FARMINGTON CITY JOINT CITY COUNCIL/PLANNING COMMISSION MEETING

December 20, 2011

WORK SESSION

Present: Mayor Scott Harbertson, Council Members John Bilton, Rick Dutson, Jim Talbot, and Sid Young, Planning Commission Members Andersen, Draper, Hillier, Michaelson, Wagstaff, and Young, and Alternates Anderson and Kaufman, City Manager Dave Millheim, Finance Director Keith Johnson, Community Development Director David Petersen, Associate City Planner Christy Alexander, Attorney Jody Burnett, City Recorder Holly Gadd and Recording Secretary Cynthia DeCoursey. Council Member Cory Ritz was excused.

Review and Acceptance of the CAFR for Fiscal Year 2011

Michael Ulrich, of Ulrich & Associates, PC gave a brief overview of Farmington City's Comprehensive Annual Financial Report (CAFR) for the Fiscal Year ended June 30, 2011. The report includes detailed information regarding the City's financial status.

Consideration of Schematic Plan approval for Spring Creek Estates Phase 6

The Council and the Commission discussed several issues regarding this request, including the number of lots, the proposed open space, impact fees, and proposed streets and improvements in the area. **David Petersen** said he received a call from a resident who is concerned about safety.

CLOSED SESSION

Motion:

At 6:35 p.m. a motion was made by **Rick Dutson** to go into a closed meeting to discuss strategy as it pertains to litigation related to the Garbett Lawsuit. The motion was seconded by **Sid Young** and approved by Council Members **Dutson**, **Talbot** and **Young**. Council Member **Bilton** did not approve the motion. Planning Commissioners were present for the closed meeting.

Sworn Statement

I, **Scott C. Harbertson**, Mayor of Farmington City, do hereby affirm that the items discussed in the closed meeting were as stated in the motion to go into closed session and that no other business was conducted while the Council was so convened in a closed meeting.

Scott C. Harbertson, Mayor

Motion:

At 7:05 p.m. a motion to reconvene into an open meeting was made by **Rick Dutson** and seconded by **Sid Young**. Council Members **Bilton**, **Dutson**, **Talbot** and **Young** approved the motion.

REGULAR SESSION

Present: Mayor Scott Harbertson, Council Members John Bilton, Rick Dutson, Jim Talbot, and Sid Young, Planning Commission Members Andersen, Draper, Hillier, Michaelson, Wagstaff, and Young, and Alternates Anderson and Kaufman, City Manager Dave Millheim, Finance Director Keith Johnson, City Engineer Paul Hirst, Associate City Planner Christy Alexander, Attorney Jody Burnett, City Recorder Holly Gadd and Recording Secretary Cynthia DeCoursey. Council Member Cory Ritz was excused.

CALL TO ORDER:

Roll Call (Opening Comments/Invocation/Pledge of Allegiance)

Mayor Harbertson welcomed the public to the Joint Planning Commission and City Council Meeting. The opening prayer was offered by City Manager **Dave Millheim**, the Pledge of Allegiance was led by **Jim Talbot**, and the **Mayor** welcomed Youth City Council members **Emily Welch**, **Rebecca Smith**, **Christa Wiscombe**, **Calvin Barnett**, and **Cooper VandeMerwe**.

Consideration of Agreement to end Lawsuit between Garbett Homes and Farmington City

Attorney **Jody Burnett** has represented numerous local governments in Utah regarding land use and zoning disputes. This is a difficult, challenging, contentious and emotionally charged issue, and there is no question that many residents bought into Farmington Crossing with the understanding and assurance that it would be owner occupied. The difficult challenge is that the City actually approved the project, and the lawsuit filed by Garbett Homes focuses on one single condition—the requirement that the units be owne occupied. Owner occupancy requirements are questionable and challenging under the best of circumstances, and the courts have said there are certain rights associated with property ownership—the right to live in it, rent it or sell it. The ability to rent is one of the primary sticks in the bundle of property rights, and the courts have been very protective of that right. There are some very serious constitutional issues posed when a City seeks to restrict a product like this to owner occupancy only in terms of the sale of those units. When a city agrees to zone a property for multi-family use, it needs to do so with the anticipation in mind that in all probability at least some of those units will be rental properties. That is the issue at the heart of this lawsuit—it is not simply a disagreement. If a judge ruled that Garbett is right, the City could be on the hook for damages, costs, and attorney's fees, and he believes that is what the outcome in this case would be. Many developers and landowners in the state have indicated that they are no longer in a position to move forward with a project because lending standards have changed—lenders are requiring higher loan to value ratios. The prudent thing for the City to do is to act in the best interest of the City as a whole and approve the proposed Settlement Agreement. Upon approval the dispute will be resolved, the owner occupancy requirement will be removed, and the litigation will be dismissed. The lease-to-own program will then be allowed, subject to the terms and conditions of the Agreement. In an effort to address concerns with respect to the lease-to-own program, Garbett has agreed to the following terms:

a. The units shall have a similar quality of construction material, building elevations, and colors as in the most recently approved buildings (53, 54, 55, 56, 69 and 70).
b. Phase 5 shall have the same quality of landscaping as the prior phases and shall be maintained by a professional property management company.
c. An additional swimming pool shall be added to the existing amenities with a pool house tha includes public restrooms, changing facilities, and an enclosed mechanical room.
d. The trail amenity shall be finished.

e. Project roads and sidewalks shall be completed and maintained by the owners through the HOA with the exception of the public right-of-ways (Shepard Creek Lane and Shepard Church Drive).
f. The connection to US 89 shall be completed to allow easier access and alleviate traffic congestion.
g. Phase 5 units shall have the ownership structure of individual townhomes that will enable Garbett Homes to sell the homes as market conditions improve.
h. Garbett Homes shall provide a professional management team to screen and control tenants and their actions as part of the lease-to-own program in the new Phase 5.

Mr. Burnett is aware of many other concerns expressed by the residents of Farmington Crossing, and Garbett has indicated that they are willing to meet with the current HOA about divesting themselves of the control of the Farmington Crossing HOA much sooner than they would otherwise be required to do—possibly within a year. But those issues must be handled by the HOA and Garbett—the City cannot be involved. In conclusion, he strongly recommended that the Council approve the Settlement Agreement.

John Bilton asked the attorney to explain what he found or did not find in the City's records. **Mr. Burnett** said that while the records could have been better and more specific, he is not sure it would have made any difference in the final analysis. He has encountered situations where an applicant or developer requests a rezone with a plan to build a certain type of product, but unless that representation is written very specifically and is accompanied by some type of exchange in value—higher density or extra things that the applicant received as a benefit—it is very difficult for a city to defend. As he reviewed the legislative and administrative records, he found that the feelings of City officials were not stated as strongly as they recollect. He did not find in writing the kind of promise or assurance which would be enforceable. **Jim Talbot** asked: "So even if the original contract with Garbett had stipulated in writing the fact that the units must be owner occupied, the law or property owner's bundle of rights would have superseded the written contract because of individual property rights?" **Mr. Burnett** said that was likely, unless the City could show that they received increased density or some other benefit above and beyond that provided by the zoning. He believes the outcome would have been the same even if it had been spelled out more clearly.

The **Mayor** said this project began 7-8 years ago prior to his election to this office, and it was approved as an owner-occupied development—it would never have been approved as a rental project. The City stubbed its toe, and he apologized. He realizes that the apology does not make the situation right, and wanted to continue the fight but realized that the City does not have a leg to stand on. He must look at the City as a whole—if the City pursued and then lost this case, the rest of the City would pay for that loss.

Sid Young thanked the **Mayor** for his comments. He has been very concerned about the residents' concerns and said that each Council Member took notes during the public hearings in an effort to understand their feelings. This is not an easy decision, but at this juncture, it is important to make a wise decision.

Jim Talbot has been involved with Farmington City government for seven years, and from the beginning he was on board with this project and believed it would benefit the City. He trusted Garbett Homes, and it was absolutely clear to him that the entire project should be owner occupied. He has struggled with this decision, and it has been the most hurtful of all the decisions he has had to make. There was clearly an agreement between the City and Garbett Homes for an owner occupied community, and to have this raise its ugly head is unbelievable. He has learned a huge lesson, and the City must be very careful in the future to fully understand property rights.

John Bilton said he has also been very frustrated by this dilemma. He was a Planning Commission member at the time and heard the details of this issue numerous times. It was represented, marketed and sold from the beginning that it would be owner occupied. But he also realizes that the Council represents the

entire City and feels he has no choice but to approve the Settlement Agreement. He knows there are HOA, maintenance, and other issues in Farmington Crossing, but those are separate from this component.

Rick Dutson said that shortly after one of the first phases of Farmington Crossing was completed, the Council heard rumors that rental units were being allowed there. Garbett was reminded that rental units were not part of the agreement, but the issue of hardship cases arose, and the Council agreed to allow rentals in those situations. During the 8 years he has served on the Council, this is the most distasteful vote in his career. Had he known the City would be facing this decision tonight, approval of the project would never have been granted. This situation has clouded the Council's judgment in other areas of the City. He feels bitterness regarding this issue, but he will reluctantly support the attorney's recommendation to settle this issue.

Motion:

Rick Dutson made a motion to approve the Agreement between Farmington City and Farmington Development Corporation settling issues related to a lawsuit by the developer regarding the final phase of the Farmington Crossing North project (Phase 5 consisting of 93 dwelling units) located west of US 89 and south of Shepard Lane. **Sid Young** seconded the motion which was approved by Council Members **Bilton**, **Dutson**, **Talbot** and **Young**.

Recess:

*The **Mayor** called for a brief recess to allow the room to clear at 7:40 p.m., and the meeting was resumed at 7:50 p.m.*

Planning Commission Appointments

Mayor Harbertson presented the following names to be appointed as Planning Commissioners:

- **Bob Murray** will serve a 2-year term for the unexpired term of **Nelsen Michaelson**.
- **Kris Kaufman** will serve a 2-year term for the unexpired term of **Jim Young**.
- **Brett Anderson** (current alternate) will serve a 3-year term to replace **Steven Andersen**.
- **Brigham Mellor** will serve a 4-year term to replace **Randy Hillier**.
- **Michael Nilson** will serve an additional year (5 years total) extending his term to Dec. 31, 2015.
- **Brad Dutson** will serve as an alternate for a 1-year term.
- **Mack McDonald** will serve as an alternate for a 1-year term.
- **Nate Creer** will serve as an alternate on the Board of Adjustment (BOA) for a 1-year term.

Motion:

Sid Young made a motion to accept the volunteers to serve on the Planning Commission as presented by the **Mayor.** The motion was seconded by **Jim Talbot** and approved by Council Members **Bilton**, **Dutson**, **Talbot** and **Young**.

PUBLIC HEARING:

Consideration of Schematic Plan approval for Spring Creek Estates Phase 6

Christy Alexander reported that the Planning Commission approved a request for Minor Plat Approval on Phase 6, but the schematic plan should have approved prior to the minor plat approval. This

meeting was arranged to allow the review of the schematic plan. The developer is requesting the addition of nine lots which covers most of the open space, and several lot line adjustments will cover the remaining open space in Phase 3c. A small amount of open space in the south and east area of Parcel E will be conveyed to the City. Details concerning the yield plan and waiver request are included in the staff report.
Public Hearing: *The public hearing was opened at 8:00 p.m.*

Larry Haugen, 94 East 500 North, owns ten lots in this area and asked if the Burke Lane extension and underground improvements would continue to the D&RG railroad or end at Lot 604. **Ms. Alexander** replied that the improvements will end at Lot 604. He thinks this proposal is a good idea.

Jordan Carver, 692 North 1875 West, said there are currently 11 children who live near the intersection of Burke Lane and 1875 West. Vehicles coming from the Farmington Ranches and Meadows areas drive too fast, and he and his neighbors are concerned about safety. His second concern is the curb and sidewalk that may come through the area to access the trail system. The road was recently improved to decrease the bumps, but it is narrow, and numerous construction vehicles are making it a dangerous area. He and other residents in the area support the idea of blocking off one of the streets to avoid having a triangle of streets around these homes. The **Mayor** suggested that he contact the City Police Chief and request the use of a speed trailer and/or speed gun.

Kenny Frazier, Lot 301, agreed that traffic is an issue, and because it is a higher elevation going to a lower elevation, speeding is more prevalent. He asked where the stop sign would be located.

City Engineer **Paul Hirst** said it was never the City's intension to have the crossing over the D&RG railroad tracks as a continuous, permanent passageway. The plan was to create two cul de sacs on either side of the rail trail, and the road in front of the **Flanders**' lot was going to be closed off and become a limited access road, and the traffic would be funneled to the major collector road. If that is the case, there would be a stop sign at the Burke Lane intersection. As far as the private homes on the diagonal are concerned, it may be better to cul de sac it off at Burke Lane and let the traffic go back to the north and enter on 1875 West.

Lane Sweat, 696 North 1825 West, lives on the east side of Lot 201, and he thanked the City for remembering their agreement to place a cul de sac in this area. He agrees with the comments made by his neighbors and urged the City to provide assistance for the busy intersection on Burke Lane and 1875 West.

Howard Kent, 261 East 300 South, Salt Lake City, is the developer of Spring Creek, and he is diligently working on finishing the improvements in the area.

Dave Millheim said the City requires impact fees to be paid prior to the recording of the plat/sale of lots. There is a separate portion—the $180,000 valuation of the open space—which will be written into a separate agreement following approval of the Schematic Plan. **Mr. Kent** has chosen, at considerable risk to himself, to install the improvements without the plat being recorded. It is not a good practice because of the risks involved, and the Council has decided that cannot happen in the future. Because this project was significantly underway, the City allowed **Mr. Kent** to finish the work at his own risk.

Mr. Kent said he does not agree with Farmington City's policy that all of the improvements must be installed prior to recording the plat. It is very commonly done in other cities in the area, and it allows flexibility. He thanked the City for their efforts concerning this development and said he realizes that he must pay $180,000 and impact fees prior to the recording of the plat.

Carolyn Sweat, 696 North 1825 West, said there is only one street in the area despite the numerous homes being built, and she asked when the other streets would be installed. The City Manager said they hope the roads will be completed in the next two years but there are no guarantees.

The public hearing was closed at 8:25 p.m.

Commissioner **Rick Draper** is a development banker, and he believes this is comprehensive analysis and a fair valuation for the property.

Motion:

Rick Draper made a motion to recommend that the City Council approve the Schematic Plan for Spring Creek Estates Phase 6 with all applicable development standards and ordinances and the conditions and findings listed below. The motion was seconded by **Brett Anderson** and approved by Commission Members **Andersen**, **Draper**, **Hillier**, **Michaelson**, **Wagstaff**, and **Young**, and Alternate Commission Members **Anderson** and **Kaufman**.

Conditions:

1. The City Council must grant a waiver of open space or conservation land as per Section 11-12-065 of the Zoning Ordinance and must enter into an agreement with the property owner to include, among other things, a determination that the valuation of the 9 additional lots is fair to both parties and the assurance that any loss of open space in Spring Creek Estates must result in comparable compensation, off-site improvements, amenities or other consideration of comparable size, quality and/or value.
2. The development agreement for the entire Spring Creek Estates subdivision must be amended to incorporate the changes.
3. The final plat (or plats) and improvement drawings shall be prepared, reviewed, and approved by all applicable reviewing entities including, but not limited to, planning, engineering, storm water, sewer, culinary and secondary water, fire, and public works.
4. The applicant must comply with all conditions of preliminary plat approval for the entire Spring Creek Estates subdivision and provisions of the development agreement.
5. The $180,000 valuation for the proposed nine lots must be paid to the City prior to plat recordation.

Findings:

1. The proposed schematic plan complies with the Subdivision Ordinance if the City Council grants a waiver, which waiver will result in comparable compensation, off-site improvements, amenities or other consideration of comparable size, quality and/or value.
2. The projected consideration, or land costs to Farmington City, of at least $180,000 for the area encompassing the proposed 9 lots (approximately 4.3 acres) exceeds the value of recently sold nearby conservation land as pasture/farm land. The more than comparable value will significantly help the City elsewhere acquire and/or improve usable park land or open space.
3. The City will, in time, realize a gain of approximately $80,000 in impact fees from the development of the 9 lots (part at plat recordation and part upon the issuance of building permits).
4. The four existing open space areas constitute small remnant parcels with little public benefit because individually the open spaces are isolated behind private property or configured in long, narrow strips of unusable land not as desirable for public space.
5. Long-term maintenance obligations with the four parcels will no longer be necessary.
6. The action sets a good precedent for the City to meet its goals for future parks and open space.

7. The action also supports the City's goals to enable Burke Lane to connect with 1875 West Street as contemplated by its Master Transportation Plan.

Motion:

Rick Dutson made a motion to approve the Planning Commission recommendation subject to the same conditions and findings. The motion was seconded by **John Bilton** and approved by Council Members **Bilton**, **Dutson**, **Talbot** and **Young**.

The **Mayor** expressed appreciation to **Steven Andersen** and **Randy Hillier** for their service on the Planning Commission. He told all of the Commissioners that the Council takes their recommendations very seriously, and the Commission plays a large role in the issues which happen in Farmington City.

FARMINGTON CITY COUNCIL MEETING

The regular City Council Meeting began at 8:40 p.m.

PRESENTATION OF PETITIONS AND REQUESTS:

Presentation of "Award of Financial Reporting Achievement" to Keith Johnson

Galen Rasmussen, representative for the Utah Government Finance Officers Association, presented this award to City Finance Director **Keith Johnson**.

Review and Acceptance of the CAFR for Fiscal Year 2011

Mayor Harbertson reported that the City's General Fund balance exceeds the State limitation by 18%, and some of that money will need to be moved to a capital project fund in 2012. He said additional details were provided by Ulrich & Associates during the work session. He commended City employees for their great work and conservative approach to the City's budget. **Sid Young** expressed gratitude to Ulrich & Associates for their thorough audit.

Motion:

John Bilton made a motion to approve the Comprehensive Annual Financial Report for the Fiscal Year 2011. **Sid Young** seconded the motion which was approved by Council Members **Bilton**, **Dutson**, **Talbot** and **Young**.

REPORTS OF COMMITTEES/MUNICIPAL OFFICERS:

Executive Summary of Planning Commission held November 10, 2011

PUBLIC HEARING:

Local Consent and Approval for a Parkstone Wood Kitchen & Bar Class B Beer License

The **Mayor** explained that this is a new restaurant which will be located in the Station Park development. He expressed concern about the name "Bar" and discussed the issue with **Craig Trottier** who plans to meet with the owners and discuss the possibility of changing the name to "Grill" rather than "Bar."

Public Hearing: *The public hearing was opened at 8:45 p.m. There were no comments, and the public hearing was closed.*

Motion:

Sid Young made a motion to approve the Class B Beer Liquor License Application and the Local Consent form for the state liquor license with the following conditions:

1. The restaurant will provide the required Surety Bond form for Class B licenses and $1 million DRAM insurance will be covered by their existing corporate insurance;
2. The State liquor license must be received before the Beer License is actually issued;
3. All conditions of Title 32B of the Utah State Code and City Ordinances must be met.

The motion was seconded by **John Bilton** and approved by Council Members **Bilton**, **Dutson**, **Talbot** and **Young**.

SUMMARY ACTION:

Minute Motion Approving Summary Action List

1. Kimoto Lot Line Adjustment
2. Ordinance establishing dates, times and places for regular City Council Meetings
3. Approval of Minutes from December 6, 2011
4. Resolution to amend the City's Personnel Policies & Procedures
5. Ordinance vacating the 100 North right-of-way for Rocky Mountain Power
6. Agreement with Rocky Mountain Power

Motion:

Sid Young made a motion to approve the items on the Summary Action List. The motion was seconded by **Jim Talbot** and approved by Council Members **Bilton**, **Dutson**, **Talbot** and **Young**.

GOVERNING BODY REPORTS:

City Manager Report

- The upcoming agenda for January 3, 2012 will include the swearing in of two new City Council Members and thanks to the two outgoing Members.
- The Building Activity Report for November is also included in the staff report.
- Nepotism issues and suggestions will be discussed on January 3rd.
- The Agreement for maintenance of the Legacy Parkway Trail will be presented for approval on January 3, 2012.

Mayor Harbertson & City Council Reports

- He thanked **Holly Gadd** for her efforts with the annual employee Christmas luncheon.
- He distributed a list of the various committee assignments which are filled by the City Council. He asked each Member to choose the assignments they are interested in—official assignments will made on January 3, 2012.

John Bilton

- He expressed concern regarding the differences in maintenance standards (on the Legacy Trail) that will likely result with various jurisdictions being involved.

Rick Dutson

- He and the Mayor and several City employees met with Kent Money, the LDS Church's Utah-based property arm manager and obtained interesting feedback regarding how to move forward with the Station Park development. He advised the City to not to do anything until UDOT has announced final plans for the Legacy extension. Once that is determined, the City should conduct a marketing study and work with stakeholders to make a plan.

Sid Young

- He inquired about a water issue at the end of Oak Lane, and the City Manager reported that the Public Works Dept. located and repaired a valve that was sticking.
- He suggested the possibility of placing speed monitors in various subdivisions throughout the City. The Mayor agreed and asked the City Manager to include the proposal in the next budget.

Jim Talbot

- No comments.

ADJOURNMENT

Motion:

At 9:05 p.m. **Rick Dutson** made a motion to adjourn the meeting. The motion was seconded by **Sid Young** and approved by Council Members **Bilton**, **Dutson**, **Talbot** and **Young**.

Holly Gadd

Holly Gadd, City Recorder
Farmington City Corporation