

City of Brighton

500 S. 4th Avenue
Brighton, CO 80601



Meeting Minutes

Tuesday, March 2, 2021

6:00 PM

Council Chambers

City Council

MAYOR - GREGORY MILLS

MAYOR PRO TEM - MATT JOHNSTON

COUNCIL MEMBERS:

*CLINT BLACKHURST, ADAM CUSHING,
MARK HUMBERT, KRIS JORDINELLI, MARY ELLEN POLLACK,
ANN TADDEO, TIM WATTS*

1. CALL TO ORDER

A. Pledge of Allegiance to the American Flag

Councilmember Watts led the recitation of the Pledge of Allegiance to the American Flag.

B. Roll Call

Present: 9 - Mayor Mills, Mayor Pro Tem Johnston, Councilmember Blackhurst, Councilmember Cushing, Councilmember Humbert, Councilmember Jordinelli, Councilmember Pollack, Councilmember Taddeo, and Councilmember Watts

Councilmember Taddeo arrived at 6:05 p.m.

2. APPROVAL OF REGULAR AGENDA

Motion by Mayor Pro Tem Johnston, seconded by Councilmember Humbert, to approve the Regular Agenda as presented. Motion passed by the following vote:

Aye: 8 - Mayor Mills, Mayor Pro Tem Johnston, Councilmember Blackhurst, Councilmember Cushing, Councilmember Humbert, Councilmember Jordinelli, Councilmember Pollack, and Councilmember Watts

Absent: 1 - Councilmember Taddeo

3. CONSENT AGENDA

A. Approval of the February 2, 2021 City Council Minutes

Motion by Mayor Pro Tem Johnston, seconded by Councilmember Humbert, to approve the Consent Agenda as presented. Motion passed by the following vote:

Aye: 8 - Mayor Mills, Mayor Pro Tem Johnston, Councilmember Blackhurst, Councilmember Cushing, Councilmember Humbert, Councilmember Jordinelli, Councilmember Pollack, and Councilmember Watts

Absent: 1 - Councilmember Taddeo

4. CEREMONIES

A. Brighton Employee Charities 2020 Update

Sergeant Monce Portillo presented the Brighton Employee Charities 2020 update.

B. Women's History Month Proclamation

City Manager Jane Bais DiSessa read the Proclamation into the record.

Motion by Mayor Pro Tem Johnston, seconded by Councilmember Watts, to approve the Proclamation. Motion passed by the following vote:

Aye: 9 - Mayor Mills, Mayor Pro Tem Johnston, Councilmember Blackhurst, Councilmember Cushing, Councilmember Humbert, Councilmember Jordinelli, Councilmember Pollack, Councilmember Taddeo, and Councilmember Watts

**5. PUBLIC INVITED TO BE HEARD ON MATTERS NOT ON THE AGENDA
(Speakers limited to five minutes)**

Chris Maslanik had technical issues and could not speak.

6. PUBLIC HEARINGS

A. AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, APPROVING THE REZONING OF A PORTION OF THE BROMLEY PARK PLANNED UNIT DEVELOPMENT 13TH AMENDMENT TO THE BROMLEY PARK PLANNED UNIT DEVELOPMENT 26TH AMENDMENT FOR THE APPROXIMATELY 11.412-ACRE PROPERTY, GENERALLY LOCATED TO THE SOUTHEAST OF THE INTERSECTION OF BRIDGE STREET AND S. 40TH AVENUE, DIRECTLY NORTH AND EAST OF FIRE STATION 52, AND IN THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 1 SOUTH, RANGE 66 WEST, OF THE 6TH PRINCIPAL MERIDIAN, CITY OF BRIGHTON, COUNTY OF ADAMS, STATE OF COLORADO (FIRST READING, CONTINUED FROM FEBRUARY 16, 2021)

Mayor Mills read the title of the Ordinance into the record.

The public hearing was opened by Mayor Mills at 6:15 p.m. on February 16, 2021 and City Clerk Natalie Hoel verified the required postings and publications (January 29, 2021 on the City of Brighton Website) for this public hearing were completed.

Mayor Mills explained that he received several correspondence related to this and he will read those into the record after the presentation.

City Manager Jane Bais DiSessa introduced Senior Planner Mike Tylka.

Senior Planner Mike Tylka presented the Bromley Park Planned Unit Development 26th Amendment Zone Change. The applicant is Cynthia Leibman, Page Southerland Page, Inc. acting on behalf of the property owner Columbo 11 LLC. The property is located southeast of the intersection of Bridge Street and South 40th Avenue and north and east of Fire Station 52. The property is approximately 11.412 acres and currently has a zoning designation of Commercial via the Bromley Park PUD 13th Amendment with specific use and development restrictions. The applicant is requesting a zone change commonly known as a rezoning. This is the second step in the land development process with the City. Before any permits can be issued, there are public and administrative process that must be completed after zoning. All processes and applications will be reviewed using the City's adopted Land Use & Development Code and applicable items such as Master Plans to ensure all proposals comply with City Codes and policies as adopted by City Council. The property owner desires to expand the allowed uses on the site and alter certain site-specific development standards set in place by the existing PUD. No user or users have been identified for this property nor any applications received to plat or build on the property.

The Bromley Park Annexation Agreement outlines that the accompanying PUD is vested for a period of forty years. The Bromley Park Land Use Regulations allow PUD amendments to the Bromley Park PUD and its subsequent amendments. Staff is using the Planned Development and PUD criteria from the updated Land Use & Development Code approved by City Council. In the written report, staff further outlines this in greater depth. As the rezoning is reviewed, it is important to refer to the review criteria in the adopted Code to ensure consistency in review.

The property was annexed in 1986 as part of the Bromley Park 2 Annexation and zoned as Single-Family Attached. Duplex, triplex, fourplex and townhome units would have been allowed at that time via the Bromley Park PUD 1st Amendment. The majority of the site is unplatted. In 2009, as part of the Bromley Park PUD 13th Amendment rezoning, it was zoned Commercial, with uses restricted to those of the City's C-3 (General Retail & Services) zoning district. Additionally, the 13th Amendment

outlined certain design and lot standards for the property. At the time, these design and lot standards pertained to a major prospective tenant. Given that this tenant and accompanying user never materialized at this location, the owner and applicant now seek to rezone to allow for an expanded mix of possible users allowed under the general standards used in the Bromley Park PUD before the 13th Amendment was adopted. Prior to the 13th Amendment, the property was zoned in 1994 as part of the Bromley Park PUD 2nd Amendment as "Commercial" for the six acres directly to the southeast of the intersection of South 40th Avenue and Bridge Street. The remainder of the property was zoned for multi-family. This is the second rezoning application for the subject property by this current owner since they took ownership in 2007. In 2007, the owner acquired the property as part of a larger purchase that included over 300 plus acres in the Bromley Industrial Park. This owner is active in the Brighton community. The subject property was not part of the Bromley Park PUD 24th Amendment approved by Council in 2020, which included accessory garages and down zoning the area to the south. The property could have been developed completely with multi-family residential products from 1986 to 1994. As partially zoned Commercial and the rest as multi-family, the entire acreage could have been developed as multi-family from 1994 to 2009. From 2009 to today, all commercial can be allowed. If this zoning does not pass, commercial uses will still be allowed.

To aid in determining if this area is right for rezoning, the surrounding uses and zoning districts are examined. To the north across Bridge Street is Commercial, Retail and Office Uses. Many of the commercial pad sites in Buffs Landing are undeveloped, unbuilt and have been for some time. To the south is Fire Station 52 and a small abutting portion of the undeveloped Single-Family Detached subdivision. To the east is a future road and one of the City's water tower and utility sites, a park, an undeveloped Multi-Family Residential on the lot where temporary soccer parking has taken place. That temporary parking lot is entitled for denser residential product and could be developed any time. To the west across 40th Avenue, there is undeveloped commercial land in Pheasant Ridge that has been undeveloped for some time.

The PUD Amendment would allow uses as outlined in the Bromley Park Land Use Regulations for the Commercial designation. This would open up the property to possible multi-family residential uses, as well as keep the general retail and service commercial uses as outlined in the C-3 zone district. That is the most broad general and retail service district. The Bromley Park Land Use Regulation is for "A Mixed Use District including General, Retail, Service, Office, and multi-family uses intended to provide local and community retail uses and services, as well as, any office use designated to provide administrative, professional, and personal services category. Land within this classification is located on arterials." This particular site is directly adjacent to two minor arterials. It is important for this City Council to consider the rezoning under the entire scope of uses that could be allowed in the desired zone district.

The 13th Amendment currently in place outlines standards that provide specific dimensional standards for retail and outdoor sales, including no minimum floor area requirements for a principal building, and allows for canopies and certain overhangs to encroach into parking areas and setbacks up to five feet. The proposed PUD Amendment seeks to remove these site-specific standards for the property. The newly adopted Land Use & Development Code outlines outdoor sales and overhang encroachments in depth, so there is no need, in Staff's opinion, for site-specific ones that differ from those allowed elsewhere. As the proposed PUD Amendment removes the allowance of no minimum floor area for a principal building, commercial uses will now be held to a minimum of 1,500 square feet as outlined in the Bromley Park Land Use Regulations.

The PUD Amendment does carry over the minimum required lot size of 0.5 acres. Staff is comfortable with this as it is used elsewhere for areas zoned as part of the Bromley Park PUD and this standard will allow adequate space to meet parking, landscaping, open space, and similar requirements as well as, provide clarification. This request is for more than allowed uses and staff can provide clarification as requested.

The 13th Amendment is being proposed to be removed in its entirety for the property. It is the intention of the applicant to use area standards and like uses seen elsewhere in this corridor. The design standards set up by this PUD propose that multi-family development may take place according to the standards outlined in the Land Use & Development Code. This sets different height restrictions than seen going for the apartments on the northeast corner of 50th Avenue and Bridge Street. It also outlines that the commercial development can take place according to the standards outlined in the

Bromley Park Town Center Regulations. This outlines for staff, the applicant and the public the different codes that staff will use to review the developments. The Land Use & Development Code would be applied for any development standards not addressed in the documents for commercial proposals. This is a similar outline seen for the other areas along 50th Avenue and Bridge Street in Ward 1 and parts of Ward 4. This tells everyone what standards to apply and when to apply them. It sets expectations publicly for all. The entire approximate 11.5 acres is being looked at for the same designation as described.

The future land use portion of Be Brighton, the Comprehensive Plan, has designated this area as appropriate for commercial land uses. Along the Bridge Street and 50th Avenue corridor, in areas zoned as part of the Bromley Park PUD, and its subsequent Amendments, the same Comprehensive Plan designation of commercial is in place where properties are allowed the same degree of residential development as proposed in this PUD Amendment. This is because they are governed by the uses allowed from the Land Use designations and Bromley Park and that commercial designation. The rezoning of this property to allow both commercial and multi-family residential uses is not completely compatible with the Comprehensive Plan's land use designation of Commercial. The Bromley Park Commercial zoning has always allowed for multi-family residential development on top of those commercial uses. As such, the property has historically allowed a degree of denser residential uses and was only limited to C-3, strict commercial uses, with the current 13th Amendment, in order to meet the demands of a large proposed commercial user with specific needs not covered in the old Code, but are addressed in the new Code.

The Comprehensive Plan is more than just a land use map. Looking to the Chapter on Citywide Principles, Policies & Strategies for further guidance, the proposed PUD Amendment can be found to advance a number of the goals outlined in the plan. The Managing Growth Principle is supported as new development at the property will favor an existing area of infrastructure and planning. The expanded allowed uses could help the property to develop in an area that is surrounded by areas of coming and existing development and infrastructure investment. Development at the site will be able to connect into the existing roadway and utilities networks. The site is bounded by two minor arterials per the adopted Master Transportation Plan. As for the Freestanding City Principle, the proposal can be thought of as being in support as its adoption could allow the site to develop in a manner that will support the City's desire to have an appropriate balance between residential and non-residential uses, and it will help to focus urban development within the Urban Service Boundary where the City has invested already in infrastructure. Moving to the Economically Vibrant Community Principle, it could be supported by the proposed Amendment as the property's development can be seen to support nearby commercial centers if developed as multi-family residential and it would focus growth again within that existing area of investment. The Distinctive Neighborhoods Principle that looks to support enhancing the diversity in housing type and cost and could be furthered by allowing multi-family residential development at the property. Additionally the Community Design Principle that seeks to promote well-designed commercial centers could be furthered if the property develops under the guidelines laid out in the proposed PUD Amendment.

The Land Use & Development Code planned development review criteria shall be used to make a decision on the matter because a Major PUD Amendment is permitted. City Council shall use the following criteria in making its decision:

- a. The plan better implements the Comprehensive Plan, beyond what would be accomplished under application of general zoning districts and development standards.*

Staff determines that this is met, as the proposal will encourage development at the site that meets a number of policies of the Comprehensive Plan and will allow the property some flexibility to further encourage development that a general zoning district would not.

- b. The benefits from any flexibility in the proposed plan promote the general public health, safety and welfare of the community, and in particular, that of the areas immediately near or within the proposed project and the proposed flexibility is not strictly to benefit the applicant or a single project.*

Staff finds that the flexibility in the proposal will allow the property to develop similarly to other nearby areas with the same Bromley Park PUD zoning. The possibility of this property developing as either commercial, multi-family residential, or a mix of the two, will meet a citywide demand for diversity in retail, services, or housing types and costs.

- c. *The flexibility in the proposed plan allows the project to better meet or exceed the intent statement of the base zoning district(s).*

The proposal will allow the site to develop as outlined in the Bromley Park Land Use Regulations Commercial designation. This same base district, allowing a mix of commercial and multi-family uses, has historically been used for multiple commercial areas in the corridor directly to the east.

- d. *The proposed adjustments to the standards do not undermine the intent or design objectives of those standards when applied to the specific project or site.*

The proposed standards do not undermine their original intent or design objectives.

- e. *The plan reflects generally accepted and sound planning and urban design principles with respect to applying the goals and objectives of the Comprehensive Plan to the area.*

Staff determines that the proposal will allow the property to develop in a manner that will support and advance a number of policies of the adopted Comprehensive Plan and widely held sound planning and design principles consistently sought to be applied by today's City staff members.

- f. *The plan meets all of the review criteria for a zoning map amendment (Sec. 2.03 B.)*

- 1) *The proposal is in accordance with the goals and objectives of the Comprehensive Plan and any other plan, policy or guidance adopted pursuant to that plan.*
- 2) *The proposal will support development in character with existing or anticipated development in the area, including the design of street, civic spaces and other open space; the pattern, scale and format of buildings and sites; and the integration, transitions and compatibility of other uses.*
- 3) *The City or other agencies have the ability to provide services or facilities that may be necessary for anticipated uses in the proposed district.*
- 4) *The change will serve a community need, amenity or development that is not possible under the current zoning or that was not anticipated at the time of the initial zoning of the property.*
- 5) *The recommendations of any professional staff or advisory review bodies.*

Staff determines that it does meet all review criteria for a zoning map amendment as the property's rezoning will help support the policies as outlined. The development of the land according to the proposal will ensure that the site develops similarly to other properties in similar zoning designations in the nearby commercial corridor. The surrounding uses are compatible with the use of the property as commercial and/or multi-family residential.

The property can be adequately served, is currently limited in uses and would allow for an expanded of possible uses that will serve a community need for either expanded retail services or housing diversity.

This property is part of a master planned community Bromley Park where varying housing products were envisioned when annexed and created in the mid 1980's. Multi-family residential and single-family attached residential areas of development were created and outlined from inception. The property, as part of the larger master planned community, where, at the time of annexation and original formation, the applicant submitted overall drainage, traffic and utility reports, was itself accepted and approved by the City as were the accompanying master plans for drainage, underground utilities and

traffic. In this plan, the overall Bromley Park PUD area, that developer and those PUD areas were granted a total number of residential units of 12,476. Today that number has yet to be met with developed and platted lots as multiple nearby areas were developed at a lower density than initially permitted. The units today between built, platted and estimated within that boundary is estimated at only 8,263 units leaving the entire Bromley Park Master Planned area under that overall total by 4,213 units.

The property can be adequately served if the future users of roads, drainage, traffic and water are in line with the adopted master plans for these areas. Staff looks to see that there is adequate capacity and that any future site developer and user will pay applicable costs to connect to City infrastructure.

Proper storm drainage can occur once the subdivision to the south (Brighton Crossing Filing No. 6) is completed, as its development requires regional pond construction at the southeast corner of South 40th Avenue and Southern Street. The adjacent right-of-way for 40th Avenue, which is currently being drained to the property as a temporary solution, will be able to drain to a final condition with the construction of the North Outfall project. The estimated time of completion for this project is within two years. Future development of the site would be required to have the proper storm drainage completed as part of their subdivision plan and final plat approvals. Either the Outfall would be built or if this site develops first, they would be responsible to make those improvements.

Per existing agreements signed before this Council and staff, the City is obligated to serve development on the property with water and sewer service. Additionally, per the agreements, development on the property can pay a fee-in-lieu in place of dedicating raw water shares.

There are many items to consider when analyzing the road network. North 40th Avenue is planned to be built north of Bridge Street in the coming years and City staff is currently in the land acquisition phase. The developer of the future residential area to the south is being tasked with making improvements to South 40th Avenue to increase the level of service (LOS) at the intersection with Bridge Street. Once the end users and their impact on the system are known, the City will right size the improvements they need to make. Additionally, the developer to the south will be contributing to the future signal at the same intersection. The signal will be placed when warrants are met and those are expected to be triggered soon after the construction of the area to the south. This could take place before any development on the subject property. The future developer of the subject property will be tasked with submitting a Traffic Impact Study to City staff with any application for initial development. When this is reviewed, City staff may require nearby improvements based on their impacts. This will likely include contributions to a future signal at 42nd Avenue and Bridge Street. As for Bridge Street, City Council gave City staff direction as part of a CIP to expand the roadway from where it is currently only one travel lane in each direction from 27th Avenue to 42nd Avenue to be built as soon as possible to the final roadway condition. City staff sizes improvements that come from site users appropriately when traffic studies related to their new uses and users are conducted. These are at stages later in the overall development process after rezoning. With the new Code in place, City Council will see what staff is recommending, what the applicant is providing and have input with those particular users subdivision development specific improvements as part of a future subdivision plan that would come before the Planning Commission and City Council. At the later phase, City staff would bring a recommendation for improvements based on the studies submitted by the user and applicant to ensure that the most recent data is being used to size the improvements to the current and future conditions. Development may not happen on this site for a number of years and conditions may change. City staff wants to ensure that improvements are sized appropriately at the time the users are coming in.

The City of Brighton will be the required entity to build a future interchange at I-76 and Bridge Street; CDOT will not fund or construct the interchange. The interchange is in the City's Master Transportation Plan and has preliminary design plans with a future design phase with construction pending future budget appropriation by City Council.

As for the nearby level of service, City staff provided in the written report data from recent reports for nearby developments. The interchanges of I-76 with Baseline Road and Bromley Lane remain areas of concern and hope that an interchange at I-76 and Bridge Street will help alleviate these. Staff understands that traffic is mentioned often in the community, especially in the adjacent area.

- *The unsignalized intersection of Bridge Street and South 40th Avenue is currently operating at a LOS of C or better during morning and afternoon peak hours with the exception of the northbound approach, which operates at LOS F. The anticipation is that this intersection requires signal control soon in which it is expected to operate at LOS B. Staff believes that the subdivision to the south will trigger that future signal. Staff may require the same for other intersection improvements for any future developer on the subject property. That would be outlined with future phases of development.*
- *The intersection of Bridge Street and 45th Avenue operates at an overall LOS of B during the morning peak hours and LOS A during the afternoon peak hours. By 2022, it is estimated that the intersection will operate at an overall LOS of B or better during morning and afternoon peak hours and is expected to do so through 2040.*
- *The intersection of Bridge Street and North 42nd Avenue, all movements at this unsignalized intersection currently operate at LOS C or better during morning and afternoon peak hours with the exception of the southbound left/through movement, which operates at LOS E during the afternoon peak hour. By 2022, several movements are expected to operate at LOS E or F. City staff anticipates a contribution from a future developer of the subject property to improve and signalize this intersection and will require and receive contributions from other nearby developers for new developments. The Public Works team will continue to monitor the intersection and provide updated traffic counts.*
- *The intersection of South 40th Avenue and Southern Street, currently an all-way-stop, operates at an overall LOS B during morning and afternoon peak hours. By 2022, the morning peak hour is expected to operate at an overall LOS C and the afternoon peak hour is expected to operate at an overall LOS B and is expected to do so through 2040.*
- *The intersection of 50th Avenue and Bridge Street is expected to operate overall at LOS C until 2040.*

This is part of a master planned community and the improvements to all networks in this area were done with the 12,000-unit count in mind. Staff is estimating approximately 8,000-units in this area.

Any user will have to demonstrate that their proposal is in line with all master plans. City staff will not grant approval or present to Council for review any proposal that is not in line with the master plans in the City. Rezoning is not the time to determine roadway or other infrastructure improvements particular to an end user. Certain users may require or trigger infrastructure upgrades. City staff works with the applicant to set those when the users are known. Staff ensures that all systems in the City can handle the traffic, water, sewer and drainage when the end user is known. Anything proposed to operate in the master plans capacity will require the user to make necessary improvements. If the user goes above the capacity in the master plans, significant improvements would be required.

Per 27J Schools, if a residential development is built and occupied on the subject property in the short term, potential residents would attend Pennock Elementary, Overland Trail Middle School, and Brighton High School. Pennock has adequate capacity for the next ten years or more, Overland will likely go over capacity around 2024, and Brighton High is over capacity. 27J Schools has stated, "If a potential bond measure is passed this November, it will include capacity relief for Overland and Brighton High". 27J will review any development with proposed residential unit counts when they are submitted and calculate estimated numbers of students for each school. The only stated occasions in which 27J has objected to a development is when a developer refused to pay cash-in-lieu of land dedication and or contribute to the Capital Facility Fee Foundation (CFFF) as these help mitigate the impact of students on district facilities particularly if they are overcrowded. It is their belief that this has never occurred in Brighton. City Council and staff have always required that the developers do as much as possible for the students in the school district.

City staff reached out to the Brighton Fire Rescue District given their stations' adjacent location and they have not voiced any opposition. The Fire District will be part of the reviewing team for future site development and building plans. Additionally, the Police Department is notified and a reviewing member of certain development proposals in the stages after rezoning.

City staff finds this site as appropriate for a variety of uses given its specific location, and based on the desires of the community as expressed in the Comprehensive Plan. Site development, including buffering and building design, will occur in accordance with the applicable standards as outlined in the PUD Amendment. Any development on the site will only be permitted with a design that ensures it fits in with the context and development patterns of the area. This would include a significant landscape buffer to the south where it will provide a few residential lots behind the fire station.

All required mailings, notices, and sign postings occurred in accordance with the adopted Code for public hearings and were carried out for the Planning Commission public hearing. The radius for the neighborhood mailing notification for both hearings was increased to 1,000 feet given that the adjacent parcels are large. Three signs were posted for each public hearing along 40th Avenue, Bridge Street and 42nd Avenue. The date of the hearing was updated on all three signs after the continuation by City Council. All comments submitted in writing are with the City Clerk and Planning staff has received only general inquiries. The newly adopted Land Use Code outlines neighborhood meetings. On October 8, 2020, the applicant held the required neighborhood meeting before their application was submitted to the City as required. Given the pandemic, the attendees were given the option to attend in person, to meet outside in Benedict Park or virtually. The notification mailings were sent by the applicant to property owners within 1,000 feet of the subject property. The applicant had several members of their team available to answer any questions and take feedback from the participants. City staff published public hearing information on various forms of social media.

The Development Review Committee has reviewed this proposal and recommends approval based on the review criteria. The Development Review Committee is made up of several professional engineers, certified planners and other skilled professionals each with focus areas in which they are subject matter experts.

The Planning Commission, appointed by City Council, heard the request on January 28, 2021 and recommend approval unanimously.

Staff finds that the zone change, via PUD Amendment is in general conformance with the requirements as outlined in the approval criteria in the Land Use & Development Code. Therefore, staff must recommend approval of the PUD Amendment as proposed and presented. City staff has proposed a draft Ordinance that recommends approval of the proposal should City Council agree with such a recommendation based on the City staff review of the applicable codified review criteria. City Council has four options when reviewing this PUD Amendment application. Council may approve the proposal via Ordinance; approve a modified proposal via Ordinance; deny the zone change via PUD Amendment via Ordinance with specific findings to justify the denial; or continue the item to be heard at a later, specified date if the Council feels it needs additional information to ensure compliance with the approval criteria as set forth in the Land Use & Development Code. If approved on first reading tonight, a second reading of the Ordinance will take place at a future meeting. It is important to note that a denial by City Council of this Ordinance must be because the Council does not find the item to meet one or more of the review criteria as outlined in the staff report and shown on the presentation slides. If the denial is put forth, the motion must outline the particular review criteria that the Council finds the request does not meet.

Mayor Mills asked if the applicant would like to add anything to the presentation.

Chris King, representing Columbo Partners. Mr. King and his partner Paul DeCrescentis are long time Colorado residents. Mr. DeCrescentis and his family are from Adams County and they have been doing business in Brighton since 2005 when they acquired this property and the Bromley Industrial Park in 2007. They are committed to the community and have been active members of the community with various programs and economic development missions. They are trying to take this site back to what it was when it was first purchased. In 2007, King Soopers approached them and were interested in building on this site so the rezoning was done to accommodate King Soopers. King Soopers had ideas for off-site storage for landscaping and a lawn and garden center and those uses are what prompted the rezoning. Subsequently, King Soopers built at a different location, so the site has remained undeveloped. Mr. King and Mr. DeCrescentis have worked to get commercial in the area but have had no interest and things slowed down during the economic downturn in 2008 – 2010. Property was sold to the Fire Department that was not a money making mission, but felt it would help the City and help development in the area. There is not a developer in mind at this time for the property driving

the rezoning, but there has been interest from residential developers for multi-family development. Mr. King feels the area is underserved residentially and overserved commercially. There are roughly 1,000 employees in the Bromley Industrial Park and it will be twice that when the area is fully developed and they all need a place to live. Mr. King has seen the comments about what the price level would be for any multi-family that is built in the area, although there is not a plan now, economics will dictate that anything that is built would be rent from \$1,700 to \$2,000 per month at a minimum. Housing is an issue in Colorado to be affordable so working people can have a place to live and it is harder for people to save given the economic times. This economy lends itself to for-rent properties. Multi-family comes in many different forms. A three-story walk-up apartment is not the only option. Multi-family has come a long way, there is different designs including cluster housing, townhomes and row homes. The sites geometry is going to dictate what could be done in the area, but there is no plan at this time. Low-end apartments will not be going into this area. Mr. King is hopeful for approval so they can move forward with their mission and see what can be done on this site. Mr. King and Mr. DeCrescentis are not a huge company, this is their livelihood, and something has to be done with the property at some point. If they were forced to go back to commercial, there would be a number of concerns from people with 24-hour service, truck deliveries, dumpsters, box containers and other things far more obtrusive and create far more traffic than a small, residential type project.

Mayor Mills read the correspondence into the record (attached as Exhibit A).

Mayor Mills asked if the applicant would like to respond to the correspondence.

Acting City Attorney Lena McClelland explained that there is a time in the public hearing process for the applicant to respond.

Mayor Mills asked if anyone in the audience wished to speak on behalf of or against the request.

Chris Maslanik asked if Council was going to allow comment under Public Invited to be heard on Matters not on the Agenda. Mayor Mills explained that this is only for the current public hearing.

George Ryan, Brighton. Mr. Ryan lives across the street from the Vista apartment complex and does not want another multi-family development three blocks away since there are 315 units going in on 50th and Bridge. That is close to 1,000 new residents in a one-mile radius. Mike said that the infrastructure could handle that; there will be problems with that density of population. Problems with parking and traffic. There will be too many traffic signals and it will be like Downtown Denver.

Susie Vancara, Brighton. Ms. Vancara moved in 2009 and had to sign an existing PUD that the City required each resident to sign to live there. The City has not made sure that all conditions of the PUD have been completed. The subdivision currently has conditions that are not met nor monitored by the City of Brighton. If this PUD change happens, who will monitor that this new PUD change will be completed? Her subdivision was to be a closed area that was a right in right out only, but the City has now opened up the subdivision and the street she lives on is a racetrack. If multi-family section 8 housing is allowed on the corner, the traffic will only get worse in her subdivision. The intersection of Tower and Bridge Street is almost impossible to navigate currently. Put more multi-family vehicles in the equation and it will be impossible. Ms. Vancara believes that if multi-family section 8 housing comes in property values all around it will fall. This subdivision is a retirement-based area and they do not want to see their homes devalued any more than it already has been. Please do not approve this change. A question to the owners of the property, do you currently live next to section 8 housing?

James Howard, Brighton. Mr. Howard bought a house six months ago not far from the intersection for the planned development. If Mr. King is unable to tell us what type of housing it seems like he is just asking the City for a blank check. In six or eight months when the development is done, he does not have to adhere to those rules anymore. Is that the case? What is the role of Mike in this, it sounded like a sales pitch on why we should actually approve this.

Courtney Rowland, Brighton. Ms. Rowland expressed concern about having more apartment facilities added to the neighborhood. The current retail shopping is very limited and seems somewhat stressed. Ms. Rowland feels it is not in the City's best interest to overwhelm the infrastructure even further and asked for City Council to consider the constituents and how this affects them.

Mayor Mills asked if the applicant would like to respond to the comments.

Mr. King understands where people are coming from. There is quite a bit of misconception about what this might be. This site is very small and ends parallel where the fire station is. When speaking about view corridors, to the east is the water tower and park, to the west is the fire station and an undeveloped corner. There is not anyone next to this property. The site to the south is open, but they do not own it. There is nothing to say about the comment regarding section 8 housing, it is not the intention of anyone and would not work economically. It is not conducive to any plan that has been proposed. The comment about the blank check and the adherence to the rules, Mr. King does not know what that means. Mr. King is not asking the City for anything, the rules are mandated by the Community Development Department, the Code and regulations. Whoever develops the land would have to follow those and the Planning Department will be very meticulous in requiring that the rules be followed. All technical requirements would be handled such as drainage and water; those are formula like and have to be followed. There is great capacity to handle those types of concerns. The biggest thing to remember when looking at 50th and what is at the King Soopers Marketplace that is exactly what this site is zoned for at this time. Mr. King feels that people would agree that is far more obtrusive than what is being proposed now. This is a difference of maybe 500 to 600 trips per day to 3,000 trips per day and 24 hour trucks in the area. In the extreme, this could be a Walmart or Target, or a convenience store. Car dealers have asked about the property and rehab centers have asked to build on the site. Mr. King does not feel this is conducive to the plan, but under the current zoning, those types of uses are allowed. Mr. King thinks there needs to be further understanding and all of this would be discussed again when a development plan is put forth for this Council and specific uses would be discussed. Mr. King sees this as taking the zoning back to the Town Center concept that it was back in 1997.

Senior Planner Tylka noted that one of the email parties spoke about the specific uses at the site, for the record, if it is an allowed use, City staff does not limit that. If there are five lots and five tire shops want to come in and they are an allowed use, staff cannot stop that. The free market would probably determine that might not be an appropriate idea, but if the Code allows it by the zone district and they could develop under the City's landscape standards, if the water and sewer use could work with the master plan and the system, they would be allowed to operate. A resident asked about Planner Tylka's role, Mr. Tylka is the Senior Planner with the Community Development Department Planning Division. His role is to present to City Council. City staff encompasses several dozen members from different engineering teams, coordinators, planners, and many certified professionals. Staff's findings are based on the review criteria that are outlined for a rezoning. Those criteria are in place for any rezoning. City staff and City Council are making their decision based off the same criteria for any rezoning. Senior Planner Tylka apologized if his presentation came off as a sales pitch; the intention of City staff is to be an unbiased, neutral party as all of the City staff is. His role is to present the City staff's findings of those review criteria. City staff finds that a recommendation of approval based on the criteria. Mr. Tylka feels he covered the questions about utilities in his presentation. There are other professionals here that can go more in depth regarding traffic, drainage and utilities if Council would like. Regarding the neighborhood zoning, as previously mentioned there is already an allowance for multi-family and denser residential products on the lot directly to the east in between the water tower neighborhood owners and the subject property. This is a master planned community originally envisioned for approximately 12,000 units. With current estimates on what is built and platted, there is a little over 8,000. The area could have 4,000 more units if all of those would adhere to the master plan.

Mayor Mills asked if any further correspondence had been received.

Senior Planner Tylka explained that all email correspondence was given to the City Clerk and was read into the record by Mayor Mills.

City Clerk Natalie Hoel has not received any additional correspondence.

Mayor Mills asked if there were questions from City Council.

Councilmember Cushing asked if there was a consideration to add the option for three-car garages and there was concern that the area to the south could allow apartments if that change was not made. The argument was that apartments were not wanted there so Council should allow the three-car garages because there was concern about the capacity. Senior Planner Tylka explained that this is

referring to the 24th Amendment of the Bromley Park PUD that was before Council last year. That PUD Amendment had two different aspects; one was to allow three-car garages on primarily the end units in the water tower park neighborhood to the east of this development. That did move forward to allow some lots where sized appropriately to have three-car garages. The area to the south is in process, the Brighton Crossing Filing No. 6 subdivision, it has not been final platted or come before Council yet, it will under the old Code provisions. There is an approved Preliminary Plat from the Planning Commission that shows 263 single-family detached lots. Before the 24th Amendment was approved by Council, it was possible to develop multi-family on the acreage to the immediate south. Councilmember Cushing remembers having the opposite conversation that the City did not want the area to be multi-family. There were concerns that this area was less appropriate for multi-family, it seems weird that we are now talking about allowing multi-family in the same vicinity. Councilmember Cushing is concerned that nobody knows what it looks like if someone came in and wants to put in an apartment. Staff would require the improvements necessary for the area, but there is a concern that students would be sent to Overland Trail and Brighton High. There is already a problem with Southern being punched through and allowing a lot of traffic and there is no sidewalk at all on the south side of that street the whole way down. More kids will be added that are going to have to head west down Southern, or even worse west down Bridge that have sidewalk issues. It does not look like the land to the west of this lot has a sidewalk at all. Kids would either have to cross Bridge to get to a sidewalk, and even then, there is not a sidewalk there either. There is not a cohesive sidewalk to get from this lot to Brighton High or Overland Trail unless you cut down to Southern and walk on only the north side of the road and cut back up 27th. Is there any chance that if someone comes forward to put in apartments that they would build a sidewalk all the way down Bridge to make it connect? Senior Planner Tylka stated that the adjacent boundaries to this site, we would look to have a sidewalk constructed appropriately. Senior Planner Tylka asked that the Public Works Engineer answer these questions. Public Works Engineering Manager Christopher Montoya explained that public infrastructure is required for any type of development. The developer submits plans that are reviewed by staff. Engineering studies are done to analyze the impacts of the development and how the capacity needs to be increased. Walkways would then be constructed around the development as well as infrastructure improvements classified as offsite improvements. Those offsite improvements are often put into the Development Agreement language. This is just a zoning part of the process and does not have anything to do with the construction development phases of the project. This information could be requested. As the City has grown and there are some empty or vacant parcels, there are some disconnecting points and there are gaps. On Southern Street from South 40th Avenue going east, the City constructed a temporary asphalt walk; this will be removed when the development to the north would develop. A concrete sidewalk would then be constructed. If there is a need and a lot of pedestrian volumes, the City has a Zero Vision Safety Program and the City looks to increase pedestrian connectivity. Every year, more capital funds are added for concrete improvements. One of the developments at 50th Avenue and Bridge Street, the developer constructed sidewalks, connected adjacent and also agreed to construct the sidewalk and gave the City funds to construct the sidewalk so the South side of Bridge had full connectivity. There appears to be decent connectivity with traffic signals allowing pedestrians to cross more easily. Staff also looks for multi-modal improvements like bike lanes and trail connections. This is all part of the construction, planning, development, and agreement phases. This does take some time to go through, there is typically three cycles at a minimum of reviewing plans and making comments so the developer can amend their plans, make modifications as well as terms of conditions of the development agreements. Staff does have a capital plan for designing Bridge Street and are hoping to make the west side of Bridge from 42nd Avenue to 27th Avenue look more like the east side from 42nd to east of 50th Avenue. Councilmember Cushing stated that once you leave the trailer park on Bridge, there is no sidewalk on either side of the road. There is between Telluride and 40th. The hard part is the high schools and middle schools are all to the west. There is plenty of options for elementary schools going east, but a lot of the kids have to go west when they reach middle school. This is not great in terms of sidewalks and connections and there is more traffic. The other concern is in addition to sidewalks, the City has made a good stride in terms of bike lanes all over the city, but we are barely catching up on sidewalks out here. Bike lanes are needed because kids are going to ride their bikes to school. Brighton High is over capacity and this is a big concern. The Capital Facility Fee Foundation does not cover the cost of building a high school and there is concern about adding to that capacity without a great plan to solve that. The comment regarding fee-in-lieu of water rights is concerning because the issue is finding water rights at any cost. It is convenient for a developer to come and give money for water, but if the City cannot find it, it does not do a lot of good. The City needs water to serve more people. Councilmember Cushing would prefer to see water rights come with these deals because the City may not be able to buy it. Certainly

do not know if the City could buy water for money received at the time of development, water is not getting cheaper. There was a comment regarding commercial in the area, Councilmember Cushing does not see a Walmart fitting in this space. A tire shop or a convenience store would not add to the problem, there is more of a worry for pedestrian traffic than car traffic, the capacity of the school, adding a bunch of people walking along Bridge, and kids riding bikes along Bridge. Not sure that section is a great place for multi-tenant homes. Councilmember Cushing is a big fan of more affordable housing and apartments are a big key to that. It is expensive to live in Colorado. There are some concerns about this section. Utility Project Engineer Matt Amidei knows there are concerns about water. Director Sherman has presented information in the past about water rights and fee-in-lieu. This is the rezoning phase and it is important to remember that they could come in today and build commercial. There are existing agreements and staff is working to find ways that this could work better for the City. The developer could come in a pay fee-in-lieu tomorrow. Utility Project Manager Amidei explained he does not know if this is a reason to look at the rezone. It is definitely an issue. Acting City Attorney Lena McClelland reminded City Council of the criteria and the stage in the process. All of the issues with infrastructure and exactions would be at the Major Subdivision or Platting stage. This is strictly a rezone and all decisions need to be based on that criteria.

Mayor Pro Tem Johnston appreciates the public's interest in this and is proud of the citizens for coming and voicing their concerns about this. It is harder to do than people think and he appreciates the emails and calls. It would be good to be in person for Council to see faces and not just hear stories. It is time for this new City Council to make the citizens proud. Mayor Pro Tem Johnston wants Council to understand the reality of its decision-making. The reality is in Section 2.04 C. in the Land Use & Development Code and was not read by City staff. This is the main portion of how Council needs to judge any kind of PUD or zoning amendment, any change including major amendments. Mayor Pro Tem Johnston read Section 2.04 C. b. into the record. "The benefits from any flexibility in the proposed plan promote the general public health, safety and welfare of the community, and in particular, that of the areas immediately near or within the proposed project, and the proposed flexibility is not strictly to benefit the applicant or a single project". Mayor Pro Tem Johnston wants that to sink in to Council and to staff because there was almost a sales pitch to send us this way. Mayor Pro Tem Johnston appreciates that City staff is doing their due diligence in order to make sure that they are following the legal ramifications of anything that can happen if Council does deny this. What was just read is the reality. The public welfare and rezoning this land, changing what is currently occurred on that land and doing it in the face of the public welfare. Council cannot talk about individual infrastructure, but if rezoning is being talked about, then they definitely have to talk about the lack of infrastructure that exists. We do not have the water, right now we are in a water crunch. This can be said because Mayor Pro Tem Johnston needs to watch out for the public health and welfare of residents. That is the main concern. It is not about the residents that might come in or the developer, that statement is very clear, it is about the current residents need to be the main emphasis of the Council's decision making when they do these. It has also been stated by Community Development Director Holly Prather many times that the reason the City changed the Code amendments to make sure that the City is back in this moment is to try to avoid doing PUD zoning amendments. That was one of the main pitches for Council to realign the Codes the way they needed to because they can get sticky. The reason they get sticky is not just the infrastructure, but as Mr. Tylka showed the audience and Council, right next to this is already zoned high density residential not including the apartments that were discussed on 50th and Bridge. We are talking about building these roads and building these sidewalks. Mayor Pro Tem Johnston appreciates the developer coming to see what we can do, but Council can vote no on this because of the Section that I just outlined for you. That is the way we say this, it is not to the benefit of the people that actually live in that area for their public health and well-being. Mr. King said he would like to turn this zoning back to 1997. In 1997 there wasn't human beings living in that area. Now that there are, we are talking about changing the zoning to multi-family housing, which is apartments and to change that zoning in any way to multi-family is a much bigger impact on any community than it is to keep it commercial. The people around there bought their homes based on what the zoning recommendations were already placed, and if there was much more empty land that would be another story, but there isn't. That land is small and we are talking about doing something that does not help the public health and welfare of the people that live there currently. Just like the City Codes say Council has to follow to make these decisions as judges in this moment. The other problem is there is a lot of ifs and hopes that are attached to this zone change and it is disconcerting. If they build across the street, this will be connected. We hope that outside improvements happen. This all came from City staff. Mayor Pro Tem Johnston understands that, but there are hopes that the street will be built once this happens. This is problematic and it is not just

problematic in the just in case scenarios, it is also bad when this is talked about. We have already dealt with this in east Brighton. We were told our streets would be built and our sidewalks would be built and it did not happen. It has taken years to watch the construction occur on many of the half streets and sidewalks. Mayor Pro Tem Johnston appreciates the idea to see what we can do, the last part of the statement from Section 2.04 C. is also important. "The... flexibility is not strictly to benefit the applicant or a single project". Mayor Pro Tem Johnston thinks that this zone change is being presented now to benefit the applicant and it is not there to benefit the flexibility of the general public health, safety and welfare of the community that exists currently. Mayor Pro Tem Johnston is asking Council please, just as I am, that you all are proud of the residents that came here tonight with something that seemed miniscule but is not. It really affects every day in east Brighton. Please make them proud of us the way that I am proud of them, I hope we are all proud of them.

Councilmember Watts thinks it is very nice when the residents come to speak and it would be nicer if it were in person and there would not be technical issues. It will be good to get back to seeing residents in person. Councilmember Watts stated that the presentation from Mr. Tylka was incredible as always, but this one struck a little chord with me. It was a little bit too descriptive and too to the point. Councilmember Watts feels the work done by the Community Development department is incredible, but the way this came across tonight was different, with a different tone in the voice. Councilmember Watts does see where the residents could have a perception issue with how it came across. Knowing Mr. Tylka and how precise he usually is, Councilmember Watts did not take it that way, but he could see how the perception could come across. It did strike a chord because it was like we were putting others ahead of our own City, that is the part Councilmember Watts had a problem with. This was the first time Mr. Tylka gave a presentation where he did not thank Council and Mayor Pro Tem for his time to speak; he only addressed the Mayor very clearly and decisively. A lot of questions had already been answered during the presentation. When Councilmember Watts was first elected he met with a couple of City staff members, one was the Deputy City Manager and Councilmember Watts told him that his vision was growth, he wants to see growth in Brighton. Councilmember Watts would like to see more residents but it also has to be done safely and correctly, not just thrown out there. Councilmember Watts is not blaming anyone at the City currently, because a lot of these dates are older. Some plans for development have been in the process for twenty or thirty years. This property first came to fruition in 1986 that this land could be developed. To be clear for the residents, a lot of times, this has already been in place and Council is just considering another amendment. Councilmember Watts does have concerns regarding the infrastructure and he knows that on Sunday at 4:00 p.m. at that intersection a car was almost hit cutting off another car. It is all about the residents. The presentation would have gone differently had this been heard on February 16, 2021 before the pipe burst and there was water damage at City Hall. It is not good that there was damage at City Hall, but it is fortunate because Council could hear from more residents. As it was pointed out when talking about the community engagement surveys, Council wants to hear from the residents. If they do not want something, Council should not look at going after that. Council had this discussion last year and the City did not want apartments then, but now they are looking at doing it again. Council is listening to the residents now and they are saying they do not want it; it is from the residents living in that area. Now granted, when talking about things on the other side of town, you may have the same residents that may not be in touch with that because they do not live there. There are residents that do not care because they do not live there. Councilmember Watts is not speaking for them, he is just saying how perceptions work and what he has heard since being on Council. These residents came out tonight and talked about what it would do to affect them and some of the Council has mentioned it. Councilmember Watts addressed Mr. Tylka when he was stern in stating if Council denies this; Council has to give X amount of reason behind it. Honestly, if the residents don't want something, that is his reason behind it. Councilmember Watts does not go into a Council meeting without first hearing from the residents. Although Councilmember Watts would love growth, and he does not want to see five tire shops, he gets that and it could be a number of things if it stays commercial. Councilmember Watts hopes the residents understand this. It is going to be one thing or the other. Councilmember Watts asked if this were to go through with either zoning as multi-family or stays commercial, how long would it be before something would break ground there or is a different developer going to come back and apply for a different zone change. At the end of the day, Council answers to the residents not the developers. Councilmember Watts cares about what the Community Development department does.

Councilmember Jordinelli asked if the City had the apartments now would there be water. Utility Project Engineer Matt Amidei asked if Councilmember Jordinelli is referring to treatment capacity or groundwater. Councilmember Jordinelli asked if the City has the water infrastructure now. Utility

Project Engineer Amidei explained that the City does have the infrastructure and could handle the demand in that area. When Bromley Park first came in to the City they looked at the land they had and the zoning and gave their demand. The City sized the lines adequately to that. Another part of the agreement was that they could pay fee-in-lieu for raw water rights. This is where things are hung up on the utilities side with the water rights and water treatment, not necessarily the hydraulic pipes from the ground. Staff is looking at this and trying to make recommendations to solve those issues with existing contracts. If someone came in today and said they wanted to build 500 apartments, staff would have to look at this closer. This cannot be done until there is a site application to know the size of the project and more about the developer. Councilmember Jordinelli is envious of Thornton and Commerce City as they are taking water from downstream and pumping it back up into their city. Brighton must not have felt like there would be a water problem. A lot of these projects started ten or fifteen years ago. Councilmember Jordinelli asked how high the apartments could go. Senior Planner Tylka explained that apartments are regulated by the City's in place Land Use Code and the height would be 3 ½ stories and the actual height depends on the building type. A small apartment would be 45 feet and this is the most typical type proposed. Councilmember Jordinelli asked if the apartments by King Soopers are three stories. Senior Planner Tylka explained that those are governed by the Bromley Park regulations height and are allowed to go up to 50 feet, about four stories with the other half for the roof. These would most likely be developed shorter. Councilmember Jordinelli asked if 4,000 units would be possible on eleven acres. Senior Planner Tylka explained that there are many sections of the Code that speak to this. If there were surface parking, a sizable amount of the property would be taken up with that. If there is a need for drainage infrastructure onsite, this would take space, landscape buffers, larger sidewalks, this all affects the size and could end up being just over 200 units. Councilmember Jordinelli feels that growth is vital to any city. Although it is uncomfortable for those residents, this development would not be as large as everyone imagines. Councilmember Jordinelli asked if the development came in prior to the completion of the North Outfall, would they have to help subsidize it. Storm Water Coordinator Scott Olsen stated that is correct. If the developer came in with their improvements to the site necessitate that Outfall system, they would have to contribute. Otherwise, they would not be able to move forward with their project. Councilmember Jordinelli stated that growth is uncomfortable and is proud of staff for their work. We knew these PUD's were coming and are still coming. There is a twenty-five year old PUD and although it is uncomfortable, the City has a great staff that has covered a lot of the bases and it is appreciated.

Councilmember Blackhurst asked that is the fact that some residents expressed their opinion that they do not want this project a legitimate reason for Council to deny the zoning application. Acting City Attorney Lena McClelland stated not necessarily, Council has to follow the criteria in the Code. If Council feels this rezone does not meet the health, safety and welfare for the citizens that would be one of the criteria. Simply disagreeing with the development without more to that is probably not enough. Councilmember Blackhurst stated that in his experience interpreting the law, using the words health, safety and welfare is not enough in his opinion, we need to define how the health safety and welfare are actually impacted, is that correct. That is the difficulty. Councilmember Blackhurst appreciates the citizens coming forward and if he lived in the neighborhood, he may be doing the same thing. The personal opinion of Councilmember Blackhurst is that growth is not always the best thing for the City. It is inevitable, but he is not pro-growth. Councilmember Blackhurst would like to keep Brighton the same size it is now and still have all the good amenities. This is not realistic, people have property rights. They buy land and invest in it and they have the right as Mr. Tylka has pointed out as long as it is within the Code, they can build what they want. If I was living next to these units, I may have the same opinion as other residents in the area. Councilmember Blackhurst also wants to stay within the law and have some reason. Council cannot, according to the City Attorney, use the fact of the water as an issue in this particular vote. That discussion will take place way down the road when the developer comes to the City and we do have the right under the Code to deny building permits if we do not have sufficient water. We always have that right, but that is later when they come back with building permits. Councilmember Blackhurst also gets frustrated with the lack of infrastructure in terms of sidewalks, it has been a big issue and we are behind the curve. Those are infrastructure issues that hopefully we can demand and make sure they get done when the building permits come in. Senior Planner Mike Tylka stated that is correct, those are the items staff would look to discuss and outline at the Major Subdivision Plan Amendment. Councilmember Blackhurst wishes this was simple enough to say that there are a number of residents in the area that do not want this and therefore we are legally able to adhere to their wishes. I am not sure that is the case. Councilmember Blackhurst has not heard anybody talk about specifics on health, safety and welfare and specifically how that is impacted by apartments.

Councilmember Pollack stated that this Council has repeatedly said to the residents to get involved, tell us your concerns and we'll do the best we can. We saw quite a few residents from that area get involved, that is what we have asked for and yet we sit here contemplating ignoring that. What do we want, we want to hear from them and ignore them, or do we actually want to serve them. We are here to serve them. If that is the way they see it and that is their property, way of life and what they planned on, why they purchased there, I think we have to take that into consideration and not just blow them off. You are talking out both sides of your mouth, tell us what you want but we are not going to listen anyway. That is not the way it has worked with this Council. Yes, I suppose we do need some growth and some housing but we had quite a few people come up and object as best they could since they can't come to City Hall. I for one, as I have at other times, am going to support the residents and their wishes. I don't live there, they do, and so if it was one or two, maybe we could think otherwise, but it wasn't just one or two. I'm not into making anybody's lives miserable and I'm not going to start now. That is my opinion and that is what Council needs to think about when we say tell us what you want. Get involved, we are going to ignore you anyway, but get involved. That is not cool, as we all know.

Councilmember Humbert asked what is the City's water capacity in terms of residents at this time. Utility Project Engineer Matt Amidei explained that when these properties were originally developed, they came in with a master plan around 12,000 units in the Bromley Park area. At that time, the developers work with their engineering team and look at the infrastructure, the City's water storage, and the pipeline sizes. When they come in and develop, if someone needs a 12" line, the City requires them to put that in. It might not be that particular development that needs that line, but it could be needed to serve someone further down the line. Staff looks at it as a whole system. The Bromley Park area was developed to serve 12,000 units. Councilmember Humbert asked if we are still at that level and could serve more people. It is important to look at connectivity and the Be Brighton plan addresses this a lot. Councilmember Humbert asked if this change in zoning would change that. I noticed driving down Bridge that 40th and Bridge is a difficult intersection and warrants have to be looked at before we get to a point where we actually consider a signal. I do not know if we meet the warrants yet. It was shocking to see the new apartments going up by King Soopers. Traffic is an issue and I cannot see this working unless you are going through the subdivision you are building on the edge of for traffic, and then we have the issues of partial streets and sometimes no sidewalks. We want to have a City that can be connected throughout. Councilmember Humbert is concerned with the disinformation about these being section 8 apartments. This isn't true and some people are making claims in that regard. Councilmember Humbert has concerns about water and connectivity. If those are there, I do not know that we can stop at least this part of the conversation.

Councilmember Taddeo is constantly hoping that the residents will stand up and say how they feel. If Council were to decide against what the residents have asked for, it does not mean that we did not consider their opinions. Councilmember Taddeo has concerns about the water, infrastructure and the schools and sidewalks. If and when we get to that point and we allow the rezone, I feel that we will have control over how that looks. It will not be a three or four story building; it could be maybe 200 units as stated by Mr. Tylka. I am not always one of those that is for growth just for the sake of growth. It has to be managed right and well thought out. In thinking about Founders Plaza, the residents wanted that and I know that there are plenty of us on Council that believe that shouldn't have happened. Part of the reason I would be in favor of this is for the reasons that Councilmember Blackhurst talked about and given the fact that it was planned for 12,000 units and we are well below that.

Mayor Mills appreciates the time staff has taken to bring all the facts and appreciates the developer for coming in to state his case. Mayor Mills is always for growth, but is always for a smart way to grow. One area that really is not clear on how it is going to be addressed was the infrastructure needs and how that will be addressed with whatever development could come with the zoning change. Mayor Mills is of the opinion that while the development does not seem bad or anything with duplication of businesses, I am a free market person so I cannot say what can come in, nor will I dictate that. That is not appropriate. I believe that we may need to take a pause on this and really understand how the infrastructure will come together with the concerns stated by the residents and many members of Council.

Mayor Pro Tem Johnston does not think it was correct to bring other projects into this. Past projects have nothing to do with the current thing and we are in a public hearing and acting in a quasi-judicial manner where we are judges. We need to judge based on what we have in front of us. What we have

in front of us, I have to reiterate this because I heard a few Councilmembers ask some questions about specifics, and so let me say it again. City Council is making its decision and shall use the following criteria from the Land Use & Development Code Section 2.04 C. "The benefits from any flexibility in the proposed plan promote the general public health, safety and welfare" let's stop there for one moment. I would love for somebody to tell me how this promotes public health or safety. I would also love for anyone on City staff to tell us that we currently have enough water and the infrastructure built to support this. Nobody on staff can tell us that because neither of those things could be true at this moment. Councilmember Blackhurst does have a good legal basis to make sure that we are legal if we do deny this. So I'm saying, if we do deny this the public health, anyone that can say that we control the water enterprise as a Council and as a City, if we cannot, for sure, deliver water to this area, then we are affecting the public health, safety and welfare. If we cannot, for sure, say that sidewalks and streets will be built to support even 200. It was said by Councilmember Jordinelli that it would only be 200, no, it probably won't. We only see this once before it comes back to us as a plat after it has gone through Planning Commission. Then again, we see a major plan that come to use, but the reality is that this is our one moment to stop this from occurring because we have to care about that main Section 2.04 C. With that said, I would like to make a motion. Mayor Mills explained that we are in the public hearing.

Chris King understands clearly that Council will vote how they will and we respect very much the comments from the residents and take them into consideration. We too are owners in the City and have been paying taxes on this property for fifteen years. One thing that is important to understand that Councilmember Cushing brought up is that a Walmart would not go into the space. The site plan in the package is about 140,000 square feet and the King Soopers building was 125,000 square feet with a series of pads across the site. Walmart, Target and Amazon all have concepts that are less than 50,000 feet. All of these big retailers they look at different concepts to see what works. My point on this is when you vote and the residents need to understand is the current zoning is such that all of that could happen on this site. They are very heavy usage. The math for the 200 units comes from the simple math of how any multi-family works there, the geometry of the site with circulation and fire access is about 200 units on the property. This is about 300 trips per day. With 150,000 feet of retail, that is about 800 trips per day. With the apartments, they go to work in the morning and come home at night but with a commercial shopping center, that happens all day. The comments about traffic really need to be considered by all involved what this really means. The point to the streets and traffic monitoring, regulating, sidewalks, all of that is done with more development. The residents and some of the Councilmembers have spoken to the issues that are on that street now. If nothing happens, that problem is there now and will not be corrected. There will not be sidewalks built and it will continue to be a difficult situation. The comments made about 1997 by Mayor Pro Tem Johnston; it was zoned multi-family in 1997 regardless of who was there. We took this solely from the zoning that it was to accommodate King Soopers and are happy to take it back as it was. It is important for the residents and Council to understand what they are doing if this goes the other way because it is a zoned commercial site, we have the criteria and will handle the technical issues when it happens.

Councilmember Watts asked the City Attorney that just to be clear if a motion is made and it is seconded this would go to a vote. If a member of Council would vote no because they didn't feel it was in the best interest for exactly the reasons most people have said about the infrastructure, the safety and sidewalks, all those things, that Councilmember now has to give the description of why they voted no, is that what you are saying. Acting City Attorney Lena McClelland explained that the Council as a whole when making their determination in the motion itself needs to list the criteria for denial. Councilmember Watts wanted to be clear because it sounded like if an individual Councilmember said no, then you can't listen to the residents. I am listening to the residents so I just want to be clear on that. If that is the case then every time we have a vote, I want written descriptions of why they voted a certain way. Councilmember Watts appreciates Mr. King coming on board and appreciate when applicants attend the meetings. Mr. King's statement sounded like an ultimatum, something is going to be built there anyway, it will be commercial or residential. It sounded a bit like if you don't approve this residential zoning change your streets will stay the same that they are. That is almost what he said. It is basically we have to approve this or our area stays unsafe if commercial goes in because they will not build sidewalks and put the other stuff up. To me it is just not safe. Community Development Director Holly Prather thinks that the point Mr. King is trying to make is that the property is currently zoned commercial and what could develop on the property could have significantly more impacts than if residential were to develop. If commercial users came to the site one was a car wash, one was a brewery, one was a laundromat facility, these are high water users. The implication is that it can stay

commercial and the impacts could be greater. In terms of traffic that are concerns raised by residents and concerns by Council about the general health, welfare and safety of everyone, the point he may have been trying to make is that commercial ends up resulting in more trips and more traffic. From a legal standpoint, the reason staff is suggesting that when Council makes a motion and it should be denying the rezoning request that Council enters into the record of Council's findings of fact in regards to why you are denying the request. Just saying that you do not believe it meets the general health, safety and welfare is probably not sufficient in terms of the decision being legally defensible if challenged. That is the concern I have. Mayor Pro Tem Johnston stated that this is for the City Attorney to claim and this question has already been asked. This is now a legal opinion coming from a Director of staff. Mayor Pro Tem Johnston would like that question to be brought to the City Attorney, not to other staff members that do not have a degree in law. Acting City Attorney Lena McClelland stated that as I have previously mentioned, should Council deny this, they need to relate their choices back to specific criteria and findings of fact as previously explained. Director Prather stated that it needs to be with the review criteria and findings of fact.

Councilmember Jordinelli stated that since there are a lot of citizens listening, staff spends a lot of hours and time deliberating over this and they try to bring us the best option. Councilmember Jordinelli would not like to see a commercial site there, it would be horrible. I bought a place by the Cherry Creek mall and right across the street, they put a massive ten-story full block condominium units. The view was twenty balconies. People do not want to live in Denver, that is why they are in Brighton, but when you have growth, things happen. I got a condo and was the first one in, the people that moved in after were horrible and I had to leave. The big lesson for the residents, if you have a field beside your house, ask what it is zoned. Most residents do not do that type of thing, but the ones getting burned right now, the next place they go they will make the right decision. As far as Council is concerned, it seems like if you want to be a great Council, you should warn people in your Ward that if you want to move into this house, there are PUD's written twenty-five years ago that cannot be changed that dramatically. The developers have the right to do what they are going to do. This was established twenty-five years ago and we can't go back twenty-five years and change it. This is just all part of a learning process and part of growth, sometimes you get a burn and sometimes you don't. It sounds cruel, but it is a simple fact of life. The City does not want to be in a lawsuit with any developer, that is not what we want to accomplish here. We want to try to compromise and make everybody happy, which isn't going to happen, but we still try to reach that common ground. I really believe our staff is absolutely capable of giving us the best options we could possibly have under the circumstances. They weren't here when those PUD's were written and approved by a former Council, we got stuck with them and we have to deal with them. That is what we are doing.

Councilmember Pollack stated that it has not even been two weeks since it was discussed that we will have some water issues. There will be limits to the amount of water that can be used. People are not going to be able to have grass. We do have water problems and maybe we should have purchased more water, but we didn't, I don't know why. We have to understand that we need to keep the residents now with as much water as possible and to bring in more. We have to think about that. Will we allow a car wash using that much water, I doubt it; well it wouldn't pass through me. We have water problems and we have to take that into consideration.

Councilmember Cushing stated that we keep throwing around the word fact, it is a fact that the high school is overcrowded and that there aren't sidewalks along Bridge. The development of a multi-tenant unit at this location would not fix that problem. Would those be considered facts or do we need to have more evidence to make those factual. Acting City Attorney Lena McClelland explained that some of that might go outside of my ability to give you a legal opinion. The point is that you need to base your decision on the facts you heard in the record and on a logical basis. They need to meet the criteria that was discussed and they need to back up that criteria as to why it does or does not meet that criteria. Remembering what those criteria encompass and having some sort of basis for that decision. Councilmember Cushing wanted to clarify that those were the two things that he heard that concerned him. I was not concerned about vehicle traffic increases, I was concerned about pedestrian traffic increases and the safety of teenagers walking or biking down a very busy road that is a highway without proper sidewalks or paths for them to get to school. What I heard in this presentation was that middle school students will have to traverse to Overland Trail Middle School, which requires them to get across town to 19th Avenue, cross Bridge and up to Overland or to Brighton High, which is even further. That was a safety concern of mine.

Mayor Mills closed the public hearing at 9:11 p.m.

Motion by Mayor Pro Tem Johnston, seconded by Councilmember Cushing, to deny Item 6A based on Section 2.04 C. item b. presented to us regarding the benefits from any flexibility in the proposed plan promoting general public health, safety and welfare of the community. Motion passed by the following vote:

Aye: 5 - Mayor Mills, Mayor Pro Tem Johnston, Councilmember Cushing, Councilmember Pollack, and Councilmember Watts

No: 4 - Councilmember Blackhurst, Councilmember Humbert, Councilmember Jordinelli, and Councilmember Taddeo

Mayor Mills called for a break at 9:13 p.m.

Mayor Mills reconvened the meeting at 9:24 p.m.

7. ORDINANCES FOR INITIAL CONSIDERATION

8. ORDINANCES FOR FINAL CONSIDERATION

9. RESOLUTIONS

10. UTILITIES BUSINESS ITEMS

Resolutions

- A. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, ACCEPTING THE PROPOSAL OF ENGINUITY ENGINEERING SOLUTIONS LLC., AND AWARDING THE CONTRACT FOR RECREATION CENTER PONDS DESIGN, PROJECT #21-006726, TO ENGINUITY ENGINEERING SOLUTIONS FOR THE CONTRACT AMOUNT NOT TO EXCEED \$184,295.00, AND AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO SIGN THE CONTRACT ON BEHALF OF THE CITY AND THE CITY CLERK TO ATTEST THERETO**

Mayor Mills read the title of the Resolution into the record.

City Manager Bais DiSessa introduced Utility Engineering Manager Roy Gallea and Parks and Recreation Director Travis Haines.

Utility Engineering Manager Roy Gallea presented the Recreation Center Ponds Design Project. The ponds are located at the Recreation Center at 11th Avenue and Baseline Road. The south pond holds utilities augmentation water for irrigation around the Recreation Center property and the north pond serves as a fishing pond for the Parks and Recreation Department. The north pond is unlined and requires constant pumping to keep it full. This is problematic for a fishing pond. There are many energy costs and the groundwater contains a lot of gravel so the water infiltrates quickly. The south pond is lined. The City's Water Master Plan recommends that this area function as a regional detention pond for the North Outfall – Baseline Outfall alignment. The project will allow for save movement of stormwater through the facility as part of the City's North Outfall – Baseline Outfall alignment. The north pond will be lined to ensure that it remains full for fishing. The stormwater in the area will be re-piped to ensure safe and legal storage and transmission of augmentation water. The City entered into an on-call stormwater engineering design agreement with Enginuity Engineering Solutions on May 14, 2020 for five one-year increments as a response to a formal RFP #20-016. Seventeen firms submitted proposals to become shortlisted contacts for on-call, as-needed engineering design services. Six were chosen based on their abilities to complete work across all utility types including storm, sanitary, potable, etc. Enginuity Engineering Solutions was shortlisted for

specifically stormwater related project based on their experience with the City and their overall qualifications as it relates to stormwater projects across the Front Range. Utilities has \$175,000 and Parks and Recreation has \$50,000 in the budget for this project. The proposed cost for the project design is \$184,295. City staff in Utilities and Parks and Recreation recommend accepting the proposal of Engenuity Engineering Solutions for \$184,295. Utility Engineering Manager Gallea and Parks and Recreation Director Haines answered questions from Council regarding:

- There being a connection between the two ponds.*
- The possibility to limit fishing to residents under 18 years old.*
- The type of fish the pond is stocked with.*

Motion by Councilmember Watts, seconded by Councilmember Humbert, to approve Resolution 2021-16. Motion passed by the following vote:

Aye: 9 - Mayor Mills, Mayor Pro Tem Johnston, Councilmember Blackhurst, Councilmember Cushing, Councilmember Humbert, Councilmember Jordinelli, Councilmember Pollack, Councilmember Taddeo, and Councilmember Watts

11. GENERAL BUSINESS

A. Review of COVID Statistics

Assistant City Manager Michael Martinez updated City Council on the current COVID statistics and vaccinations.

Motion by Mayor Pro Tem Johnston, seconded by Councilmember Humbert, to allow a member of the public to speak on matters that are not on the agenda. Motion passed by the following vote:

Aye: 9 - Mayor Mills, Mayor Pro Tem Johnston, Councilmember Blackhurst, Councilmember Cushing, Councilmember Humbert, Councilmember Jordinelli, Councilmember Pollack, Councilmember Taddeo, and Councilmember Watts

PUBLIC INVITED TO BE HEARD ON MATTERS NOT ON THE AGENDA

Chris Maslanik, Brighton. Mr. Maslanik expressed concern regarding an article from February 9, 2021 and comments made about a prior Council and their vote against marijuana in the City of Brighton. These decisions were made with the information available at the time.

B. Memorandum of Understanding for the Minor Home Repair Program

City Manager Bais DiSessa explained that this Memorandum of Understanding (MOU) is for the use of Community Development Block Grant (CDBG) funds for the Minor Home Repair Program.

Senior Management Analyst Nicole Samson presented an updated MOU between the City and Adams County for the administration of the Minor Home Repair program and to ask Council to allow staff to bring this item for approval on March 16 2021 as a consent item. The Minor Home Repair program was established in 1994 by Adams County to assist low and moderate income residents in Adams County with necessary repairs to their home to ensure the residents are living in safe, decent and sanitary conditions. Adams County administers the program and cities can participate with the County to provide this service. Common repairs completed through this program include repairs to the roof, plumbing, electrical, hot water heater or furnace. Energy efficiency and ADA improvements can be made to the home. Eligible residents do not have to pay for these repairs since this is a grant-funded program with CDBG funds. These federal funds come from the US Department of Housing and Urban Development to Adams County. The City of Brighton applies to the County for these funds each year and requests that the funds be assigned to a specific project or program. The CDBG primarily funds renovation and repairs type projects for low-income residents. In order for Brighton residents to be served through this program, the City can apply or assign CDBG funds to this program. The City can apply for funds each spring and assign those funds directly to the Minor Home Repair program. The

other option for receiving funds is for the City to identify the Minor Home Repair program as a contingency project. This project would receive remaining funds from a primary project once it is complete. In 2019, the City completed a CDBG project and there was \$13,000 remaining. If the Minor Home Repair program was considered a contingency project, those funds could have been rolled over to serve one to three households. Declaring a Minor Home Repair program as a contingency project does not require the City to roll over funds, it is optional. The MOU allows the City to identify the Minor Home Repair project to Adams County. If these funds were not to be rolled over, the City would have to assign them to another project. There is an existing MOU because the City has an active Minor Home Repair program that Brighton residents can apply to receive services. That MOU does identify the responsibility of Adams County to administer the program and the City's responsibilities. The proposed MOU identifies the Minor Home Repair program to be used as a contingency project and lowers the activity delivery cost amount to 10% from the 20% of the current MOU. The activity delivery cost is the amount that Adams County retains to administer the program. Only Brighton residents are served with the City's CDBG funds and there is approximately \$70,000 in funds available. Residents qualify based on their household income and other criteria. Residents must own and live in their home, be in a single-family house and the homeowner must be current on their mortgage payments. Senior Management Analyst Samson answered questions from Council regarding:

- The income limits for this program.

12. REPORTS

A. By the Mayor

B. By Department Heads

Update on Vestas Blades Operations

Assistant City Manager Michael Martinez updated City Council on the Vestas Blades operations. Vestas is consolidating operations in Colorado and the blades manufacturing in Brighton will move to Windsor. There will be layoffs of 280 employees in Brighton. There will be additional jobs based on the tooling operations moving to Brighton. These layoffs do not affect any of the terms of the agreements with BURA at this time. Staff will ensure that the employment terms are being met.

C. By the City Attorney

D. By the City Manager

13. REPORTS BY COUNCIL ON BOARDS & COMMISSIONS

Mayor Pro Tem Johnston attended the Airport Coordinating Committee meeting.

Councilmember Jordinelli attended the Link meeting.

Councilmember Watts asked that the student surveys be sent to City Council.

Acting City Attorney Lena McClelland explained that City Council recently updated the City Code regarding extension times for Regular City Council meetings. Section 2-4-30 now states that in the event that City Council is in an Executive Session at 11:00 p.m. or at the conclusion of an extension period as provided for herein, the Regular Council meeting shall be extended without Council action for the limited purpose of allowing Council to complete and return from Executive Session and adjourn the meeting. Acting City Attorney McClelland explained that if Council goes into Executive Session before 11:00 p.m. or during an extension, Council does not need to come out of Executive Session in order to extend the meeting. The meeting does not have to be adjourned by 11:30 p.m.

14. EXECUTIVE SESSION

Motion by Mayor Pro Tem Johnston, seconded by Councilmember Blackhurst, to continue the Executive Session to a Special City Council Meeting to be held on March 9, 2021 after the Study Session. Motion passed by the following vote:

Aye: 7 - Mayor Mills, Mayor Pro Tem Johnston, Councilmember Blackhurst, Councilmember Humbert, Councilmember Jordinelli, Councilmember Pollack, and Councilmember Watts

No: 2 - Councilmember Cushing, and Councilmember Taddeo

15. ADJOURNMENT

Mayor Mills adjourned the meeting at 10:59 p.m.

CITY OF BRIGHTON, COLORADO

Gregory Mills, Mayor

ATTEST:

Natalie Hoel, City Clerk

Approval Date