

Minutes of the Centerville **City Council** meeting held Tuesday, November 16, 2021, at 7:06 p.m. with participants present at Centerville City Hall, 250 North Main Street, and electronically via Zoom.

MEMBERS PRESENT

Mayor Clark Wilkinson

Council Members Tamilyn Fillmore
William Ince
Stephanie Ivie
George McEwan
Robyn Mecham

STAFF PRESENT

Brant Hanson, City Manager
Lisa Romney, City Attorney
Jennifer Hansen, City Recorder
Jacob Smith, Administrative Services Director
Nate Plaizier, Finance Director
Cory Snyder, Community Development Director
Bruce Cox, Parks and Recreation Director
Paul Child, Centerville Police Chief
Lt. Allen Ackerson, Centerville Police Department
Dave Walker, Deputy Public Works Director
Kevin Campbell, City Engineer

VISITORS

Melven Smith, Smith Knowles
Ron Hales, Center Point Construction
Jeremy Draper, Reeves and Associates
Interested Citizens

PRAYER OR THOUGHT Mayor Wilkinson

PLEDGE OF ALLEGIANCE

OPEN SESSION

Libby Dobb, Centerville resident, asked that the Council place a discussion of alternate routes for bus rapid transit through Centerville on a future Council meeting agenda, and asked that the public have an opportunity to participate in the discussion.

PUBLIC HEARING – SUMMERHILL LANE PDO – FINAL SUBDIVISION PLAT

Community Development Director Cory Snyder gave a brief background of the Summerhill Lane Planned Development Overlay (PDO), and presented a Final Subdivision Plat and Plan Submittal to be considered by the Council within the boundaries of City ordinances.

Melven Smith, attorney for the applicant, reviewed with the Council applicable State statutes regarding land use regulation, Centerville City ordinances, and the following statement from Utah law: "...if the plat conforms to the municipality's ordinances...the municipality shall approve the plat" [Utah Code Ann. §10-9a-603(3)(a)]. He showed a list of Planning Commission conditions for Final Plat, and stated all conditions had been fulfilled. Mr. Smith referred to the prescriptive easement claim and the claimed easement of record, and shared the following:

1 **Preliminary Plat Easement Standard:** The location, principal dimension, and names of
2 all existing or recorded streets, alleys, and easements, both within the proposed
3 subdivision and within 100 feet of the boundary thereof, showing whether recorded or
4 claimed by usage.

5 **Final Plat Easement Standard:** All existing and proposed easements shall be clearly
6 labeled and identified.

7
8 Mr. Smith said the prescriptive easement was included on the Preliminary Plat, but not
9 required on the Final Plat. The prescriptive easement would be handled in a court of law.
10 Regarding the claimed easement of record, Mr. Smith showed the Packer Warranty Deed dated
11 February 11, 2015, and said there was no listing of an easement in the legal description. He
12 showed the previous warranty deed, dated March 11, 1972, which included the same legal
13 description with no listing of an easement. He said an easement was referenced in a 1908 deed,
14 but was abandoned and not continued to later deeds. Mr. Smith stated the recent use was
15 permissive, not prescriptive.

16
17 Councilmember Fillmore asked the City Attorney for the definition of "proposed
18 easements" as mentioned in the Final Plat Easement Standard. City Attorney Lisa Romney
19 responded that proposed easements were generally public utility easements or subdivisions, not
20 easements proposed by neighbors. She stated the prescriptive easement had not been perfected,
21 and the easement appurtenant was unclear. Councilmember Fillmore said she believed the intent
22 of the City ordinance was to serve future purchasers of the properties, so they could be fully
23 informed. She said that, knowing the easement issue was going to be argued in court, she
24 wondered if the Packer easement could be fit under the definition of "proposed easement" to
25 serve the purpose and intent of the ordinance.

26
27 Mr. Smith shared details of the settlement between Symphony and the Packer Family
28 regarding the claimed easement, emphasizing the settlement was satisfied. He stated the claim
29 to an easement did not come from the plat, and the Packer claim would not be harmed by approval
30 of the Final Plat. Mr. Smith said Symphony Homes agreed to give notice of the claimed easement
31 to potential purchasers of the affected lots. He showed how the claimed easement would affect
32 14 of the Summerhill Lane lots, and explained that access to the easement could not be blocked
33 on any of the lots if the claimed easement were approved in court. Mr. Smith said Symphony
34 hoped to find a win-win conclusion of the easement issue. He repeated the applicant had complied
35 with all requirements for Final Subdivision Plat. Mr. Smith stated candidly that the prescriptive
36 easement would affect an entire lot in the subdivision, and would be a problem for Symphony if
37 supported by a court, but the claimed easement of record, if perfected, would be less
38 inconvenient. He said Symphony would be willing to put the claimed easement of record on the
39 Plat marked "under dispute". He added that the claimed easement of record could be removed
40 with an amendment to the Plat, if needed, following settlement or litigation.

41
42 Mayor Wilkinson opened a public hearing at 8:20 p.m.

43
44 Spencer Packer, Centerville resident, asked that he be allowed to share a presentation
45 and take more than the two minutes usually allowed. Mr. Packer stated he did not oppose the fact
46 that Symphony was developing the property neighboring his property. He said he opposed what
47 he felt was an attempt to take his personal property rights – his only access to his property. He
48 stated an easement was created when the property was sold in 1908 (Drake Lane easement)
49 with perpetual 2 Rod (33' wide) right of way for general purposes over and through. Mr. Packer
50 emphasized that "perpetual" meant never ending or changing, and stated the 1908 deed
51 superseded or overrode later deeds that followed because it was attached to the property. He
52 stated the notice of interest constituted an easement of record that must be considered and shown

1 on the Final Plat, and stated the Drake Lane easement as it served his property had never been
2 extinguished.
3

4 Matthew Anderson, Kaysville resident and attorney for the Packer Family, said the
5 objective for the Packer Family was to get the easements on the Plat. He said the issue had been
6 argued with Symphony since the beginning of the project, and said, if Symphony was willing to
7 put the Drake Lane easement on the Final Plat with a note as stated by Mr. Smith, and if the City
8 was willing to place such a condition on approval, he would cut his presentation in half.
9

10 Councilmember McEwan said there were questions he wanted to ask that would
11 disadvantage both parties, and expressed a desire for a closed session for legal advice from the
12 City Attorney. Mr. Anderson said he disagreed with Mr. Smith on most points, including what
13 constituted the Council's scope on the issue. Mr. Anderson stated one condition placed by the
14 Planning Commission for Preliminary Plat approval was that the Final Plat shall comply with
15 Subsection L of the Preliminary Plat language, which stated the Plat must show easements of
16 record or easements claimed by usage. He stated the notice of interest in the Title Report
17 constituted an easement of record. Mr. Anderson said he had understood that the Final Plat would
18 have to comply with the Preliminary Plat language because of the stated condition. In agreeing to
19 the settlement that the easement would be on the Preliminary Plat, he expected the easement
20 would also appear on the Final Plat. Mr. Anderson said that according to Utah law, a prescriptive
21 easement was existing and in place after twenty years of use. He repeated that the Packer
22 Family's desire was for both easements to be depicted on the Final Plat. Mr. Anderson
23 encouraged the Council to err on the side of full disclosure. He said he thought the City should do
24 some planning and governing, and have Symphony Homes address the incompatible use.
25

26 Andy Bavelas, Centerville resident, said he had one of the oldest owned properties in the
27 City. He said he had learned from experience that going back on records was essential, especially
28 for easements. He suggested the situation could be win-win if done correctly. He expressed the
29 opinion that Centerville had a very good Mayor and Council.
30

31 Trent Packer, Centerville resident, said he had attended a lot of the meetings with
32 Symphony. He said the Packer Family wanted a resolution that was right and true. He said he
33 hoped the easement would be shown on the Final Plat.
34

35 Kirk Fowers, Centerville resident, said his property was adjacent to both the Summerhill
36 Lane Subdivision and the Packer remnant property. He encouraged the Council to think of the
37 future buyers of the Summerhill Lane lots. He said four parties were impacted by the remnant
38 properties: Symphony Homes, Centerville City, the future HOA, and the Fowers family. He said
39 he had offered three different times to purchase property currently part of Lot 148 from Symphony.
40 Mr. Fowers said Symphony had not incorporated all remnant property into existing lots. He spoke
41 of his offer to purchase part of the property currently part of Lot 148, as well as the current Parcel
42 C. Mr. Fowers spoke of previous experience with HOAs. He said he would maintain the property
43 he proposed to purchase well for the benefit of the City, and suggested the property would not be
44 of particular interest to a future HOA.
45

46 Matthew Cutler, Centerville resident, said he coached the Speech and Debate Team at
47 Viewmont High School, and wanted to comment on the argumentation he had heard during the
48 meeting. He said he had heard a lot of framework debate and definitions debate that benefited
49 no one. He talked about impact calculus and self-actualization, and said it appeared to him that
50 requiring full disclosure on the Final Plat would be a benefit to people who would come into the
51 community and people already in the community. He stated not requiring full disclosure would
52 have a negative benefit. Mr. Cutler referred to an article in The Economist in 2005 regarding

1 quality of life, and expressed the opinion that the City could not trust the words of a developer. He
2 suggested delaying development until litigation of the easement issue was completed.

3
4 Ivan Cutler, Centerville resident, said he lived adjacent to the Packer property. He stated
5 it was the duty of any elected official to represent the best interest of its citizens, and one of the
6 citizens of Centerville was Spencer Packer. He spoke of the positive impact Mr. Packer had in
7 the community. Mr. Cutler expressed appreciation for the Council and all they did for the
8 community.

9
10 Cindy Garlic, Centerville resident, said she loved the community and the proclaimed desire
11 to defend citizens and provide a healthy lifestyle and the opportunity to be happy. She suggested
12 the Council postpone a vote on the Summerhill Lane property until litigation was complete. Ms.
13 Garlic stated Mr. Packer was a long-time resident of the City who deserved the right to utilize his
14 property as he saw fit. She suggested the Council protect the rights of Mr. Packer, and of the
15 future purchasers of the affected lots.

16
17 Bryan Adams, Centerville resident, said it was not the role of the Council to adjudicate the
18 easement. He said he loved Centerville, and was interested in one of the Summerhill Lane lots
19 for his family. Mr. Adams said Symphony had agreed to put a note on the Plat regarding the claim
20 of easement, which would notify potential buyers of the existing dispute. He said he believed
21 Summerhill Lane would be a great development, and was interested in seeing development move
22 forward.

23
24 Mayor Wilkinson closed the public hearing at 9:07 p.m. Mr. Smith said Symphony would
25 comply with the Planning Commission's recommended conditions for approval of the Final
26 Subdivision Plat, including Condition (2): Applicant shall add "affecting Lots 120-134" to Plat Note
27 #2 on the Final Plat; and Condition (3): Developer shall provide notice of claim of interest to
28 potential purchasers of Lots 120-134. Mr. Smith stated the Planning Commission did not have
29 authority to impose conditions on the Council, and suggested the condition of Preliminary Plat
30 approval that referenced the Final Plat should have referenced the Preliminary Plat, not the Final
31 Plat. He said it would not be appropriate or legal to bind the Final Plat to Preliminary Plat
32 requirements. Mr. Smith explained the land desired by Mr. Fowers was an integrated part of the
33 development plan, not surplus. He said the open space would be maintained as required.

34
35 Councilmember McEwan said there was a lot the Council needed to understand from a
36 legal standpoint in closed session, and **moved** to table the Final Subdivision Plat. Councilmember
37 Ivie seconded the motion, which passed by unanimous vote (5-0).

38
39 Mayor Wilkinson called a recess at 9:15 p.m., and the Council returned at 9:30 p.m.

40
41 **PUBLIC HEARING – ZONING CODE AMENDMENTS – INTERNAL ACCESSORY**
42 **DWELLING UNITS – DEFINITIONS**
43

44 At a previous meeting, the City Council directed staff and the Planning Commission to
45 consider amending the Internal ADU Ordinance to increase the owner-residency definition from
46 180 days to 183 days. Community Development Director Cory Snyder reported staff and the
47 Planning Commission recommended approval of the proposed amendment.

48
49 Mayor Wilkinson opened a public hearing at 9:31 p.m., and closed the public hearing
50 seeing that no one wished to comment. Councilmember Ince **moved** to approve Ordinance No.
51 2021-25, amending the definition of full-time residency for purposes of Internal ADUs.
52 Councilmember Ivie seconded the motion, which passed by unanimous vote (5-0).

PUBLIC HEARING – FLOODPLAIN DEVELOPMENT VARIANCE – YOUNG POWERSPORTS

Jeremy Draper with Reeves and Associates, representing Young Powersports, explained the request for variance from the requirements of the City's Flood Damage Prevention Ordinance to develop commercial property located at approximately 695 West 400 South. Young Powersports submitted a Letter of Map Revision (LOMR) request to FEMA considering significant drainage improvements made to the Deuel Creek drainage channel (the source of the floodplain). If FEMA were to deny the LOMR request, Mr. Draper stated he was confident, based on technical data collected, that there would be no risk of flooding impact to the proposed structures.

Public Works Director Dave Walker answered questions from the Council. He explained the City would not have any liability if flooding were to occur.

Mayor Wilkinson opened a public hearing at 9:42 p.m., and closed the public hearing seeing that no one wished to comment. Ron Hales with Center Point Construction showed the latest proposed rendering of the project. City Attorney Lisa Romney recommended the Council approve the variance subject to the applicant signing an Assumption of Risk and Waiver of Liability Agreement.

Councilmember McEwan **moved** to approve Young Powersport's request for variance from the requirements of the City's Flood Damage Prevention Ordinance to develop commercial property located at approximately 695 West 400 South, subject to the applicant signing an Assumption of Risk and Waiver of Liability Agreement, as required by City Ordinance, and subject to any additional conditions of approval requested by the City Engineer; the Mayor was hereby authorized to sign and fully execute the Variance Findings and Decision and the Assumption of Risk and Waiver of Liability Agreement. Councilmember Ivie seconded the motion, which passed by unanimous vote (5-0).

PUBLIC HEARING – DAVIS COUNTY PRE-DISASTER MITIGATION PLAN UPDATE

The Federal Disaster Mitigation and Cost Recovery Act of 2000 required all jurisdictions to be covered by a Pre-Disaster Hazard Mitigation Plan in order to be eligible for Federal Emergency Management Agency (FEMA) post-disaster funds. Centerville participated with Davis County and other cities within the County to prepare the Davis County Pre-Disaster Mitigation Plan 2021 Update in accordance with the Disaster Mitigation and Cost Recovery Act and applicable FEMA requirements. Davis County requested that all cities adopt the Disaster Mitigation Plan by December 10, 2021.

Police Chief Paul Child presented and explained the Davis County Pre-Disaster Mitigation Plan 2021 Update (to be reviewed and updated every five years), and recommended adoption. Councilmember McEwan suggested Chief Child review different sections of the plan with the Council over time.

Mayor Wilkinson opened a public hearing at 9:50 p.m., and closed the public hearing seeing that no one wished to comment. Councilmember Ivie **moved** to approve Resolution No. 2021-27 adopting the Davis County 2021 Pre-Disaster Mitigation Plan Update as required by the Federal Disaster Mitigation and Cost Reduction Act of 2000. Councilmember Ince seconded the motion, which passed by unanimous vote (5-0).

1 **MODERATE INCOME HOUSING – ANNUAL REPORT**
2

3 Community Development Director Cory Snyder stated cities were required to submit a
4 Moderate Income Housing Annual Report to the State each year by December 1st. Mr. Snyder
5 provided an update on moderate-income housing goals adopted by the Council. He explained
6 that moderate income housing was required to be calculated using the median income in the
7 County, which was most recently reported as \$122,000 – higher than previously reported. Mr.
8 Hanson and Mr. Snyder said staff were looking further into the data to confirm the numbers. Mr.
9 Snyder answered questions from the Council, and suggested the Council approve the Annual
10 Report and grant staff the ability to change the numbers if needed following further study of the
11 data, prior to submission to the State.
12

13 Councilmember Fillmore **moved** to approve the Moderate Income Housing Annual Report,
14 authorizing staff to change the numbers if needed and authorizing the Mayor to review and sign
15 the Annual Report for submission by December 1, 2021. Councilmember Ivie seconded the
16 motion, which passed by unanimous vote (5-0).
17

18 **FLOCK SERVICES AGREEMENT FOR AUTOMATIC LICENSE PLATE READER**
19 **DATA ACCESS**
20

21 Lt. Allen Ackerson explained the request for approval of a Memorandum of Understanding
22 with Flock Group, Inc. for the use and access of automatic license plate reader data for Police
23 Department investigative purposes. The term of the Memorandum of Understanding would be five
24 years, with no cost to the City for access to the data provided. Lt. Ackerson said access to the
25 data would benefit the Police Department from an investigative standpoint, and would allow the
26 Department to demo the program.
27

28 Councilmember McEwan said he was comfortable with the Police Department using the
29 data offered with the proposed agreement, but said he would want to be cautious about security
30 on the back end before entering into an agreement to collect data within Centerville.
31 Councilmember Ince **moved** to authorize the Police Chief to sign a Memorandum of
32 Understanding with Flock Group, Inc. for an exploratory review of software. Councilmember
33 Mecham seconded the motion, which passed by unanimous vote (5-0).
34

35 **WETLAND IMPROVEMENTS AT COMMUNITY PARK – PICKLEBALL COURTS**
36 **PROJECT PROPOSAL**
37

38 In a November 3, 2021 Work Session, the Council gave staff direction to pursue mitigating
39 the Community Park wetland for the development of pickleball courts. Parks and Recreation
40 Director Bruce Cox reported he contacted Dennis Wenger, a wetland consultant recommended
41 by City Engineer Kevin Campbell. Mr. Cox presented a proposal from Frontier Corporation to help
42 with getting needed permits from the Army Corps of Engineers to make improvements at both the
43 west end of Community Park Expansion and the Parrish Creek Pond Area. Mr. Hanson stated
44 any costs spent by the City on the Parrish Creek Pond Area, including mitigation costs, would be
45 reimbursed by UDOT if the area were impacted by planned UDOT projects.
46

47 Councilmember Fillmore said the Permitting Proposal felt preliminary because the Council
48 had not yet made the decision to move forward with pickleball courts at Community Park. Mr.
49 Hanson responded that moving forward with wetland mitigation would not obligate the Council to
50 use the land for pickleball courts. Mr. Cox emphasized that no improvement could be made to the
51 wetland area without mitigation.

1 Councilmember McEwan **moved** to approve the Permitting Proposal with Frontier
2 Corporation for wetland improvements for the amount specified in the staff report (\$28,100).
3 Councilmember Ince seconded the motion. Councilmember Ivie said she would prefer to see
4 multiple bids in such situations. The motion passed by unanimous vote (5-0).
5

6 **APPOINTMENT OF CITY REPRESENTATIVE TO GREAT SALT LAKE LEGACY**
7 **PARKWAY SCENIC BYWAY COMMITTEE**
8

9 City Manager Brant Hanson recommended the Council appoint Administrative Services
10 Director Jacob Smith as the City representative to the Great Salt Lake Legacy Parkway Scenic
11 Byway Committee. The Great Salt Lake Legacy Parkway Scenic Byway Committee met on a
12 quarterly basis and consisted of members from south Davis County cities, Davis County, Wasatch
13 Front Regional Council, UDOT, and various environmental agencies. Councilmembers provided
14 input regarding Legacy Parkway, including a desire to prohibit use by large trucks and prohibit
15 billboards.
16

17 Councilmember Ince **moved** to approve Resolution No. 2021-39 appointing Jacob Smith
18 as the City representative to the Great Salt Lake Legacy Parkway Scenic Byway Committee.
19 Councilmember Meham seconded the motion, which passed by unanimous vote (5-0).
20

21 **FINANCIAL REPORT**
22

23 A quarterly financial report was included with the meeting agenda for review.
24

25 **MINUTES REVIEW AND ACCEPTANCE**
26

27 Minutes of the November 3, 2021 Work Session, City Council Meeting, and Closed City
28 Council Meeting were reviewed. Councilmember Ince **moved** to approve all three sets of minutes.
29 Councilmember Meham seconded the motion, which passed by unanimous vote (5-0).
30

31 **CITY COUNCIL REPORT**
32

33 Councilmember Meham provided an update regarding UTOPIA.
34

35 **MAYOR'S REPORT**
36

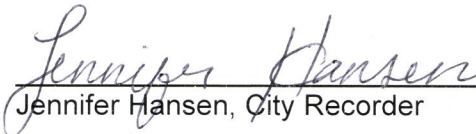
- 37
- Mayor Wilkinson reported on the Veteran's Day event at Freedom Hills Park.
 - The Council was scheduled to meet with State Representatives on December 7, 2021.
- 39

40 **CITY MANAGER'S REPORT**
41

- 42
- Mr. Hanson reported Municipal Justice Court hours would change to 9:00 a.m. - 3:00 p.m., similar to Davis County and other area court hours.
 - Mr. Hanson said formation of a CRA would be presented in a RDA meeting on December 7, 2021.
 - The City Manager provided an update regarding Davis County Animal Control.
 - Mr. Snyder reported on a recent meeting with area agencies regarding planning and Smart Growth America.
 - Mr. Hanson provided an update regarding park signage.
- 49

ADJOURN AND CLOSED MEETING

At 10:58 p.m., Councilmember Ivie **moved** to adjourn to a closed meeting in Council Chambers for the purpose of discussing reasonably imminent litigation, with no intent to return to open meeting. Councilmember Ince seconded the motion, which passed by unanimous vote (5-0). In attendance at the closed meeting were: Clark Wilkinson, Mayor; Councilmembers Fillmore, Ince, Ivie, McEwan, and Mecham; Brant Hanson, City Manager; Lisa Romney, City Attorney; Jennifer Hansen, City Recorder; and Cory Snyder, Community Development Director.


Jennifer Hansen, City Recorder

12-13-2021
Date Approved


Katie Rust, Recording Secretary

