

## FARMINGTON CITY – CITY COUNCIL MINUTES

AUGUST 4, 2020

### WORK SESSION

*Present: Mayor Jim Talbot; City Manager Shane Pace; City Councilmembers Brett Anderson, Scott Isaacson, Shawn Beus, Amy Shumway, and Rebecca Wayment; City Recorder Holly Gadd; Community Development Director Dave Petersen; Assistant City Manager/Economic Development Director Brigham Mellor; Assistant City Manager/City Engineer Chad Boshell; and City Attorney Todd Godfrey.*

### **CALL TO ORDER:**

Mayor **Jim Talbot** called the meeting to order at 6:00 p.m. Councilman **Scott Isaacson** offered the invocation.

### **PATSY’S MINE CLOSURE**

City Manager **Shane Pace** said he has had two meetings with the U.S. Forest Service regarding a State grant that is being used to close mines in Davis, Weber and Morgan counties. Davis County was looking at taking over Patsy’s Mine, but has now stepped back. Davis County Commissioner **Randy Elliott** asked **Pace** to become involved. The only thing that is possible is an exchange, which takes an act of Congress. The Forest Service said they will close the mine whether or not there is a future exchange. Since, **Pace** has spoken with **David Petersen**, Executive Director of Utah Risk Management Agency, of which Farmington is a member. That is the agency the City runs their liability insurance and risk management programs through. **Petersen** comes from risk management with Brigham Young University and was a former fire fighter for Sandy City and Nevada. He has been doing some research about what it would take to insure and maintain a mine.

**Peterson** said the trail itself has some governmental immunity if a claim were filed. However, the mine is another matter. There is not a policy existing that covers mines, abandoned or operating. It is a specialized policy offered only by AIG and Lloyds of London, which is expensive. They have a minimum premium that considers considerable risk like risk of collapse because of lack of shoring and regular engineering. It would take between \$50,000 and \$250,000 for an annual premium. Toxic environment, wet surfaces, and flooding are other issues to consider. If the City would want to take over possession of the mine, he recommends purchasing insurance. He also suggests doing a structural assessment of the mine, with regular assessments done by a structural engineer. If there is any type of geologic change, it would need to be assessed again. There would also need to be regular gas monitoring, as well as other ongoing monitoring and control measures. He has heard that rocks have fallen from the ceiling and the mine used to go in farther in the past. Farmington is currently covered under a commercial general liability policy covering city operation, parks and recreation, law enforcement, etc. Acquiring a mine is not covered under the policy.

Councilman **Shawn Beus** asked if **Petersen** was aware of a self-insurance pool. **Petersen** said Utah Risk Management Agency is self-insurance, with additional catastrophic insurance. He talked with someone at the Utah Attorney General's office about if mines could be included in governmental immunity if held as part of a recreational area not being used for mining operations. That office said the mine itself would not be covered, but the trail going to and from would be. He consulting with a handful of attorneys to see if there is any case law regarding mines and governmental immunity, and none could be found in the State of Utah. Litigating a case like this would be new ground. He also looked up the legal description of a mine, and said if mining operations had commenced at some point in the past, it met the description of a mine. He said it is an anomaly in the state, as he couldn't find another city or county in the state that owns a mine. They are all on state or federal property. The actuary said mines are like earthquakes, which they can predict will happen, but not when. Mine ownership brings with it significant risk.

**Mayor Talbot** said the City has to consider their fiduciary duty and if it is wise to own a mine. Councilman **Brett Anderson** said the possibility of a lawsuit from a City-owned mine freaks him out. **Isaacson** said the only option seems to be to persuade the Forest Service not to close it.

**Pace** said as city manager, he cannot recommend taking possession of the mine because of the cost of exchange, annual insurance, and continual inspection. It is not in the City's purview. He has explored getting the mine on the National Historic Register, as there are other mines on the register. He emailed a heritage program manager for the U.S. Forest Service and gave him all the details about Patsy's Mine. He did not immediately decline the request, but said he would get back with **Pace**. **Pace** said there may be a possibility of making progress on getting it listed on the National Register, but he does not know the requirements. There is a lot going on at Flag Rock that the Forest Service ignores, and some worry that the more pressure that is put on the Forest Service, the more they may take a conservative approach to Flag Rock. It is the same trail to both Flag Rock and Patsy's Mine. **Pace** doesn't know if there are protections for properties listed on the register that may convince the Forest Service not to close it.

**Isaacson** said it may be better to plug the mine further in, and place a historic plaque outside. **Pace** said he doubts the Forest Service will reconsider their decision to shut it off up front in September. He said the Forest Service is aware of the City's efforts to keep the mine open. Councilwoman **Rebecca Wayment** said it may be good to alert news crews to the issue. **Pace** said the City cannot get involved in that way.

## **MODERATE INCOME HOUSING**

Community Development Director **Dave Petersen** said this information was requested at the last City Council meeting. He and staff could not answer the questions, so they asked experts to come in and address the Council.

Davis County Commissioner **Lorene Kamalu** introduced **Kim Michaud**, Deputy Director with Davis Community Housing Authority, recalling when she first met her and took her on a tour of affordable housing, which blends in with the community. **Michaud**, a 30-year resident of Farmington, said the authority was formed in 1972 as Davis County Housing Authority. She

introduced the statewide fair market report, which details that a Utah resident making minimum wage would need to work 109 hours a week to afford a two-bedroom apartment at fair market rent rates. Previously she read the City's affordable housing plan, which details that only 30 percent of income should be spent on housing to make it affordable and sustainable. The waiting list is about two years long for a subsidized housing voucher. It is tricky to find properties that will accept rental rates that the agency is willing to pay. The Authority owns about 20 units that it is willing to rent out at affordable rates, most of them single family homes rented out for \$800 a month.

Davis Community Housing Authority Board of Directors Vice Chair **Stephen M. Tumblin** addressed the Council. He said the County is going through a housing study to assess what the housing stock in the county is, and how affordable housing can be increased. He said the Community Development Block Grant (CDBG) gives the Authority about \$940,000 annually.

**Mayor Talbot** said while Farmington may not have a lot of affordable housing, it has more apartments than neighboring cities. He suggested that the Authority controls the CDBG purse strings, should ask Davis County to get further involved, and perhaps develop ground they own. **Tumblin** said they can only use 15 percent of CDBG funds that way. They can buy the ground and pay for utilities, but they cannot build the building.

**Michaud** said the benefit of a property owner renting in cooperation with Davis Community Housing Authority (DCHA) is that they will always get the full rent check on time every month, and a pool of money can help pay for damages if the owner gets a judgement in court. She would like to get the word out about these benefits. She said the Authority also helps administer federal money to first-time home buyers in the County, Layton City, and Clearfield City with households at 80 percent of area median income. They also help with emergency home repairs that would correct code violations. They have 51 vouchers in Farmington, which is 5 percent of the total in the County. Most are at Rose Cove senior housing, where rents are increasing. There are nine units at Farmington Crossing on the credit to own program, where they will become homeowners with about a remaining \$80,000 mortgage at the end of the program.

She said it would be helpful for the City to help facilitate a meeting with local developers to discuss their program. However, if their rents are higher than the Authority's allowed \$800 a month, multifamily units cannot be considered affordable housing stock in Farmington. She said tax credits are a good public-private way to get affordable housing, but the market bears out that landlords can often get higher rents otherwise. The Authority's next five-year plan is due in 2021, and they want better outcomes in the next five years. They have to decide on the focus, whether it be homelessness, affordable housing, housing repairs, etc.

**Beus** said he would like to put together an affordable housing task force in Farmington, and **Michaud** would be a good addition to that body.

**Mike Plaizier** addressed the Council. He is a member of the Farmington Planning Commission with affordable housing experience after owning a nonprofit. He said affordable housing and transportation affect the strength of families. He discussed area median income (AMI) for Davis County to Ogden, which is \$86,300. Moderate income is 80 percent of that. Low income is

under 60 percent of AMI. Very low income is 50 percent of AMI. Extremely low income is under 30 percent of AMI. He advocated for developers dedicating a portion of their projects to affordable housing for income-verified recipients. He brought up both incentives and “penalties.”

**Pace** said a task force is an excellent idea. To work towards an aggressive moderate housing program, it is necessary to team up with Davis Community Housing Authority. He doesn't want a program that takes a high amount of management effort, so teaming up is important. He said it may be worth exploring Transfer of Development Rights (TDRs) that go toward moderate income housing.

**Isaacson** said public relations are needed in this effort so residents don't worry about decreased land values, stereotypes, etc. “Sustainable housing” and a “diverse array of housing” are other terms that can be used to describe affordable housing that are better accepted by the community.

**Petersen** noted that **John Saltsgiver** is in attendance today, and he is interested in the City's take on affordable housing. **Pace** said the DCHA could submit answers to the City Council's specific questions about moderate income housing during recent past meetings, and the City Council should address this issue as it directly relates to **Saltsgiver** in a future meeting.

## **BUSINESS PARK**

**Pace** addressed the Council, commenting on what lessons the City has learned during recent negotiations on the Business Park. Assistant City Manager/Economic Development Director **Brigham Mellor** addressed the Council. At one point, the City was meeting bi-weekly in negotiations with STACK Development, and they became emotionally invested in the project. In the end, they had to make a decision that best benefitted the City.

Things that have been learned during the process:

1. Property owner relationships. Several respected individuals were put under contract for this project, and it became uncomfortable.
2. Public sentiment toward the project. The public wants roads and displayed that they desire office use with some residential uses. They don't want any more retail. Six-story office buildings are scary along the rail trail against the residential.
3. The public trusts the administrative vision of the area. Many people, including five property owners, participated in the discussion, and it was rarely negative. The public trusts the City Council's decision.
4. The public has understood that the Denver and Rio Grande Western Rail Trail (D&RGW Trail) width and gas line easement is a long distance, about half a block.
5. Housing to commercial ratio. Their proposal was 55 percent commercial/office/retail/nonresidential uses, vs. 45 percent residential. The more comfortable ratio would be 65 percent/35 percent. Density is less important than the quality of the design. This area needs to be truly unique without segregated uses.
6. Public transit should be considered in this entire development.
7. Trails are essential to marketability of an office park.

8. Road alignment. New alignments need to consider Interstate 15, not just property lines. The focus is on Commerce Drive, and Digital may have to wait north of Burke Lane.
9. Connectivity of the roads is needed. The public needs to feel safe walking on the roads in a walkable community.
10. Infrastructure. Sewer will be an issue regardless of what is built. Power is yet to be determined, and the City can't commit to power infrastructure improvements. Fiber is less of a problem, but the City is not the owner of that. Culinary water storage is a long-term issue. Gas is unknown. Impact fees cannot be used to build secondary water infrastructure, and funding needs to be figured out.
11. Roads must be put in as soon as possible. Accessibility to property is crucial, and developers cannot be relied upon to construct the roads in an unproven market.

City Attorney **Todd Godfrey** said that the further along the City can take a project, in building out roads and infrastructure, the broader the market of developers will become. It will level the playing field of who can develop the property. **Pace** said it will greatly simplify reimbursement agreements. Once roads are in, the marketability of land increases.

12. Incentives. Tax incentives are intended to hedge the risk of creating a new employment center, which was the deal made with the taxing entities. Road construction is an incentive, as is any housing opportunity. More incentives will be offered out the gate in an unproven market vs. later developers in proven markets.
13. Nothing is a done deal until it is done. This will take 30 years to build out, with lulls and periods of intense activity along the way. Accelerations can be detrimental if it is the wrong deal.
14. Hiring a consultant to help update the UDA 2016 plan, considering an upcoming transition in the real estate market.
15. Affirmation that Farmington has an unsurpassed opportunity on the Wasatch Front to do something amazing in this area. The City is an investment partner in this project, and is in the market for a developer that shares its vision. The risk of COVID was too great to continue with the STACK negotiations. Farmington has to stick to what is best for the City as a whole. The public is invested in the City's vision for this area. The City is now better prepared to go forward.

**Pace** said the City recruited developers for this project, approaching several that were the best and brightest. There was a term sheet made available to developers, and the City considered many proposals. COVID made it so STACK didn't want to develop office first, and that was something the City couldn't bend on. There were extensive talks about housing and Rights of Way. It got to where STACK was in a hurry to extend their contracts. In the end, it was a loss of trust and the City Attorney was involved in the negotiation. **Pace** was angered and frustrated when STACK presented their reimbursement agreement, which minimized their risk and threw it all on the City. He could not recommend that agreement to the City Council. Roads were a big thing, as STACK wanted the City to commit to having all the roads in by 2022, then 2023. While there is a funding plan in place, it has a lot to do with how much comes in from third quarter funding, which doesn't happen until September. He lost trust in STACK at the point they

presented the reimbursement agreement. He concluded that STACK is a big builder that builds great buildings, but they do most of their work on already platted and entitled property. They were not experienced in going through the development process up front. He believes they sent the reimbursement document out of lack of experience. They would not take the City's agreement, which **Pace** thought was a good agreement that other developers would have taken.

He was told by a third party that STACK now has \$400 million that they need to reinvest, which is a different story than the City has been hearing from them in a year and a half. They were saying they needed \$55 million as a return to investors. Those stories don't match up. **Pace** said he doesn't know what the truth is. There may be an opportunity to meet with them again in the future. There are four different property owners with land along the I-15 corridor, which is where office would be best. **Mellor** said STACK didn't want anyone on neighboring property competing with their office use, which is why they wanted a contract on such a large amount of land—to control the market. This is why they likely won't reduce contracts to just the I-15 office area.

**Godfrey** said he doesn't believe the City and STACK were ever as close in negotiations as other City staff thought they were. **Isaacson** said that if it weren't for the pandemic, the City would have had the development agreement presented to them in March. He was concerned that if both parties were so far apart on such fundamental issues, it shouldn't have been presented in March. **Pace** said that he anticipated approving a development agreement first, to be followed by several months of working out the reimbursement agreement. **Godfrey** said he usually sees them presented at the same time, not separated. He doesn't feel the City should commit to a development agreement without knowing the commitments of the reimbursement agreement.

**Mayor Talbot** said he thought the two parties were close in that the vision seemed the same initially, because both wanted commitment to office. However, he said **Godfrey** saw right through some things that Staff didn't. **Godfrey** said the City needs to stand by the commitments they had made previously to the taxing entities. COVID made the bridge too big to build. They couldn't see beyond the risk of current market conditions; and the City couldn't see beyond the risk of entitling a whole bunch of residential uses not knowing when the City would get the "key" (office) to the whole project.

**Isaacson** said there is not an effort to find fault, but lessons need to be learned. He was struck by how many zeros were in the agreements, hundreds of millions of dollars in places. With a contract of that size, the City needs to be on the ball up front. He recommends that the City Attorney should be involved earlier in the process. **Isaacson** said he can see why STACK got frustrated with the Staff. **Pace** said they made it clear that nothing was certain until a legal review had been done and the City Council had approved things. Something good that came of this is that **Godfrey** drafted a useful reimbursement agreement that can be used in the future. **Pace** said Station Park is the only true reimbursement agreement the City has ever done. **Mellor** said the City was lucky that Station Park didn't take advantage of the City with that agreement. **Godfrey** said the Station Park agreement is a traditional common increment reimbursement agreement for the 2004-2008 time period.

## **GOVERNING BODY REPORTS:**

### **Mayor Talbot and City Council Reports**

**Mayor Talbot** addressed the parking situation at Farmington Crossing, that there are perhaps not enough stalls for the people living there. The City allowed the Police Department to put no parking signs on Shephard Church Drive, a public street there. The management company of Farmington Crossing reacted, saying they appreciated that parking was being restricted on that road for safety reasons. However, some residents have a hard time with the parking restrictions. **Mayor Talbot** said the City is hesitant to paint the entire curb red there, but staff is watching it, as it is a work in progress.

**Pace** said the Homeowners Association (HOA) there didn't start charging for parking until 2016. They are required by their zoning approval to have 282 guest parking stalls, which they now charge for. **Pace** said the City they think that is a violation of their zoning approvals, and a letter will be sent to the HOA regarding that violation. The City will request that the HOA stop charging for those 282 guest parking stalls. The HOA charging and the LDS church prohibiting parking in their lot has brought this issue to a head. The Police Department went back 10 years and the only accidents they have had in the area have involved fire hydrants, not collisions or pedestrian accidents. The facts don't indicate it is a safety issue. **Pace** feels the biggest issue is that the HOA began charging for those stalls, and that pushed people from inside the neighborhood to park on that public street.

**Wayment** said she has lived on a street that was marked no parking. She said there should be no problem that the parking situation is trying to be figured out. She is glad that the City did not paint the curb yet and only did signs that can be taken down if it is needed.

**Pace** said he is happy to email the residents who have voiced concern to inform them of what is being done so far. It is a fad that apartment complexes have started charging for parking as a revenue source, and it is maddening because it causes more parking on public streets. He said he will send those emails tomorrow.

**Shumway** said she has been driving these roads for nine years, and it has only been a problem recently. There are 510 housing units in that area that all converge to that one street. So when both sides of the street are crowded, through traffic has to stop. It is on a curve, there is a trail, and there are young children in the area. It is a dangerous area. She said the management company is very aggressive at towing cars, which costs \$300 for those in violation. **Mayor Talbot** said that is an expensive towing ticket. Shumway said that now all those guest parking spots are empty because no one wants to pay an extra \$25 per month to use them.

**Mayor Talbot** wants to get something to the management company as soon as possible, as it is important to the people in the area.

**Godfrey** recommended that Pace pursue the zoning enforcement and in the meantime Councilmembers should tell those they hear from that they are aware of the situation and are currently collecting data.

## CLOSED SESSION

### *Motion:*

**Beus** made the motion to go into a closed meeting for the purpose of property acquisition. **Shumway** seconded the motion, which was unanimously approved.

### **Sworn Statement**

I, **Jim Talbot**, 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.

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**Jim Talbot**, Mayor

### *Motion:*

**Wayment** made a motion to reconvene to an open meeting. The motion was seconded by **Shumway**, which was unanimously approved.

**Shumway** asked about the email regarding property by Canyon Creek Elementary. **Mayor Talbot** said that six acres is part of the negotiation with UDOT and is a great opportunity. He foresees that it will remain an open space park. **Shumway** said it is a nice spot for a trail head.

**Pace** said there is good progress on modifying the space upstairs.

## ADJOURNMENT

### *Motion:*

**Shumway** made a motion to adjourn the meeting. **Beus** seconded the motion, which was unanimously approved.

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**Holly Gadd**, Recorder