

SPECIAL FARMINGTON CITY COUNCIL MEETING

August 28, 2006 - 3:30 P.M.

PRESENT: Mayor Scott C. Harbertson, Council Members Richard Dutson, David Hale, Larry W. Haugen, Paula A. Alder, Sidney C. Young, City Manager Max Forbush, City Planner David Petersen, City Attorney Michael Mazuran, City Engineer Paul Hirst, Walt Hokanson, Public Works Director, and Margy Lomax, City Recorder.

OTHERS PRESENT: Bryson Garbett, Noel Baldstead, Jacob Baldstead, of Garbett Homes; Ryan Snow, Counsel for Garbett Homes; Renee McDonald, Manager for Farmington Crossing Homeowners Association; and Leroy Larsen, a Farmington resident.

Mayor Harbertson called the meeting to order at 3:40 p.m. and offered an invocation to the meeting. A pledge of allegiance was led by Council Member Hale.

GARBETT HOMES “RENTAL OF HOMES” ISSUE

Mayor Harbertson referred to a letter that had been sent by the City to Garbett Homes dated August 11, 2006, regarding their conditional use permit and the rental use of the Farmington Crossing units.

Noel Baldstead addressed the Council giving a brief history of the development. He expressed appreciation to the Council for their trust and confidence. Three years ago they appeared before the Council with a group called Cowboy Partners who had planned on constructing apartments on part of the property in the development with Kent Buie doing part commercial and Garbett building condos. It had always been Garbett's intention to build condos. When they started selling the condos, it was early and really fast. Some of the early purchasers were investors. They stopped selling to investors as of August of last year when they learned about the City's opposition to such. They added a new clause to their agreement which now prohibits investors from buying, but sometimes purchasers are not up front and honest about their intentions. He stated they were not trying to make rentals out of them. They have hired property management team to monitor and supervise the condos.

Jacob Baldstead, Sales Manager for Garbett Homes, spoke stating what they are doing to comply with the conditions of the Conditional Use Permit. He also stated there had been a number of sales made to in-state and out-of-state investors, but now an addendum has been added to their contract stating that the property cannot be rented or sold for a period of 12 months. He said the addendum is specifically pointed out to buyers. He stated they are exploring different avenues including looking at deed restrictions. He stated they do not want to have investors either. What the Council is seeing now is from what happened early on in the development.

David Hale expressed alarm at seeing the same name as owner of multiple condo units on County records. He asked about Susan Van Arysedale's name being listed as owner on a number of units. It was explained she is with the Utah Housing Authority's CROWN Project which helps people get into homes by renting-to-own agreements. He stated his frustration on hearing that Garbett's sales people are telling prospective buyers they can rent the units after 12 months and that there is a high percentage being sold to investors.

Renee McDonald of Community Solutions lives in one of the Farmington Crossing units and manages the Homeowners Association. Community Solutions manages HOA's from Utah to Weber County and has been in business for 50 years. Her company helps with the CC&R's and rules and prepares a synopsis of them for the homeowners. She also patrols the subdivision looking for any violations. If there is a violation, a verbal warning is given followed by a notice on the door, and then a fine. She stated the homeowners see her on a daily basis and that she is not seeing a lot of rental signs. She said the investors buy the first year of new developments and then sell to homeowner occupied. If units were rented, she thought they would be on the high end -- around \$1,400 per month. She stated that she knows most of the owners and that a monthly newsletter is sent out to each owner to educate and inform them. She keeps track of when a verbal warning is given.

Council Member Rick Dutson arrived at 4:00 p.m.

Noel Baldstead told the Council they are looking for direction from the City as to what they can do to make the situation better. He stated that around 15% of the units are owned by investors. At buildout they anticipate that overall percentage will be at 6%.

David Hale reminded them that no rental units were to be allowed.

Rick Dutson stated that he worries that in 3-4 years the second generation of owners will be predisposed to rental property.

Renee McDonald responded that the profit margin to invest as rentals is in the first two or three years, not down the line.

David Hale questioned whether the City Council had made a mistake in approving 14 units per acre instead of 10.

Noel Baldstead reported that the Planning Commission has asked how many were investors and that Garbett Homes was up front about the number. Noel suggested that perhaps Garbett's information may not have been forwarded to the City Council.

Rick Dutson stated that he would not have voted in favor of approval had he known there were going to be rentals.

Jacob Baldstead reported that people are attracted to new development, because they know the price will escalate. Some of the prices have gone up \$50,000 since the project began.

Noel Baldstead stated that they had done pre-sales and that they are now sorry because their cost of construction has gone up so rapidly. He stated they did not mean to deceive the City Council regarding rentals and asked for suggestions – what they could do now.

Rick Dutson stated he is concerned that the roads are too narrow and that there is no parking.

David Hale was concerned the parking stalls project half way into the street.

Noel Baldstead responded stating they are in the process of tearing curb & gutter to correct the problem. He acknowledged that the parking stalls were made too shallow. They are making them deeper. They did make a mistake with them.

David Hale also expressed concern about public safety in the motor court area.

Renee McDonald responded that information will be put in the monthly newsletter and there will be 15 miles per hour signs installed.

Sid Young expressed concern about fire trucks getting into the motor court area. It was stated that the motor courts were built per approval and that there is no parking in the motor courts.

In response to a question asked by Rick Dutson regarding where in the approval process Garbett Homes is on their other phases, David Petersen stated that the middle phase is recorded and mostly built out. Garbett Homes is working on the northerly final improvement drawings for final plat approval. He said the LDS Church Stake Center site will be a separate application as will the commercial site.

Noel Baldstead reported Fire Chief Gregory had been out to look at their northern site and that he was pleased with it. Mr. Baldstead said they monitor parking and that the roads are clear at night. There is guest parking in every phase.

David Hale questioned if there was not some way to keep the property from being rentals as they were supposed to be from the beginning, then maybe the City Council should drop the density on the north phase in order to have more control over it. He stated that he doesn't like marketing of the property as rentals.

Renee McDonald said they can do a resolution to put rental caps – something that will help make the owners not want to rent.

Rick Dutson suggested the City Council meet with the City Attorney in a closed meeting.

Bryson Garbett reported there are 120 units which are occupied. They would have voting rights in the HOA. Garbett owns 35 voting rights in the first phase. He didn't believe it would be easy to change the CC&R's for the first phase. He stated it would not be easy to change the northern phase but they would be willing to try to do it. A 66% approval is needed to make a change. Garbett Homes at the present time has 94 votes. He said it is unclear whether they can change a property right. He said there has never been a problem with rentals, but they are willing to do anything they can legally do.

Mayor Harbertson told Mr. Garbett that the City Council needs to sit down with the City Attorney and then meet again with them. It needs to be checked out whether the CC&R's can be changed.

Michael Mazuran, City Attorney, stated his understanding is that Garbett Homes has no rental restrictions on any projects today; no rental restrictions on any recorded CC&R's that are existing; and that it is his understanding that they are not adverse to doing something with the CC&R's to address the situation.

Ryan Snow, Counsel for Garbett Homes, responded they are willing to look at anything as long as it is legal. They do not want to be involved in lawsuits.

Bryson Garbett stated there are 250 units in these two phases. Garbett owns 130 units. In the north phase there will be 250 units also.

CLOSED MEETING

At 4:45 p.m. **Rick Dutson** moved to adjourn the meeting to a closed session to discuss strategy as it pertains to acquisition of real property. The motion was seconded by **Larry Haugen** with a roll call vote of Council Members all voting in favor of the motion.

SWORN STATEMENT

I, Scott C. Harbertson, Mayor of Farmington City, to hereby affirm that the items discussed in the closed meeting portion of the Special City Council meeting were to discuss acquisition of real property and that no other business was conducted while the City Council was so convened.

Scott C. Harbertson, Mayor

A motion to go back into an open meeting was made by **Rick Dutson** and seconded by **Larry Haugen**. The voting was unanimous in favor and the meeting reconvened into an open session at 5:15 p.m.

David Hale was excused from the remainder of the meeting.

FARMINGTON RANCHES PARK

Mayor Harbertson introduced this agenda item stating everyone is interested in a park in the Farmington Ranches area. Agreement needs to be reached as to what needs to be accomplished for it to happen. A letter of intent will be given to Gordon Crabtree, President of the Farmington Ranches Homeowners Association, listing four requirements that must be met before the City can move forward with the park project.

The first condition is that the City must have fee title to the property, free and clear of all encumbrances, except those accepted in writing by the City.

Steve Petersen, Vice President of the Farmington Ranches Homeowners Association, passed out maps showing the overall layout of the subdivision and a concept plan for the park. He said the Association has the ability to transfer ownership of the property to the City and that work has begun to mitigate the wetlands.

Mayor Harbertson brought up the fact that the Shepard Creek channel runs right through the area of the proposed park. Ten months of the year the stream channel is shallow but for two months the water flow is high. Davis County has suggested ways to mitigate the stream channel by widening it and making the slopes far less aggressive. Reconstructing Shepard Creek channel would add to the cost of the overall project. Mr. Petersen pointed out that the stream channel danger/risk exists whether the park is there or not and that developing a park would give the opportunity to mitigate the risk.

The second condition in the letter is that the City would determine the size and have final decision as to the design of the park, have the final say what can or cannot go into it. Mr. Petersen said they agree with that but asked to make sure any amenities would not be damaging to homes around the perimeter and he hoped the City would be receptive to their desires and concerns. He hopes the City will look at it as a partnership.

Issue number three – financing issue. The City has set aside \$500,000 in park impact fees for development of the park and are asking the HOA to match it. The City would match dollar for dollar. Mr. Petersen said it was the general consensus among stakeholders to have some type of partnership. He stated the homeowners in Farmington Ranches are already assessed \$220 per year for dues. He doesn't feel they could be committed to a fixed-dollar amount. They are mainly young families who are stretched to the limit. They would like the net proceeds from the sale of the lots

to be their contribution. He also stated the 8-10 acres of land is being donated and that there is clear value in ownership of it. The HOA is planning on selling the lots that are owned by them. They are hoping to sell them for \$350,000.

Mayor Harbertson stated that the proposed park for Farmington Ranches is not listed on the City's Master Plan. The Master Plan would need to be amended to add it. It was the Farmington Ranches Homeowners Association who came to the City with their proposal for a park. The City already has 17 acres of property for a park further to the east near the Fairgrounds. If the City waited until it could purchase the land from the Homeowners Association, it would be way down the road.

Rick Dutson suggested the possibility of a "bare bones" park with nothing except grass.

The City Manager said the Public Works Department would be able to do some of the work on the park, but the cost just can't be determined right now. He also reminded the Council the Farmington Greens development just to the east of Farmington Ranches has a three-acre parcel set aside for a neighborhood park in their development and they might be coming to the City to ask for assistance in developing it. He said it is not possible for every neighborhood to have a park. He acknowledged that it would be a good thing for a park in the Ranches subdivision which will have 540 homes when completely built out. He felt the park could be partially improved but then additional improvements would not happen without a bond election. There is simply not enough money for all that people want.

Mayor Harbertson told Steve Petersen that the City would match the amount of money Farmington Ranches HOA is able to come up with. He also said that what the City does for one subdivision it will have to do for another.

Steve Petersen stated a lot of families would truly benefit from a park and felt like asking them for money would be a hardship for most of them. They would like a nice park, nothing outlandish but with enough amenities for the residents to enjoy it. He felt they would be able to sell their lots for \$70,000 to \$80,000 per lot. He reported they are trying to find grants to help with their part of the financial obligation; trying everything they can to move this project forward.

Rick Dutson stated he felt torn. He is concerned about setting a precedent, but also feels compassion for the young families trying to get in homes.

Mayor Harbertson then referred to condition #4 in the letter to the HOA which requires the Association to be responsible for the landscaped areas adjacent to the Cross-Project Trail. He felt the main stumbling block to the park is financing. The City needs to be very careful about setting a precedent.

Steve Petersen felt like the Ranches Subdivision is a special circumstance because of the huge population there and they have no place to recreate together. He stated that Farmington is a growing city and believes it has flexible funds.

The City Manager responded the City does not build parks out of the General Fund and it generally does finance capital facilities out of the General Fund.. Parks are built from General Obligation Bonds proceeds or from impact fees. The City's General Fund is extremely tight and the City doesn't have enough for all of its public safety needs. He stated that residential development never pays for itself. The cost of providing municipal services to residential neighborhoods far exceeds revenues generated from the same. He suggested the possibility of the HOA assessing each of the 540 units an amount of \$5 - \$15 extra and then pledge that money to the City to help pay for the cost of the park.

Steve Petersen felt his neighbors are being isolated by the City saying it is a public park, but only Farmington Ranches residents are required to help pay for it. He asked if the City could amend its Capital Facilities Plan to add a park for the Ranches area.

Mayor Harbertson said the City could take a look at the Capital Facilities Plan to see where they are at. He asked Steve Petersen to see what they can do so the park could be built.

Walt Hokanson, Public Works Director, addressed the Council stating the lots the Ranches HOA are wanting to develop is presently raw ground. Money will need to be invested to get them ready to build on. He thinks the City should re-evaluate where the park should go in west Farmington. He said the population growth is mainly to the very west, that maybe the park should be located further to the west. He said the Ranches' residents need a park now, not 10 years from now. He also stated that mitigation of the Shepard Creek stream channel as proposed by Davis County is going to be expensive, possibly \$1 million.

Mayor Harbertson suggested the possibility of Davis County helping with the cost of the stream channel mitigation.

Steve Petersen asked for a letter from the City stating where the City stands on the park development so he can take it to the homeowners for a vote at a meeting to be held on Wednesday, September 6, 2006.

Mayor Harbertson said his request would be discussed and that he would get back with him in a day or so.

REVIEW OF TRAILS MASTER PLAN AND PUBLIC NOTICE PLANS

Max Forbush stated the issue on this agenda item is whether or not to give extraordinary notice to residents in the Davis Creek area for proposed amendments to the Trails Master Plan.

The Trails Committee and City staff have made a number of changes and one change may appear to be controversial to one family living in the area. When the City originally adopted the Master Trails Plan in 2002, it was determined that access through Constance and Jonathan Hughes' property would likely be a sidewalk. Mr. Forbush felt it would be appropriate to send a letter notifying the Hughes' of the public hearing on amending the Master Trails Plan.

George Chipman of the Trails Committee did not feel notice needed to be sent to the Hughes. He felt it is not necessary to notify the property owners along Davis Creek because the proposed location of the trail is not being changed from amendments made in 2003. At that time proper noticing procedures were followed. He believes the location of the trail, going up the stream channel, should be left as shown on the Master Trails Plan as amended in 2003. He stated the issue will come up again when the land is developed and at that time it would be the best time to decide the actual location of the trail through the Hughes' property -- on their final plat. A public hearing was held when the Plan was amended in 2003 and notice was sent to all property owners, but the Hughes did not attend the meeting.

Max Forbush stated there have been enough changes made to the Trails Plan that a new hearing needs to be held with a new adoption by the City Council.

Mayor Harbertson stated he would feel better personally informing the Hughes about the changes to the proposed location of the trail and to make sure they know where the trail is now proposed to go through their property as shown in the amendments made in the Master Trails Plan in 2003. He does not want them to feel like they were not involved. He wants to make sure there is no misunderstanding. It would be a courtesy to let them know.

Rick Dutson was excused from the meeting at 6:45 p.m.

REVIEW OF CITIZEN SURVEY QUESTIONS/TIMING

Max Forbush reported staff is trying to schedule timing of mailing the survey to residents with the public hearing on the Legacy-North to Legacy-South scheduled for September 26th. The goal is to have the survey sent so it will reach residents a couple of days prior to the hearing. It was decided the survey should be sent on September 20.

ADJOURNMENT

There being no further business to be brought before the Council, upon motion by **Larry Haugen**, with a second on the motion by **Paula Alder**, the meeting was adjourned at 7:15 p.m.

Margy Lomax, City Recorder
Farmington City