CITY COUNCIL AGENDA

Wednesday, July 11, 2018

NOTICE IS HEREBY GIVEN that the Herriman City Council shall assemble for a meeting in the Herriman City Council Chambers, located at 5355 West Herriman Main Street, Herriman, Utah.

5:00 PM - WORK MEETING: (Fort Herriman Conference Room)

1. Mayor and Council Social
   1.1. The Mayor and Council will meet for informal discussion and dinner. No action will be taken on any items.

2. Council Business – 5:15 PM
   2.1. Review of this Evening’s Agenda
   2.2. Future Agenda Items

3. Administrative Reports
   3.1. Surplus Vehicle Discussion – Monte Johnson, Operations Director
   3.2. Discussion relating to study of the Olympia Hills Development – Michael Maloy, City Planner
   3.3. City Manager Updates – Brett Wood, City Manager
   3.4. Boundary Adjustment to Riverton Border – Blake Thomas, City Engineer
   3.5. Legal Update relating to Mascaro and Alpine Homes Lawsuit Decision – John Brems, City Attorney

4. Adjournment

7:00 PM - GENERAL MEETING:

1. Call to Order
   1.1. Invocation/Thought/Reading and Pledge of Allegiance
   1.2. Council Disclosure for Conflict of Interest
   1.3. Mayor/Council Comments and Recognitions

2. Public Comment
   Audience members may bring any item to the Mayor and Council’s attention. Comments will be limited to two minutes. State Law prohibits the Council from acting on items that do not appear on the agenda.

3. Mayor and Council Board and Committee Reports
4. **Reports, Presentations and Appointments**
   4.2. Resolution to Appoint two Planning Commissioners and one Alternate Planning Commissioner – Michael Maloy, City Planner
   4.3. Herriman Police Department Update – Chief Troy Carr
   4.4. Unified Fire Authority Report on Fireworks – UFA Chief Riley Pilgrim

5. **Public Hearing**
   5.1. Public Hearing and Consideration of a Resolution Amending the 2018-2019 Herriman City Fiscal Budget, including information regarding the Truth in Taxation Public Hearing scheduled for August 16, 2018 at 6:00 pm – Alan Rae, Finance Director

6. **Consent Agenda**
   6.1. Approval of the April 11, 2018 and June 20, 2018 City Council Meeting Minutes
   6.2. Approval of an Ordinance Declaring City Vehicles as Surplus, Establishing a Minimum Bid, and Establishing a Method to Determine the Highest and Best Economic Return to the City – Monte Johnson, Operations Director
   6.3. Approval of an Ordinance granting an Electric Utility Franchise and General Utility Easement to Rocky Mountain Power – John Brems, City Attorney
   6.4. Approval of a Resolution Authorizing and Directing the City Manager to Enter into an Access Agreement with Rocky Mountain Power Allowing the City and its Designated Artists to Decorate Certain Pad-Mounted Equipment Owned by Rocky Mountain Power – Wendy Thomas, Director of Parks, Recreation and Events

7. **Discussion and Action Items**
   7.1. Discussion and Consideration of a Resolution approving the First Amendment to an Interlocal Cooperative Agreement between the Local Building Authority of the Salt Lake Valley Fire Service Area and Herriman City for the Exchange of Real Property – Blake Thomas, City Engineer

8. **Calendar**
   8.1. **Meetings**
      8.1.1. July 19 – Planning Commission Meeting 7:00 p.m.
      8.1.2. August 8 – City Council Work Meeting 5:00 p.m.; Special City Council Meeting 7:00 p.m.
      8.1.3. August 16 – Special City Council Truth in Taxation Meeting 6:00 p.m.
      8.1.4. August 16 – Planning Commission Meeting 7:00 p.m.
   8.2. **Events**
      8.2.1. July 24 – Pioneer Day; City Offices Closed
      8.2.2. August 10 – Enduro Cross; Butterfield Park
      8.2.3. August 11 – Enduro Cross; Butterfield Park
8.3. **Closed Session**

8.3.1. *The Herriman City Council may temporarily recess the City Council meeting to convene in a closed session to discuss pending or reasonably imminent litigation, and the purchase, exchange, or lease of real property, as provided by Utah Code Annotated §52-4-205.*

9. **Adjournment**

10. **Recommence to Work Meeting (If Needed)**
DATE: July 11, 2018

TO: The Honorable Mayor and City Council

FROM: Monte Johnson

SUBJECT: Surplus Vehicles

RECOMMENDATION:
Staff recommends declaring one (1) 2011 Ford F-150 truck and five (5) 2008 Ford Escapes as surplus and setting a minimum bid. Recommended minimum bid for the 2011 Ford F-150 truck is 8,500.00 and the 2008 Ford Escape hybrid vehicles are 2,800.00 each.

DISCUSSION:
We will discuss the disposition of six vehicles that were scheduled for replacement and have been replaced in the last fiscal year. We will review the process and set a minimum bid for each vehicle.

FISCAL IMPACT:
This will have a positive impact on the financial budget.
SUMMARY:

On June 20, 2018, the Herriman City Council directed staff to prepare a cost estimate and begin the process of retaining a consultant to analyze a proposed 937-acre mixed-use development known as “Olympia Hills,” which is located immediately north of the City boundary (see Attachment A – Olympia Hills Land Use Plan Map). While the subject project is outside Herriman city limits, and within an unincorporated area of Salt Lake County, it is within Herriman’s annexation declaration, which was approved December 8, 2011 (see Attachment B – Resolution 11.24 Annexation Declaration).

The proposed study intends to assess potential improvements, economics, and impacts to determine the carrying capacity—meaning development density—of the property. In response, members of City staff met with a local consultant to discuss the Council’s request for professional services.

DISCUSSION:

On June 28, 2018, Assistant City Manager Gordon Haight, and Planning Director Michael Maloy met with Bob Springmeyer, Chairman of Bonneville Research, an experienced and highly regarded business and economic development consultant, who has completed previous contracts for services with Herriman City. For those unfamiliar with Bonneville Research, Mr. Springmeyer offered the following description:

“Bonneville Research, located in Salt Lake City, Utah, was formed in 1976 as a multi-disciplined consulting firm dedicated to providing quality services and solutions in two primary consulting areas—strategic planning and economic development/redevelopment.

“We counsel public sector clients at both the state and local levels on strategic and economic planning strategies, focusing on the design of innovative programs and mechanisms to
Staff Report

achieve maximum leverage and efficiency in achieving community goals.

“We develop strategies for municipalities and economic development organizations to help steer efforts in strengthening the local economy, providing a seamless turnkey team to address all the competitive, analytical, strategic and marketing aspects for balanced economic growth.”

In response to the City’s invitation to meet, Mr. Springmeyer invited the following two additional consultants to join the conversation on how to assess the potential impacts, required improvements, and appropriate density of the proposed development:

- Tom Burdett, Principal Consultant at Burdett Planning and Development
- James Taylor, Principal Broker with Salt Lake Realty

During this meeting, staff discussed the need for an unbiased analytical approach that would generate clear and understandable results. To achieve this, staff recommended an analysis of all essential factors of land development—such as economic and environmental sustainability, topography, utilities, transportation, parks, schools, etc.—that would determine the “carrying capacity” of the land. Each factor would be reduced to a layer of information that when combined would form a rational basis for understanding what the development density should be to protect—if not enhance—property values and quality of life for Herriman residents and surrounding communities.

The staff wishes to discuss this issue further with the Council during the July 11, 2018 work meeting.

RECOMMENDATION:

No formal action by the City Council is needed at this time. However, the Council may provide additional direction to staff regarding a potential contract for professional services.

ATTACHMENT:

A. Olympia Hills Land Use Plan Map
B. Resolution 11.24
Attachment A
Olympia Hills Land Use Plan Map
Attachment B
Resolution 11.24 Annexation Declaration
HERRIMAN, UTAH
RESOLUTION NO. 11.24

A RESOLUTION OF HERRIMAN
APPROVING THE ADOPTION OF AN ANNEXATION DECLARATION

WHEREAS, the Herriman City Council ("Council") met in regular meeting on December 8, 2011, to consider, among other things, approving the adoption of an annexation declaration; and

WHEREAS, the Council has determined that it is advisable, but not necessary, to adopt an annexation declaration; and

WHEREAS, the Council has determined to declare its intent to consider for annexation the area described on the attached map.

NOW THEREFORE, BE IT RESOLVED, that the attached map indicate the intent of the Council with respect to future annexations and constitute an annexation declaration.

This Resolution, assigned No. 11-29, shall take effect immediately on passage and acceptance as provided herein.

PASSED AND APPROVED by the Council of Herriman, Utah, this eighth day of December 2011.

HERRIMAN COUNCIL

By: Joshua E Mills, Mayor

ATTEST:

Kristi Peterson, MMC
City Recorder

VOTING:

Joshua E Mills Yea X Nay
Mike Day Yea X Nay
Matt Robinson Yea X Nay
Craig B. Tischner Yea X Nay
Raquel DeLuca Yea X Nay
CERTIFICATE OF POSTING

STATE OF UTAH  
COUNTY OF SALT LAKE  

I, Cindy Quick, do hereby certify that I am the duly appointed, qualified and acting Deputy Recorder for Herriman, State of Utah, and do further certify that the foregoing is a true and correct copy of

RESOLUTION NO. 11.24

A RESOLUTION OF HERRIMAN APPROVING THE ADOPTION OF AN ANNEXATION DECLARATION

Herriman City Council duly adopted this resolution at a meeting duly called and held in Herriman, Utah on December 8, 2011 at the hour of 7:30 o'clock P.M. of said day, and I certify that after its passage I caused to be posted a copy of the Ordinance in the following location:

1. Herriman Community Center bulletin board, main floor - 13011 S Pioneer Street (6000 West)
2. Herriman Smith’s Marketplace located at 5560 West 13400 South
3. Herriman City Website: www.Herriman.org

Cindy Quick  
Herriman City Deputy Recorder
A corner of Herriman City
6400 West, thence
of 11800 South to the
ence running Northerly
111 to the centerline of
ly to the centerline of 8200
coordinate of 10100
South coordinate to the
ndary. Thence follow the
and then Easterly to the
boundary.
DATE: July 11, 2018

TO: The Honorable Mayor and City Council

FROM: Blake Thomas, City Engineer

SUBJECT: Riverton Boundary Adjustment Discussion

RECOMMENDATION:
No action required at this time.

DISCUSSION:
When Mountain View Corridor was constructed there were several locations where remnant land parcels were created. There is an existing remnant parcel located on the northwest corner of Palisade Rose Drive and Mountain View Corridor. The property is still owned by UDOT, located adjacent to and existing park and subdivision in Riverton, but resides entirely within Herriman City. The parcel does not have adequate access or area to allow for new development and as a result the only compatible use would be for a park or open space.

Staff has discussed this proposed boundary adjustment with Riverton City staff and received support to include this area into Riverton City. Riverton has plans to improve this area as a park, continuing the design of the adjacent park. These types of improvements would predominantly benefit the residents of Riverton City, since access for Herriman residents is difficult.

ALTERNATIVES:
Choose to not proceed with a boundary adjustment and plan for a Herriman park or open space at this location.

FISCAL IMPACT:
$10,000 to prepare the boundary plat.
Legend

- Herriman City Limit

AREA INCLUDED IN PROPOSED BOUNDARY ADJUSTMENT

NEW HIGH SCHOOL SITE
THE UTAH COURT OF APPEALS

LJ MASCARO INC., LELAND MASCARO, AND SHERI MASCARO, Appellants,
v.
HERRIMAN CITY, Appellee.

Opinion
No. 20160723-CA
Filed June 21, 2018

Third District Court, Salt Lake Department
The Honorable Ryan M. Harris
No. 140903070

Jeffrey T. Colemere and Brady T. Gibbs, Attorneys for Appellants
J. Scott Brown and Bradley M. Strassberg, Attorneys for Appellee

JUDGE KATE A. TOOMEY authored this Opinion, in which JUDGES MICHELE M. CHRISTIANSEN and DIANA HAGEN concurred.

TOOMEY, Judge:

¶1 Leland Mascaro and Sheri Mascaro (collectively, the Mascaros) and LJ Mascaro Inc. appeal the district court’s grant of summary judgment in favor of Herriman City, affirming Herriman City’s denial of the Mascaros’ request for nonconforming use status. We are asked to determine whether the district court correctly concluded that the Herriman Land Use Appeal Authority’s (the Appeal Authority) decision to deny the Mascaros’ request was not arbitrary and capricious or illegal. We conclude the Mascaros failed to provide substantial evidence to support a prior legal use of topsoil manufacturing and screening on their property (the Property), and therefore Herriman City’s denial of their request was not arbitrary and
capricious or illegal. The district court did not err in granting summary judgment in favor of Herriman City. Accordingly, we affirm.

BACKGROUND

¶2 According to the Mascaros, they have owned the Property since 1979, when Leland’s grandfather gave it to them as a wedding gift. In 2009, Herriman City annexed the Property, which previously had been within Salt Lake County’s jurisdiction. Under the Herriman City Code, the Mascaros’ use of the Property to perform topsoil manufacturing and screening was classified as a conditional use, not a permitted use.1 In 2013, the Mascaros submitted a request to the Herriman Zoning Administrator, seeking a determination that a nonconforming use had been established on the Property. The Zoning Administrator denied the request, and the Mascaros appealed the denial to the Herriman City Planning Commission (the Commission).

¶3 The Commission held a hearing during which the Mascaros submitted documents and proffered testimony in an attempt to support their claim that they had been granted

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1. A permitted land use, or conforming use, is one that conforms with the zoning ordinances and classifications of a particular municipality or district. Cf. Conforming Use, Black’s Law Dictionary (10th ed. 2014). A conditional use is one that does not conform with the zoning ordinances and classifications of a particular municipality or district but may be permitted “subject to special controls and conditions.” See Conditional Use, Black’s Law Dictionary (10th ed. 2014); see also Utah Code Ann. § 10-9a-103(5) (LexisNexis Supp. 2017). And a nonconforming use is one “that is impermissible under current zoning restrictions but that is allowed because the use existed lawfully before the restrictions took effect.” Nonconforming Use, Black’s Law Dictionary (10th ed. 2014).
authorization for and established their use of the Property for
topsoil manufacturing and screening. The Mascaros explained
that their family has used the Property for topsoil manufacturing
and screening since the early to mid-1950s, and that they
continued this activity when they obtained ownership of the
Property. They asserted that the Property was located in Salt
Lake County and the county did not zone the Property until
1958. Then, in 1978, Riverton City attempted to annex a portion
of Salt Lake County, including the Property. The Mascaros
informed the Commission that, while the Property was within
Riverton City’s jurisdiction, topsoil manufacturing and screening
was a permitted use because the city had not enacted zoning
ordinances until sometime after 1981. But in 1981, a district court
declared Riverton City’s annexation “null and void and of no
effect.”

¶4 According to the Mascaros, while the annexation was
being challenged, they sought a separate permit from Riverton
City for a new nonconforming building on the Property. They
informed the Commission that Riverton City stated it could not
grant the permit because the annexation was being challenged.
For the same reasons, Salt Lake County did not grant the permit
and the Mascaros built the building without permission.

¶5 The Mascaros also provided the Commission a business
license application asserting that LJ Mascaro Inc. began
operating in 1988. In this application, the Mascaros sought a
business license for “trucking, sand, and gravel” operations, but
it was instead approved for “phone and mail” use based on the
zoning ordinance governing the Property. They also provided
several business licenses from the 1990s and 2000s for “Trucking
& Courier Services.” These licenses authorized a Standard
Industrial Classification designation of “421,” which included a
variety of land use operations, but topsoil manufacturing and
screening were not listed among the authorized operations.

¶6 The Mascaros also provided documents to the
Commission showing that, in 1992, residents near the Property
filed complaints with Salt Lake County, expressing their
opinions that the Mascaros' business, LJ Mascaro Inc., was a "public nuisance" because "soil, gravel, and other materials" were being transported "across [the] private lane" in the community. Salt Lake County investigated the business, but it decided not to bring legal action "concerning [the Mascaros'] gravel operation . . . [because] it [did] not appear legal action would be successful."

¶7 In 1999, when the Salt Lake County Board of Adjustments met to consider the Mascaros' request to expand their nonconforming building "to store and maintain equipment," one member commented, "You are in a residential area and run a business from your home. The current zoning makes you nonconforming. . . . Have you considered moving your business to a more appropriate place for trucking?" The Mascaros asserted that this comment and the approval to expand the nonconforming building established that, at least as of 1999, Salt Lake County recognized that they had established topsoil manufacturing and screening as a legal use of the Property.

¶8 As further support for their request for nonconforming use status, the Mascaros provided a letter delivered to them in 2012 from a Salt Lake County councilmember that said that beginning "in 1992 or before, and continually thereafter, LJ Mascaro Trucking has been treated as a non-conforming use, as that has been your presumed status." The councilmember explained that the county had only a twenty-year record retention schedule and that because it was "likely" the county "granted" a nonconforming use to the Mascaros prior to 1992, any record of it "may have been disposed." The councilmember concluded the letter by stating that he "sincerely hope[d] that Herriman takes into consideration our account of your non-conforming use status . . . considering LJ Mascaro Trucking has been granted business licenses by Salt Lake County for over 30 years. Had there been unresolved zoning violations, it would be unlikely that [the] business license would be renewed."

¶9 Due to the large volume of documentation submitted by the Mascaros as well as the testimony proffered, the Commission
delayed making a decision until after it had an opportunity to thoroughly review the record. The following month, the Commission issued its decision in an order, concluding that the Mascaros failed to meet their burden of proving that their topsoil manufacturing and screening operations legally existed prior to Herriman City’s annexation of the Property. The Commission found that although the Mascaros had established a topsoil manufacturing and screening business on the Property at some time before Herriman City annexed the Property, the Mascaros were unable to provide any documents to support that this business had been legally established under Salt Lake County’s jurisdiction. In addition, it found that because a court determined that Riverton City’s annexation of the Property was null and void and of no effect, the Property “was never legally included in Riverton City and remained in Salt Lake County.” The Commission concluded that, as a result, the Mascaros could not rely on Riverton City’s lack of zoning ordinances between 1978 and 1981. The Commission therefore upheld the Zoning Administrator’s denial of their request for nonconforming use status.

¶10 The Mascaros appealed the Commission’s decision to the the Appeal Authority, which held a hearing and reviewed the record. The Appeal Authority reviewed the Commission’s decision to determine whether it was arbitrary and capricious or illegal. It concluded that, although the record contained facts

2. The Utah Code provides that a land use appeal authority must determine whether the land use authority correctly interpreted and applied “the plain meaning of the land use regulations” and whether it “interpret[ed] and appl[ied] a land use regulation to favor a land use application unless the [relevant] land use regulation plainly restrict[ed] the land use application.” Utah Code Ann. § 10-9a-707(4) (LexisNexis Supp. 2017). To complete its review of factual matters, the land use appeal authority must determine whether the record included “substantial evidence for each essential finding of fact.” Id. § 10-9a-707(3).
that could support a nonconforming use, they were nonetheless sufficient to support the Commission’s factual findings that topsoil manufacturing and screening was not a permitted use while the Property was within Salt Lake County’s jurisdiction. The Appeal Authority stated that the “troubling aspect” of the appeal was the effect of the nullified Riverton City annexation. It explained that the Mascaros “presented unrefuted evidence that Riverton City did not adopt any zoning regulation or zoning map for the [Property] when it was purportedly annexed,” and if the Property “was a part of Riverton City during this period of time[,] it would be possible to conclude as a matter of law the . . . use was legally established.” But because the Mascaros did not provide any “legal authority regarding the regulatory status of property [that] is the subject of a challenged annexation,” the Appeal Authority relied on the court’s order that the annexation was null and void and of no effect and concluded that the Commission’s decision was therefore not illegal.

¶11 The Mascaros sought judicial review from the district court of the Appeal Authority’s decision, asking it to determine whether the denial was arbitrary and capricious or illegal. The parties filed cross-motions for summary judgment and the district court heard argument on them. The Mascaros argued that the Appeal Authority wrongfully denied their application for nonconforming use, because the use was legally established (1) as early as the 1950s; (2) during the period when Riverton City annexed the Property; and (3) by virtue of a special application granted by Salt Lake County in 1999 for the expansion of their nonconforming building.

¶12 Herriman City argued that the Appeal Authority’s decision was not arbitrary and capricious or illegal, because the Mascaros failed to provide any documentary evidence to support the legal use of the Property for topsoil manufacturing and screening. Herriman City pointed to the Mascaros’ concession that they did not have any documents “either conclusively proving or conclusively disproving” a prior legal use. It further argued that they could not rely on Riverton City’s
LJ Mascaro v. Herriman City

annexation to establish a prior legal use because a court ruled that the annexation had no legal effect.

¶13 The district court granted summary judgment for Herriman City. Addressing the Mascaros’ three arguments that their application for nonconforming use was wrongfully denied, the court found: (1) the Mascaros conceded at oral argument that they had no definitive proof that topsoil manufacturing and screening complied with Salt Lake County zoning ordinances in the 1950s; (2) the Mascaros failed to prove that they relied on the Riverton City annexation in any manner that might constitute an exception to the null and void annexation; and (3) the 1999 special application “on its face, had nothing to do with topsoil operations.” The court concluded that the Appeal Authority did not act arbitrarily and capriciously or illegally when it denied the Mascaros’ request.

¶14 The Mascaros appeal.

ISSUE AND STANDARD OF REVIEW

¶15 The Mascaros contend the district court erred in granting Herriman City’s motion for summary judgment and affirming the Appeal Authority’s decision to uphold the denial of their request for nonconforming use status. Summary judgment is appropriate when “there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law.” Utah R. Civ. P. 56(a). We review a district court’s legal conclusions in granting summary judgment for correctness. Davis County Solid Waste Mgmt. v. City of Bountiful, 2002 UT 60, ¶ 9, 52 P.3d 1174.

¶16 Because this case “involves a challenge to a land use authority’s decision to deny an application for nonconforming use,” “we review the district court’s judgment as if we were reviewing the land use authority’s decision directly and we afford no deference to the district court’s decision.” Fuller v. Springville City, 2015 UT App 177, ¶ 11, 355 P.3d 1063 (quotation
simplified). In other words, "in [an] appeal of an administrative order, we review the [district] court's decision" for whether it "correctly determined whether the administrative decision was arbitrary [and] capricious[] or illegal." McElhaney v. City of Moab, 2017 UT 65, ¶ 26. We will not disturb the decision of a land use authority or an appeal authority unless the decision is arbitrary and capricious or illegal. Utah Code Ann. § 10-9a-801(3)(b)–(c)(i) (LexisNexis Supp. 2017).

ANALYSIS

I. Nonconforming Use

¶17 Utah Code section 10-9a-103 defines "nonconforming use" as a use of land that "(a) legally existed before its current land use designation; (b) has been maintained continuously since the time the land use ordinance governing the land changed; and (c) because of one or more subsequent land use ordinance changes, does not conform to the regulations that now govern the use of the land." Utah Code Ann. § 10-9a-103(37) (LexisNexis Supp. 2017). It is undisputed that the Mascaros have continuously used the Property for topsoil manufacturing and screening and that this use does not conform with Herriman City zoning regulations. We therefore must determine whether the district court correctly determined that the Appeal Authority did not act arbitrarily and capriciously or illegally when it denied their request for nonconforming use status based on the

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3. "[B]ecause zoning ordinances are in derogation of a property owner's common-law right to unrestricted use of his or her property, provisions therein restricting property uses should be strictly construed, and provisions permitting property uses should be liberally construed in favor of the property owner." Patterson v. Utah County Board of Adjustment, 893 P.2d 602, 606 (Utah Ct. App. 1995).
Mascaros' failure to establish that their use of the Property legally existed prior to Herriman City's annexation.

¶18 The Mascaros contend that the Appeal Authority's decision was arbitrary and capricious because it was based on the Commission's findings of fact, which "ignored substantial record facts." They further contend the decision was illegal, because they had established that the use was lawful while it was under the jurisdiction of Riverton City and of Salt Lake County. We address each contention in turn.

A. The Decision to Deny the Nonconforming Use Status Was Not Arbitrary and Capricious.

¶19 First, the Mascaros argue that the decision to deny their request was arbitrary and capricious because it went against "substantial record facts." We disagree.

¶20 The Utah Code provides that unless it is arbitrary and capricious or illegal, the decision of a land use authority or an appeal authority shall be presumed valid and shall be upheld. Utah Code Ann. § 10-9a-801(3)(b). A decision is arbitrary and capricious when it is not supported by substantial evidence in the record. Id. § 10-9a-801(c)(i). To determine whether substantial evidence supports the Appeal Authority's decision, we consider all of the evidence in the record but do not "weigh the evidence anew or substitute our judgment for that of the municipality." Springville Citizens for a Better Cnty. v. City of Springville, 1999 UT 25, ¶ 24, 979 P.2d 332. We will not disturb the Appeal Authority's decision so long as "a reasonable mind could reach the same conclusion." Id.

¶21 The Mascaros take issue with a number of the Commission's findings of fact, arguing that they do not take into consideration all of the evidence presented to it.4 We need not

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4. Herriman City argues that the Mascaros failed to properly preserve their challenges to the Commission's factual findings (continued...
address each of the findings the Mascaros take issue with, because their arguments boil down to asking us to reweigh the evidence presented. For example, the Commission found that they never applied for or received official permits or licensing from Salt Lake County to engage in topsoil manufacturing and screening. They now argue, "While there was no documentary evidence of an actual application for conditional or permitted use for soil manufacturing on the Property, such applications or permits were unnecessary [and the] Commission[] . . . ignore[d] substantial and relevant evidence demonstrating that [the] Mascaros were awarded non-conforming status for topsoil manufacturing." The Mascaros do not cite any legal authority or identify anything in the record to support their assertion that "such applications or permits were unnecessary." And although the Mascaros were able to point to some additional evidence not included in the Commission’s findings that they had engaged in topsoil manufacturing and screening, they have not pointed to any evidence that this activity was a legal use of the Property.

(...continued)

because they did not raise the issues before the Appeal Authority. See Rosen v. Saratoga Springs City, 2012 UT App 291, ¶ 31, 288 P.3d 606 (explaining that, to preserve an issue, it must be presented to the agency in such a way that it “could have been resolved in the administrative setting” (quotation simplified)). Herriman City asserts that only two of the findings “were even mentioned” at the hearing before the Appeal Authority. We disagree. Our review of the transcript of the Appeal Authority’s hearing shows that the Mascaros raised the factual findings they challenge on appeal point by point. We therefore address the merits of the Mascaros’ challenges to the factual findings.

5. We note that the Mascaros submitted to the Commission for its review more than 3,250 pages of documents that they concede neither “conclusively prov[ed] [nor] conclusively disprov[ed]” a prior legal use.
¶22 At best, the Mascaros point to minutes from a meeting before Herriman City, discussing their request for a “conditional use” of topsoil manufacturing and screening, during which Herriman City acknowledged that Salt Lake County approved one of the Mascaros’ applications. The meeting minutes state that Salt Lake County gave LJ Mascaro Inc. an approval for “phone and mail” business operations from the Mascaros’ house, and that, “[o]ver time,” the Mascaros began using the Property “to store soil and trucks, which violated the terms of the [original approval].” The minutes continue that the Mascaros later applied for nonconforming use status under a county provision that “allowed illegal uses to be deemed ‘nonconforming’ if they had been in existence with no history of complaint” and that Salt Lake County eventually approved that application. But Herriman City’s minutes further state that, even after the approved nonconforming use status, the Mascaros “continued to expand and operate outside of their conditions of approval,” which meant that “they were not in compliance” when Herriman City annexed the Property.

¶23 Although these minutes show that Herriman City acknowledged that Salt Lake County might have approved a nonconforming use, the Mascaros have failed to provide the application or any documentation from the county that shows which nonconforming use, if any, was “granted.” Although it could have been granted for “stor[ing] soil and trucks,” it could also have been for anything other than “phone and mail” services. In addition, the Mascaros have not explained how storing soil is equivalent to topsoil manufacturing and screening and they have failed to provide any supporting documents that would have clarified the ambiguity in the Herriman City meeting minutes. Because we give deference to the Appeal Authority’s decision, we cannot say that it acted arbitrarily and capriciously when it did not give substantial weight to the Herriman City meeting minutes.

¶24 The Mascaros have repeatedly conceded that they were unable to provide evidence—other than through their own
testimony—that Salt Lake County granted them nonconforming use status for the purpose of topsoil manufacturing and screening. They admit on appeal that the Salt Lake County councilmember’s letter, which stated that the county had “likely... granted” a nonconforming use status, did “not precisely identif[y]” the “nature of the [nonconforming] use.” When the district court asked if they could “nail down when [the Mascaros] started [the] topsoil operation and when the zoning ordinances went into effect,” their counsel responded, “I cannot do [that] with definition today, and it’s not for lack of trying.” And before the Commission, the Mascaros conceded that they did not have any evidence “either conclusively proving or conclusively disproving” a prior legal use. These concessions, among many others throughout the record, support the district court’s determination that the Appeal Authority’s decision was not arbitrary and capricious.

¶25 We agree with the Commission’s finding that the Mascaros “provided no evidence that they had received any land use approval[] or business license permit for a soil manufacturing and screening operation on the property from any of the respective jurisdictions.” We conclude that substantial evidence in the record supported the Commission’s conclusion that the nonconforming use was not legally established prior to Herriman City’s annexation of the Property. The Appeal Authority’s decision to uphold the denial of the nonconforming use status was therefore not arbitrary and capricious, and the district court correctly reached this conclusion.

B. The Decision to Deny the Nonconforming Use Status Was Not Illegal.

¶26 The Mascaros contend the Appeal Authority’s “strict application” of a court order rendering the Riverton City annexation “null and void and of no effect” was illegal because they relied on the annexation to conduct their topsoil manufacturing and screening operation. They further contend that the Appeal Authority’s determination that the use was not
legally established when under Salt Lake County’s jurisdiction was illegal. A decision is illegal if it is “based on an incorrect interpretation of a land use regulation” or “contrary to law.” Utah Code Ann. § 10-9a-801(c)(ii) (LexisNexis Supp. 2017).

¶27 To begin with, Herriman City argues that the Mascaros failed to preserve the argument that they relied on Riverton City’s annexation and we therefore should not address the merits of this argument. We agree. To preserve an issue for appeal, the issue must have been presented in such a way that a lower tribunal had the opportunity to rule on it. Rosen v. Saratoga Springs City, 2012 UT App 291, ¶ 31, 288 P.3d 606. “The preservation rule applies in agency appeals when the issue raised on appeal could have been resolved in the administrative setting.” Id. (quotation simplified). Here, the Mascaros stated in the hearing before the Appeal Authority that the Property was under the jurisdiction of Riverton City between 1978–1981; that the city was providing services to the Property; and “for all intents and purposes, as . . . normal citizen[s], we were in Riverton City.” But, as articulated by the Appeal Authority in its order, the Mascaros did not provide any “legal authority regarding the regulatory status of property which is the subject of a challenged annexation.” The Mascaros therefore failed to provide the Appeal Authority the opportunity to resolve whether an exception applied to a court’s determination that a city’s annexation is null and void and of no effect. See id.

¶28 The Mascaros also argue that their topsoil manufacturing and screening use was legally established while under Salt Lake County’s jurisdiction and that therefore the Appeal Authority’s decision was illegal. But, as discussed above, they have failed to point us to anything in the record that would support their assertion that Salt Lake County approved this particular use of the Property at any point or that the Property was used for such purposes prior to the county promulgating zoning ordinances. See supra ¶¶ 21–25. Again, the Mascaros state that the county’s grant of nonconforming use status “is also bolstered by Salt Lake County’s issuance of various building permits, business permits,
LJ Mascaro v. Herriman City

the 1999 special exception to expand a nonconforming building on [the Property], and [the Property] tax notices.” (Emphases added.) But, as with the business licenses, the building permits did not include information regarding topsoil manufacturing or screening. And the business applications were for trucking and courier services or “mail and phone” services. The Mascaros also fail to identify any improper interpretation or misapplication of the law by the Commission or the Appeal Authority. See Utah Code Ann. § 10-9a-801(c)(ii).

¶29 We therefore conclude that the district court correctly determined that the Appeal Authority’s decision was not illegal. The Mascaros failed to prove that their use of the Property for topsoil manufacturing and screening was legally established under either Riverton City or Salt Lake County jurisdiction and the Appeal Authority properly upheld the Commission’s denial of the request for nonconforming use status.

CONCLUSION

¶30 We conclude that the Appeal Authority did not act arbitrarily and capriciously when it upheld the Commission’s denial of the Mascaros’ request for nonconforming use status for topsoil manufacturing and screening, because the Mascaros failed to provide substantial evidence to support that this was a prior legal use of the Property. Similarly, we conclude the Appeal Authority’s decision was not illegal. The Mascaros failed to show that the use was legally established when the Property was under Salt Lake County’s jurisdiction or that an exception applied to a district court’s determination that Riverton City’s annexation was null and void and of no effect. We therefore affirm the district court’s grant of summary judgment in favor of Herriman City.
CERTIFICATE OF MAILING

I hereby certify that on the 21st day of June, 2018, a true and correct copy of the attached OPINION was sent by standard or electronic mail to be delivered to:

J. SCOTT BROWN
BRADLEY M STRASSBERG
COHNE KINGHORN PC
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HONORABLE RYAN M. HARRIS
THIRD DISTRICT, SALT LAKE

THIRD DISTRICT, SALT LAKE
ATTN: JULIE RIGBY AND CHERYL AIONO
cheryla@utcourts.gov; julier@utcourts.gov

[Signature]
Judicial Secretary

TRIAL COURT: THIRD DISTRICT, SALT LAKE, 140903070
APPEALS CASE NO.: 20160723-CA
This matter came before the Herriman Land Use Appeal Authority (hereinafter, the “Appeal Authority”) in a hearing held on June 18, 2018 on the appeal filed by Alpine Homes, LLC (hereinafter, “Appellant”), of the decision of the Herriman City Planning Commission (hereinafter, the “Planning Commission”) to grant a conditional use permit for a C-store and service station at the property located at the southwest corner of Academy Parkway and 15000th South in Herriman, UT (hereinafter, the “Conditional Use Permit”).

The undersigned, David L. Church, was sitting as the appointed hearing officer to hear the appeal. The Appellant was present and represented by its attorney, Mr. Rodger M. Burge. Herriman City (hereinafter, “City”) was present and was represented by Mr. John Brems, City Attorney. Holiday Oil/Wagstaff Investments, LLC (hereinafter, “Applicant”) was present and represented by its attorney, Mr. John B. Linton. The landowners were present and represented by their attorney, Mr. Blake Parrish.

STANDARD OF REVIEW

There are two standards of review the I must utilize to consider this matter. First, there is a standard of review that governs my review of the Planning Commission’s decision. Second,
there is a separate standard of review the Planning Commission utilized to reach its decision to grant the Conditional Use Permit.

A. Standard of Review for the Planning Commission’s Decision

This matter is governed by both Section 10 of the Herriman City Code (hereinafter, the “Herriman Code”) and Utah Code Annotated Section 10-9a-507. On December 13, 2017, the Herriman City Council adopted a new Land Development Code (the “Current Herriman Code”). The Utah State Legislature amended Section 10-9a-507 of the Utah Code Annotated (the “2018 Utah Code”), which became effective on May 8, 2018. The parties have stipulated this matter is governed by the Current Herriman Code and the 2017 version of Section 10-9a-507 of the Utah Code. In other words, this appeal shall not be governed by the 2018 Utah Code.

Section 10-5-24 of the Current Herriman Code, which is consistent with Section 10-9a-707 of the Utah Code, establishes the standard of review I must apply in reviewing the Planning Commission’s decision. Section 10-5-24.F. provides:

1. The appellant shall have the burden of proving that the land use authority erred.
2. The appeal authority shall:
   a. Determine the correctness of the decision-making body or official’s interpretation and application of the plain meaning of land use regulations; and
   b. Interpret and apply a land use regulation to favor a land use application unless the land use regulation plainly restricts the land use regulation.
3. The appeal authority shall determine the correctness of a decision of the decision-making body or official in its interpretation and applications of the land use ordinances based solely on the record.
   a. Factual matters shall not be reviewed de novo.
   b. The appeal authority shall determine whether the record on appeal includes substantial evidence for each essential finding of fact.

Based on the foregoing, in reviewing factual determinations of the Planning Commission, I must (1) determine the correctness of the Planning Commission’s decision based solely on the record; and (2) apply the Current Herriman Code to favor the Applicant. In sum, the Appellant has the
burden of proving the Planning Commission erred. I am limited to the facts contained in the record of the proceeding in the matter, and may not take additional testimony or do additional factual research on the matter.

B. Standard of Review Utilized by Planning Commission to Consider a Conditional Use Permit

Section 10-9a-507 of the Utah Code governs conditional uses. Section 10-9a-507(a) provides: “[a] conditional use shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards.” Section 10-9a-507(b) of the Utah Code further provides that “[i]f the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the imposition of reasonable conditions . . ., the conditional use may be denied.”

Section 10-5-11 of the Current Herriman Code governs the Planning Commission’s review of conditional use applications. Section 10-5-11.E.1 provides: “In considering an application for a conditional use permit, the decision-making body or official may analyze any of the following factors and may request information, studies, or data with respect to such factors for the purpose of determining whether a proposed conditional use meets the standards set forth in subsection E-2 of this section.” Section 10-5-11.E.1. then lists a series of 10 factors the decision-making body may consider, which are listed as items a. through j. Section 10-5-11.E.2. provides: “A conditional use permit shall be approved or conditionally approved unless substantial evidence is presented showing any of the following circumstances cannot be mitigated by imposing conditions of approval.” Section 10-5-11.E.2. then provides a list of 10 circumstances. Based on the foregoing, I must uphold the Planning Commission’s decision
unless there is substantial evidence that any of the factors identified in such provision cannot be mitigated.

**RECORD ON APPEAL**

The Record on Appeal in this matter consists of the following:

- Land Use Application No. C2018-006
- Staff report dated March 15, 2018 and April 12, 2018 and recommendations to the Planning Commission together with all exhibits and attachments
- Letter from John Linton representing Holiday Oil to Planning Commission dated April 3, 2018
- Letter from Blake Parrish representing Scenic Development to Planning Commission dated April 3, 2018
- Letter from Steve Jackson representing Alpine Homes to Planning Commission, which was not dated
- Planning Commission minutes, recorded audio, and recorded video dated March 15, 2018 and April 19, 2018
- Letter from Herriman City to Wagstaff Investments, LLC (i.e., Holiday Oil) dated April 19, 2018 notifying Holiday Oil of the Herriman City Planning Commission’s conditional use approval and the conditions relating to such approval
- Letter from Alpine Homes dated April 20, 2018 appealing the decision of the Planning Commission
- Letter of June 6, 2018 from Holiday Oil and Scenic Development in response to the Alpine Homes appeal
- Notices of the Planning Commission meetings and appeal hearing

**DISCUSSION**

**A. THE APPELLANT HAS STANDING**

The City contends the Appellant lacks standing to bring this appeal. Before considering the merits of the Appellant’s arguments on appeal, I must first determine if the Appellant has the necessary standing to file an appeal challenging the City’s issuance of the Conditional Use Permit.

Section 10-5-24.D. of the Current Herriman Code provides that “any person adversely affected by a decision made by a decision-making body or official administering or interpreting this title may . . . appeal the decision to the appeal authority . . .” The City asserts Appellant has
not been “adversely affected.” According to the City, to be “adversely affected,” Appellant must satisfy the “traditional standing test” outlined in Society of Prof. Journalists v. Bullock, 743 P.2d 1166, 1170 (Utah 1987). The Utah Supreme Court summarized the test for standing outlined in the Society of Professional Journalists case to require the Appellant to show (1) the existence of an adverse impact on Appellant’s rights, (2) a causal relationship between the governmental action that is challenged and the adverse impact on Appellant’s rights and, (3) the likelihood that the relief requested will redress injury claimed. See National Parks & Cons. Ass’n v. Board of State Lands, 869 P.2d 909, 913 (Utah 1993). The City contends that Appellant failed to produce any evidence to demonstrate that Appellant is “an aggrieved party in this matter” beyond Appellant’s unsupported statement (Appellant’s appeal, Page 1). The City further contends there is no evidence in the record showing an adverse impact on Appellant’s rights.

In the hearing, Appellant conceded that Appellant did not hold title to the allegedly affected real property at the time the Planning Commission considered the Applicant’s request for a conditional use permit, but that Appellant held an equitable interest in such real property. Appellant also asserted that Appellant had delivered a substantial non-refundable earnest money deposit at the time this matter commenced, which Appellant would have lost had it elected to terminate its purchase contract.

I conclude that Appellant has satisfied its burden under the first element of the Society of Professional Journalists test. Appellant also satisfies the second element because the damage caused to Appellant is directly related to the Planning Commission’s decision to grant the Conditional Use Permit. And Appellant satisfies the third element because Appellant’s requested relief of the Planning Commission’s denial of the Conditional Use Permit or
reorientation of the C-store and service station will provide Appellant redress for its alleged damage.

At the time of its appeal, Appellant was an “adversely affected party” and therefore has standing.

**B. THE PLANNING COMMISSION DID NOT ERR IN GRANTING THE CONDITIONAL USE PERMIT**

As indicated in the Standard of Review section above, Appellant has the burden of proving the Planning Commission erred. I must determine the correctness of the Planning Commission’s decision based on the plain meaning of the relevant regulations, and must apply the regulations in favor of the Applicant. Moreover, I am restricted to considering only those matters of record, and cannot review factual matters de novo. Finally, I must determine whether the record includes “substantial evidence” for each essential finding of fact.

In its appeal, Appellant asserts that Section 10-9a-507(2)(b) of the Utah Code mandates that the Appeal Authority find that the Planning Commission required the Applicant to take significant measures to “substantially mitigate” all reasonably anticipated detrimental effects of the proposed conditional use. Appellant’s characterization of the Planning Commission’s required findings is incorrect. Section 10-9a-507(2)(b) provides that if the “reasonably anticipated detrimental effects of a propose conditional use cannot be substantially mitigated by the imposition of reasonable conditions,” then the conditional use “may” be denied. In other words, the foregoing statute does not require the Planning Commission to determine whether actions proposed to mitigate reasonably anticipated detrimental effects are “substantial,” but whether such actions will “substantially mitigate” such effects. Moreover, the Section 10-9a-507(2)(b) provides that such mitigation can be addressed by “reasonable conditions,” which
further undermines Appellant’s interpretation of the statute. Finally, even assuming Appellant’s characterization is correct that substantial mitigation, as determined by magnitude or quantity, is required, the failure to achieve substantial mitigation is not fatal to the Planning Commission’s issuance of the Conditional Use Permit because it only provides a basis on which the Planning Commission “may” deny a conditional use application.

Appellant devotes significant time and attention to reviewing the factors set forth in Section 10-5-11.E.1. of the Current Herriman Code. Specifically, Appellant argues the Planning Commission erred in its “findings” and “rational[e]” [sic] with respect to the following factors: (a) The suitability of the specific property for a proposed use; (d) The economic impact of the proposed facility or use on the surrounding area; (e) The aesthetic impact of the proposed facility or use on the surrounding area; (g) The safeguards proposed or provided to insure adequate utilities, transportation access, drainage, parking, loading space, lighting, screening, landscaping, open space, fire protection, and pedestrian and vehicular circulation; (h) The safeguards provided or proposed to prevent noxious or offensive omissions such as noise, glare, dust, pollutants and odor from the proposed facility or use; (i) The safeguards provided or proposed to minimize other adverse effects from the proposed facility or use on persons or property in the area; and (j) The impact of the proposed facility on the health, safety, and welfare of the city, the area, and persons owning leasing property in the area. Appellant appears to assert that the Planning Commission was required to make specific findings on each of the foregoing factors set forth in Section 10-5-11.E.1. of the Current Herriman Code. Such an analysis ignores the plain language of the provision, which provides: “In considering an application for a conditional use permit, the decision-making body . . . may analyze any of the following factors . . . for the purpose of determine whether a proposed conditional use meets the standards set forth in
subsection E-2 of this section.” Based on the foregoing, the Planning Commission can analyze some, all or none of the foregoing factors. The Planning Commission is not required to make specific findings on any of such factors in order to reach a decision to grant approval of a conditional use permit.

Notwithstanding the foregoing, there is substantial evidence the Planning Commission carefully considered the factors set forth in Section 10-5-11.E.1. and did not err in its application of such factors. The Appeal Authority will consider each of Appellant’s arguments in turn.

(a) **The suitability of the specific property for the proposed use.**

Appellant asserts the Planning Commission erred by finding the proposed conditional use was “compliant” with this standard by merely finding the property is located in a commercial zone. In Appellant’s view, the test for “suitability” of the property must consider other factors beyond whether the use is “legally authorized.” However, the Appellant cites no authority for its argument. The Planning Commission was not required to consider other factors in connection with suitability, because confirmation that the proposed conditional use is permitted under the current zoning is a dispositive factor. Indeed, Section 10-5-11.E.2. of the Current Herriman Code provides that the Planning Commission must consider whether the proposed conditional use is (1) “not allowed in the zone where the conditional use will be located,” (2) “is not consistent with the general plan, as amended”, or (3) “will not comply with regulations and conditions specified in this title for such use”. If the proposed conditional use were not permitted under the current zoning, the Planning Commission may have had grounds to deny the Conditional Use Permit. Because the Planning Commission determined the proposed conditional use was permitted under the current zone, the Planning Commission provided substantial evidence of satisfaction of this factor.
(d) The economic impact of the proposed facility or use on the surrounding area.

Appellant asserts the Planning Commission erred in its interpretation and application of this factor by interpreting the “surrounding area” to include the “City.” Appellant argues the Planning Commission should have construed the term “surrounding area” much more narrowly – to include only those residential homes in close proximity. However, Appellant cites no authority to support Appellant’s definition of “surrounding area.” The Planning Commission reviewed this factor and referenced the RSL training facility and other planned commercial areas in the vicinity. Such an interpretation of the “surrounding area” is no less reasonable than Appellant’s assertion that “surrounding area” should be narrowly defined as several neighboring residential lots. Indeed, the Planning Commission’s reference to the RSL training academy and other planned commercial areas provides a more balanced and realistic view of the nature of the area given that the area is not comprised solely of residential lots. Because the Current Herriman Code does not require the Planning Commission to narrowly define the term “surrounding area” to mean several adjacent residential lots, the Planning Commission accurately considered the economic impact on a larger area.

(e) The aesthetic impact of the proposed facility or use on the surrounding area.

The Planning Commission determined the proposed building meets the City’s commercial design criteria and also the landscape ordinance. Appellant argues the Planning Commission erred by not applying a higher standard. However, Appellant cites no authority for its argument. Moreover, Appellant fails to acknowledge the substantial mitigation that Applicant has agreed to undertake. For example, the original site plan that Applicant submitted to the Herriman Design Review Committee (hereinafter, the “Herriman DRC”) consisted of a landscaping plan that adhered to the City’s landscape ordinance, which was approved by the Herriman DRC. Despite
satisfying the City’s landscape ordinance and the Herriman DRC, the Planning Commission, in a meeting held on March 15, 2018, requested that Applicant provide additional landscaping in order to mitigate the perceived impact of light emanating from the C-store and service station. On April 19, 2018, Applicant submitted a revised site plan, which include several substantial changes to the landscaping along 15000 South including (a) a row of hedges and tall oat grass along to block the “sweep lights” from cars, (b) six maple trees, (c) dozens of shrubs, and (d) the removal of a monument sign. Moreover, Applicant agreed to dim LED lights in the canopy of the fuel island after dark. Despite Applicant’s voluntary agreement to make these substantial changes, Appellant was not satisfied. Thus, Applicant agreed to plant a pine tree in between each of the maple trees. The record indicates that Applicant currently has four locations in Herriman, two of which have residential lots within twenty (20) feet of Applicant’s boundary lines. The landscaping at the proposed site far exceeds the landscaping required at any of these other locations. The record provides substantial evidence of Applicant’s substantial mitigation of any alleged detrimental impacts, and effort to minimize any negative aesthetic impact on the surrounding area.

(g) The safeguards proposed or provided to insure adequate utilities, transportation access, drainage, parking, loading space lighting, screening, landscaping, open space, fire protection, and pedestrian vehicular circulation.

Appellant asserts the Planning Commission erred on this factor by failing to make specific findings with respect to screen and light pollution. However, Appellant fails to acknowledge the requirements imposed on Applicant as part of the Conditional Use Approval. Specifically, Item No. 2 of the Recommendations for the Conditional Use Permit provides “All exterior lighting, including a photometric plan, must be reviewed and approved by the City Engineer which will mitigate or eliminate detrimental impacts of light.” Applicant submitted a
photometric plan as part of Applicant’s submissions to the Planning Commission, which demonstrates a reduction in light pollution. In addition, Item No. 11 of the Recommendations for the Conditional Use Permit provides “Hours of operation to be from 5:00 a.m. to 11:00 p.m. which will mitigate or eliminate detrimental light and noise impacts.” Item No 5 of the Recommendations for the Conditional Use Permit provides “The front yard area and the side yard area which faces on a street shall be landscaped and maintained with live plant material, including shrubs, flowers and trees for a minimum distance of twenty feet (20’) which will mitigate or eliminate detrimental visual impacts. This should include trees in the park strip every 30 feet.” Item No 8 of the Recommendations for the Conditional Use Permit provides “No monument sign will be allowed on 150th South, which will mitigate detrimental lights and glare.” Item No. 9 of the Recommendations for the Conditional Use Permit provides “Screen all outside trash and dumpster areas which mitigate or eliminate detrimental visual impacts.” These conditions imposed by the Planning Commission provide substantial evidence of the Planning Commission’s efforts to substantially mitigate the potential negative effects of Applicant’s proposed conditional use.

(h) The safeguards provided or proposed to prevent noxious or offensive omissions such as noise, glare, dust, pollutants and odor from the proposed facility or use.

Appellant argues that relocating underground storage tanks and adding all the additional landscaping will not provide “substantial” mitigation for odor, light or glare. Applicant’s photometric plan demonstrates that the light from the fuel island canopy at a distance between 120 – 200 feet from the residential lots will be far less than the light emitted from a typical city-approved street light in the residential development area. Appellant also alleges that the odor from spills at the pump will not be dissipated between the pump and a home located between 120 feet and 300 feet from the pump. However, Appellant provides no evidence for that assertion.
Appellant takes the untenable position that the only mitigation that will be sufficient is place a precast fence along 15000 South. Appellant’s other proposal is that Applicant reorient the convenience store and fuel pump island so that the store is parallel to 15000 South and can act as a buffer between 15000 South and the fuel pump island. Such a proposal is not only draconian, but economically unfeasible. The record indicates the reorientation of the site as requested by Appellant would require the landowner to redesign the subdivision and would result in the complete loss of one or more commercial building pads. Moreover, the record indicates the landowner is not willing to redesign the lot. Therefore, Appellant’s requested mitigation would result in the elimination of the C-store and service station at this site. Such a result is not warranted. As outlined above, there is substantial evidence in the record that Applicant has been required to substantially mitigate any potential detrimental effects of the proposed conditional use.

(i) The safeguards provide or proposed to minimize other adverse effects from the proposed facility or use on persons or property in the area; and (j) The impact of the proposed facility on the health, safety, and welfare of the city, the area, and persons owning or leasing property in the area.

Appellant asserts the Planning Commission erred in not specifically considering factor (j) and in failing to adequately consider factor (i) above. Specifically, Appellant argues the Planning Commission should have considered the economic impact to Appellant on the value of the residential lots directly across the street. Once again, Appellant fails to cite any authority for the proposition that the Planning Commission was required to consider economic impact on the value of the residential lots across the street. Moreover, Appellant fails to cite any specific facts to demonstrate the negative impact. Appellant merely relies on anecdotal information. Finally, as indicated above, the Planning Commission was not required to consider all of the factors in Section 10-5-11.E.1. of the Current Herriman Code.
Section 10-5-11.E.2 provides the relevant standard for the Planning Commission to consider a conditional use application. It provides: “A conditional use permit shall be approved or conditionally approved unless substantial evidence is presented showing any of the following circumstances [listed as items a. through j.] cannot be mitigated by imposing conditions of approval.” Appellant only challenged conditions i. and j. Condition i. provides “Fencing, screening, landscaping, and other buffering cannot adequately protect adjacent property from light, noise, and visual impacts associated with the proposed conditional use.” Condition j. provides “the proposed use will be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity.” With respect to items i. and j., Appellant has not provided “substantial evidence” that the conditions imposed on the Applicant’s Conditional Use Permit, or other changes agreed to by the Applicant during the approval process, do not substantially mitigate such factors. To the contrary, the record demonstrates that the Applicant made significant changes in the design of its project, which include among other things, moving the location of the underground storage tanks further away from houses, adding trees and other landscaping as a buffer, eliminating a monument sign on 15000 South street, and agreeing to dim the lights and close the C-store at 11:00 p.m., which is earlier than all other Holiday Oil locations.

In its unanimous approval, the Planning Commission correctly exercised its administrative authority by weighing the health, safety, and welfare of the city, area, and persons in the area. The Planning Commission evaluated Applicant’s conditional use application and determined which perceived risks may actually cause a detrimental impact. Once the Planning Commission decided there was a potential detrimental impact, it identified “reasonable” steps to provide “substantial” mitigation. Finally, the Planning Commission weighed the benefits against
the risks in light of the steps taken to substantially mitigate the risks and unanimously arrived at the conclusion to approve the Conditional Use Permit. The record unequivocally demonstrates that the Planning Commission’s consideration of each item requiring substantial mitigation is based on substantial evidence.

C. **THE PLANNING COMMISSION’S DECISION WAS NOT ARBITRARY OR CAPRICIOUS**

Appellant asserts the Planning Commission’s decision to grant the Conditional Use Permit was arbitrary and capricious. Appellant’s argument is not supported by the record. The Utah Court of Appeals has held that a decision is arbitrary or capricious only if it is not supported by substantial evidence in the record. *See Ralph L. Wadsworth Construction, Inc. v. West Jordan*, 2000 UT App 49; 9, 999 P.2d 1240; *Pen & Ink, LLC v. Alpine City*, 2010 UT App 203, 16; 238 P.3d 63, *cert. denied*, 241 P.3d 771 (Utah 2010) (internal quotation marks and citation omitted.).

While substantial evidence may appear to be a significant amount of evidence, it is not. The Utah Court of Appeals has defined substantial evidence to be “that quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion.” *Id.* The Utah Court of Appeals noted that substantial evidence is “more than a ‘scintilla’ of evidence…though ‘something less than the weight of the evidence.’” *Grace Drilling Co. v. Board of Review*, 776 P.2d 63, 68 (Utah App. 1989). In other words, if the record shows that “a reasonable mind could reach the same conclusion as the [Planning Commission]” *Id*, then I must uphold the decision of the Planning Commission.

There are sufficient facts in the record to support the decision of the Planning Commission. These facts are described in the City’s response and I compared them to the
material presented to the Planning Commission that is found in the record. Based on my review of the entire record, as outlined above, I determine that the conclusions reached by the Planning Commission are supported by substantial evidence and are not arbitrary or capricious.

D. THE PLANNING COMMISSION’S DECISION WAS NOT ILLEGAL

The Appellants argue the Planning Commission may have erred by acting illegally in granting the Conditional Use Permit. It is undisputed that the proposed C-Store and service station are located in the C-2 zone and that a C-Store and service station are permitted conditional uses in the C-2 zone. If there is ambiguity in a municipality’s land use ordinances, the ambiguity must be resolved in the landowner favor. In Patterson v. Utah Cty. Bd. Of Adjustment, 893 P.2d 602, 606 (Utah Ct. App. 1995), the Utah Court of Appeals held: “[b]ecause zoning ordinances are in derogation of a property owner’s common-law right to unrestricted use of his or her property, provisions therein restricting property uses should be strictly construed, and provisions permitting property uses should be construed in favor of the property owner.” Moreover, as described in Applicant’s response to the appeal, “If a land use regulation does not plainly restrict a land use application, the decision-making body or official shall interpret and apply the land use regulation to favor the land use application.” Utah Code Ann. §10-9a-306(2). Therefore, based on Utah law, the Current Herriman Code, and the presumption in favor of landowner rights affirmed by the Utah Court of Appeals, I must construe the Current Herriman Code in favor of the Applicant’s proposed use unless that use is clearly prohibited. I find that the proposed use is not clearly prohibited. Therefore, the Planning Commission’s decision to grant the Conditional Use Permit was not illegal.
CONCLUSION

While Appellant has standing to bring an appeal, the Appellant is unable to meet its burden of proving the Planning Commission erred in granting the Conditional Use Permit. As the Appeal Authority it is not my job to determine whether or not the Planning Commission could have denied the conditional use permit or added additional conditions to the application. I am only tasked with determining whether or not the Planning Commission violated some law or acted arbitrarily or capriciously in granting the permit. As outlined above, there is enough substantial evidence in the record demonstrating that the Planning Commission’s decision to grant the Conditional Use Permit was in accordance with the Current Herriman City Code and Utah law, was not arbitrary, capricious, or illegal. Therefore, the Planning Commission’s decision to grant the Conditional Use Permit is upheld.

Dated this 23rd day of June 2018.

HERRIMAN CITY LAND USE APPEAL AUTHORITY

____________________________
David L. Church
DATE: July 3, 2018

TO: The Honorable Mayor and City Council

FROM: Michael Maloy, AICP, Planning Director

MEETING: City Council General Meeting July 11, 2018

SUBJECT: Appointment of Planning Commission Members and Alternate Member

SUMMARY:
On May 31, 2018, Curtis Noble emailed Mayor David Watts and resigned from the Planning Commission. Upon acceptance of this resignation, the Planning Commission had five members and three alternates. As per City Code 10-4-5, the Planning Commission “shall consist of seven (7) persons who shall be appointed by the City Council.” The Council may also “appoint three (3) alternate Planning Commission members.” Acting under the direction of the City Council, staff prepared the attached resolution to fill two vacancies on the Planning Commission, and appoint one new alternate member.

DISCUSSION:
City Code 10-4-5 states that the term of service for each Planning Commission member is three years, while the term of service for an alternate member is one year. Regarding vacancies that occur due to resignation, the following City Code governs the term of service:

10-4-5 B.6 Any vacancy occurring on the Planning Commission by reason of death, resignation, or removal shall be promptly filled by the City Council, for the unexpired term of such member.

In compliance with City Code, staff recommends Andrea Bradford, an alternate member of the Planning Commission, fill the vacancy caused by the resignation of Curtis Noble. Staff also recommends Jackson Ferguson, another alternate member of the Planning Commission, be appointed to the Planning Commission. Furthermore, staff recommends the Council appoint Parry Harrison to become a new alternate member of the Planning Commission. If approved, the proposed appointments would form a full Planning Commission with two alternates. Regarding a third alternate, staff recommends consideration of this appointment at a later date.
RECOMMENDATION:
Staff recommends the City Council make the following motion:

I motion to adopt the attached resolution to appoint the following individuals to the Herriman City Planning Commission for terms of service as specified by City Code 10-4-5:

- Andrea Bradford member
- Jackson Ferguson member
- Parry Harrison alternate

ATTACHMENT:
A. Resolution to Appoint Two Planning Commission Members and One Alternate
HERRIMAN, UTAH
RESOLUTION NO. __

A RESOLUTION APPOINTING TWO MEMBERS AND ONE ALTERNATE MEMBER TO THE PLANNING COMMISSION

WHEREAS, the Herriman City Council (the “Council”) met in regular session on July 11, 2018, to consider, among other things, appointing two members and one alternate member to the Planning Commission; and

WHEREAS, the Council has amended the ordinance creating the Planning Commission; and

WHEREAS, the amended ordinance creating a Planning Commission provides that members of the Planning Commission shall be appointed by the Council; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interest of the health, safety and welfare of the citizens of Herriman to make appointments as set forth below.

NOW, THEREFORE, BE IT RESOLVED that the Council hereby appoints the following two members and one alternative member of the Planning Commission to the terms set forth opposite his/her name:

<table>
<thead>
<tr>
<th>NAME</th>
<th>TERM</th>
<th>DATE TERM EXPIRES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andrea Bradford</td>
<td>1 year</td>
<td>July 2019 (vacancy caused by resignation)</td>
</tr>
<tr>
<td>Jackson Ferguson</td>
<td>3 year</td>
<td>July 2021</td>
</tr>
<tr>
<td>Parry Harrison</td>
<td>1 year</td>
<td>July 2019</td>
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</tbody>
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PASSED AND APPROVED this 11th day of July, 2018.

HERRIMAN CITY COUNCIL

By: _______________________
    Mayor David Watts

ATTEST:

__________________________
Jackie Nostrom, MMC
City Recorder
The following are the minutes of the City Council Meeting of the Herriman City Council. The meeting was held on **Wednesday, April 11, 2018 at 5:00 p.m.** in the Herriman City Hall Council Chambers, 5355 West Herriman Main Street, Herriman, Utah. Adequate notice of this meeting, as required by law, was posted in the City Hall, on the City’s website, and delivered to members of the Council, media, and interested citizens.

**Presiding:** Mayor David Watts

**Council Members Present:** Sherrie Ohrn and Clint Smith

**Staff Present:** City Manager Brett Wood, Assistant City Manager Gordon Haight, City Recorder Jackie Nostrom, Finance Director Alan Rae, Water Director Justun Edwards, Parks and Recreation Director Wendy Thomas, City Engineer Blake Thomas, Deputy Chief of Police Services Troy Carr, City Planner Michael Maloy, Unified Fire Chief Riley Pilgrim, City Attorney John Brems, Chief Building Official Cathryn Nelson, Events Manager Kevin Schmidt, Communications Specialist Destiny Skinner, Communications Specialist Mitch Davis, Streets Manager Ed Blackett, and Assistant City Planner Bryn McCarty.

**Excused:** Councilmember Jared Henderson, Councilmember Nicole Martin, and Director of Administration and Communications Tami Moody.

**5:00 PM - WORK MEETING: (Fort Herriman Conference Room)**

1. **Mayor and Council Social**
   1.1. The Mayor and Council will meet for informal discussion and dinner. No action will be taken on any items.

2. **Council Business – 5:15 PM**

   Mayor David Watts called the meeting to order at 5:16 p.m. and welcomed those in attendance. He excused Councilmember Jared Henderson and notated Councilmember Nicole Martin would arrive late.

   2.1. **Review of this Evening’s Agenda**
April 11, 2018 – City Council Minutes

Staff and elected officials briefly reviewed the agenda. Mayor Watts requested Police Chief Carr comment on the specific incident that had occurred earlier in the week. The Council agreed.

2.2. Future Agenda Items

Councilmember Clint Smith asked when the Council would continue the discussion regarding the community session. City Manager Brett Wood confirmed the discussion would be scheduled for a future work session item for the Council to review in conjunction with the information presented by the Promise Foundation.

3. Administrative Reports

3.1. Wasatch Front Regional Council (WFRC) Report – LaNiece Davenport, WFRC Government Relations Manager

Wasatch Front Regional Council (WFRC) Government Relations Manager LaNiece Davenport reported on the function of their organization. She explained she would like to review Senate Bill 136 as regarding the transportation governance bill. The Bill is a significant forward thinking legislation needed for the future of Utah as it has been growing and changing. The bill would authorize funding for transit and local needs and would enhance the coordination of transportation, land use and economic development. Manager Davenport informed the Council the Utah Transit Authority (UTA) had been renamed to the Transit District of Utah and would change the board from 16 part-time members to three full-time members, which would be nominated by counties, appointed by the Governor and confirmed by the Senate to create a nine-member local advisory board. The bill would create a new Transit Transportation Investment Fund (TTIF) for transit capital projects which would be subject to legislative appropriations and require a 40-percent local match requirement. The state will transfer funding into the TTIF beginning July 1, 2019.

Manager Davenport reported three revenue options. Increased vehicle registration fees would be phased until 2021 for alternative-fuel vehicles, plug-in hybrids, electric vehicles, and hybrid electric vehicles. The registration fees for those said vehicles would be split between the District and to the city and county B&C roads. The additional funding going to the District would be used to partner with other entities to expand the availability of infrastructure for emerging vehicle technology. Once the road usage charge program has been implemented, the owners of the alternative fuel vehicles would be offered the option to participate in the program rather than having to pay the increased registration fees. The second revenue option would be for local option sales tax to be used for transportation which would make the referendum requirement for county imposition optional. If the County chose to impose the fourth quarter after May 8, 2018, the County would keep 100-percent of the revenues collected through June 30, 2019 to pay debt service or fund significant transportation or transit projects. After that date, the regular fourth quarter distribution would apply which includes: .10-percent to cities, .10-percent to the Transit District and .05-percent to the County. If the County does not impose the fourth quarter sales tax by July 1, 2020, Herriman City would have the option to impose the full quarter, with .125-percent going to the City and .125-percent going to the Transit District for transit within the County. Finally, the bill would also allow the authorization of a Transportation Reinvestment Zone (TRZ) to create an area with two or more public agencies by an Interlocal Agreement to capture increased property or sales tax revenue generated by the transportation infrastructure project.

Manager Davenport acknowledged the request of Salt Lake County to have a resolution approved by local municipalities expressing support for the imposition of the sales tax. Mayor Watts relayed his concern with increasing
4. Deer Mitigation Update – Justun Edwards, Water Director

Water Director Justun Edwards explained that the City Council voted to approve the Urban Deer Control Plan in conjunction with a Certification of Registration (COR) issued by the Division of Wildlife Resources (DWR) in 2015. The Urban Deer Control Plan and the COR would allow the City to use two methods to control the deer population within Herriman City limits. The City has maintained the contract with the DWR and the Mule Deer Foundation (MDF) to reduce the number of resident deer in Herriman.

Over the past three years, City staff has been working closely with the DWR and MDF to control the high number of resident deer within City limits. The two basic methods utilized are the lethal removal of deer with the use of archery equipment and non-lethal removal of deer, which would require the use of traps and relocate the animals. Director Edwards acknowledged the effectiveness of both methods being utilized and reviewed the annual cost and statistics of the program. Director Edwards asked the Council if they would support the continuation of the program and relayed the importance to continuing both methods for the program to be successful. He also thanked the DWR, MDF and Humphries Archery for their partnership, and relayed his appreciation to Water Supervisor Luke Sieverts and Water Operator III Austin Crane for the dedication in making the program successful. Councilmember Smith asked about the statistics of relocated animals. Director Edwards explained the survival rate of the relocated animals depends on the health of the herd, time of year and the amount of snow in the relocated area as water may be more difficult to find. The Council relayed their support of continuing the program.
3.5. **Water Department Report** – Justun Edwards, Water Director
Director Edwards explained of the previous Councils desire to expand the secondary water service area, particularly to areas of the City where dry water lines have been installed during development. The City developed a secondary phasing plan to provide direction service to the most economically and feasibly lines first. A number of projects had been identified and approved during the 2017-2018 budget process. Those projects are in some stage of the construction process which consist of the construction and equipping of the Tuscany Well House and the installation of over 10,000 linear feet of water piping. The project would provide secondary water to an additional 410 lots and four parks and provide water to future development along the pipeline alignments.

3.6. **Follow-Up Discussion regarding McCuiston Avenue Neighborhood Meeting** – Blake Thomas, City Engineer
City Engineer Blake Thomas oriented the Council of the location of the unpaved McCuiston Avenue in west Herriman which had been annexed into Herriman in 2009. There has been a large amount of residential development in the Rose Basin area which, as a result, caused detrimental impacts to the existing section of the road. Engineer Thomas indicated there has been times the neighborhood has been interested to construct the full roadway improvements since incorporation. He referenced a neighborhood meeting that had been held on April 3, 2018 to discuss the roadway project with property owners who abut McCuiston Avenue. There were five property owners in attendance with the remaining four not available. The discussion introduced several requests to modify the roadway sections, adjust the preliminary design and to limit the impacts to private property. He further reviewed the misconceptions of the project. Councilmember Ohrn suggested the installation of curb and gutter would help alleviate some of the problems. City Manager Wood highlighted an interesting discovery that the right-of-way had been deeded over to the City to be used as a road according to the plat.

Engineer Thomas offered a brief synopsis of the meeting noting the majority of property owners in attendance were supportive of the project and one property owner was against dedicating the property without receiving compensation. Assistant City Manager Gordon Haight looked for direction from the Council. Mayor Watts relayed his belief the road would be installed if the right-of-way had been donated to the City. Councilmember Smith agreed and expressed appreciation to the residents for their desire to keep moving the project forward.

3.7. **Storm Water Management Program Audit Response Plan** – Blake Thomas, City Engineer
City Engineer Thomas indicated the Utah Department of Environmental Quality (UDEQ) provided the results of their audit of the City’s storm water management program and reviewed the control measures including:

1. Public education and outreach on storm water impacts
2. Public involvement and participation
3. Illicit discharge detection and eliminations
4. Construction site storm water runoff

He explained their audit response deadline has been scheduled for April 25, 2018 and reviewed the performance measures in each of areas. The key deficiencies found were written Standard Operating Procedures (SOP), documentation for training and public outreach, adopted storm water ordinance, spill response and follow-up tracking, information available to the public, consistent educational outreach, and in-house training did not meet their
required standards. Engineer Thomas offered a brief overview of the response plan to address the deficiencies and what measures would be implemented to maintain compliance.

Engineer Thomas informed the Council he has requested a budget amendment for the allocation to conduct a rate fee study to help with this endeavor. Mayor Watts thanked staff for their best efforts to be in compliance.

3.8. City Manager Updates – Brett Wood, City Manager
City Manager Wood reported on the standoff between the Unified Police Department SWAT team and a man who had barricaded himself in a house adjacent to 7300 West. He noted the Risk Management Department would work with the family as the home had been significantly altered in the incident.

City Manager Wood extended condolences to the Skankey Family who lost their infant child in a tragic accident. Councilmember Ohrn reported an account had been set up for the family for individuals interested in donating to the family.

Director of Parks, Recreation and Events Wendy Thomas announced the rough cutting on the Sidewinder Trail had been completed, and volunteers will finish the handwork necessary. She thanked Trails Committee Chair Jo Darton for her diligent work.

City Manager Wood informed the Council of the necessity to nominate a temporary Mayor Pro Tempore when Mayor Watts and Councilmember Martin will be unavailable during the May 9, 2018 City Council meeting. Council consensus recommended Councilmember Henderson.

City Manager Wood informed the Council of the Unified Police Department (UPD) Finance Committee that had been formed to help get questions answered regarding their budget. He relayed the confusion when reviewing the budget documents. Councilmember Smith expressed the importance for staff to continue working with UPD to get answers relating to getting the level of service the City is entitled. He indicated if there is a deficit, how are the unexpended funds being allocated. Mayor Watts relayed his full confidence in the service being provided by our precinct officers, and the questions being raised are solely with the UPD. City Manager Wood indicated Herriman City has a solid team and are vetting out the concerns with the discrepancies. UPD Police Chief informed the Council he would try to provide the numbers being requested, and the department is here for the community. Councilmember Ohrn complimented the Herriman Police Precinct for their dedicated service.

4. Adjournment
Councilmember Ohrn moved to adjourn the City Council work meeting at 7:02 pm. Councilmember Smith seconded the motion and all voted aye.

7:00 PM - GENERAL MEETING:
1. Call to Order
Mayor Watts called the meeting to order at 7:08 p.m. and welcomed those in attendance. He excused Councilmembers Jared Henderson and Nicole Martin from the meeting.

1.1. Invocation/Thought/Reading and Pledge of Allegiance
The Pledge of Allegiance was led by Scout Troop #4446.

1.2. Council Disclosure for Conflict of Interest
There were no conflicts of interest disclosed.

1.3. Mayor/Council Comments and Recognitions
Mayor Watts expressed condolences to the family relating to the tragic incident that occurred on Mountain View Corridor. He invited Police Chief Troy Carr to address the attendees prior to public comment for everyone to gain a better understanding of the situation.

Councilmember Smith reported he attended the Basket Bash over the previous weekend and commended staff for their hours of dedication planning events to benefit the community.

Councilmember Smith moved to reorder the agenda to allow for a presentation by Unified Police Department Chief Troy Carr followed by Agenda Item 4.2 Presentation of the 2018 Utah Recreation and Parks Association (URPA) Awards prior to the public comment portion of the meeting. Councilmember Ohrn seconded the motion and all voted aye.

2. Public Comment
Britney Mendel understood the accident on Mountain View Corridor had been caused by reckless driving and encouraged the Council, staff and residents to work together to alleviate dangerous intersections. She indicated many people walk across the road at this intersection and vehicles travel with excessive speed in the area. Ms. Mendel recommended the installation of an advanced warning sign to allow motorists time to prepare for the stop and to increase the transition time delay. She also recommended a merging lane onto Mountain View Corridor would help traffic ease into the flow. She thanked the Unified Police Department for increased traffic enforcement as Autumn Crest is the only ingress/egress out of the subdivision. She noted a sky bridge or underground tunnel would help pedestrians cross the road safely.

Katrina Jolley acknowledged the high number of accidents at the intersection and relayed her concern of the lack of additional entrances in and out of the neighborhood.

Tarlton Blair indicated he was at the scene and witnessed the collision. He agreed with Ms. Mendel's recommendation to have an advanced warning signal be installed and requested the Council allocate budget funds for that purpose as it could be beneficial.

Alexander Blanchard requested additional speed limit signage be placed along Fort Herriman Parkway. He noted there are no signs going northbound.

Michael Strong explained the community has been grieving about the loss of one life. He noted he had been with the Los Angeles Police Department for a number of years, and affirmed that people sometimes don’t take others safety into consideration when making decisions. He asked the Council to continue to seek a remedy for potential similar issues and expressed his appreciation to law enforcement personnel.
Brad Palmer indicated he was a Utah Department of Transportation (UDOT) representative and acknowledged concerns in the area. He noted that UDOT was committed to safety and commenced an investigation of the area to resolve the issues. He relayed his desire to have community involvement and looked forward to scheduling a meeting to discuss solutions.

Raymond Wrigley thanked the Police Department and Fire Department who provided assistance in the area. He relayed his hope to solve the problem and address situations, and suggested the warning light may have made a difference.

Councilmember Ohrn thanked everyone for their comments and recommended solutions and relayed her desire to find a way to fix the problem as everyone in the community had been affected by the situation. Councilmember Smith relayed his condolences to the family and the personal loss felt throughout the community. Mayor Watts expressed his frustration with the situation and hoped the issue could be addressed.

Councilmember Smith moved to temporarily recess the City Council meeting. Councilmember Ohrn seconded the motion and all voted aye.

The Council reconvened the City Council meeting by consensus.

Police Chief Carr introduced an individual who played an important role in the situation and wanted to offer him the opportunity to speak to the Council. Mr. Scott Gurney recounted the tragic incident and noted that additional signage would not have mattered in this situation as there was no way the driver would have stopped. He suggested the Justice System failed the community as the driver shouldn’t have been allowed on the roads. He pleaded with the community to attend court hearings and thanked the Police Chief for spending time with him to be able to overcome what had happened. Mr. Gurney stated he would pray there would be justice.

3. Mayor and Council Board and Committee Reports
There were no reports.

4. Reports, Presentations and Appointments
   4.1. Unified Police Department Quarterly Report – Unified Police Department Chief Troy Carr
Unified Police Department Chief Troy Carr presented Mr. Dell Mickelson with the Citizens Action Award for his quick response and bravery in assisting the Unified Police Department (UPD) in making a difference in the community. The audience offered applause.

UPD Lieutenant Chad Reyes presented the Citizen’s Advisory Board (CAB) to the City Council to help the precinct engage with the community. The CAB consists of citizens selected throughout Salt Lake County to review problems, policies and issues to make a recommendation to the Sheriff. The Board functions as a communications bridge between the Sheriff and the communities. Lieutenant Reyes introduced the five board members present: Bethany Zeyer, Paul Fulks, Bill Sattree, Christopher Jolles, Justin Anderson. Mayor Watts thanked the citizens for their commitment to represent the community.
Chief Carr indicated the City had suffered a great loss with the accident that had occurred along Mountain View Corridor and extended condolences to the family. He noted the enforcement component of the situation was only a small portion of the incident and added the UPD has been taken a proactive approach in distracted driving. There are engineering and educational factors that need to be taken into consideration. Mountain View Corridor is under the authority of the Utah Department of Transportation which does not allow a lot of local control. He presented a synopsis of the citations offered along the roadway depicting the performance standard had increased dramatically. He observed the concern with the specific intersection and acknowledged the enforcement efforts had been concentrated to the south of this location. Chief Carr reviewed the reportable accidents that had significant damage, criminal acts, or had injuries sustained. He observed a “Heat Map” outlining the high-risk areas for traffic accidents and noted that the accidents that have occurred at the intersection are dramatic due to the speed of vehicles.

He touched on the amounts of traffic accidents along Rosecrest Road and noted high traffic intersections would cause more accidents. City Engineer Blake Thomas concurred. Chief Carr stated the UPD would continue enforcement actions in the area. He explained to the audience this situation is in the preliminary stages of the investigation; however, this incident was caused by an individual who did not attempt to stop for the red light causing the horrific multi-vehicle accident. He observed the combative nature of the individual who had been apprehended. Chief Carr recalled the family in the vehicle who had been severely injured and the infant who did not survive. He acknowledged charges would be filed against the individual responsible soon. Councilmember Smith commended Chief Carr along with the Unified Police Department and Unified Fire Authority for their professionalism shown in difficult situations. He thanked them for their ability to listen to residents and put a plan into action to address concerns. Councilmember Smith said these situations are concerning to the Council as they try to do everything in their power to help keep residents safe. Chief Carr thanked the Council and pledged to continue making the community a safe place to live. Councilmember Ohrn expressed her appreciation for the UPD and UFA for their willingness to help in these situations and acknowledged the decision made by a person who chose not to pay attention and disregarded the safety of other individuals. Mayor Watts looked forward to working with the community and the Utah Department of Transportation to address concerns and come to acceptable solutions.

Chief Carr talked about the monthly trending data and contributed the significant increase of calls to the growth. Councilmember Ohrn asked if those figures were comparable with other communities similar in size. Chief Carr responded in the affirmative and anticipated to see continual increase with the trend as the City gets larger. He continued with a breakdown of personal crimes for the first quarter of 2018 and noted the high level of those types of crimes throughout the area.

Chief Carr reviewed the staffing situation for the Herriman Precinct. The Investigations unit has been very active and started with four vacancies throughout UPD, three of which, are in Herriman City and the other vacancy in the Southwest Area. He informed the Council of Officer Ken Cannon’s retirement, Officer Robert Osmond’s resignation, and Officer Scott Lauritzen’s reassignment. Councilmember Smith asked how long it has been since Herriman Precinct was fully staffed. Chief Carr indicated that during his tenure as the Herriman Chief, the Precinct has never been fully staffed. Mayor Watts asked if the City has been paying for those positions. Chief Carr responded affirmatively and informed the Council he was unaware when the positions would be filled. He acknowledged the Herriman Precinct had the most vacancies within the UPD force; however, it would not guarantee officers would be assigned to Herriman after training has been completed. Mayor Watts relayed his concern of the vacancies. Chief Carr indicated he has been working to influence UPD to not have Herriman be in such a deficit. Councilmember Smith
asked if the unspent funds come back to the Herriman Precinct. Chief Carr responded in the negative. Councilmember Ohrn expressed her concern of overtime staffing of officers as they already have a stressful situation. Chief Carr expressed appreciation of her concern. Councilmember Smith felt it was disproportionate for Herriman City to be the last precinct eligible to get officers. The Council agreed. Chief Carr indicated the officers are spread over 72 square miles because of allocations. Mayor Watts recommended continuing the discussion of additional allocations. Councilmember Smith indicated it is the fiscal responsibility of the Council to ensure the City is getting services that are being paid for. He expressed appreciation to the officers for their service and dedication. He reiterated his concern of paying for officer allocations that aren’t being received. Councilmember Ohrn agreed.

Chief Carr congratulated Madi Montgomery for her contest-winning design for the new D.A.R.E (Drug Abuse Resistance Education) vehicle. He indicated Interstate Image donated the wrap for the vehicle. Chief Carr presented the goals for the Herriman Precinct to meet the demands of public safety especially for patrol officer allocations in order to meet the shift minimums. He offered an overview of the department accomplishments to be a more proactive police force. He also informed the audience the department would allow for the residents to use the decommissioned laser guns, if requested.

4.2. **Presentation of the 2018 Utah Recreation and Parks Association (URPA) Awards** – LeeAnn Powell, URPA Executive Director
Utah Recreation and Parks Association (URPA) Executive Director LeeAnn Powell thanked the Council for the opportunity to present the 2018 URPA Award. She relayed her admiration for Herriman City staff for their work. She presented Herriman City Arts Council Vice Chair with the 2018 Utah Recreation and Parks Association Award for volunteerism and thanked her for her service. The audience offered applause.

Director Powell informed the Council of the Utah Recreation and Parks Association Innovation of the Year Award and presented it to the special guest of honor, Yeti. The audience offered applause.

4.3. **Presentation of the Arbor Day Proclamation** – Anthony Teuscher, Parks Manager
Parks Manager Anthony Teuscher introduced himself to the Council and highlighted the accomplishments of the department that allowed the City to receive the title of Tree City USA. He outlined benefits trees provide to the community. Manager Teuscher recited the 2018 Arbor Day Proclamation.

Councilmember Ohrn moved to approve the 2018 Arbor Day Proclamation. Councilmember Smith seconded the motion.

The vote was recorded as follows:
- Councilmember Jared Henderson: Absent
- Councilmember Nicole Martin: Absent
- Councilmember Sherrie Ohrn: Aye
- Councilmember Clint Smith: Aye
- Mayor David Watts: Aye

The motion passed unanimously with Councilmember Henderson and Martin being absent.

4.4. **Presentation of the Child Abuse Prevention Proclamation** – Brett Wood, City Manager
City Manager Brett Wood introduced Family Support Center Executive Director Jeff Bird who received the Child Abuse Prevention Proclamation.

**Councilmember Smith moved to approve the 2018 Child Abuse Proclamation. Councilmember Ohrn seconded the motion.**

*The vote was recorded as follows:*

- Councilmember Jared Henderson: Absent
- Councilmember Nicole Martin: Absent
- Councilmember Sherrie Ohrn: Aye
- Councilmember Clint Smith: Aye
- Mayor David Watts: Aye

*The motion passed unanimously with Councilmember Henderson and Martin being absent.*

**4.5. Presentation of the Fair Housing Month Proclamation** – Michael Maloy, City Planner

City Planner Michael Maloy explained that today is the 50th anniversary of the Fair Housing Act. The month of April is nationally recognized as Fair Housing Month, and is a time to reflect on the national commitment to the idea that fair housing opportunity is available to everyone in the United States without regard to race, color, religion, national origin, sex, familial status and disability. The proclamation denoted a collaborative effort with HUD and its housing partners in realizing increased housing opportunities for every individual.

**Councilmember Ohrn moved to approve the 2018 Fair Housing Month Proclamation. Councilmember Smith seconded the motion.**

*The vote was recorded as follows:*

- Councilmember Jared Henderson: Absent
- Councilmember Nicole Martin: Absent
- Councilmember Sherrie Ohrn: Aye
- Councilmember Clint Smith: Aye
- Mayor David Watts: Aye

*The motion passed unanimously with Councilmember Henderson and Martin being absent.*

**4.6. Presentation of the 2018-2019 Herriman City Tentative Budget** – Alan Rae, Finance Director

Finance Director Alan Rae presented the tentative budget for year 2018-2019 and revised budget for year 2017-2018. He commended the communications staff for their efforts in helping with the budget document. He indicated the tentative budget is a working document for the Council to offer input prior to the budget document being released to the public. The overall budget had decreased. Director Rae referenced the budget schedule. Mayor Watts thanked the staff for their efforts regarding the budget. City Manager Brett Wood thanked all of the Directors and Managers involved in creating the budget document.

**5. Consent Agenda**

**5.1. Approval of the March 14, 2018 City Council Meeting Minutes**

**5.2. Consideration of a Resolution Adopting a Revised Organization Chart** – Brett Wood, City Manager
The vote was recorded as follows:

Councilmember Jared Henderson Absent
Councilmember Nicole Martin Absent
Councilmember Sherrie Ohrn Aye
Councilmember Clint Smith Aye
Mayor David Watts Aye

The motion passed unanimously with Councilmember Henderson and Martin being absent.

6. Discussion and Action Items

6.1. Discussion and consideration of an ordinance amending the Herriman City 2025 General Plan – Michael Maloy, City Planner

On January 10, 2018, the Herriman City Council directed staff to initiate an amendment of the Herriman City 2025 General Plan Amendment to facilitate planning for commercial growth within the City. More specifically, the City Council requested the Planning Commission, City staff, and the public, consider the following amendments to the Future Land Use Map for approximately 1,350 acres of property.

1. 45 acres along 11800 South & 6000 West Single Family, & Medium Density to commercial
2. 10 acres at Anthem Park Blvd & Freedom Park Drive from high density to commercial
3. 15.5 acres at Herriman Blvd & 5600 West Public Commercial
4. 25 acres at Herriman Boulevard & Main Street Single Family Commercial
5. 60 acres along Mountain View Corridor (PRI) Single Family Commercial
6. 100 acres at Juniper Crest & Mountain View Corridor Mixed Use, & Public Commercial
7. 40 acres at Mountain View Corridor & Academy Pkwy Medium Density Commercial
8. 35 acres near Porter Rockwell Blvd Single Family Light Industrial/Business Park
9. 20 acres adjacent to Porter Rockwell Blvd Mixed Use Commercial
10. 1,000 acres of Kennecott Property (potential annexation) Residential (various) Light Industrial/Business Park

The Planning Commission met on March 15, 2018, and voted 4-0 to recommend approval of application G2018-001 to amend the Future Land Use Map of the Herriman City 2025 General Plan with the following exceptions:

- Number 3 should not be amended as proposed at this time. The proposed amendment should be reconsidered during a future comprehensive review of the General Plan;
- Number 4 should not be amended as proposed at this time. The proposed amendment should be reduced and reconsidered during a future comprehensive review of the General Plan; and
- Number 5 should not be amended as proposed at this time. The proposed amendment should be removed and reconsidered during a future comprehensive review of the General Plan.

Mayor Watts asked if area three was already zoned commercial. Planner Maloy confirmed and notated zoning conditions could be placed on the property to help mitigate concerns. He added that the community responded well to the recommendation. Councilmember Ohrn agreed. Councilmember Smith asked about the concerns regarding areas four and five. Planner Maloy indicated neighboring property owners around area four wanted more a mixed use component on the property. The Planning Commission suggested it should be studied further as they felt there was too much potential commercial property within the City.
Councilmember Smith expressed appreciation to staff for their efforts on this proposed amendment. He understood the views of the Planning Commission regarding their concern of having too much commercial zoning and referenced the recent study that had been conducting confirming the statement. He explained he would not want to miss out on an opportunity to have commercial development in specific areas of the City. Mayor Watts agreed and added the City would have the option to move forward and study viable locations. He relayed his support to correct the General Plan to match current zoning designations and would be willing to work with residents to study the viability of having a mixed use component in some areas. Councilmember Smith indicated that commercial development would be best suited along major transportation corridors and within a certain proximity to City Hall. He relayed his willingness to look at multiple uses. Councilmember Ohrn agreed and relayed her support to review all of the areas during the future rendition of the General Plan, but did not want to lose out on critical opportunities. She indicated it was appropriate to amend the General Plan to have the current zoning designation match. Mayor Watts indicated this amendment was the first step needed prior to the review of the entire General Plan. He recommended the City needs to create a vision and maintain that stance.

Councilmember Smith moved to approve Ordinance No. 2018-16 amending the future land use map of the 2025 General Plan to include all ten parcels as outlined. Councilmember Ohrn seconded the motion.

The vote was recorded as follows:
Councilmember Jared Henderson   Absent
Councilmember Nicole Martin   Absent
Councilmember Sherrie Ohrn  Aye
Councilmember Clint Smith  Aye
Mayor David Watts    Aye

The motion passed unanimously with Councilmember Henderson and Martin being absent.

6.2. Discussion and Consideration of an Ordinance Declaring Approximately .62 Acres of Real Property Located at or near 7068 West Rose Canyon Road Herriman, as Surplus, and Determining that a Trade for 1.36 Acres of Real Property Located at or near 7068 West Rose Canyon Road is in the best interest of the City and the Consideration is Adequate Based on Public Policy Factors – Blake Thomas, City Engineer

City Engineer Blake Thomas informed the Council that staff has been coordinating with a representative from the Unified Fire Authority (UFA) to swap property located at approximately 7100 West Rose Canyon Road. This swap would provide Herriman with the needed right-of-way and area for storm water storage for the future construction of 7300 West. Staff presented this proposal to the City Council in work meetings on January 10, 2018 and March 14, 2018 and was provided direction in those meetings to continue working with UFA to exchange the property. In order for the exchange of property to occur, the City Council would be required to declare the property as surplus. Engineer Thomas indicated the parcel that is asking to be declared as surplus property is 0.62 acres and would be traded for 1.53 acres, not 1.36 as previously discussed. The exchange would provide the City with the ability to provide a detention pond for the new 7300 West roadway, when it is constructed, and the right-of-way needed to construct the roadway. In return, UFA will be left with an
adequately sized parcel to construct a fire station at some time in the future. There will be a separate inter-local agreement to outline the specifics about the property exchange.

Councilmember Ohrn moved to approve Ordinance No. 2018-17 declaring approximately .62 acres of real property located at or near 7068 West Rose Canyon Road, as surplus, and determining that a trade for 1.53 acres of real property located at or near 7068 West Rose Canyon Road is in the best interest of the City and the consideration is adequate based on public policy factors. Councilmember Smith seconded the motion.

The vote was recorded as follows:
- Councilmember Jared Henderson: Absent
- Councilmember Nicole Martin: Absent
- Councilmember Sherrie Ohrn: Aye
- Councilmember Clint Smith: Aye
- Mayor David Watts: Aye

The motion passed unanimously with Councilmember Henderson and Martin being absent.

6.3. Discussion and Consideration of a Resolution Approving and Interlocal Cooperative Agreement between the Local Building Authority of the Salt Lake Valley Fire Service Area and Herriman City for the Exchange of Real Property – John Brems, City Attorney

City Attorney John Brems informed the Council the Interlocal agreement provides the mechanism to trade approximately 1.53 acres of Unified Fire Authority (UFA) property for 0.62 acres of Herriman City property. To account for the discrepancy in acreage being traded between the parties, UFA is requesting that Herriman City agree to the following conditions:

- Install or reimburse UFA for sidewalk, park strip landscaping/irrigation, street lighting along the frontage of the UFA property.
- Provide two culinary water stubs to the UFA property.
- Provide one sanitary sewer lateral to the UFA property.

Herriman City would be responsible to fund the improvements when the fire station has been constructed. The agreement does not allow these conditions to pass on to a new owner if UFA decides to sell the property. Attorney Brems relayed his opinion this transaction would be an equitable trade. He also reviewed the technical amendments of the Interlocal Cooperative Agreement and indicated deeds would need to be inserted into the document. He confirmed there were no substantive changes to the agreement.

Councilmember Smith asked if the UFA decided to sell the parcel the additional improvements would not be carried on to the new buyer. This was verified. Councilmember Ohrn asked if the provisions should be transferrable. Councilmember Smith indicated he was looking for clarification. Attorney Brems indicated the provision could be modified under Council direction.

Councilmember Smith moved to approve Resolution No. R21-2018 approving an Interlocal Cooperative Agreement between the Local Building Authority of the Salt Lake Valley Fire Service Area and Herriman City for the Exchange of Real Property and allowing for the City Attorney to make technical changes to the Agreement and insert the legal maps. Councilmember Ohrn seconded the motion.

The vote was recorded as follows:
6.4. Discussion and Consideration of a Resolution Authorizing Eminent Domain Proceedings with Respect to Herriman Main Street – John Brems, City Attorney

City Attorney Brems reviewed the state statute relating to Eminent Domain proceedings to offer an opportunity for the property owners to speak on the matter.

Mr. Ron Hepner indicated he was representing individuals that had been affected by the action. He reviewed the history of the proceedings and notated intend to follow through with the negotiation. He explained property owners received an offer from the City based on an appraisal that had been conducted, and added the land owners have not agreed with the valued price. Mr. Hepner indicated the property owners have been working to get an independent appraisal conducted by an independent appraiser to be able to negotiate with the City. He indicated the letters notating the City has looked to eminent domain had caught them off guard. He indicated the parcels should be looked at with real values instead of assumptions that could be agreed upon.

Mr. Andrew Peterson representing Mr. Joel Peterson indicated he had been in constant contact with the City and several staff members and was not opposed to the road being installed as it would be in the best interest of the City. He indicated they would like fair market value and is willing to negotiate the price. He reiterated that a third party appraiser is reviewing the property as they would like to have compensation for the true value of the property.

Mr. Josh Winn spoke on behalf of Ms. Diane Thomas asking the Council not to take such an aggressive approach as the property owners have been working through a process and added the independent appraisal would be completed next Monday. He noted he hoped to see something in the appraisal that would be palatable for the City as well as the property owners as he felt they weren’t asking for an exorbitant amount. Mr. Winn indicated they have maintained good will and are not being uncooperative and would prefer to work with the City. He acknowledged he had been in contact with the State Ombudsman office to ensure they have the ability to conduct their due diligence. He requested the Council consider holding off on the eminent domain and allow discussions with staff to continue.

City Attorney John Brems informed the Council he has drafted five separate purchase agreements on the property and Staff Engineer Jory Howell had been involved with the negotiations. He explained this process was not an absolute step, but one step to follow in order to find a resolution. Councilmember Smith asked Attorney Brems if he had been aware of the independent appraisal. Attorney Brems responded in the negative, and notated the City had paid for an appraisal that had been conducted by an appraiser selected by the property owners. He explained this property situation has been difficult for negotiations. Mayor Watts asked if the property owners had counter-offered. Engineering Coordinator responded in the affirmative and added a second appraisal had been conducted and a new offer had been extended. He indicated the property owners refused the second offer of roughly $830,000. Councilmember Smith asked for a timeline of the last offer. Engineering Coordinator responded the last offer was
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extended March 15, 2018 and a collective response was not given to the City. He indicated the property owners wanted the appraisal to be conducted with a residential designation as it is currently zoned A-1.

In response to Councilmember Ohrn’s request, Attorney Brems reviewed the statutory requirements of the process. Councilmember Ohrn indicated as the 30-day requirement hasn’t lapsed there would still be time for negotiations and relayed her desire to continue negotiations. Mayor Watts questioned the date of the most recent appraisal. Attorney Brems responded February 21, 2018 and reiterated the property owners had selected the appraiser. Councilmember Ohrn indicated the property owners stated there was a communication disconnect and they had been surprised with the eminent domain proceedings and asked about the discussions with the property owners. Staff Engineer Howell indicated he had not spoken to the group collectively; however, he has not been told of their willingness to sell the property. There has been a push for representation for all property owners for discussions to be conducted with Mr. Josh Winn. The owners present agreed. Mr. Winn acknowledged to working with all of the land owners and explained he was a professional developer. Councilmember Smith asked if he had any relationships with these individuals outside of this transaction. Mr. Winn responded in the negative, and added he has been working with the group for about four months. Councilmember Smith asked if the recommendation for the appraisal was initiated by the group or him. Mr. Winn responded both parties requested to have another appraisal conducted as he felt the appraisal process had not been followed. He suggested no property owner had been consulted after the property had been re-evaluated and added there could have been a potential conflict of interest of the selected appraiser. Councilmember Smith disagreed and affirmed the City would not pay nothing more or less than the appraised fair market value of the property. Mr. Winn expressed his belief that the appraisal did not represent the current fair market value. Attorney Brems interjected the appraiser selected had never had a working relationship with the City and had been approved by the group of property owners. Councilmember Smith asked Mr. Winn to clarify his concern of the appraisal not being valid. Mr. Winn indicated that raw property has doubled in value.

In response to a question posed by Mayor Watts, Assistant City Manager Haight informed the Council this offer was the highest of all property purchase transactions in the area. He noted the City has other properties in the area under contract for purchase for a lesser amount. Those transactions had been conducted within the last two months. Mr. Winn insisted the City would have the ability to pay what the property is worth to the property owners. Mayor Watts reiterated the City could not pay above or below the appraised market value. Councilmember Smith reviewed the his understanding of the recent comparable property purchased. Mr. Winn suggested the data would only be available if the transactions had been publically disclosed.

Councilmember Smith asked if passing a resolution regarding eminent domain would take away the ability to negotiate with the property owners. Attorney Brems responded in the negative and encouraged the continuation of negotiations to be able to pay fair market value. Councilmember Smith asked if those negotiations could include their updated independent appraisal. This was confirmed. Councilmember Ohrn asked what the benefit would be to move forward with the approval of this resolution. Attorney Brems responded the resolutions would allow the process to continue if the negotiation process breaks down. He recommended the Council add language into their motion to request negotiations to continue.

Mayor Watts expressed his concern of taking an individual’s property and balancing the rights of the property owner compared to the needs of the City. Assistant City Manager Haight indicated the property owners have been great and the City has been looking at commercial projects in this area where the City has to commit the infrastructure. He
Councilmember Smith emphasized the timing of this project was of the imperative. Councilmember Smith clarified that there would be significant long-term implications.

Councilmember Smith agreed with the comments offered by Mayor Watts regarding property rights. He noted the City Council had been elected to make difficult decisions and to be able to do what is in the best interest of the community. Ultimately, the Council would be held accountable to the residents and explained the community has been concerned with creating a tax base to be sustainable. He empathized with the property owners and thanked them for sharing their views of the issue with the Council and expressed his desire to continuing good faith discussions. He indicated the goal would be to maintain being fiscally responsible while paying fair market value for the property.

Attorney Brems indicated the City would have to wait 30 days after the offer had been extended to file for eminent domain action. He explained if the new appraisal is received, the process timeline would reset. Mayor Watts expressed his hesitation to consider eminent domain proceedings; however, it was the responsibility of the Council to make a decision and the land had been designated as a road. He relayed his desire to continue conversations with the property owners to ensure they would receive the appropriate compensation.

Councilmember Ohrn asked if the property owners rejected the offer that had been extended. Staff Engineer Howell indicated he had received mixed messages from the property owners. Mayor Watts asked the property owners and their representatives if they were rejecting the second offer. The affected individuals responded in the affirmative. Councilmember Ohrn confirmed all property owners had rejected the offer as they were waiting for their independent appraisal which is due to be delivered the following Monday. The property owners agreed with the clarification.

Mayor Watts asked for a recommendation from legal counsel when the action would be filed and if it would allow for enough time to review their independent appraisal. Attorney Brems recommended the filing date to be set at April 30, 2018. Councilmember Ohrn clarified the extension of the filing would allow for the ability to continue negotiations.

Councilmember Smith moved to approve Resolution No. R22-2018 authorizing Eminent Domain Proceedings with respect to Herriman Main Street with the following conditions. 1. City continue to negotiate in good faith with the property owners and to consider the independent appraisal which is due next Monday, and 2. No formal legal action would take place prior to April 30, 2018 to allow the City the protection needed with other timeline commitments while allowing time for good faith negotiations to take place. Councilmember Ohrn seconded the motion.

The vote was recorded as follows:

Councilmember Jared Henderson   Absent
Councilmember Nicole Martin   Absent
Councilmember Sherrie Ohrn   Aye
Councilmember Clint Smith   Aye
Mayor David Watts   Aye

The motion passed unanimously with Councilmembers Henderson and Martin being absent.
Councilmember Ohrn indicated her reasoning to move forward with the proceedings is due to the time sensitive issues to be able to get the economic development necessary in the area. She relayed her concern of the City’s dependence on one-time monies and the City needed to do something to help with commercial development in the community. She sympathized with the position of the property owners and shared her intent to operate in good faith and make sure they are compensated equitably.

7. Calendar
7.1. Meetings
  7.1.1. April 18 – City Council Work Meeting 5:00 p.m.; City Council Meeting 7:00 p.m.
  7.1.2. April 19 – Planning Commission Meeting 7:00 p.m.

7.2. Events
  7.2.1. April 15 – Thomas Butterfield Scholarship Application Deadline
  7.2.2. April 28 – Community Service Day

8. Closed Session
8.1. The Herriman City Council may temporarily recess the City Council meeting to convene in a closed session to discuss pending or reasonably imminent litigation, and the purchase, exchange, or lease of real property, as provided by Utah Code Annotated §52-4-205.

Councilmember Smith moved to temporarily recess the City Council meeting to convene in a closed session to discuss the pending or reasonably imminent litigation, and the purchase, exchange or lease of real property as provided by Utah Code Annotated §52-4-205 at 11:44 p.m. Councilmember Ohrn seconded the motion.

The vote was recorded as follows:
Councilmember Jared Henderson
Councilmember Nicole Martin
Councilmember Sherrie Ohrn
Councilmember Clint Smith
Mayor David Watts

The motion passed unanimously with Councilmembers Henderson and Martin being absent.

The Council reconvened by consensus at 12:04 a.m.

9. Adjournment
Councilmember Smith moved to adjourn the City Council meeting at 12:04 a.m. Councilmember Ohrn seconded the motion and all voted aye.

10. Recommence to Work Meeting (If Needed)

I, Jackie Nostrom, City Recorder for Herriman City, hereby certify that the foregoing minutes represent a true, accurate and complete record of the meeting held on April 11, 2018. This document constitutes the official minutes for the Herriman City Council Meeting.

[Signature]
Jackie Nostrom, MMC
City Recorder
The following are the minutes of the Special City Council Meeting of the Herriman City Council. The meeting was held on Wednesday, June 20, 2018 at 5:00 p.m. in the Herriman City Hall Council Chambers, 5355 West Herriman Main Street, Herriman, Utah. Adequate notice of this meeting, as required by law, was posted in the City Hall, on the City’s website, and delivered to members of the Council, media, and interested citizens.

Presiding: Mayor David Watts

Council Members Present: Jared Henderson, Nicole Martin, Sherrie Ohrn and Clint Smith

Staff Present: City Manager Brett Wood, Assistant City Manager Gordon Haight and Director of Administration and Communications Tami Moody, Finance Director Alan Rae, City Recorder Jackie Nostrom, Public Works Director Justun Edwards, Parks and Recreation Director Wendy Thomas, Operations Director Monte Johnson, City Engineer Blake Thomas, Police Chief Troy Carr, City Planner Michael Maloy, Unified Fire Chief Riley Pilgrim, Chief Building Official Cathryn Nelson, Communications Specialist Destiny Skinner, Assistant City Engineer Jonathan Bowers, Lieutenant Cody Stromberg, City Attorney John Brems, and Acting Deputy Chief Brian Lohrke.

5:00 PM - WORK MEETING: (Fort Herriman Conference Room)

1. Mayor and Council Social
   1.1. The Mayor and Council will meet for informal discussion and dinner. No action will be taken on any items.

2. Council Business – 5:15 PM
Mayor David Watts called the meeting to order at 5:15 p.m.

   2.1. Review of this Evening’s Agenda
The Council and staff briefly reviewed the agenda. Regarding Item 3.4, Lieutenant Cody Stromberg explained they were exploring other options for the dispatch services because the Interlocal Agreement with South Jordan was no longer needed. He requested that this item be stricken from the agenda.
City Manager Wood noted that an on-site field trip was scheduled for tonight and would leave at 6:45 pm.

2.2. Future Agenda Items
There were no future agenda items that needed to be discussed. Councilmember Henderson said he wanted to discuss expiration dates on future development agreements. Mr. Wood agreed that this discussion should take place.

Mayor Watts said he wanted a report from staff on the Wasatch Front Waste and Recycling District. Councilmember Ohrn explained they would provide feedback at the next meeting.

3. Administrative Reports
3.1. Discussion regarding Senate Bill 136 relating to Transportation Governance
Tami Moody, Director of Administration and Communications & LaNiece Davenport, WFRC Government Relations Manager

Director of Administration and Communications Tami Moody said they discussed if Andrew Gruber or Representative Shultz would speak on this topic. She noted neither was available so LaNiece Davenport was in attendance to discuss SB 136. She listed which cities voted to pass the bill and explained that it passed with the required 67-percent majority. She asked Ms. Davenport to discuss the bill.

Ms. Davenport presented a handout to the Council. She noted the Wasatch Front Regional Council was not an advocate for the local option sales tax; rather, the State Legislature provided local governments the ability to impose this sales tax in four quarters. She explained how the first three quarter taxes were used, and explained that the fourth quarter sales tax, which recently met the required support, would be 0.25% on every dollar. The funds could be used for any road or transit project.

Councilmember Ohrn asked if the funds could be used on other infrastructure projects. Ms. Davenport explained it was strictly for transportation projects. Councilmember Ohrn asked if the County had indicated how they wanted to use the tax revenues. Ms. Davenport answered in the negative. She then noted that only two communities opposed the sales tax.

Ms. Davenport explained when the tax would be imposed and the funds would become available. Councilmember Ohrn asked how the County would determine which projects were regionally significant. Ms. Davenport stated that there was a list of items that needed funding. Councilmember Smith asked who had the authority to determine whether these projects were regionally significant. Ms. Davenport stated that Amy Winder Newton sent out a description of the process the County should follow for regionally specific projects. She explained that cities could apply for the funding and a committee would make appropriate determinations. Councilmember Smith clarified that no one entity should have discretion over the funds. It was stated the County would have ultimate authority but would generally accept the committee’s decisions.

Ms. Davenport noted Utah Transit Authority (UTA) would not receive money for the first eight months. Councilmember Martin asked if the money could be earmarked for the UTA. Ms. Davenport confirmed that this was possible. She continued explaining that after July 1, 2019, Herriman would receive $376,000 per year. Mayor Watts stated this was ongoing funding that could be used for road and transit projects. Ms. Davenport explained the percentage allocated to the County would be distributed based on a competitive grant process; however, this was not stated in the bill. Councilmember Martin said the bill should have made this clear, and Councilmember Ohrn agreed.
Councilmember Martin was concerned that the bill language was ambiguous. She suggested they articulate the City’s understanding of the bill if they adopt the resolution. She explained the assurances given from those soliciting the bill were why she would vote yes on the resolution. The Council agreed with her suggestion.

Ms. Davenport referenced the handout for the lists of potential projects, which also included the regional plan and update through 2050.

Director Moody noted they had a list of road projects that could benefit from the tax. Councilmember Martin said they should include an addendum to the resolution to define what projects were regionally significant. Assistant City Manager Haight noted there were projects listed as regionally significant in Herriman. He said they could include a list of other projects they thought were also regionally significant. He noted the only other way to generate funds for transit was through property taxes.

3.2. Discussion pertaining to the 2018-2019 Herriman City Tentative Budget – Alan Rae, Finance Director

Finance Director Alan Rae noted that as a part of the motion the Council would need to approve the addendum to fund the police. Councilmember Smith asked if the certified tax rate was typical, to which Director Rae responded the rate was down from last year. He noted the tax liability would not change unless the valuation changed. He stated they generated about $700,000 last year. There were no other significant changes to the tentative budget. City Manager Wood said he was impressed with the questions and comments by the Council. He thanked staff for their work on the budget.

3.3. Water Impact Fee Adjustment Policy Discussion – Justun Edwards, Water Director

Water Director Justun Edwards reminded the Council of the requests received recently, and explained that each adjustment was being requested for a different reason. The current water impact fee that related to these scenarios was based on lot size; therefore, if a portion of a lot was deemed unbuildable, or not able to be irrigated, property owners could request that the fee be adjusted. This policy set guidelines for which future adjustments would be based. The City had recently been approached for a reduction of an impact fee based on a property owner’s financial inability to pay the entire fee. This particular property owner’s water was supplied by a private well. However, for whatever reason, they were no longer able to use the well as a water source and were in need of a new water supply to their home. This policy set guidelines for which future reductions would be based.

Councilmember Smith asked if Director Edwards foresaw any challenges they needed to address, to which Director Edwards answered in the negative. He explained that everything would come back to the Council for approval.

3.4. Discussion of an Agreement with South Jordan for the purpose of Hosting a Temporary Records Management and Computer Aided Dispatch System for the Herriman Police Department – Troy Carr, Police Chief & John Brems, City Attorney

This item was not discussed.

3.5. Review of the Anthem Commercial Development Agreement Amendments – Gordon Haight, Assistant City Manager

Assistant City Manager Gordon Haight explained that the City had an RDA in the anthem commercial area. He said they estimated an income of $14 million, and the amount anticipated to Anthem was capped at $11 million with the rest to the City. He subsequently explained how the money would be allocated. He noted that they initially waived impact fees for everything other than Walmart. He explained that in 2021 they would waive 75-percent of the impact fees.
fees, which would be an incentive to developers to move their projects forward. He said the RDA would reimburse the impact fees. Staff would provide a handout to the Council prior to future discussion.

3.6. Rocky Mountain Power Franchise Agreement Discussion – John Brems, City Attorney
City Attorney John Brems indicated that as part of the discussion relating to the Public Art Utility Box Program, Rocky Mountain Power requested that the City renew the franchise agreement. The agreement was set to expire June 30, 2019. Councilmember Martin asked if they were increasing rates. City Attorney Brems said there were no changes.

3.7. Discussion pertaining to the Public Art Utility Box Program – Wendy Thomas, Director of Parks, Recreation and Events
Rocky Mountain Power and the Utah Department of Transportation implemented community art pilot programs to allow cities to decorate certain pad-mounted equipment (utility boxes). Similar programs had been implemented in several cities around the world, and they helped foster citizen pride in beautifying streetscapes. Councilmember Martin asked if they could change the look of the utility boxes on a regular basis. Director of Parks, Recreation and Events Wendy Thomas answered in the affirmative and stated that artists were asked to keep the art simple. City Manager Wood said this was a positive program because these boxes were targets for graffiti. Councilmember Ohrn suggested that the City solicit local artists. It was noted that once the project was turned over to local artists, the City could no longer control what went on the boxes. Mayor Watts and Councilmember Martin both expressed support for the program.

3.8. McCuiston Avenue Project Update – Blake Thomas, City Engineer
City Engineer Blake Thomas presented a timeline of the project. He discussed the parcels along McCuiston Avenue and noted that a resident asked the City to modify a certain cross-section. He displayed the suggested modifications and explained there were other property owners that had concerns with the project. There was then a discussion regarding the implications of a resident not allowing curb, gutter, and sidewalk improvements.

City Engineer Thomas explained that the proposed cross section would be 55 feet. He noted that a typical cross section would be 60 feet and would have room for snow storage and street lights. City Manager Wood said they worried about narrow park strips because they caused issues. He said they would have to plan to accommodate the narrow park strip. Councilmember Ohrn asked about the normal width of park strips, to which City Manager Wood stated five feet was the standard. Assistant City Manager Haight discussed the landscaping options for the park strip. Staff recommended that the Council permit this narrow cross section to advance this project.

Councilmember Henderson said this issue had been a struggle but they were trying to seek a compromise. Councilmember Martin agreed and stated that this showed the City was willing to make concessions with the residents. City Engineer Thomas said he understood how the Council wanted him to proceed. He said he would survey property and meet with the residents again.

3.9. Autumn Crest Road Update – Blake Thomas, City Engineer
City Engineer Blake Thomas indicated the Utah State Legislature provided funding to Herriman and Riverton to construct Autumn Crest Boulevard (4500 West) from 13400 South to its northern terminus in Herriman at approximately 14200 South. Additionally, Herriman applied for and received Corridor Preservation funding to purchase the right-of-way for the new road. Herriman and Riverton recognize the importance of opening this roadway before the new high school and elementary school open in August 2019. Herriman staff worked with the property owner, Riverton staff, and Salt Lake County Flood Control through the design process of the road and storm drainage. There were a handful of design constraints and regulations that were affecting the progress of this project. This discussion would provide a description of the issues that the cities were facing and working through to
3.10. Engineering Standards Update – Jonathan Bowers, Assistant City Engineer

Assistant City Engineer Jonathan Bowers stated he would discuss section three of the land development standards update. He explained that the intention of the update was to take the developer from Planning Commission approval to a building permit. He discussed the key changes and highlights of the update, and explained that minor changes to developments would not need to be reviewed by the Planning Commission again. There was subsequent discussion regarding what constituted a substantial change that the Planning Commission would need to reconsider.

Mayor Watts said he was concerned a developer would slightly realign without Planning Commission approval. Councilmember Smith noted there were minimum setbacks in place to combat this behavior. Mayor Watts asked the Council to consider this issue while they reviewed the updates. Councilmember Smith noted substantial changes were rare and were handled well by engineering and staff.

Assistant City Engineer Bowers explained the City could not withhold a building permit if a developer installed or bonded for essential infrastructure. He noted that any deviations from the approved plans needed to be addressed and recorded accordingly.

At 6:39 pm, the Council temporarily recessed the City Council work meeting by consensus.

3.11. Update on the Olympia Hills Development – Gordon Haight, Assistant City Manager

Assistant City Manager Haight stated that the Olympia Hills Development should be a part of Herriman. He said they needed to create the correct infrastructure and density, and noted that the developer did not want the City to take a long time to approve the project. The subject property would need to first be annexed into Herriman City before development could occur. Councilmember Martin said the developer should not expect the City to rush the approval; as a City, they could promise that they would be as thorough and efficient as possible.

Assistant City Manager Haight noted there were plans for townhomes and apartments in the development. There was discussion at the State level about encouraging these types of large developments. Staff and elected officials discussed the developer’s demands to make this process move quickly, and determined that the approval process was essential.

Councilmember Martin said this was an opportunity to show the County and State how a City should handle this type of project. Assistant City Manager Haight said they would start a general plan to move the process forward. He recommended they discuss the holding capacity of the land because they needed an idea of what could be developed. It was noted that the City needed to study the surrounding areas because they would also be affected by this development. Councilmember Martin added that the City needed to work closely with the County on the project.

3.12. City Manager Updates – Brett Wood, City Manager

City Attorney Brems briefly updated the Council on an ongoing legal issue.
City Manager Wood reported that there was currently a vacant position on the Planning Commission, which led to a discussion on potential candidates for filling said position.

Chief Pilgrim reported on an individual who was recently injured. He asked residents to be aware of children playing near windows.

City Manager Wood reported that Towne Days would take place soon and noted that Councilmember Ohrn and Mayor Watts signed up for a booth. He asked more Councilmembers and staff to sign up as well.

The Federal Fund Committee was discussed. City Manager Wood noted that currently there was not a lot of interest in this committee. Councilmember Ohrn stated the programs were not applicable to Herriman. Councilmember Martin said participating was a good idea for building relationships within government.

4. Adjournment

Councilmember Smith moved to adjourn the Work Meeting and move into the General Meeting at 6:55 pm. Councilmember Ohrn seconded the motion and all voted aye.

7:00 PM - GENERAL MEETING:

1. Call to Order

Mayor David Watts called the meeting to order at 7:02 p.m. and welcomed those in attendance.

1.1. Invocation/Thought/Reading and Pledge of Allegiance

Scout Troop #1125 led the audience in the Pledge of Allegiance.

1.2. Council Disclosure for Conflict of Interest

There were no noted conflicts of interest.

1.3. Mayor/Council Comments and Recognitions

There were none.

2. Public Comment

There was no public comment offered.

3. Mayor and Council Board and Committee Reports

Councilmember Martin reported that she recently attended the UFA board meeting. She expressed appreciation to them for their service and said UFA had kept the community safe. She personally thanked Chief Peterson and Chief Pilgrim.

Councilmember Henderson reported that the UPD board meeting was tomorrow. He stated he would gather more information to share with the Council.

4. Reports, Presentations and Appointments

4.1. 2018 Grand Marshall for Herriman Towne Days to Mayor J. Lynn Crane – Brett Wood, City Manager

City Manager Wood explained that staff created an online survey for the Town Days Grand Marshall. He said James Lynn Crane was the nominee selected. He introduced Mr. Crane and stated that he was the first Mayor of Herriman.
He said Mayor Crane always worked for what was best for Herriman. He thanked Mayor Crane for his work and presented him with an award.

Mayor Crane said he appreciated the opportunity to participate in the City, and he was impressed with the City’s progress. He noted that he, along with City Attorney Brems and City Manager Wood, were present the first day the City incorporated. He shared his sentiments about the growth of the City and community and thanked City Manager Wood for his devotion to the growth of the City. He also thanked his family, Council, and staff for their involvement and commitment. As the City continued to grow, he encouraged the Council to retain the feel of an urban community. Mayor Watts noted the residents were motivated to keep the same sense of community encouraged by its founders.

Councilmember Smith remarked that Mayor Crane was a pillar of the community. Councilmember Martin noted that Mayor Crane was the first Mayor with whom she worked. She said there were elected officials that had the courage to do the right things. She commended him for his accomplishments and for being her mentor. Councilmember Ohm said she appreciated Mayor Crane for his work with the City. Councilmember Henderson also thanked Mayor Crane, as did Mayor Watts.

### 4.2. American Society of Landscape Architecture Design Excellence Award Presentation – Wendy Thomas, Director of Parks, Recreation and Events

Director of Parks, Recreation, and Events Wendy Thomas introduced Bryce Ward. Mr. Ward stated Mayor Crane had significant influence on the City’s landscape architecture and design. He explained that the American Society of Landscape Architecture met every year to decide these awards, and this particular award was rarely presented. He shared a comment from a Colorado community praising Herriman, and then presented the award to Herriman City.

### 4.3. Unified Fire Authority Level of Service Update – Dan Peterson, UFA Fire Chief

UFA Fire Chief Dan Peterson thanked the Council for the opportunity to present additional information regarding the quarterly report that had been conducted during the last meeting.

Regional approach:
The Unified Fire Service Area (UFSA) was the taxing authority responsible for construction and capital maintenance of fire stations and for payment of the member fee to Unified Fire Authority (UFA). Herriman City was a part of this taxing authority and in 2017 represented 8.67 percent of the total taxing revenue collected by the UFSA. Herriman City would be responsible for their portion of the member fee and 8.67 percent of the expenses for the district. The UFA was formed by an Interlocal Agreement to provide emergency service. The authority had four UFSA members and three contract cities. The number of engine and truck companies serving the entire response area proportioned the costs.

Stations 103, 123 and 121 provided first response within Herriman City; the assessment would only be applied for the percentage of first-due incidents for each of those station zones inside the City. The member fee estimate of excess beginning fund balance was credited back to the member. The credit was based on each member’s percentage of the total member fee for the new fiscal year. The excess fund balance was considered revenue for the new fiscal year. The three stations that provided the first response to the residents of Herriman City each housed four full-time career firefighters and were assessed accordingly. In addition, a third station within the City would increase the costs to the UFSA based on that station’s first response percentage of incidents within the City. The cost to construct the station would be shared by all communities who were part of the UFSA.

Chief Peterson explained the UFSA was a tax authority responsible for the construction and maintenance of fire stations. The tax also covered the member fees of the UFA, which was responsible for providing emergency services.
He said Herriman shared this cost with three other cities as a part of an Interlocal Agreement. He discussed the fee structure and how the funds would be used.

Chief Peterson noted only 14 percent of the incidents were outside of a four minute drive time. He said this would increase as the City grew, but they were working on keeping this percentage under five percent. He explained that response times were calculated using the elapsed time from dispatch to arrival for the first responders. He discussed their methods to keep these times low, and explained they used a program called Interra that would track incidents. The data from this program was available to residents.

When asked how often a station was unable to respond to calls, Chief Peterson explained that a good indicator of this data would be how often a unit responded outside a zone. There was subsequent discussion on effective data-collecting methods.

The value of four-person staffing model was discussed. It was stated that the fire and rescue system was designed to solve critical problems within the community. The station locations, response times, and the crew’s ability to solve problems once they arrived were all part of the equation. The decision to staff fourhanded engine and truck companies is science-based and provides benefit for residents. The UFA positioned fire stations across the service area with the goal of providing a four-minute drive time to the built upon areas of the district with four-person crews able to quickly take critical action to solve the problem once they arrived. The call to action time was crucial. When citizens call for help they are asking for crews to extinguish the fire, resuscitate a loved one, extricate a patient from a car, and a myriad of other problems that crews solve each day. The flexibility for the Captain to deploy the proper units and personnel on scene to solve the problems directly affects the outcome of an incident, and four firefighters on each unit greatly improved capabilities. Chief Peterson explained where the City lacked in coverage and their plans to improve the coverage. He noted they included the Olympia Hills development into their data to create coverage. He then discussed the challenges and their strategy to cover the City as it grew.

Councilmember Smith said the data presented was a result of questions he had asked. He thanked those involved for providing this information and responding to his concerns. He noted he had worked with Chief Peterson recently and commended him for his work.

4.4. **Herriman Police Department Update** – Troy Carr, Police Chief

Herriman Police Chief Troy Carr thanked the Council for the opportunity to speak. He explained that 16 years ago he came to work in Herriman, an opportunity afforded to him by Mayor Crane. He said he loved his time working for Herriman. Police Chief Carr explained they began hiring the command staff and many people applied. He noted they also began hiring crossing guards and officers; all of the other job descriptions had also since been posted. He discussed policies and the programs the department would utilize to keep current. He explained the seniority policy, which detailed how the officers would be compensated. He then described the various partnerships that were required as a police department.

Police Chief Carr said he was pleased with the brand logo and explained that they placed decals on the vehicles and ordered patches. In addition, they added more safety and comfort features to the police vehicles. He noted they ordered more vehicles because they had more police officers than was provided by UPD. He thanked Director Monte Johnson for his work obtaining these vehicles quickly.

Police Chief Carr reported that he recently attended a finance committee meeting. He stated that he was confident the department was in a good situation with transferring equipment. Presently, they were going through the process of accessing the State records, and in so doing, they were working with the FBI to ensure their competency with State
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Mayor Watts thanked South Jordan for their help with technology. Police Chief Carr said they would collaborate with VECC with dispatch.

Police Chief Carr also discussed the weapons they would use. Mayor Watts asked if the officers would be issued non-lethal weapons, to which Chief Carr responded in the affirmative; officers would always have the option to use a less lethal weapon. He explained the ways in which officers were trained to de-escalate situations.

Lastly, Police Chief Carr explained they were making sure their evidence storage was secure. He noted they would be using body cams, a technology for which he was a major proponent.

5. Consent Agenda

5.1. Approval of the May 16, 2018 City Council Meeting Minutes
5.2. Approval of the Monthly Financial Summary – Alan Rae, Finance Director
5.3. Adoption of a Resolution designating authorized Users to Transact Business with the Public Treasurers Investment Trust – Alan Rae, Finance Director
5.4. Approval of an Interlocal Agreement between Herriman City and South Jordan with Respect to 11800 South Street Asphalt Overlay Construction – Jonathan Bowers, Assistant City Engineer
5.5. Approval of a Resolution Authorizing the City Manager to Negotiate an Interlocal Cooperative Agreement with the City of South Jordan for the purpose of a Temporary Records Management System and Computer Aided Dispatch System for the Herriman Police Department – Troy Carr, Police Chief

Councilmember Martin moved to approve the Consent Agenda with the deletion of item 5.5. Councilmember Smith seconded the motion.

The vote was recorded as follows:
Councilmember Jared Henderson  Aye
Councilmember Nicole Martin  Aye
Councilmember Sherrie Ohrn  Aye
Councilmember Clint Smith  Aye
Mayor David Watts    Aye

The motion passed unanimously.

6. Discussion and Action Items

6.1. Discussion and Consideration of an Ordinance to adopt a final budget; make appropriations for the support of Herriman City for the fiscal year beginning July 1, 2018 and ending June 30, 2019; and determining the rate of tax and levying taxes upon all real and personal property within Herriman City – Alan Rae, Finance Director

The following schedule had been followed in relation to the proposed budget:
- April 11 Presentation of the Tentative Budget
- April 25 Discussion of the Tentative Budget
- May 11 Approval of the Tentative Budget
- May 11 Published budget to the Public
- May 16 Additional Discussion of the Tentative Budget
- June 6 Public Hearing
June 6 Additional Discussion of the Tentative Budget

Director Rae reviewed the above schedule for budget approval, which included the addendum to fund the police department. He noted this would also set the property tax rate for 2019, which had not changed. Councilmember Smith added that the tentative budget was available for public review and had not changed. Director Rae concurred; however, he noted that the addendum for the police department had since been added. Councilmember Smith commended staff for their work preparing the budget.

Councilmember Smith moved to approve Ordinance 2018-23 adopting a final budget including the addendum for fiscal responsibility for the police department and to make appropriations for the support of Herriman City for the fiscal year beginning July 1, 2018 and ending June 30, 2019; an determining the rate of tax and levying taxes upon all real and personal property within Herriman City to be set at .000307. Councilmember Henderson seconded the motion.

The vote was recorded as follows:

Councilmember Jared Henderson  Aye
Councilmember Nicole Martin  Aye
Councilmember Sherrie Ohrn  Aye
Councilmember Clint Smith  Aye
Mayor David Watts    Aye
The motion passed unanimously.

6.2. Discussion and Consideration of a Resolution supporting the House Bill 362 (2015) authorized .25% Local Cooperation General Sales Tax Dedicated to Transportation, and Encouraging Salt Lake County To impose the tax as outlined in Senate Bill 136 (2018) – Gordon Haight, Assistant City Manager

Assistant City Manager Gordon Haight displayed a list of roads eligible for capital project funds, including transit lines proposed for Herriman. He stated that however the City decided to vote, the tax had already passed. He said the Council needed to consider the importance of the funds for Herriman. He then introduced LaNiece Davenport to discuss this resolution.

Ms. Davenport introduced herself as the Government Relations Manager with The Wasatch Front Regional Council. She noted she was not present to advocate for or against the bill. She discussed the history of the taxes and noted the required supermajority threshold had been reached. She said the money from these taxes would go to roads and transit districts. She discussed how the money would be collected and how it would be distributed to the cities. She stated that this was flexible funding for transportation, meaning that cities could create projects for roads, trails, and transit. She said they could use the funds for maintenance and partner with other cities for regionally significant projects.

Councilmember Ohrn asked if there was an increase in ridership for UTA in Utah County. Ms. Davenport said she did not have the answer; however, she noted that the other two counties that already implemented these taxes had a positive relationship with UTA.

Councilmember Smith asked if a portion of the sales taxes collected would be given to cities and another portion be made available through a competitive process. Ms. Davenport answered in the affirmative, and explained that a committee created by local governments would award regionally significant projects. Councilmember Martin expressed concerns with defining regionally significant projects. She said they needed to ensure their taxpayer dollars returned to the City. She discussed the importance of improving and growing their road and transit system, and explained that there were several regionally significant projects in Herriman.
Councilmember Smith explained that the Council had to make difficult decisions, and they needed to do what was best for Herriman. He said he had spent a lot of time examining this issue, and there was a need for transportation growth. He discussed the potential option not to enact the sales tax and its consequences; if they raised the taxes through property taxes to get the same funding, property taxes would be increased 50-percent. He said this was a regional issue and they needed to work with their neighbors on finding a solution. He was in favor of implementing a process that distributed the funds for regionally significant projects in a fair, equitable manner. He said he also expected an increase of options for transit.

Councilmember Ohrn noted that Herriman voters overwhelmingly rejected this in 2015, based on UTA’s involvement. She said they needed assurance UTA would handle the funds appropriately, because 40 percent of the tax revenue would be distributed to them. She stated a lot of the bill was ambiguous and nothing was binding. She discussed the unsettling way this bill was passed, and said her biggest issue pertained to its uncertainty.

Councilmember Henderson reiterated that the bill was passed when more than half of the voters were unsupportive of it. He noted the cities that did not pass the resolution were on the west side of the valley. He explained it was not fair that the County took money away from the west side of the valley to fund projects on the east. He said he was also concerned with the manner in which the bill was passed. There was no accountability to ensure the funds were distributed fairly. He was opposed to entertaining the proposal.

Mayor Watts stated there was a lot of fear surrounding this resolution; elected officials were fearful of residents’ reaction to their decision and reprisal from the County if they did not vote in favor of the resolution. He agreed the manner in which the bill was passed was inappropriate. He noted this was a tax increase and he was elected based on his promise to lower taxes. He suggested a motion for an amended resolution, as follows:

“Section 7 Expected Distribution of New Funds: Herriman City supports that over time, the portion of this tax that is collected from Herriman residents for the County and transit district portion be fairly distributed back to the Herriman community in projects such as, but not limited to, new bus routes into Herriman City, bus rapid transit, TRAX Frontrunner, new roads, expanded capacity on current roads, and regionally significant project such as those that are included with this resolution.”

Councilmember Henderson said he was in favor of an amendment, which clarified what the City wanted. Councilmember Martin said she agreed with the Mayor’s resolution. She said congestion was worsening as the State grew, and as the tax funds were spent, they would likely be spent on the west side of the valley.

Councilmember Martin moved to approve Resolution No. R33-2018 supporting the HB 362 (2015) authorized .25% Local Option General Sales Tax dedicated to Transportation and acknowledging Salt Lake County has already met their required approval threshold as per SB 136 (2018) to impose the tax in 2018 reflecting our understanding per the bill and Salt Lake County’s responsibility to formally outline the competitive and fair process for revenue distribution from year one and beyond a detailed definition of regionally significant projects and that final distribution decisions be made by a representative body of all cities contributing to funding. Lastly, the inclusion of an addendum outlining our high priority projects we see as meeting the definition of regionally significant and vital to not only our growth, but the States growth as well. Councilmember Smith seconded the motion.

The vote was recorded as follows:

Councilmember Jared Henderson  Nay
Councilmember Nicole Martin   Aye
Councilmember Sherrie Ohrn  Nay
Councilmember Clint Smith  Aye
Mayor David Watts    Aye
Councilmember Smith said he appreciated how Councilmember Martin worded the motion. He commented that he was thankful the Council respectfully discussed this topic. Councilmember Smith said he was not frustrated with anyone on the Council. He said he respected the members of the Council, to which Councilmembers Ohrn and Henderson also concurred. Mayor Watts encouraged residents to continue voicing their opinions.

7. **Calendar**
   7.1. **Meetings**
      7.1.1. June 21 – Planning Commission Meeting 7:00 p.m.
      7.1.2. June 27 – City Council Work Meeting 5:00 p.m.; City Council Meeting 7:00 p.m. Cancelled
      7.1.3. July 11 – City Council Work Meeting 5:00 p.m.; City Council Meeting 7:00 p.m.
   7.2. **Events**
      7.2.1. June 18-23 – Herriman Towne Days

7.3. **Closed Session**
   7.3.1. The Herriman City Council may temporarily recess the City Council meeting to convene in a closed session to discuss the character, professional competence or physical or mental health of an individual, pending or reasonably imminent litigation, and the purchase, exchange, or lease of real property, as provided by Utah Code Annotated §52-4-205

Councilmember Henderson moved to temporarily recess the City Council meeting to convene in closed session to discuss the character, professional competence or physical or mental health of an individual, pending or reasonably imminent litigation, and the purchase, exchange, or lease of real property, as provided by Utah Code Annotated §52-4-205 at 10:26 p.m. Councilmember Smith seconded the motion.

The vote was recorded as follows:
- Councilmember Jared Henderson Aye
- Councilmember Nicole Martin Aye
- Councilmember Sherrie Ohrn Aye
- Councilmember Clint Smith Aye
- Mayor David Watts Aye

The motion passed unanimously.

The Council reconvened the City Council meeting at 11:56 p.m.

8. **Adjournment**

Councilmember Martin moved to adjourn the City Council meeting at 11:57 p.m. Councilmember Henderson seconded the motion and all voted aye.

9. **Recommence to Work Meeting (If Needed)**
I, Jackie Nostrom, City Recorder for Herriman City, hereby certify that the foregoing minutes represent a true, accurate and complete record of the meeting held on June 20, 2018. This document constitutes the official minutes for the Herriman City Council Meeting.

Jackie Nostrom, MMC
City Recorder
DATE: July 11, 2018

TO: The Honorable Mayor and City Council

FROM: Monte Johnson

SUBJECT: Surplus Vehicles

RECOMMENDATION:
Staff recommends declaring one (1) 2011 Ford F-150 truck and five (5) 2008 Ford Escapes as surplus and setting a minimum bid. Recommended minimum bid for the 2011 Ford F-150 truck is 8,500.00 and the 2008 Ford Escape hybrid vehicles are 2,800.00 each.

DISCUSSION:
We will discuss the disposition of six vehicles that were scheduled for replacement and have been replaced in the last fiscal year. We will review the process and set a minimum bid for each vehicle.

FISCAL IMPACT:
This will have a positive impact on the financial budget.
HERRIMAN, UTAH
ORDINANCE NO.____

AN ORDINANCE DECLARING ONE (1) 2011 FORD, F-150, 4 DOORS, 4X4 TRUCK AND FIVE (5) 2008 FORD ESCAPE HYBRID VEHICLES AS SURPLUS, ESTABLISHING A MINIMUM BID, AND ESTABLISHING A METHOD TO DETERMINE THE HIGHEST AND BEST ECONOMIC RETURN TO THE CITY

WHEREAS, the Herriman City Council (the “Council”) met in a special meeting on July 11, 2018 to consider, among other things, an ordinance declaring one (1) 2011 Ford, F-150, 4 doors, 4x4 truck and five (5) Ford Escape hybrid vehicles as surplus (“Surplus Property”) as surplus, establishing a minimum bid, and establishing a method to determine the highest and best economic return to the City; and

WHEREAS, the staff has advised the Council that the Surplus Property is not needed for City purposes; and

WHEREAS, the staff has informed the Council that the reasonable value of the 2011 Ford, F-150, 4 doors, 4x4 truck is 8,500.00 and the 2008 Ford Escape hybrid vehicles are 2,800.00 each; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interest of the health, safety, and welfare of the citizens of the City to declare such property as surplus, to establish a minimum bid, and establish a method to determine the highest and best economic return to the City.

NOW, THEREFORE, BE IT ORDAINED by the Council that such property is declared surplus, that the method for determining the highest and best economic return to the City shall be by competitive bid, and the minimum bid for the 2011 Ford, F-150, 4 doors, 4x4 truck is 8,500.00 and the 2008 Ford Escape hybrid vehicles 2,800.00 each.

BE IT FURTHER ORDAINED that the City Manager and Recorder are hereby authorized and directed to sell such property to the highest bidder, provided that the sales price equals or exceeds the minimum bid.

PASSED AND APPROVED this 11th day of July 2018.
HERRIMAN CITY COUNCIL

______________________________
David Watts, Mayor

ATTEST:

______________________________
Jackie Nostrom, MMC
City Recorder
DATE: July 5, 2018

TO: The Honorable Mayor and City Council

FROM: John Brems, City Attorney

SUBJECT: Rocky Mountain Power Franchise Agreement Renewal

RECOMMENDATION:
Approval of an Ordinance Granting an Electric Utility Franchise and General Utility Easement to Rocky Mountain Power

BACKGROUND:
As part of the June 20, 2018 City Council Work Meeting discussion relating to the Public Art Utility Box Program, Rocky Mountain Power requested we renew the Franchise agreement at the same time. The Franchise was originally set to expire June 30, 2019.

DISCUSSION:
The Term of the new Franchise and General Utility Easement would be for twenty years. The right to use and occupy the Public Ways of the City shall be nonexclusive and the City reserves the right to use and Public Ways for itself or any other entity that provides services to City Residents.
HERRIMAN CITY, UTAH

ORDIANANCE NO. 18---

AN ORDINANCE GRANTING AN ELECTRIC UTILITY FRANCHISE
AND GENERAL UTILITY EASEMENT
TO
ROCKY MOUNTAIN POWER

WHEREAS, the Herriman City Council (“Council”) met in regular meeting on July 11, 2018 to consider, among other things, adopting an ordinance granting an electric utility franchise and general utility easement to Rocky Mountain Power; and

WHEREAS, Rocky Mountain Power, is a regulated public utility that provides electric power and energy to the citizens of Herriman City (the “City”) and other surrounding areas;

WHEREAS, providing electrical power and energy requires the installation, operation and maintenance of power poles and other related facilities to be located within the public ways of the City;

WHEREAS, the City, pursuant to the provisions of Utah Code Ann. § 10-8-21 has the authority to regulate power line facilities within public ways and to grant to Rocky Mountain Power a general utility easement for the use thereof;

WHEREAS, the City desires to set forth the terms and conditions by which Rocky Mountain Power shall use the public ways of the City;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL:

SECTION 1. Grant of Franchise and General Utility Easement. The City hereby grants to Rocky Mountain Power the right, privilege and authority to construct, maintain, operate, upgrade, and relocate its electrical distribution and transmission lines and related appurtenances, including underground conduits and structures, poles, towers, wires, guy anchors, vaults, transformers, transmission lines, and communication lines (collectively referred to herein as “Electric Facilities”) in, under, along, over and across the present and future streets, alleys, and rights-of-way, not including City parks, buildings or other spaces not associated with City-owned rights-of-way (collectively referred to herein as “Public Ways”) within the City, for the purpose of supplying and transmitting electric power and energy to the inhabitants of the City and persons and corporations beyond the limits thereof.

SECTION 2. Term. The term of this Franchise and General Utility Easement is for twenty (20) years commencing on the date of acceptance by the Company as set forth in Section 3 below.
SECTION 3.  **Acceptance by Company.** Within sixty (60) days after the passage of this ordinance by the City, Rocky Mountain Power shall file an unqualified written acceptance thereof, with the City Recorder otherwise the ordinance and the rights granted herein shall be null and void.

SECTION 4.  **Non-Exclusive Franchise.** The right to use and occupy the Public Ways of the City shall be nonexclusive and the City reserves the right to use the Public Ways for itself or any other entity that provides service to City residences; provided, however, that such use shall not unreasonably interfere with Rocky Mountain Power’s Electric Facilities or Rocky Mountain Power’s rights as granted herein.

SECTION 5.  **City Regulatory Authority.** In addition to the provision herein contained, the City reserves the right to adopt such additional ordinances and regulations as may be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties or exercise any other rights, powers, or duties required or authorized, under the Constitution of the State of Utah, the laws of Utah or City Ordinance.

SECTION 6.  **Indemnification.** The City shall in no way be liable or responsible for any loss or damage to property or any injury to, or death, of any person that may occur in the construction, operation or maintenance by Rocky Mountain Power of its Electric Facilities. Rocky Mountain Power shall indemnify, defend and hold the City harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of Rocky Mountain Power’s use of the Public Ways within the City, and shall pay the costs of defense plus reasonable attorneys' fees for any claim, demand or lien brought thereunder. The City shall: (a) give prompt written notice to Rocky Mountain Power of any claim, demand or lien with respect to which the City seeks indemnification hereunder; and (b) permit Rocky Mountain Power to assume the defense of such claim, demand, or lien. If such defense is not assumed by Rocky Mountain Power, Rocky Mountain Power shall not be subject to liability for any settlement made without its consent. Notwithstanding any provision hereof to the contrary, Rocky Mountain Power shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or willful act or failure to act of the City or any of its officers or employees.

SECTION 7.  **Annexation.**

7.1  **Extension of City Limits.** Upon the annexation of any territory to the City, the rights granted herein shall extend to the annexed territory to the extent the City has such authority. All Electrical Facilities owned, maintained, or operated by Rocky Mountain Power located within any public ways of the annexed territory shall thereafter be subject to all of the terms hereof.

7.2  **Notice of Annexation.** When any territory is approved for annexation to the City, the City shall, not later than ten (10) working days after passage of an ordinance approving the proposed annexation, provide by certified mail to Rocky Mountain Power: (a) each site address to be annexed as recorded on county assessment and tax rolls; (b) a legal description of
the proposed boundary change; and (c) a copy of the City’s ordinance approving the proposed
annexation. The notice shall be mailed to:

Rocky Mountain Power Customer Contact Center
Attn: Annexations
P.O. Box 400
Portland, Oregon 97207-0400

With a copy to:

Rocky Mountain Power
Attn: Office of the General Counsel
1407 West North Temple, Room 320
Salt Lake City, UT 84116


8.1 All Electrical Facilities installed or used under authority of this Franchise shall be
used, constructed and maintained in accordance with applicable federal, state and city laws,
codes and regulations.

8.2 Except in the case of an emergency, Rocky Mountain Power and/or its agents,
contractors, etc. shall, prior to commencing new construction or major reconstruction work in the
Public Ways, apply for any permit from the City as may be required by the City’s ordinances,
which permit shall not be unreasonably withheld, conditioned, or delayed. Rocky Mountain
Power will abide by all applicable ordinances and all enacted rules, regulations and requirements
of the City, and the City may inspect the manner of such work and require remedies as may be
reasonably necessary to assure compliance. Notwithstanding the foregoing, Rocky Mountain
Power shall not be obligated to obtain a permit to perform emergency repairs.

8.3 All Electric Facilities shall be located so as to cause minimum interference with
the Public Ways of the City and shall be constructed, installed, maintained, cleared of vegetation,
renovated or replaced in accordance with applicable rules, ordinances and regulations of the
City.

8.4 If, during the course of work on its Electrical Facilities, Rocky Mountain Power
causes damage to or alters the Public Way or public property, Rocky Mountain Power shall (at
its own cost and expense and in a manner reasonably approved by the City) replace and restore it
in as good a condition as existed before the work commenced.

8.5 In addition to the installation of underground electric distribution lines as
provided by applicable state law and regulations, Rocky Mountain Power shall, upon payment of
all charges provided in its tariffs or their equivalent, place newly constructed electric distribution
lines underground as may be required by City ordinance.
8.6 The City shall have the right without cost to use all poles and suitable overhead structures owned by Rocky Mountain Power within Public Ways for City wires used in connection with its fire alarms, police signal systems, or other public safety communication lines used for governmental purposes; provided, however, any such uses shall be for activities owned, operated or used by the City for a public purpose and shall not include the provision of CATV, internet, or similar services to the public. Provided further, that Rocky Mountain Power shall assume no liability nor shall it incur, directly or indirectly, any additional expense in connection therewith, and the use of said poles and structures by the City shall be in such a manner as to prevent safety hazards or interferences with Rocky Mountain Power’s use of same. Nothing herein shall be construed to require Rocky Mountain Power to increase pole size, or alter the manner in which Rocky Mountain Power attaches its equipment to poles, or alter the manner in which it operates and maintains its Electric Facilities. City attachments shall be installed and maintained in accordance with the reasonable requirements of Rocky Mountain Power and the current edition of the National Electrical Safety Code pertaining to such construction. Further, City attachments shall be attached or installed only after written approval by Rocky Mountain Power in conjunction with Rocky Mountain Power’s standard pole attachment application process. Rocky Mountain Power shall have the right to inspect, at the City’s expense, such attachments to ensure compliance with this Section 8.6 and to require the City to remedy any defective attachments.

8.7 Rocky Mountain Power shall have the right to excavate the Public Rights of Ways subject to enacted rules and regulations of the City including but not limited to the requirement of restoration of surfaces, as amended from time to time. Before installing new underground conduits or replacing existing underground conduits, Rocky Mountain Power shall first notify the City of such work by written notice and shall allow the City, at its own expense, (to include a pro rata share of the trenching costs), to share the trench of Rocky Mountain Power to lay its own conduit therein, provided that such action by the City will not unreasonably interfere with Rocky Mountain Power’s Electrical Facilities or delay project completion.

8.8 Before commencing any street improvements or other work within a Public Way that may affect Rocky Mountain Power’s Electric Facilities, the City shall give written notice to Rocky Mountain Power.

SECTION 9. Relocations of Electric Facilities.

9.1 The City reserves the right to require Rocky Mountain Power to relocate its Electric Facilities within the Public Ways in the interest of public convenience, necessity, health, safety or welfare at no cost to the City. Before requiring a relocation of Electric Facilities, the City shall, with the assistance and consent of Rocky Mountain Power, identify a reasonable alignment for the relocated Electric Facilities within the Public Ways of the City. Following Rocky Mountain Power’s receipt of the City’s final plans for the project, Rocky Mountain Power and the City shall develop a target schedule for the relocation of Rocky Mountain Power’s Electric Facilities within a reasonable period of time, taking into account the nature and location of the project, and the facilities to be relocated.
The City shall assign or otherwise transfer to Company all right it may have to recover the cost for the relocation work and shall support the efforts of Rocky Mountain Power to obtain reimbursement.

9.2 Rocky Mountain Power shall not be obligated to pay the cost of any relocation that is required or made a condition of a private development. If the removal or relocation of facilities is caused directly or otherwise by an identifiable development of property in the area, or is made for the convenience of a customer Rocky Mountain Power may charge the expense of removal or relocation to the developer or customer in accordance with Rocky Mountain Power’s approved and adopted Electric Service Regulation No. 12, or any successor thereto. Notwithstanding anything to the contrary all road widening or realignments projects, installation of curb and gutter, or installation of sidewalks shall be deemed in the interest of public convenience, necessity, health, safety or welfare, except where such projects are caused directly or otherwise by an identifiable development of property or are made for the convenience of a customer.

SECTION 10. Subdivision Plat Notification. Before the City approves any new subdivision and before recordation of the plat, the City shall obtain Rocky Mountain Power’s approval of Electrical Facilities, including underground facilities to be installed by the developer, and associated rights of way depicted on the plat. A copy of the plat shall be mailed or submitted to Rocky Mountain Power:

Rocky Mountain Power
Attn: Estimating Department
1569 W. North Temple
Salt Lake City, UT 84116

SECTION 11. Vegetation Management. Rocky Mountain Power or its contractor may prune all trees and vegetation which overhang the Public Ways, whether such trees or vegetation originate within or outside the Public Ways to prevent the branches or limbs or other part of such trees or vegetation from interfering with Rocky Mountain Power’s Electrical Facilities. Such pruning shall comply with the American National Standard for Tree Care Operation (ANSI A300) and be conducted under the direction of an arborist certified with the International Society of Arboriculture. A growth inhibitor treatment may be used for trees and vegetation species that are fast-growing and problematic. Nothing contained in this Section shall prevent Rocky Mountain Power, when necessary and with the approval of the owner of the property on which they may be located, from cutting down and removing any trees which overhang streets.

SECTION 12. Renewal. At least 120 days prior to the expiration of this Franchise, Rocky Mountain Power and the City either shall agree to extend the term of this Franchise for a mutually acceptable period of time or the parties shall use best faith efforts to renegotiate a replacement Franchise. Rocky Mountain Power shall have the continued right to use the Public Ways of the City as set forth herein in the event an extension or replacement Franchise is not entered into upon expiration of this Franchise.
SECTION 13. **No Waiver.** Neither the City nor Rocky Mountain Power shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

SECTION 14. **Transfer of Franchise.** Rocky Mountain Power shall not transfer or assign any rights under this Franchise to another entity, except transfers and assignments by operation of law, or to affiliates, parents or subsidiaries of Rocky Mountain Power which assume all of Rocky Mountain Power’s obligations hereunder, unless the City shall first give its approval in writing, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, Rocky Mountain Power may assign, mortgage, pledge, hypothecate or otherwise transfer without consent its interest in this Franchise to any financing entity, or agent on behalf of any financing entity to whom Rocky Mountain Power (1) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof.

SECTION 15. **Amendment.** At any time during the term of this Franchise, the City through its City Council, or Rocky Mountain Power may propose amendments to this Franchise by giving thirty (30) days written notice to the other party of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). No amendment or amendments to this Franchise shall be effective until mutually agreed upon by the City and Rocky Mountain Power and formally adopted as an ordinance amendment, which is accepted in writing by Rocky Mountain Power.

SECTION 16. **Notices.** Unless otherwise specified herein, all notices from Rocky Mountain Power to the City pursuant to or concerning this Franchise shall be delivered to the City Recorder’s Office. Unless otherwise specified herein, all notices from the City to Rocky Mountain Power pursuant to or concerning this Franchise shall be delivered to the Regional Business Management Director, Rocky Mountain Power, 70 North 200 East, Room 122, American Fork, Utah, 84003, and such other office as Rocky Mountain Power may advise the City of by written notice.

SECTION 17. **Severability.** If any section, sentence, paragraph, term or provision hereof is for any reason determined to be illegal, invalid, or superseded by other lawful authority including any state or federal regulatory authority having jurisdiction thereof or unconstitutional, illegal or invalid by any court of common jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

SECTION 18. **Waiver of Jury Trial.** To the fullest extent permitted by law, each of the parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this agreement. Each party further waives
any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

PASSED by the City Council of the City of Herriman, Utah this 11th day of July, 2018.

HERRIMAN CITY

___________________________________
David Watts, Mayor

ATTEST:

_______________________________
Jackie Nostrom, MMC
City Recorder
S T A F F  R E P O R T

DATE: 07/05/2018

TO: The Honorable Mayor and City Council

FROM: Wendy Thomas

SUBJECT: Public Art Utility Box Program

BACKGROUND:

Rocky Mountain Power and the Utah Department of Transportation have implemented community art pilot programs to allow Cities to decorate certain pad-mounted equipment (utility boxes). The program has been implemented in several cities around the world. Local cities and their public art communities have implemented programs that have created citizen pride and beautified their streetscapes.

ALTERNATIVES:

Don’t implement a Public Art Utility Box Program

FISCAL IMPACT:

Varies, depending on whether we use wraps or artists physically paint on the box. Staff recommendation is to use wraps.

- Wraps will cost approximately $750 per box, depending on size
- Last anywhere from 5 – 7 years
- Can be changed out easily

STAFF RECOMMENDATION:

Enter into an agreement with Rocky Mountain Power to decorate pad-mounted equipment.
WHEREAS, the Herriman City Council ("Council") met in regular meeting on July 11, 2018, to consider, among other things, a resolution authorizing and directing the City Manager to enter into an access agreement with Rocky Mountain Power allowing the City or its designated artist to decorate certain pad-mounted equipment owned by Rocky Mountain Power; and

WHEREAS, Rocky Mountain Power ("RMP") owns, operates, and maintains transmission and distribution assets in the City’s pursuant to an electric distribution system franchise granted by the City; and

WHEREAS, City desires and RMP is willing to allow the City to implement a community art pilot program to allow local artists to decorate certain pad-mounted equipment owned by RMP and located within City’s municipal boundaries; and

WHEREAS, RMP has agreed to grant a temporary, non-exclusive and revocable license to the City solely for the purpose of permitting the City and its designated artists to decorate designated pad-mounted equipment located within the City’s municipal boundaries; and

WHEREAS, staff has presented a Revocable Right of Access Agreement ("Agreement") that grants a temporary, non-exclusive and revocable license to the City solely for the purpose of permitting the City and its designated artists to decorate designated pad-mounted equipment located within the City’s municipal; and

WHEREAS, after careful consideration the Council has determined that it is in the best interest of health, safety, and welfare of the residents of the City to authorize and direct the City Manager to execute and deliver the Agreement.

NOW, THEREFORE, BE IT RESOLVED, that the City Manager and City Recorder are hereby authorized and directed to execute and deliver the Agreement in substantially the form presented to this meeting and the City Manager may make such changes to the Agreement as the City Manager may deem necessary or desirable, such approval to be conclusively evidenced by the execution and delivery thereof.

PASSED AND APPROVED by the Council this 11th day of July, 2018.
HERRIMAN CITY COUNCIL

____________________________________
David Watts, Mayor

ATTEST:

____________________________________
Jackie Nostrom, MMC
City Recorder
DATE: July 5, 2018

TO: The Honorable Mayor and City Council

FROM: Jonathan Bowers, Assistant City Engineer

SUBJECT: First Amendment to Interlocal Cooperation Agreement with UFA for Property Exchange

RECOMMENDATION:
Approve the agreement amendment.

DISCUSSION:
The Interlocal Cooperation Agreement with UFA outlines the conditions property exchange including roadway and utility improvements by the City for UFA. The proposed First Amendment outlines the timing that the improvements shall be installed.

ALTERNATIVES:
Not approve the amendment or alter the conditions of the agreement

FISCAL IMPACT:
None
WHEREAS, the Herriman City Council ("Council") met in regular session on July 11, 2018, to consider, among other things, approving the First Amendment to an Interlocal Cooperative Agreement between the Local Building Authority of the Salt Lake Valley Fire Service Area and Herriman City for the exchange of real property; and

WHEREAS, the Utah Interlocal Cooperative Act (UTAH CODE ANN. § 11-13-101, et seq.) (the “Act”) provides that any two or more government entities are authorized to enter into agreements with each other to do what each agency is authorized by law to perform; and

WHEREAS, the Act provides that any public agency may convey property to or acquire property from any other public agencies for consideration as may be agreed upon; and

WHEREAS, Herriman and the Local Building Authority of the Salt Lake Valley Fire Service Area (“Area”) are government entities and may convey and acquire property as contemplated by the Act; and

WHEREAS, in or about April, 2018, Herriman and the Area Parties executed that certain Interlocal Agreement facilitating a swap of two parcels of land between the Parties; and

WHEREAS, the April 2018 Interlocal provided that Herriman provide additional consideration to the Area and concern has been raised that the additional consideration be provided after the swap is completed; and

WHEREAS, the Council finds that it is in the best interests of the inhabitants of Herriman to enter into the First Amendment to the Interlocal Cooperative Agreement ("Amendment") to provide that the additional consideration survive and be performed after the Closing; and

WHEREAS, the Amendment has been prepared for approval, which sets forth the purpose thereof, the extent of participation of the parties, and the rights and duties and responsibilities of the parties.

NOW, THEREFORE, BE IT RESOLVED that the Amendment is approved, and the City Manager and Recorder are hereby authorized and directed to execute and deliver the same.

This Resolution, assigned No. 18-____, shall take effect immediately upon passage and acceptance as provided herein.

PASSED AND APPROVED by the Council this 11th day of July, 2018.

HERRIMAN CITY
FIRST AMENDMENT TO INTERLOCAL COOPERATION AGREEMENT

THIS FIRST AMENDMENT TO INTERLOCAL COOPERATION AGREEMENT (the “Amendment”) is made effective as of the 30th day of June, 2018, by and between the LOCAL BUILDING AUTHORITY OF THE UNIFIED FIRE SERVICE AREA, FKA THE LOCAL BUILDING AUTHORITY OF THE SALT LAKE VALLEY FIRE SERVICE AREA, a Utah local building authority (the “Fire Authority”) and HERRIMAN CITY, a municipal corporation of the state of Utah (the “City”). The Fire Authority and City are sometimes individually referred to as a “Party” and sometimes collectively referred to as the “Parties.”

RECITALS

A. Utah Code Ann. § 11-13-202 provides that any two or more public agencies may enter into an agreement with one another for joint or cooperative actions.

B. On or around April, 2018, the Parties executed that certain Interlocal Agreement facilitating a swap of two parcels of land between the Parties, which land is located on Rose Canyon Road in Herriman City, Utah (the “Property Trade Agreement”).

C. In addition to the trade of real property parcels between the Parties, the Property Trade Agreement, in Article 2, required additional consideration by the City such that the City would install or pay the Fire Authority for (1) sidewalk, park strip landscaping, park strip irrigation, and street lights along the frontage of the property; (2) two culinary water stubs to the Fire Authority property; and (3) one sanitary sewer lateral to the Fire Authority property.

D. Under Article 4 of the Property Trade Agreement, the closing of the trade was to be conditioned upon the Parties’ compliance with their respective obligations under said agreement prior to, or on, the Closing Date.

E. It is the Parties’ actual intention that the City’s obligations listed under Article 2 will be performed after the Closing, and therefore the Parties desire to amend the Property Trade Agreement to make that fact clear.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. The above recitals are hereby incorporated into this Amendment as if fully set forth herein.

2. The following sentence is added to the end of Article 2 of the Property Trade Agreement:
Notwithstanding anything herein to the contrary, the obligations of the City set forth in this Article 2 shall survive and be performed after the Closing and shall be performed by the City before the Fire Authority develops the Fire Authority property or during roughly the same time as said development, in coordination therewith, as shall be mutually agreeable to the Parties.

3. In the event of any inconsistency between the provisions of this Amendment and any provision of the Property Trade Agreement, the provisions contained in this Amendment shall govern and control.

IN WITNESS WHEREOF, the Fire Authority, by resolution duly adopted by its governing authority caused this Agreement to be signed and attested; and the City, but resolution of its Council, caused this Agreement to be signed by the Mayor, or his designee.

HERRIMAN CITY

By: _________________________________
Brett geo Wood, City Manager

ATTEST:
Jackie Nostrom, City Recorder

APPROVED AS TO FORM:
John Brems, City Attorney

LOCAL BUILDING AUTHORITY OF THE UNIFIED FIRE SERVICE AREA,
FKA THE LOCAL BUILDING AUTHORITY OF THE SALT LAKE VALLEY FIRE SERVICE AREA

By: _________________________________
Mayor Jeff Silvestrini, Board Chair

ATTEST:
Michelle Roper, Clerk

APPROVED AS TO FORM:
Rachel S. Anderson, Attorney

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