents because it can't be enforced.

Council Member Zander would like to discuss ADUs at a future date. When the ordinance was passed last year, the PC zone was exempted from those rules. This means that there are people that meet all the other requirements the rest of the city has, but they aren't allowed to have an ADU and she would like to bridge that gap. In Daybreak, if you have a 6000 square foot lot, a four car garage and a fully permitted basement apartment you are not allowed to use that as an ADU and that doesn't match what's allowed in the rest of the city. She thinks this is a problem and she has spoken with staff about it.

Attorney Loose noted that Daybreak has been treated uniquely, in that the state statute says "primarily residential zones," and we are trying to be protective. He agrees that the issue in Daybreak needs to be addressed, but he doesn't want to cross the line and say the state statute should apply because he doesn't believe Daybreak is primarily residential. Daybreak has equal amounts of office and industrial, and as they continue to develop we need to change our ordinance; however, he doesn't want to ever give the impression that the state statute starts to apply.

Council Member Zander would like request that topic be in an upcoming work session as soon as possible, as it's a huge disparity that a family in Daybreak can't have an ADU when everyone else in the city can.

Director Schaefermeyer clarified that this would specifically be for internal ADUs, as the above garage types of ADUs are already currently allowed in Daybreak and have been since the beginning.

Attorney Loose added that the city doesn't regulate those external ADUs, that is controlled by the HOA.

F. Training Item

F.1. Land Use *(By City Attorney Ryan Loose)*

Training was covered during previous discussions in the meeting.

ADJOURNMENT

Council Member Shelton motioned to adjourn the March 7, 2023 City Council Study Meeting. Council Member Zander seconded the motion; vote was unanimous in favor. Council Member Harris was absent from the vote.

The March 7, 2023 City Council Study meeting adjourned at 6:23 p.m.