

MINUTES OF THE DRAPER CITY COUNCIL MEETING HELD ON TUESDAY, OCTOBER 23, 2012, IN THE DRAPER CITY COUNCIL CHAMBERS 1020 EAST PIONEER ROAD, DRAPER, UTAH.

“This document, along with the digital recording, shall constitute the complete meeting minutes for this City Council meeting.”

PRESENT: Mayor Pro Tem Bill Rappleye, Councilmembers Troy Walker, Alan Summerhays, Jeff Stenquist, and Bill Colbert. Mayor Smith was excused.

STAFF PRESENT: David Dobbins, Doug Ahlstrom, Tracy Norr, Ed James, Dan Boles, Garth Smith, Rhett Ogden, Troy Wolverton, Brien Maxfield, Russ Adair, Jared Zacharias

STUDY MEETING

1.0 Dinner

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1.1 During dinner, Jared Zacharias presented an update on sales tax and the effect of the Thru-U turn on revenue.

2.0 Closed Meeting

[6:06:19 PM](#)

2.1 **A motion to adjourn to a closed meeting to discuss litigation, property acquisition, and the character and professional competence or physical or mental health of an individual was made by Councilmember Colbert and seconded by Councilmember Summerhays. The motion carried unanimously.**

3.0 Adjourn to Redevelopment Agency Meeting

[6:49:15 PM](#)

3.1 **A Redevelopment Agency meeting was held.**

BUSINESS MEETING

1.0 Call to Order

[7:03:03 PM](#)

1.1 Mayor Pro Tem Bill Rappleye called the meeting to order and welcomed those in attendance. He noted Mayor Smith was excused.

2.0 Comment/Prayer and Flag Ceremony

[7:03:39 PM](#)

- 2.1 The prayer was offered by Spencer Starling, Boy Scout Troop 873. Troop members then led the flag ceremony.

3.0 Recognition – Emergency District Representatives

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- 3.1 Mayor Pro Tem Rappleye said this item has been rescheduled due to illness among the group.

4.0 Citizen Comments:

[7:06:01 PM](#)

- 4.1 Dave Mast, PO Box 1, said he wanted to inform the council and staff of concerns he has with a contract for engineering of storm drain corrections the city approved in 2011. He said the engineer is well into his work and thinks they will come up with a good redesign. He said he does not believe the council is aware of the contract. He said he is assisting the engineer with the design. Hansen Allen and Luce needs time to come up with the cost for the storm drain fix. He said in the Zions Bank real estate purchase, it states the city has a current bond with Zions Bank. The performance bond is impossible because the costs are not known. He said the storm drainage does not get to Pond 7A and there is a lot of work that needs to be done and will cost several million dollars. He said the city needs to understand what it is dealing with during the due diligence period. He said there are reciprocal easements that need to be worked out. He presented his proposal to assist the engineers. He submitted the proposal and a copy of the HAL contract for the record.

[7:12:24 PM](#)

- 4.2 Bob Christiansen said he is concerned about why the city wants to buy Suncrest. He said he has a letter from Terrabrook, dated 2005, which is a unilateral modification to the development agreement which is a breach of contract. A letter like that would instantly generate a default notice with a courtesy copy to the bonding company. If the bonding company is not notified in a timely basis, they don't have to do anything to fix it. That is the situation the city found itself in when it tried to do something with the bonds. Now the city is going to let them off the hook for \$29 million in road construction and \$15 million in water, buy the property for \$5 million, and then pay for the repair. He said the city should hold the money in escrow to make the repairs.

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- 4.3 Denver Snuffer, 10885 South State Street, said he was speaking on behalf of Dan Simmons and Arden Bodell who own property on Suncrest. He said he can no longer represent DJI because he is a witness. He said he has looked at the arrangement for the Zions Bank purchase. He discussed the density and open space requirement for the property. He said the amortization of cost is misleading because of the open space. The

city will inherit about \$25 million of road repairs and \$12 million for water infrastructure. With the costs of repairing the Zions Bank property, the cost per acre is substantially higher and the city won't get any more density. He said the representation in the staff report is not fair. He said he is concerned about the water infrastructure and wildfire potential.

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4.4 There were no further comments.

5.0 Consent Items:

- a. **Minutes of Meetings of October 2, 2012 and October 16, 2012**
- b. **Agreement #12-137 with PEC for Professional Services for 300 East Pioneer Road Intersection Design Project.**
- c. **South Valley Sewer District's request to City Council to waive the City's bond requirement for their Contractor's performance bond.**
- d. **Agreement #12-136 with UDOT and Jordan Valley Water Conservancy District for 11400 South Meter Station Relocation and Betterments**
- e. **Agreement #12-111 with Village Cleaners, Inc. for Dry Cleaning and Laundry Services for the Police Department**
- f. **Agreement #12-140 with UTA/TRAX for Town Center Plaza Maintenance**
- g. **Agreement #12-141 with Draper City RDA for the Gateway CDA**
- h. **Agreements #12-105, #12-123, #12-121, #12-124, and #12-122 for Landscaping Maintenance Rotational Vendor Pool**
- i. **Agreement #12-135 with Lewis, Young, Robertson & Burningham, Inc. for Financial Advisor Services**
- j. **Agreements #12-130 and #12-139 for Purchase of Road Salt**

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5.1 Councilmember Summerhays cited a conflict of interest and recused himself.

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5.2 A motion was made by Councilmember to pull Item B from the consent agenda. The motion was seconded by Councilmember Colbert and carried unanimously.

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5.3 A motion to approve the remaining consent items as presented was made by Councilmember Walker and seconded by Councilmember Stenquist.

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5.4 A roll call vote was taken with Councilmembers Walker, Stenquist, Colbert, and Rappleye voting in favor.

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5.5 Councilmember Walker said he had seen some innovative roundabouts during a bicycle tour in Long Beach, California. He asked that the engineers look at the particular

roundabouts. Councilmember Colbert added that there were also green bicycle lanes which could help with bicycle crossings on Pioneer Road.

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5.6 A motion to approve Item B with a request to look at the different types of roundabouts was made by Councilmember Walker and seconded by Councilmember Stenquist.

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5.7 A roll call vote was taken with Councilmembers Walker, Stenquist, Colbert, and Rappleye voting in favor. The motion carried.

6.0 Public Hearing: Ordinance #1030, Adoption of the R.C. Willey Community Development Area Plan.

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6.1 Ed James said the council must approve the action of the Redevelopment Agency in the adoption of the R.C. Willey Community Development Area Plan. He summarized the CDA plan and expected tax revenues.

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6.2 A public hearing was opened. There were no comments and the hearing was closed.

[7:31:02 PM](#)

6.3 A motion to suspend the rules was made by Councilmember Stenquist and seconded by Councilmember Walker.

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6.4 The motion carried by unanimous vote.

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6.5 A motion to adopt Ordinance #1030 was made by Councilmember Stenquist and seconded by Councilmember Walker.

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6.6 A roll call vote was taken with Councilmembers Stenquist, Walker, Summerhays, Colbert, and Rappleye voting in favor. The motion carried.

7.0 Public Hearing: Ordinance #1032, Amending Draper City Municipal Code Section 9-31 Regarding Accessory Dwelling Units.

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7.1 Ed James said the council had adopted a moratorium on accessory dwelling units (ADUs) until certain issues could be resolved. Staff has reviewed the issues of maintaining the integrity of the neighborhoods, clearing up the confusion in the code, making the code

user-friendly, and furthering compliance to building and fire codes. The recommendations are to lift the moratorium, to allow residents on single-dwelling lots to utilize their property more fully, and to simplify where ADUs are allowed. Mr. James reviewed the text changes which include amending definitions of dwelling units and of occupants, repealing the provisions for guest houses, and allow ADUs in RM1, RM2, and certain RSD zones. Minimum lot size, lot coverage, and additional parking have been addressed. The ordinance would also repeal the moratorium. Existing lots with ADUs are non-conforming.

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7.2 A public hearing was opened.

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7.3 Shawn Benjamin, 360 West 13165 South, said there is a property owner in his area with two accessory dwelling units on the property. He expressed concern about limiting the number of units where there may be hardships or waivers that could be necessary.

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7.4 Janet Hyde, 18624 Bridle Trail Circle, said she is trying to finish her basement for her parents. It would be great to get resolution on this issue but she agrees there could be instances of hardships.

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7.5 There were no further comments and the hearing was closed.

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7.6 Councilmember Summerhays agreed that there may be instances where lots cannot be split and sold separately. Councilmember Colbert said he would worry that people may think they could subdivide the platted lot. Mr. Dobbins said if there is enough property to create a legal lot under the zoning ordinance, they could do it. If they cannot create a legal lot with size and setbacks, it would not be allowed. Councilmember Colbert said future zoning changes could make it possible. Mayor Pro Tem Rappleye asked about hardships. Mr. James said the city's responsibility is to protect the integrity of the neighborhood. There is no such thing as a perfect ordinance. If it does not address the needs, it can be amended.

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7.7 A motion to suspend the rules was made by Councilmember Stenquist and seconded by Councilmember Summerhays.

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7.8 The motion carried by unanimous vote.

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7.9 A motion to adopt Ordinance #1032, to become effective immediately, was made by Councilmember Stenquist and seconded by Councilmember Summerhays.

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7.10 A roll call vote was taken with Councilmembers Stenquist, Summerhays, Walker, Colbert, and Rappleye voting in favor. The motion carried.

8.0 Public Hearing: Richens Townhomes Plat Amendment.

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8.1 Dan Boles said the application is for a plat amendment. There are two lots zoned RM-2. These are in the Harrison Estates Subdivision. Last year the zoning was changed from RA-2 to RM-2 to allow multi-family units. The planning commission reviewed the site plan and has recommended approval of the plat amendment. Councilmember Colbert noted the lane is private and the city will not provide snow removal or maintenance. Troy Wolverton said the city trash collection trucks would not go down the lane. If they want city waste collection, they would have to put the bins along 800 East.

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8.2 Nate Shipp said he would answer any questions. When asked about garbage collection, Mr. Shipp said they plan to utilize city services. Councilmember Colbert recommended using community collection instead of individual cans.

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8.3 A public hearing was opened. There were no comments and the hearing was closed.

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8.4 A motion to suspend the rules was made by Councilmember Stenquist and seconded by Councilmember Summerhays.

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8.5 The motion carried by unanimous vote.

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8.6 A motion to approve the plat amendment with the addition of language that if he decides to have a group garbage collection he can work with the staff for approval was made by Councilmember Stenquist and seconded by Councilmember Summerhays.

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8.7 A roll call vote was taken with Councilmembers Stenquist, Summerhays, Walker, Colbert and Rappleye voting in favor. The motion carried.

9.0 Resolution #12-40, Declaring Certain Property Located at 645 East between 12000 South and 12100 South as Surplus and Authorizing the Sale of Said Property.

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9.1 Ed James said the road width in this location is a historic width of about 72 feet. The current standard is 60 feet. The width of 645 East would be realigned to the west to fit within the 60-foot right of way. That leaves 22.5 feet of the original road width owned by the city for a distance of 605.25 feet. The property was appraised for \$44,000, which is \$3.24/square foot. He recommended the property be considered surplus and sold to Ivory Development, the adjoining property owner.

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9.2 **A motion to approve Resolution #12-40 and sell the property made by Councilmember Stenquist and seconded by Councilmember Summerhays.**

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9.3 **A roll call vote was taken with Councilmembers Stenquist, Summerhays, Walker, Colbert, and Rappleye voting in favor. The motion carried.**

10.0 Encroachment Hardship requests from Kevin and Lori Kennedy, 1221 Hickenlooper Way; Gil and Mary Lou Lund, 1213 Hickenlooper Way, and Marcelo and Anna Maria Fraga, 1227 Hickenlooper Way.

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10.1 Marcelo Fraga, 1227 Hickenlooper Way, said their property backs up to Rambling Road. He purchased the lot 16 years ago and paid extra for the view. The builder graded the lot and there was a lot of erosion on the property. The builder told them the ground belonged to the city. Paul Glauser looked at the property and told them they have to put in retaining walls. He told them they could present their retention plan to the city. Mr. Glauser looked at the three properties and agreed with the plan. Mr. Fraga said he has a contract to make the changes on city property. They are now being asked to remove the improvements or purchase the property for \$9/square foot. He noted the city just authorized the sale of some property at \$3.24/square foot. He offered to pay \$5,000 for the land. He said he has never thought it was his property.

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10.2 Gil Lund, 1213 Hickenlooper, said when there was the erosion problem they knew something had to be done. It was not done to be adversarial. He said there is a ditch between his property and the Kennedy property that leads to the retention area.

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10.3 Anna Maria Fraga said they were aware it was not their property and could be used for the public at any time.

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10.4 Mr. Fraga said there is a signed agreement that he cannot find. He presented an unsigned copy. He said Mr. Glauser was very helpful at the time. City Attorney Doug Ahlstrom told the council that they had directed Greg Hilbig to survey the encroachment problems, and he has been doing that. He then referred to the ordinance addressing structures in open space encroachments and the requirements for hardships. He said the developer created a lot of the erosion problems and caused the confusion by grading the area. Councilmember Colbert noted that Mr. Fraga worked with the city manager and proceeded in good faith. He cautioned residents against negotiating with the city staff. Working directly with the city council clearly defines the constraints and is a matter of record. Mr. Ahlstrom noted that other neighborhood property owners have offered to have their property surveyed and one has offered to purchase the encroachment at \$9.00 per square foot. Councilmember Colbert said he agrees the council needs to be consistent with the price for the property. The appraised price for the road is a different situation because that property is useless to the city whereas open space adds value to the city. He said he supports a hardship for these cases but not selling the property. Mayor Pro Tem Rappleye said he feels the property owners have presented enough evidence that they were participating in a quasi public works project to mitigate the erosion. Councilmember Colbert said he feels that there is a difference between a retaining wall, which is a structure, and an accessory dwelling unit or shed when considering whether or not to sell the property.

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10.5 Mayor Pro Tem Rappleye said this item would be discussed by the council in a closed meeting. Mr. Ahlstrom noted for the record that there are similar encroachment problems in Suncrest, but Suncrest has different rules that must be followed.

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10.5 A motion to continue this issue to date uncertain for further discussion, with staff direction to take no adverse action at this time, was made by Councilmember Walker and seconded by Councilmember Summerhays.

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10.6 The motion carried by unanimous vote.

11.0 Encroachment Hardship request from Scott and Brenda Taylor, 487 Laney's Way.

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11.1 Brenda Taylor said they have owned the home for seven years, the fence was there for 10 years, and the landscaping has been there longer than that. She said they are requesting a hardship because they cannot afford to move the fence. Mr. Taylor said it looks like the property was enclosed just to square off the neighborhood. It is \$2,000 to move the fence. The property is only native vegetation. He said he had met with the council in 2008 to propose some land swapping for an area of unfenced property at the front of the yard. Mrs. Taylor asked if they could get an encroachment permit which would allow the

fence to remain and to allow the curbed landscaping in front. Mr. Ahlstrom noted that there is a sewer easement along the fence line. He said the corner of the house is in the easement too.

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11.2 Mayor Pro Tem Rappleye said they would take the request under advisement.

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11.3 A motion to continue this item to date uncertain with staff direction to take no adverse action was made by Councilmember Colbert and seconded by Councilmember Summerhays.

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11.4 The motion carried by unanimous vote.

12.0 Request for Off-Premise Alcoholic Beverage License for 7-11, Located at 231 East Highland Drive.

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12.1 David Dobbins said the request is for the new 7-11 to sell alcohol from their convenience store.

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12.2 The applicant offered to answer questions. She said they plan to open November 5, 2012. The employees will be trained.

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12.3 A motion was made by Councilmember Walker to approve the off-premise alcoholic beverage license. The motion was seconded by Councilmember Summerhays.

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12.4 The motion carried by unanimous vote.

13.0 Agreement #12-141, Real Estate Purchase Contract with the Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints for property at the southwest corner of Manti Drive and Parowan Way.

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13.1 David Dobbins said the city council had declared the property as surplus. The LDS Church would like to purchase the property. He reviewed the location of the property and showed their proposed site plan. The church has asked for 120 days for due diligence. The sale price is \$940,000. The church will pay the broker commission. The property on the west side will continue to be used as a detention basin that the church will enlarge and improve. Additional improvements are also required for storm drainage. He noted the purchase will include a gap of property between the subject property and the

neighboring property. The city will provide a temporary construction easement and needs to make sure the church revegetates that easement area. He recommended the agreement be approved with the requirement that the final landscape plan and design of the detention basin will be determined at site plan level.

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13.2 A motion was made by Councilmember Stenquist to approve the agreement with the recommendation as stated by David Dobbins. The motion was seconded by Councilmember Walker.

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13.3 A roll call vote was taken with Councilmembers Stenquist, Walker, Colbert, Summerhays and Rappleye voting in favor. The motion carried.

14.0 Council/Manager Reports

[9:03:32 PM](#)

14.1 Councilmember Summerhays asked if the school fence or the Kimball's Lane property should be discussed. He said Troy Wolverton had a good solution for the fence. Mr. Wolverton said two bids schedules had been discussed to get costs. Mr. Dobbins said the TREX or concrete fence would be approximately the same amount. He said he would like to find out the school's portion. Councilmember Colbert said he is against the city paying for the fence in principle. Mr. Dobbins said the Kimball's Lane issue would be discussed in closed meeting.

[9:07:25 PM](#)

14.2 Councilmember Walker thanked the staff who helped with the Halloween Haunted Hollow. Stefanie Walker was recognized for the work she did.

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14.3 Councilmember Colbert asked if there was a response for the resident about sidewalk improvements on Sunburn Lane. Mr. Wolverton said they met with the resident and resolved the concerns. Councilmember Colbert said there had been comments and some misconceptions about the Suncrest purchase. He said the city had already taken the responsibility for the improvements to Suncrest Drive. He said some of the assumptions were based on a full build-out, which will not happen now. David Dobbins said the concerns were addressed in the open house that was held with the Suncrest Homeowners Association. Discussion was held about the density, open space, and the price per acre as well as the purchase of the property. Councilmember Walker noted that the particular developer who spoke has several lawsuits against the city and is speaking in his own interest. Councilmember Colbert said some of those issues will be more easily resolved by working with one party rather than two. Mayor Pro Tem Rappleye said he thinks more communication with Suncrest is better because of the misinformation. David Dobbins said he has proposed meeting with the HOA on a regular basis. He also said he believes the comment about a contract that the council is not aware of a contract is in

error. The contract was approved by the city council and the work is still within budget. Councilmembers agreed that purchasing the Suncrest property is the right decision.

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14.4 Doug Ahlstrom said the aquarium is breaking ground. The paperwork is not all there but is getting closer.

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14.5 Danyce Steck said she had had a pre-pricing call on the bonds. The interest rates are at a 60-year low today. She predicted a rate of 3.62% for the Suncrest acquisition and 2.25% for the refunding. The city will save over \$1 million on the bond issuance. She said the aquarium was unable to perform on all of the deliverables so the bond issue was split.

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14.6 Mayor Pro Tem Rappleye said the Pioneer Square parking lot looks good.

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14.7 Councilmember Walker discussed the sharrow (shared green traffic lane) that he experienced in Long Beach, California.

15.0 Adjournment to Closed Meeting

[9:27:24 PM](#)

15.1 A motion to adjourn to a closed meeting to discuss litigation, property acquisition, and the character and professional competence or physical or mental health of an individual was made by Councilmember Colbert and seconded by Councilmember Summerhays. The motion carried by unanimous vote.

15.2 Following the closed meeting, a motion to adjourn was made by Councilmember Rappleye and seconded by Councilmember Colbert. The motion carried unanimously. The meeting adjourned at 10:40 p.m.