IVINS
CITY COUNCIL
MINUTES
September 1, 2022

NOTICE: : This meeting was held electronically and in person. City Hall was the anchor location for the electronic meeting. You may watch the audio and video feed by going to www.ivins.com under "City Council" on the right of the home page and selecting "Audio".

1) WELCOME AND CALL TO ORDER

MAYOR AND COUNCIL: The meeting was called to order at 5:30 p.m. and announced there was a quorum present.
All present included Mayor Hart, Council Member Scott, Council Member Mehr, Council Member Johnson, Council Member Murphy, and Council Member Anderson.
STAFF: City Manager/Attorney Dale Coulam, Parks and Recreation Director Benny Sorensen, Public Safety Director Bob Flowers, Building and Zoning Administrator Mike Haycock and City Recorder Kari Jimenez
AUDIENCE: Chris Haddad, Dana Cook, Michael Cook, Mira Leffler, Tim Gillespie, Shelley Moller, L. Johns, Diana Roesslein, James Barden, Eric A. Simonsen, Sue Simonsen, Judith Hutcheson, Helen & Dean Cavaletto, Sharon Gillespie, CJ Koharcheck, Dee Edmonds, Connie Butterfield, Jim & Connie Von Behren, Sue Newman, Bill Newman, Leah Monzari, Marty Clayton, Dan & Frosyne Mensendick, Stuart & Tricia Sockrin, Kathy Smith, Keith Smith, Mike Hugo, Niki Hugo, Mike & Julie Dumas, David Farnsworth, Barbara Alexander, Brian Waller, David Hatch, Becky & Chuck Warren, William Mayol, Gwen Harrington, Elizabeth Fortney, Greg Cherry, Hans J. Wolters, Marcia DeLucchi, Steve & Lisa Jarvis, Bob Sporrong, Martin & Mazelle Nohr, Maureen Parks, Jan Wiggins, Bob Wiggins, Connie Lewis, Rich Lewis, Shauna Fisher, Jillyn Facer, Jennifer Dobson, Louie Goldstein, Nicole Hugo, Mark Coons, Patrick Manning, Stephenie Nast, Diane & Sterling Patrick, Lindsey Brinkerhoff, Brent Facer and others who did not sign in.
EXCUSED: None.

A. Acknowledgement of Quorum

Mayor Hart acknowledged there was a quorum present.

B. Flag Salute

Council Member Anderson led the Flag Salute

C. Invocation

Council Member Anderson gave the Invocation

D. Disclosures

There were no disclosures or conflicts of interest with items on this meeting's agenda.

2) REPORTS, PRESENTATIONS AND APPOINTMENTS

A. Presentation regarding renovation of the Desert Exhibit Room of the St. George Children's Museum and request for participation

Mayor Hart welcomed and introduced Sonya Darter, Director of the Children's Museum. **Sonya Darter** indicated that the reason the Museum Board came before the Council tonight, was to talk about the Museum's Desert Discovery room, which is in the process of being renovated and part of that renovation will include an exhibit that focuses on the night sky. She provided a

presentation to the Mayor and City Council, a copy of which is available as an attachment to this agenda. **D'Ann Millward** appreciated the opportunity to speak with the Ivins City Council regarding the Museum and the Desert Discovery room. The Museum Directors felt that it would be a perfect match for Ivins to join forces with the Children's Museum. The Children's Museum is looking for funding and in the long-term, would request an annual sponsorship that would be a long-term stewardship with Ivins City. What Ivins City has done as it relates to the night sky, integrates with what is trying to be done at the Museum within the Desert Discovery room. With sponsorship, there would be signage in the dark side area for the dark sky initiative. The Children's Museum has some great funding and great sponsors that have assisted in bringing this to the forefront and making the Desert Discovery room happen. She thanked those in attendance at the meeting tonight who have supported the museum and have donated. A long-term stewardship sponsorship would be something that the Museum would be looking for from Ivins City and in an amount of $1,000 on an annual basis, which would assist in maintaining the room. The length of the sponsorship would be between 5 and 10 years. **Jennifer Dobson** is the President of the museum and stated that on behalf of the Board of Directors, thanked the Council and the Community, indicating that the Children's Museum loves partnering with community members. **Mayor Hart** inquired if the Council would like to support the Desert Discovery room night sky exhibit. The **Mayor and City Council** agreed. **Council Member Johnson** recognized and thanked the St. George Children's Museum for donating six (6) family passes for the Princess Pageant.

B. Department Reports: Parks and Recreation and Public Safety

Benny Sorenson reported that the Parks Department was preparing for Heritage Days that will be held on September 9th and 10th and they are preparing for Flag Football and Volleyball, which will be starting in the near future.

Mayor Hart publicly recognized Fire Chief Parker, City of Santa Clara Mayor Rosenberg and City Manager Brock Jacobson for the re-grand opening of the SCI Fire EMS at the Center Street station, that is now staffed 24/7, 365 days a year. **Fire Chief Parker** provided a written report, a copy of which is available as an attachment to this agenda. He reported that they have moved three (3) part-time fire fighters, to full-time and they are assigned to the Center Street Fire Station. Captain Mark Youngberg was recently assigned to Ivins to provide fire inspections for business occupancy and that is strictly for Ivins City. SCI Fire/EMS will be at Heritage days for the 100-year celebration and will be providing a walk-thru of the Center Street station. He referred to the St. George News reporting a pediatric accident that happened in Ivins and reminded motorists to be aware of the surroundings. The digitalization of the dispatching is being finalized and SCI Fire/EMS is continuing to work with volunteers and getting their uniforms squared away.

Police Chief Flowers provided a written report, a copy of which is available as an attachment to this agenda. He reported that citizens have complained about drivers not using roundabouts properly. Every two (2) to three (3) times a year, SCI PD goes through an educational process and writes citations. There have been some close calls with pedestrians and a couple of serious accidents. A lot of education needs to be done and if there are any complaints regarding traffic, to send those to him. He reported that in the last couple of weeks, six (6) officers have been significantly injured. Anytime an Officer gets spit on or blood on their face or their mouth, they are required to go to the hospital and get tested, which takes about three (3) hours out of the day. He recognized Animal Control Officer Bailee who was recently bitten pretty good on her arm by a Pitbull. **Lieutenant Studley** reported on one incident in particular where an individual

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was in a mental health crisis that resulted in an assault on someone that he resided with. He was reported and seen walking down the street. Officer Ray wasn't on duty but was driving down the road and heard that Sergeant Tobler was enroute and had located the individual. Officer Ray had contacted the individual first but his guard was up and a fight ensued. In that encounter, Officer Ray sustained a significant break to his right leg. Sergeant Tobler jumped in to detain the suspect and also sustained an injury. The individual was brought under control and into custody with minimal force. SCI PD issued letters of commendation for Sergeant Tobler for the manner in which he kept his cool and used minimum force and although Officer Ray broke his leg, he continued to assist with bring the individual under control and into custody. **Chief Flowers** clarified that the suspect was completely out of control and that Sergeant Tobler took quite a strike to his head and had to go to the ER and get checked out. He commended the emergency personnel on the absolutely wonderful job that they did in taking care of the two Officers and appreciated the City Manager for being on top of it as well.

C. Planning Commission Report

Mike Haycock reported that the Planning Commission held two (2) Public Hearings on concurrent land use amendments and building heights, which will be brought forward to the City Council.

3) CITIZEN REQUEST FOR FUTURE AGENDA ITEMS REGARDING ORDINANCES, POLICIES OR OTHER LEGISLATIVE ITEMS

Mayor Hart indicated that James Barden had submitted a request, but the request refers to the Public Hearing that is currently an agenda item to be addressed tonight.

Susan Kingsbury Newman submitted a request for speedbumps to be installed on the north and south ends of the Split Rock roundabout. She resides in The Reserve and due to traffic not yielding and speeding through the roundabout, it is extremely difficult for individuals in The Reserve to exit that subdivision. If speedbumps are unable to be used, she would like some signage or something to be done to address the issue.

Mayor Hart requested that the Council suspend rules and move agenda 5)A up to this point in the agenda.

5) DISCUSSION AND POTENTIAL ACTION ITEMS

A. Discuss and consider approval of a Proclamation regarding Constitution Week

Mayor Hart indicated that there are various proclamations to choose from, with options of one (1) through three (3). **Council Member Mehr** suggested approving Proclamation option number three (3).

MOTION: Council Member Mehr moved to approve a Proclamation regarding Constitution Week, option number three
SECOND: Council Member Scott
VOTE: The motion carried.

Council Member Scott	AYE
Council Member Mehr	AYE
Council Member Johnson	AYE
Council Member Murphy	AYE
Council Member Anderson	AYE

4) PUBLIC HEARING AND ACTION ITEMS

A. Public Hearing on the Planning Commission's recommendation for a Zone Amendment per the Application and Project Plan. The property consists of approximately 113 acres. School Institutional Trust Lands Administration-Owner. Jerry Miyahara-Applicant

Mayor Hart indicated this is an unusual landowner with the application, and he asked Council Member Murphy to exactly what SITLA is. **Council Member Murphy** stated SITLA stands for school and institutional trust land administration. The idea for SITLA originated with Thomas Jefferson. Thomas Jefferson felt that a strong democracy is founded upon education for all. He proposed that each new state that enters the union should set aside land to support public education, public institutions. In 1896 when Utah was made a state, Utah granted land called trust lands to the state of Utah. Those lands were given with the provision that revenue generated from the sale or lease of these lands be placed in permanent endowments for specific educational institutions. The state of Utah is divided into townships. The Township is 6 miles by 6 miles there's 36 sections in a Township and SITLA has four sections in every Township in the in the state of Utah. If you were to look at a map you could see like the checkerboard across the state of Utah. Trust lands can become categorized as development land when the developing group of SITAL identifies the land parcel with development potential. Then it's designated as development land and then SITLA requests development proposals for developers to contact SITLA with their proposals. Trust lands not are not public lands, they are private lands. SITLA lands are allocated to the states specifically for the purpose to generate revenue in support of designated state institutions. SITLA can sell, trade, lease or give mineral rights on those lands. **Mayor Hart** stated the applicant is not SITLA directly. SITLA is the landowner, and the applicant is a developer that has entered into an agreement with SITLA. **Dale Coulam** indicated back in 2019 this particular SITLA parcel, which is South of Mesa Vista and east of Puerto, at the end of 400 S was approved for a land use of RMU along with residential buffers along boundaries next to existing homes. RMU means Resort Mixed Use. He referred to the legend of the land use plan. What are the available zones within resort mixed-use? All residential zones, all commercial zones except RV. It is the most flexible commercial zone. In April 2022 the applicant submitted an application for a zone change from RA-5 to resort commercial. The Planning Commission held a public hearing on the request and recommended that the zone be changed to RMU. (Resort mixed-use) Two meetings ago Council Member Scott did a good job of showing how that zone is unworkable. The Council has before it tonight the original application for resort commercial, the application hasn't changed since April. There is also the Planning Commission's recommendation for resort mixed-use which may be an unworkable zone. What is the authority of the City Council and what options the Council has tonight in making its decision? The City Council may adopt or reject the Planning Commission recommendation or make any revision the legislative body considers appropriate. That has been done many times. The City Council may amend the shape, the boundaries, or the area of any zoning districts. The City Council has expressed a desire that a portion of the SITLA property be zoned in a way that is residential without short term rentals. The table of uses for resort commercial states that for any type of residential dwelling to be allow there must be a mixed-use overlay. However, the project plan that would be required to be submitted with a mixed-use overlay requires such things as a parking layout and the number of parking spaces. That isn't done until there is a development application prepared. Some of the requirements for a mixed-use overlay are to be submitted at the time of a development application but there are a lot of them that are to be submitted at the time of zoning with the project plan and that can't be accomplished at this time. If the entire property was zoned resort commercial that would mean that all the units would have to be put in the rental pool. That does not mean they all have to be rented. That would mean the market drives it, the owner determines whether they use it as a short-term rental or not. If it's rented, it's under the control of the central management. An

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alternative would be to zone a portion of this SITLA property as residential and not resort commercial. He understands that if the City Council desires to exercise its authority to modify the Planning Commission recommendation tonight, as well as the applicant's request, the applicant would be willing to accept a multifamily zone designation. That is our most flexible residential zone. It allows anything from single family homes, twin homes, townhomes, and condos. It allows all residential uses. It allows all the dwellings that would be prohibited in a resort commercial zone without the mixed-use overlay. The applicant has been making some concessions and is willing to compromise. The western corridor runs right through the SITLA property. It is a major corridor that with the development of Black Desert Resort and this property would be installed from snow Canyon Parkway all the way to the Santa Clara border. The western corridor would be the primary access and egress from this property when it's developed. The applicant's proposal is multifamily to the west of the corridor and resort commercial on the east. That has significantly cut down the amount of resort commercial in an attempt to meet the expressed desires of the City Council that there be a portion of the property that is not allowed to have any short-term rentals on it. **Matt Ence** thanked the Mayor and the Council for the attention to this application. He indicated that the original application and on one screen and the compromise is on the other. The applicants have worked very hard with SITLA as the property owner. The city has worked very hard on looking at alternatives that might be acceptable as a City Council and that might help to address some of the concerns that have been raised. In addition to the RM zoning that is depicted on the compromise proposal, there is also an additional buffer of the R-1-7.5 which surrounds that area to the north, the West, and the South. That is intentional and the purpose of that is to help provide an additional buffer in addition to the residential zones that are already zoned on those boundaries to provide an additional buffer for the residents. **Mayor Hart** inquired it that is the copper color. **Matt Ence** stated yes that is correct. He wanted to point that out because it wasn't mentioned specifically, in terms of development vision, the developer has been open about the fact that the intent with that RC zone is to essentially operate that with a use as a resort hotel. Dale touched on that briefly with residential units, but they would be in a rental pool. Owners could elect if they wanted to rent those units as resort short term rental units. One thing to point out is it's very similar to what the city approved in the Black Desert project. That's very much what the developer and SITLA envisions for this RC zone as well. In the compromise proposal the developer has tried to narrow the scope of that geographically and address some of the concerns about the number of units. If that's something that the City Council is interested in, then the developers are certainly interested in this compromise approach. Black Desert Resort is a big deal for Ivins City. That will contribute tax revenue and drawing people to the city contributing to the overall success of the city. This project has a complementary effect to that because Black Desert needs rooftops, it needs tourist dollars to help supplement and support what the Council has already approved in the Black Desert project, which we all want to see succeed for the city. Not only does the compromise proposal reduce the number of resort hotel units that are proposed it will reduce the overall number of units in the entire project. In terms of density and impact there's a reduction in the total impact of the project under the compromise proposal. Some of the revenue from this project under the development lease will support the mission of SITLA and that is important to the highlight. He represents Rize Development, and he is very honored to be partnered with SITLA on this project. The tax revenue from the uses that will be put into place by this zone change certainly will be to the benefit of Ivins City, not just the tax from increased property values in this area but also for the additional revenue that comes from the resort hotel use. This is

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a positive, not just for SITLA or the Developer, but for the Ivins community. The hope as the developer is that the City and residents see that by coming back with a proposed compromise the developer is trying to be responsive and listen to the concerns that have been expressed. **Mayor Hart** indicated representing SITLA is Gregg McArthur. Greg sent in a letter to be read to help explain SITLA's position before going into the public hearing. He read Dear Mayor Hart; I am writing to you regarding the proposed zone change for the SITLA 120 project that is on the City Council agenda this evening. As you know SITLA holds the SITLA 120 property in trust and has entered into a lease with Rize development to facilitate the development of the land. SITLA's mission is ultimately to use its trust landholdings to generate revenue for the benefit of Utah's public-school institutions and their students. Development of the trust lands is a critical component of our mission. SITLA's relationship with the developer is built upon mutual trust and a shared vision for the SITLA 120 property. We want the city to know that we support Jerry Miyahara and Scott Stowell with Rize Development as the best partners to fulfill our development vision for this property. SITLA fully supports the pending zone change application submitted by Rize Development, which seeks to change the current zoning from R-A-5 holding zone to Resort Commercial RC and we hope that the City Council will consider this support when weighing its ultimate decision. SITLA recognized the cities prior designation of this property as resort mixed-use in the city land use plan and we believe that the zone change application is consistent with that designated land use. SITLA also believes that the application is consistent with applicable city ordinances, the general plan and with the prior city land use decisions. SITLA and Rize Development have heard the comments of the city and its residents during this application process. In response to that feedback SITLA and Rize Development will be presenting a modified proposal at tonight's meeting that we believe will address many of these concerns. Our modified proposal limits the RC zone and its associated resort hotel use to the east of the future western corridor and limits the West side of the western corridor to single family and multi-family residential uses. This both reduces the overall unit count and reduces the number of units in the plan resort hotel use. We believe this modified proposal demonstrates our desire to be responsive to the city and its residents, while still demonstrating that SITLA is and will remain committed to develop this property consistent with the current land use designation and the property's highest and best use. Thank You Mayor for the collective attention to this application from you, the City Council and City staff. Signed, Greg McArthur. **Mayor Hart** opened the Public Hearing.

The following residents spoke on behalf of themselves and/or others in the audience and were in opposition to a zone amendment for this agenda item: Lisa Ganz, Sharon Barton, Chris Haddad, Sharon Gillespie, Connie Butterfield, Michael Barton, CJ Koharcheck, Mike Cook, David Farnsworth, Jon Gunderson, James Barden and David Hatch. Written comments for the public record were submitted by Lisa Ganz, Sharon Barton, Chris Haddad, Sharon Gillespie, Connie Butterfield, Michael Barton, CJ Koharcheck and Mike Cook. Those written comments are available as attachments to this agenda.

Lisa Ganz and those she spoke on behalf of, were concerned about protocol as it related to the compromise that has been presented tonight, as it was new to the public and they would be commenting on different information and that did not seem to be fair. She referred to Title 16 of Ivins Code regarding allowed uses and prohibited uses, commenting that any use not specifically provided in the Table of Uses, is declared prohibited; the Table of Uses, a Resort Hotel did not allow for single family and multi-family residential for sale homes with a Resort Hotel Use as stated in the applicant Project Plan; the Resort Hotel did not allow for single family homes for

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nightly rental with lock out keys; what was being proposed was not a Resort; the RA-5 zone is an allowed zone currently listed on the City's maps, with no disclaimer that it is a holding zone; applicants project plan was ambiguous with descriptions, no open space requirements, no market study on the need for another hotel or short-term rentals, no sensitive lands, traffic or environmental studies, and no support from the community; the project was not in compliance with Ivins City Code and it was felt that the City Council must vote no on this amendment.
Sharon Barton and those she spoke on behalf of, were concerned with that access to the SITLA property was an issue. She referred to the applicant for SITLA no longer having an access agreement with the adjoining development Black Desert Resort/Patrick Manning; the property is land-locked amongst the established neighborhoods; SITLA has no right to come off of the horse roundabout to access the SITLA property; SITLA is in non-compliance with the General Plan; the validity of Ordinances 2019-13 and 2020-10 seemed questionable; Black Desert Resort has their necessary sense of arrival entrance off of Snow Canyon does not need the Western Corridor to open and/or operate their resort destination; SITLA does not have the required sense of arrival entrance until the Western Corridor is built and the General Plan is amended; the concerns that need to be addressed and resolved are 1)who are the investors in the Western Corridor, 2) what portion is each party responsible to complete, including a specific time line, and 3) proof of funding/financing approved by SITLA and the City; if the SITLA project is allowed to move forward without the require resort commercial access, where does the extensive amount of heavy construction equipment and vehicles enter and exit?; a traffic impact study was completed in July of 2022 and should be available to the public; one of the intersections studied in that study was Puerto and 400 South at complete build out and until then, it was more than likely that 400 South would be used as an access road; Puerto Drive is a minor collector and using Puerto Drive as any part of a construction route should be considered unacceptable, tremendously dangerous and extremely reckless; was the City Council ready to make a decision based upon the Rize LLC road assessment assumptions, know it is not in compliance with the General Plan and knowing that the access agreement no longer exists?; SITLA was not compliance with Mayor Hart's statement that he made in September of 2019 referencing the zoning map and the far east end of the City being designated as Resort Commercial and that none of the traffic was going to be going through any of the neighborhoods; Ivins residents are counting on the City Council to heed the words of Mayor Hart and the General Plan and vote no on this amendment.
Chris Haddad and those she spoke on behalf of, referred to two sections of the Ivins City General Plan from 2015 wherein the plan states in part that SITLA lands would likely be subject to increasing development pressure and if development were to occur, it should be developed in harmony with current zoning requirements and it would be important for the City to monitor and trades and potential development of SITLA properties to ensure optimal land use in terms of protection of existing property values, traffic, economics, utilities, visual/aesthetics and zoning ordinances; lands within the City under SITLA and/or the U.S. Bureau of Land Management should be carefully reviewed by the City for development impacts when an exchange or sale is considered; the 2 sections in the Public Lands and Public Land Policies have been forgotten as it relates to the discussion of this zone amendment; no consideration for the residents whose homes surround the 113 acres; the tone has been all about money to be made from Short-Term rentals for SITLA – what does Ivins City and its residents receive in return?; as a former Police Officer, Chris Haddad referred to transient people who are away from their homes and have no vested interest in other people's life – rowdy visitors, drunkenness, noise complaints and family

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conflict; the lack of adequate parking for renters and invited guests causing parking problems in nearby residential neighborhoods, as well as vandalism/break-ins; these are not unusual and things Public Safety will have to deal with; the majority of issues are not reported – they are tolerated, affecting preserving the community beauty, character and culture.

Sharon Gillespie and those she spoke on behalf of, referred to the pros and cons of short-term rentals. She referred to definitions of Short-Term Rental, Hotel, Motel, Bed and Breakfast, Resort and Resort Hotel; data provided on Short-Term rentals in the area and in Utah; concerns or less long-term rentals and data regarding those; property management and a single management company; illegal short-term rentals and missed tax revenues; safety; traditional lodging partners; preserving community character; and quality of life issues.

Connie Butterfield referred to Ivins General Plan that reads in part "Although it is gaining in popularity as a center for tourism, Ivins City is first and foremost a peaceful family and retirement community with pockets of agriculture." The Plan does not state pockets of short-term rentals and/or for sale housing operating as a resort hotel. She resides on Puerto Drive and provided information on the short-term rental developments that are just down the street from her in the City of Santa Clara. The additional 500+ short-term rental units that are proposed lack appeal to established residents and neighborhood and adding those units would put Ivins tourist accommodations at a 50/50 level with 50% being tourist accommodations and 50% being residential accommodations and that is not in line with the opening paragraph of Ivins General Plan. The short-term rentals in Santa Clara are within walking distance to several amenities but the SITLA property is not and those using the short-term rentals will be driving and using the residential streets to get to the amenities. Traffic on Puerto Drive is already insane and there are currently 3,000 cars each day using Puerto.

Michael Barton referred to soils issues, indicating that the SITLA property and the St. George Regional Airport both sitting on top of the Chinle Geological Formation also known as blue clay. The airport runway was ultimately removed and replaced due to soil issues, at a cost of over $22 million dollars. The SITLA parcel could easily face similar problems and that posed a risk to Ivins. Construction delays could occur due to expansive clay mitigation and costs could lead to investor or developer bankruptcy. Where expansive clays are present or expected, Ivins needs very clear soil testing requirements, expansive clays mitigation standards and a soil removal/replacement plan completed and approved prior to a permit being issued.

CJ Koharcheck referred to the topography of the property sloping from north to the south, with the northmost section of the SITLA land being blue clay as was just described and that area has been eroded by the Padre Canyon wash. The erosion has brought many deposits of blue clay down to the next section. The corner at Puerto and 400 South has an aquifer a few feet below the surface. She was concerned with what could occur if the natural underground water flow was disturbed. The best development for the SITLA land was "Kayenta" style where the development respects the contours of the land with minimal disruption to the land and low density residential would be consistent with Ivins General Plan before the land bubbles were changed. SITLA can make money from low density residential zoning rather than the argument that has been made regarding an ongoing revenue stream from overnight rentals. It is not the job of the City Council to maximize profits for a developer. She was also concerned about City finances and felt that City financial concerns as it related to revenue from overnight rentals, were a red herring. Regarding SITLA having the option to not operate within City bounds, in the history of SITLA, that option has not been executed. She referred to two maps that had been prepared regarding the SITLA land and the geology of the land. Development of the SITLA

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land needs a very light touch and respect for the geology that gives the property its beauty. **Michael Cook** referred to the proposed amendment not complying with zoning, the Table of Uses, the General Plan, does not fall within the envisioned boundaries in the General Plan and they do not have the necessary road access that is required. Prior speakers provided information about Public Land Policies, financial pitfalls and cost to the City long-term, data from the Kem Gardner Policy Institute and Granicus regarding short-term rentals, traffic, geology and blue clay. The current plan is ambiguous but calls out densities across the RC zone that average between 4 to 7.5 dwelling units per gross acre. The project plan calls for 3 story six plex's, which could be 45 rental units per acre, that could possibly go as high as 58 dwellings per acre, depending on the calculations. With this project, Ivins would have 2258 Short-Term rentals and on any given night, Ivins could have more transient occupants than full time residents, degrading their quality of life. When he bought his home on 1 acre adjacent to the SITLA property, it was designated Low Density Residential and RA5, which he meant to mean one home per 5 acres. He felt that the term "holding zone" as it relates to RA5 did not exist in the code or Table of Uses and making up designations like that isn't allowed and is outside of the rules of civil governance. Development does not pay in the long run and commented that the City needs to stop threatening the residents with property tax increases because the City's 5 year projection shows that the current approved commercial entities will more than fund the City. A General Plan is worthless if not followed. The constituents of the elected body do not want the referenced horizontal hotel and the manipulation of the interpretation of the Ivins General Plan gives the appearance of bias in favor of the applicant.

One resident spoke in favor the zone amendment. Greg Cherry indicated that his property borders and overlooks the proposed development and agreed that the compromise provided tonight, on behalf of SITLA, was a good compromise. He would rather look out across a tastefully developed property, than into a sea of homes or blocking apartments. He supported the amendment with the compromise that was described at the meeting tonight. **David Farnsworth** referred to the number of units that was discussed but not the actual occupancy rate. He was concerned about making this much commitment on one development. SITLA owns the land to support public education, however, SITLA did not get any water with the land and in light of the Governor's emergency declaration of using less water, he inquired how they were going to commit to water this project and stated that highest and best use without water, is desert. **Jon Gunderson** was concerned about Public Safety and is aware that developers in other areas have provided a place for Public Safety. He was also concerned about where the individuals staying in the short-term rentals were going to shop. They are going to go somewhere else and provide the tax base in other cities. Ivins needs a better commercial base somewhere. **James Barden** referred to the General Plan and commented that it says to preserve and enhance the natural beauty of Ivins landscape. He referred to SITLA's plan and it does not do that and under SITLA's own rules and regulations, he counted 10-12 violations with this development. **David Hatch** commented that the City needed to find other alternatives to short-term rentals and provide housing for all types of people. He was concerned about pricing out those who need and deserve housing. **Mayor Hart** inquired if there was anyone in attendance through the Zoom application that wished to make public comments on this agenda item. **Cade Visser** confirmed that there was no one in attendance through the Zoom application requesting to make public comments on this agenda item. There being no other comments, **Mayor Hart** closed the Public Hearing and commented that he was grateful for the articulation and respect that was shown at this Public Hearing tonight.

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The City Council meeting was in recess from 7:38 p.m. to 7:45p.m.

B. Discuss and consider approval of Ordinance No. 2022-08, an Ordinance of Ivins City, Utah, approving a Zone Amendment per the Application and Project Plan for property located at approximately Puerto Drive and 400 South from RA-5 to _____ on property owned by SITLA and consisting of approximately 113 acres

Mayor Hart indicated there was a tremendous amount of information that was provided this evening and very important points that were made. He thanked the Public and commented that the way the Public Hearing occurred was exactly the purpose of a Public Hearing. The Public has asked the Council to be forward-looking and perhaps not consider a zone change until some questions have been answered. Some things can be dealt with through the Utah State statute and others are left to the marketplace to decide. He agreed with the gentleman who brought up the issue of there being little to no moderate-income housing but commented that the reason for that is that there is no money in that type of development. Ivins City has an Affordable Housing Task Force that is being reactivated and he planned on being a part of that. There are issues that have to do with geotechnical characteristics of the land that certainly must be addressed for the long term but was unsure as to the timing of that. He inquired of Dale Coulam as to the specifics when it comes to a potential zone change. **Dale Coulam** indicated that per State statues, the legislature sets forth the flow of land use development and zoning. It starts with looking at the Land Use Plan and zoning, then comes development applications. At the time of a development application, that is when all of the soil, water, drainage, and the sensitive lands impact studies are required. If the City were to impose a high level of expense at zoning that the State Statute did not require at the zoning stage, that could be considered an exaction or that the City is asking for too much and the City could be held liable to the developer. A Mixed-Use overlay wouldn't work because the applicant doesn't have those studies to put in a Project Plan that a Mixed-Use overlay would require. Only some of those are part of the development application process and the rest on a Mixed-Use Overlay would be upfront at zoning. He referred to Council Member Scott commenting about that being a catch 22. Having those studies up front in the Project Plan would be great but it is unknown if an applicant would file that. What is required now as part of a zoning amendment, does not require all of those studies to be part of it, unless it goes to dwellings. The City has not wanted vertical hotels and that is why there are maximum heights in the Ivins ordinances that keeps things low. The term initially used was "horizontal hotel", meaning that the rental units are low and spread out over the site, as opposed to going vertical with the units, which is not what he has heard expressed as to what was desired. When the Table of Uses was discussed, the City Council decided to change the name to "Resort Hotel" and that is how that term came about. The legislature has indicated the outline and order to be followed and an answer to a lot of the residents' great questions will be determined as part of the development process, but the studies are not done until the development application is submitted. There is a tremendous cost in requiring those studies and without any entitlements, it would be very risky for any developer to do those studies up front, without knowing the type of project that is going to be developed. If the developer does not get the type of project that is anticipated, that may void each study said because now all of the studies have changed. A significant portion of the legislature is made up of developers now, instead of former Mayors and Council Members like it used to be. Yes, those studies are critical and yes, they will be reviewed through the development process, but that is not required to be presented by the developer at zoning.

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Mayor Hart stated that it was expressed that there was some surprise that the City has a new map before them, which was submitted by SITLA and their developer as a compromise. The concern is that because it is different than the earlier application, is this something that the council could decide? He inquired if this is something that's in the purview of the Council as they consider the Planning Commission's recommendation and is this something that could be acted on with the new information that can be seen on the new map? **Dale Coulam** clarified that the City Council has the authority to zone this to anything other than RV. The legislative body can determine what the size, shape and boundaries are of the zones. The City Council has the authority to adopt the Planning Commission recommendation, deny it, or deny the application, but the City Council will need to have findings in why they feel the motion is in the best interest of the City. It can be modified, or it can deviate from the Planning Commission's recommendation, and it can deviate from the application. What was discussed previously, was putting in residential without the ability to rent those residential units out as short-term rentals. In response, the applicant and SITLA have proposed the compromise of what was expressed at the last City Council meeting, which was a modification from both the Planning Commission's recommendation and the applicant's own application for Resort Commercial. This is new to the Council, as well as the comments made by the public and they certainly can continue this discussion. The Council has the authority to zone it whatever they think would be in the public's best interest if there is a majority vote, that is the purview of the legislative body. **Mayor Hart** commented the Resort Mixed Use land use is extraordinary in its scope of potential zoning. **Dale Coulam** stated yes and indicated that it is very flexible. It is like multi-family for residential zoning that would allow everything from single family all the way up to the multi-family. RMU allows any residential zone and any commercial zone except RV. **Mayor Hart** stated that Gregg McArthur was present, representing SITLA. He inquired if any of the Council Members had questions for the developer or SITLA? **Council Member Scott** indicated that he would like to invite the applicant to address any of the issues that have come up by the residents. **Council Member Anderson** stated that since the City Council is talking about zoning, he would like to focus on the zoning.

Attorney Matt Ence, representing the applicant, echoed what Mayor Hart said about the public comments and decorum. He complimented the residents on their very thoughtful and insightful questions. He indicated that the challenge with answering many of the questions is that many of those questions will be addressed and answered through the development process. The developer has a responsibility to retain professional advisors, engineers, surveyors, and soil specialists. In order to complete the development process, those reports and investigations will be submitted to the City. The challenge is until there is an understanding to what the base zoning will be going forward, it is difficult to nail some of those things down because unit counts may change, layouts will certainly change, service requirements and traffic, all of those things will change but going through the development process, those things will be narrowed down. As studies are submitted, additional approvals are made. The developer recognizes that, and they want to answer all of those questions at the appropriate time. The current application is consistent with the ordinances and the applicant has submitted everything needed to essentially put this in front of the Council's legislative judgment. Several sections of the General Plan were quoted tonight and all are in the Ivins General Plan. The Ivins General Plan also has a list of goals. Number 4 (four) of the General Plan is to develop Ivins City as a Resort Destination. There are many competing interests and goals in the General Plan. The public comments were insightful and many of the comments were right on point as to things that the developer will have to figure out as the

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process proceeds. **Mayor Hart** commented that it was brought up that the Western Corridor was not in place and that there was an agreement that existed between the Black Desert development and Rize Capital for access. He inquired how they get there if their share of that road is not in place? That is not specifically zoning, but it certainly is an appropriate point to make and is a very real concern and would impact their ability to develop that parcel of ground. It has been made very clear that the City is looking at the existence of the Western Corridor as the main access to this development. Several comments were made, particularly by the residents regarding Puerto Drive. That road was never designed to be a construction access for a project like this or a main access for that number of units. Now it is being talked about that this project could potentially be both a type of multi-family residential, as well as an area of Resort Commercial or a horizontal hotel. He doesn't want anyone in the room to walk away feeling like a critical issue had not been addressed. The trick is which of these things are obligated to be brought up now and try and resolve as a zone change is considered, versus those things required by State statute. There are several steps in this process, of which a development approval would bring another Public Hearing and many will require staff approval like geotechnical and drainage studies. **Matt Ence** referred to the access question and commented that his client can respond from the development side, but from the legal side, the Ivins City General Plan, in addition to the Land Use Plan, has another component which is the Master Road Plan. On the Master Road Plan, the Western Corridor is identified as a future road. Ivins City has already formally recognized in the adopted General Plan that the Western Corridor will exist at some point in the future. The details of how that road comes into existence is part of that development process that the developer will be going through and certainly will have a responsibility to provide the access that's required. If the developer can't provide that access at a certain point, then the developer won't be able to proceed with their development. That point is not part of the zone change and that falls into one of those future development applications. A lot of the questions that have been raised, the developer is already asking those questions because the answers to those questions, at least in their preliminary way, inform what the developer comes to the City and asks for. As Dale Coulam indicated, part of the challenge is the developer may get a preliminary idea of what the traffic is going to look like, or what the soil issues may be, but that may change based on the approvals that come from the City. What the developer is asking for, is the Council willing to approve the zone change request that has been presented. The developer believes it complies with the General Plan and reflects the vision of Ivins City as stated in Ivins General Plan. Once the developer gets the approval, they move onto the next step and the requirements are higher and the options are narrower.

Council Member Murphy referred to the new map provided by the applicant and SITLA and questioned if the short-term rentals are in the pink RC section and everything else in the gold or dark brown section, are not going to be in the rental pool and will be a variety of housing choices with a variety of price points and asked if that was correct? Applicant **Jerry Miyahara** stated that was correct and commented that the wash dissects the property east of the Western Corridor and are very natural barriers to create a boundary. Everything east of the Western Corridor would be the Resort Commercial zone with a Resort Hotel use and isolating the short-term rental product in that zone, which is about half of the previous application and is a significant concession for SITLA. Everything west of the Western Corridor would be a variety of residential products, not available for short-term rentals. **Council Member Anderson** referred to the zoning map and indicated on the RA-5 terminology, in 2008 RA-5 was used as a holding zone and just recently the Planning Commission has been working on adopting a clarification on

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the zoning map, stating that it is a holding zone. That was done at that time to help solve another Land Use problem. He questioned if the Planning Commission has had a meeting on that? **Dale Coulam** stated that the Planning Commission has discussed it and clarified that how that holding zone began, was suggested by the professional consultant for Ivins City on zoning. **Mayor Hart** indicated it had more to do with giving Ivins City considerable control as to what might eventually be awarded on a piece of property but has been confusing for some. **Council Member Anderson** indicated that occurred in 2008 and agreed it was not good terminology, but the history is important to understand and they are trying to figure out if this is the best and highest use of the land, to meet the General Plan. Most houses that have been built, the lots have probably been over excavated and dug down 18 feet. That is not a new thing, it happens every day. It is an inconvenience to those around the properties but Ivins, Santa Clara and St. George have blue clay but those are not things that relate to a zone change. It is good information but is a geological issue. Regarding the Transportation Master Plan, the City is not going to allow the developer to develop a piece of property without building the Western Corridor. It's on the Transportation Master Plan and if they try to develop without building the Western Corridor, he would not vote for it. There's no way he wants that amount of traffic running through Puerto or even coming into 400. The developer must do these steps but again, that is not part of the zone change, it's part of the Transportation Master Plan. **Mayor Hart** stated the Western Corridor is a major road. **Jerry Miyahara** agreed and indicated that the Western Corridor is a critical improvement for the eventual development plan of that property. It will be the main marketing window to bring people into the community and is going to be a priority improvement for the development. On the extension to Snow Canyon Parkway, that is defined within the Black Desert Resort Development Agreement with the City as it relates to timing requirements. There are discussions with Black Desert Resort on exactly how that plays out on the cost sharing of that improvement. The quarter mile or so off of Snow Canyon Parkway, he understood that there is language in the General Plan that talks about commercial corridors and Snow Canyon Parkway being one of them that meets the criteria. That is a major connection right off of Snow Canyon Parkway into the property. On the southwest of the project, in the Black Desert Resort property, there has been a recent zone change on a parcel, that being Resort Commercial for a restaurant facility. Before Black Desert Resort turns private and gated, that is another commercial use that will be in proximity and very connected to what the applicants compromised plan shows as the Resort Commercial zone. **Council Member Anderson** stated that one thing he has learned in dealing with SITLA, is that the land is private land and not public. They do not meet the requirements of the BLM (Bureau of Land Management). SITLA meets the same requirements as a private landowner. The applicant came back with one more layer of houses for R-1-7.5 (Residential 7,500 sq ft lots) and RM (Residential Multi-Family), which will help with affordable housing. RM can be apartments or townhomes but they cannot be rented out. He referred to the zoning map and the area in brown next to the Cordero subdivision and commented that that is a FEMA floodplain. Nothing can be built there, that's why there's no buffer zone because it is a floodplain and then a corridor going through there. The applicant has come back with a pretty good compromise and everything that has been said as far as the soils, aquifer, traffic and similar, all must be dealt with or the developer cannot build.

Council Member Scott indicated that the question that needs to be answered tonight is what's desirable for this property? It is not what is the highest and best use from a developer's perspective. It's what's desirable for the community. Decisions can be based on opinions, but they don't have to be based on facts but opinions of what is thought appropriate and compatible.

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The Utah Courts also say decisions can be based on a showing of public support or opposition. There is support but mostly opposition even if the public comments are not based on substantial evidence or facts. The public's opinion is based on what they view as desirable, appropriate and compatible for the site and for the community. Short-term rentals may be great for developers and investors, but he doesn't believe that they're good for a community, especially Ivins. He stated a number of reasons why at the August 4th meeting. Goal Number 4 (four) says to develop Ivins as a Resort Destination Community and lists seven (7) action steps. Only one (1) action step says build tourist housing. The other action steps refer to doing things within the community like bike and walking trails, supporting the arts, enhancing the arts and other things that make Ivins a better place to live as residents. When it's a better place to live as residents, that makes it a Resort Destination Community where people will want to come here because it's a place to be. The applicant is touching on goal number four (4) but only addressing one of the seven (7) action steps. The Council has heard a lot of public opposition about this asking a bunch of public questions. Those will be addressed in the future and they are not meant to be addressed in this decision process. The Council has also heard a lot of comments that are really residents' views of why they feel that this is not desirable, that it's not appropriate and not compatible. It's totally legitimate and important for them to pay attention to those decisions. He recommended denying this zoning change and make it clear that short-term rentals are not wanted in Ivins community. He recognized that what the developer has provided is a compromise but they need to really listen to what the City Council was talking about at the last meeting. The developer has compromised in a way, but what was suggested they do in the past was with the Resort Mixed Use zoning with a proposed 35% open space. That isn't happening now but it is being talked about having open space but there is no 35% requirement. When you take out the first level of buffer areas that was proposed before and now adding another level, 35% is based on what's left and that would be 27 1/2 acres, which is an awful lot of open space that would be a real benefit to the community. For perspective, UNITY Park is Ivins biggest park at 12.3 acres. The developer has compromised by moving the short-term rentals all over to the east. At a previous meeting, it was talked about dumping all of the short-term rentals over to the east and down towards Santa Clara. When he listened to that meeting, it sounded like the other Council members didn't really like the idea of short-term rentals and were just trying to hide them. **Council Member Murphy** stated that the sentiment was that it fit better with the surrounding property there because it had no impact on any residents on that end and no impact on the south side. That is what the thought was and not just dumping them off there. That is where they fit the best because they did not fit along the whole property. They fit there, they do make an impact on any adjoining residents because there are no adjoining residents there other than Black Desert and the Santa Clara border. **Council Member Anderson** clarified that the other reason was the Western Corridor, plus two (2) major washes going though there. If you look at a FEMA map, those washes are quite wide and will be open space. It was talked about getting the buffer between the residents and he believed that SITLA had done a pretty good job convincing the developers that's what they should do. **Mayor Hart** asked Dale Coulam to touch on what the property owners' rights are at this moment in time, given the conditions under which they made the application. Regardless of what this or any Council chooses to do in the future by changing the Land Use Plan, the date of the application determines the regulations under which obligations are performed. **Dale Coulam** clarified that the applicant has a right to a zone that is shown as an available zone under the Resort Mixed-Use Land Use and that is any zone except RV. The Council has very broad discretion as to what zones would fit the best and meet what is

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the best interests of the City. That is a limited evidentiary standard. The Council needs to make that a finding but it's not like an administrative decision or a building application that comes later, providing substantial evidence and support. This is a very nominal evidentiary standard to make a finding that this is in the best interests of the City. Whatever the motion, it should be accompanied with a reason why it is in the best interest of the City with a majority vote and as long as it is not RV, it is legal. **Council Member Anderson** inquired what the distance was of the R-1-7.5? **Scott Stowell** stated it is 100 feet deep and will be 75 feet wide. **Council Member Anderson** indicated that the applicant has met the criteria and even raised the density for all of the houses around them. The applicant would like to put in 400 feet of homes around the RM zone and then move to the east side where there are no homes and separate it by a wash and the Western Corridor. He was not for against this but wanted to make sure there is good and sound transitional zoning, which is what the City Council has asked for every time. For many years they have talked about transitional zoning and the Planning Commission spent hours talking about it.

Council Member Johnson stated that in response to Council Member Scott commenting that the applicant had only met one (1) of the seven (7) action steps, she believed that there is no requirement for the applicant to meet all or any of the action steps. **Council Member Anderson** indicated that at the zone change level, those action steps are unknown until the next plan is presented. **Council Member Johnson** stated that the Council needs to focus on the zoning part of this and what has already been presented and this does meet one of the action steps. She was never in favor of calling the Ivins community a Resort Destination in the first place but because that is part of the General Plan, it is something that must be considered. The other word that was mentioned was the word "desirable". What's desirable to the community? Having been here for more than 50 years, her desires are not the same now as they were then and they are not the same as a neighbor. The Council must consider what is the most desirable as a community and just because there is a room full of opposition and one in favor, she was proud of the one individual who was in favor and his ability to stand up, knowing that he was going to be a minority in the group. There are a lot of people that she has talked to who feel like it is a benefit and acceptable given what there is to work with in the community now. Ivins does not have a lot of commercial. Sticking to the zoning, she thought that the applicant made a good compromise with the zoning itself and she liked the compromise. There are a lot of other steps that need to be made and those may not have her support but right now she was pleased with the compromise that has been made. **Council Member Murphy** commented at the last City Council meeting, it was discussed to have some residential in the project and there were a lot of comments made tonight about housing shortages and about the need for a variety of housing options. This development is going to bring a variety of housing options and there are not many things in Ivins that gives a variety of housing options. That is one of the things that is really important. A lot of times there are subdivisions with cookie cutter houses after cookie cutter houses. Ivins has a lot of huge homes being built and there are a lot of McMansions being built. This is not what this project is going to be. There are going to be patio homes, possibly some duplexes, a variety of housing and there's going to be a variety of price points. They are not all going to be the same prices and will bring some added benefit because there's going to be a variety of housing options. The fact that the applicant has made this compromise and added that extra buffer, speaks a lot to their listening to the issues. She felt that this was a good compromise and was better than what was talked about prior at the last City Council meeting. **Council Member Mehr** referred to the proclamation regarding the Constitution that

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the City Council just approved unanimously. The Constitution is the guardian of our liberties, embodies the principles of limited government in a Republic dedicated to rule by law and a magnificent document inspired by God, providing some key protections for inalienable or unalienable rights of freedom of religion, the press, the right to assemble, to speech and to petition government. It was a beautiful thing that happened at the City Council meeting tonight, with the ability to speak and to share thoughts and feelings about what the impact is going to be as discussing the general welfare of the Ivins community. It is a government by the people and as the Council sits as City Council members, governing to ensure that the voice of the people are respected and supported, while protecting the rights of individual property owners, he thanked the public. Many residents have recently moved to Ivins and he has only lived in Ivins for a little more than a decade. People are moving to Ivins because of how we the City, have been governing, planning, and coming together and operating in sort of a conservative approach to development and how things are done. The Council has heard a lot of comments and have brought up questions about compliance with ordinances. He referred to the beautiful tree lined Santa Clara drive, which is a gem to the County, just as the Red Mountain is to Ivins. To help the developer understand that bringing a huge high-density, short-term rental project to this location in the community, would be as if they were proposing to cut down all of the trees on Santa Clara Drive and build high-density residential and short-term rentals along Santa Clara Drive. That is the kind of the mindset that he believes many in the Ivins community feel. The Black Desert Resort came forth compliant with ordinances and similar. He was not in favor of a taxpayer funded development and that has been his objection with the Black Desert Resort all along; not with the resort and not with the things that Black Desert is trying to do and the amenities it will bring, but he felt that it should be done by the free market and not on the taxpayer. In the backdrop of Ivins, is the Sentierre project, that has kind of stalled. Where will Ivins be in a year and a half? Will things be scarred for a decade because of the deep debt that they are in as a country? He thought about what things the Council could do. The Council can approve, deny, or modify. As a property owner, he did not like the idea of the government deciding how he should use his property, although that is legal. He did not think it was appropriate for the Council to make any modifications and suggested that the City Council either approve or deny the application. He acknowledged that he loved the compromise and agreed with Council Member Murphy that the sentiment wasn't that nobody wanted short term rentals because Ivins has them in Encanto development and other locations. In the proper location, where people know it's going to be built or be expected, then it makes more sense. He appreciated and agreed with the data that was brought forth. Short-term rentals will drive up the cost of housing and that drives away families. He has been consistent that Ivins is a bedroom community and Ivins wants families to come to live in Ivins and for Ivins to have a nice and diverse population of retirees, second homes and families. Right now, families are no longer welcome based on how designing and building is going forward. While he appreciated the compromise, his biggest concern were the transitions and it was unclear to him about what was happening at 400 South and Puerto Drive. It would be nice to see more clarity around that and what's going to happen with things below Mesa Vista and above Red Rock Canyon. His view was because of the questions that were brought up about compliance with ordinances and the desire to pack all of this into one spot. He still has questions and concerns and he would be voting to deny the application.

Council Member Andersen indicated that one thing to remember is that in an RM zone, those buildings can only be 25 feet high, which is the same height restriction of a home. In RC, they could have all been 35 feet high so the heights of the homes are not going to be any different

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than the other homes around there. **Mayor Hart** inquired if the Council felt like they understood what has been said and if they have sufficient answers as it pertains to a zone change, to take action.

MOTION: Council Member Scott moved to deny the application
SECOND: Council Member Mehr
VOTE: The motion failed

Council Member Scott	AYE
Council Member Mehr	AYE
Council Member Johnson	NAY
Council Member Murphy	NAY
Council Member Anderson	NAY

Mayor Hart inquired of Dale Coulam, to deny the application leaves no zoning other than what exists? **Dale Coulam** stated that was correct.

Two Council Members voted in favor and three (3) Council Members opposed. The motion failed.

Mayor Hart inquired if there was an alternate motion. **Dale Coulam** referred to the proposed ordinance and clarified that whatever the motion was, would be because it was in the interest of the general findings of the City and its residents to either approve, deny or modify. **Mayor Hart** stated that any motion should be accompanied by findings. **Council Member Scott** stated that his motion was to deny, based on the public input tonight because it was clear that this not in the best interest of the community. There was no change to the vote.

MOTION: Council Member Murphy moved to approve Ordinance No. 2022-08, an Ordinance of Ivins City, Utah, approving a Zone Amendment per the application and per the compromise map for the property located at approximately Puerto Drive and 400 South, based on the transitional zoning, the added RM zoning, and the reduction of the amount of short-term rentals
SECOND: Council Member Anderson
VOTE: The motion failed .

Council Member Murphy	AYE
Council Member Anderson	AYE
Council Member Scott	NAY
Council Member Mehr	NAY
Council Member Johnson	NAY

Council Member Mehr requested a discussion. He referred to some questions having been brought up tonight about compliance with ordinances. He understood and respected the sentiment for the General Plan but is that a reason that this shouldn't be acted upon and take more time to review? **Dale Coulam** clarified that the General Plan is not an ordinance. It is a visionary guide and is supposed to give some guidance in the Councils decision, but not all of it. The Council cannot always comply with every portion of the General Plan in their decisions. People can point to conflicting parts of the General Plan but it is what the Council thinks is the vision that is in the best interest of the City. It may be interpreted differently over periods of time, which is why the General Plan is updated on a regular basis. Over time, views and visions may change with the nature of the community but that is not the enforceable ordinance, the zoning text is. **Council Member Mehr** questioned if there were any concerns with the Table of Uses that were brought up? **Dale Coulam** stated that there are a lot of uses there and the Resort

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Hotel fits what is being proposed, whether it's slightly vertical, two or three stories staying within the height requirements or just one level homes that are rented out on a short-term basis. That complies with the Resort Hotel use. They are not considered dwellings that would require a Mixed-Use overlay. **Council Member Scott** commented that it was clear to him where this vote was going so he suggested that some conditions be required like a deed restriction for the buffer area and the RM zone, preventing use of short-term rentals. He would like the City to require that 400 South be closed at the border of Cordero Drive and the SITLA property until construction is completed and the Western Corridor is open between Snow Canyon Parkway and Highway 91. That would take care of any concerns about construction activity. The developer does not have enough control over a contractor to be confident that they won't go down Puerto Drive. The developer continues to offer and has offered that the P1 area homes will be limited to one story homes with flat roofs. That sounds terrific and it is great but that makes neighbors imagine that they'll all be very low-profile homes, but the zone still allows to build 25-foot-tall homes. He would like to limit the building height to one story flat roofs with a maximum height of 17 feet because those are really going to be short-term rentals. This project is being done without a short-term rental overlay. The City Council spent a lot of time a number of years ago creating 20 design requirements for short-term rentals. There will be no requirement to follow those requirements. He suggested having a condition that requires the developer to comply with the sections of the short-term rental ordinance that covers design and management requirements in section 16.07.806. He would like to require the same 35% open space the developer was willing to provide in their project plan in July and clarify that the space is contiguous and open and accessible to the public. That would turn into a tremendous open space benefiting the development and the community. In 2019, staff proposed that the wash area and the City interior bluff Ridge line east of Puerto, be shown as open space. The minutes of the City Council meeting on September 19th, 2019, stated that the Sensitive Land Ordinance would prohibit construction in those areas and he would like to make that a requirement. **Dale Coulam** clarified that all of those points are valid, but they would be part of a Conditional Use Permit application and not part of the zoning process. He was not aware of anything in the Ivins Ordinance or in the State Statute that would allow a whole list of conditions like that. **Mayor Hart** inquired if the individual who made the motion willing to accept those conditions as part of the motion? **Council Member Murphy** indicated that Council Member Scott made some good points and had some good conditions but those are further down the road. Per Dale Coulam, if this is not the place for those, then why add them to the motion at this point? **Mayor Hart** inquired of Council Member Murphy if those conditions would then not be a part of the current motion? **Council Member Murphy** stated that was correct, based on the guidance from Ivins City Attorney Dale Coulam. **Council Member Anderson** indicated he was with Council Member Scott as it related to parking, garbage cans and similar for short-term rentals. The conditions are being stated now because those are things that have been problems with short-term rentals. If boats are allowed, there needs to be parking so they are not in other peoples yards. **Mayor Hart** stated that the City Council acts on a Development Agreement in which all these conditions would be placed. **Dale Coulam** clarified that was correct, at the Conditional Use Permit stage. The purpose of a Conditional Use Permit is to mitigate potential adverse impacts and the Council may impose reasonable conditions to mitigate adverse impacts. All of the points brought up are valid concerns about potential adverse impacts. The Council can impose conditions on the development at the time when it issues a Conditional Use Permit. He has always been against conditional zoning and does not see anywhere in Ivins Ordinances or State

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Statutes that say it can be done.
Mayor Hart requested a point of order and stated that there is a motion and second that does not include Council Member Scotts suggested conditions and the City Council needs to act on that.
Council Member Mehr indicated that Council Member Murphy may consider amending the motion but there is a big, long list of many things would be addressed later. He questioned if it would be a better outcome if the motion was amended? **Council Member Anderson** stated for example, the RE-37 zone is the same zone as the neighboring lot and the applicant has the right to build a 25-foot house there. Why would the Council require 17-foot homes when the adjacent parcel can build 25 foot high homes? The applicant is asking for exactly what is next to the parcel.
Mayor Hart requested a point of order again and asked for a roll call vote on the existing motion.
Roll call vote. Council Member Scott voted "nay"; Council Member Mehr voted "nay"; Council Member Johnson voted "nay" at the moment, indicating she needed clarification; Council Member Murphy voted "aye" and Council Member Anderson voted "aye". The motion failed.
Council Member Scott indicated that he understood that it was weird to put conditions on a zoning change. The majority of the Council does not like this proposed zoning change but a majority would accept it if there were conditions to make it more acceptable to the community. It is conditional zoning, offering these other things and the Council would go with it and things wouldn't come up down the road. The deed restrictions he was suggesting would happen on the residential units and not the Resort Commercial. The Council has no opportunity to deal with that in the future. **Council Member Anderson** stated that if a deed restriction is put on a zone that's residential already, then restrictions would need to be put throughout the whole city. **Mayor Hart** indicated that venturing into a gray area was inviting the possibility of litigation. Dale Coulam, the Ivins City Attorney, has informed the Council that this is not something that is specifically allowed either in the Ivins City Ordinances or in the State Statute. He was not stating that he was particularly in favor, but this was inviting the possibility of litigation. **Matt Ence** addressed the first example. It's informative as to what kinds of issues such conditions can be imposed. Talking about the deed restriction, in legal terms, the term "deed restriction" has a fairly specific definition. It's a restriction that's included in a deed when a deed is given as part of a conveyance. Generally, what happens in these types of developments is not a deed restriction, but a set of CC&R's (covenants, conditions and restrictions), which is a very different thing. It's very typical for a set of CC&R's to be imposed at the time of a final plat recording. What Council Member Scott is asking for is certainly appropriate at the appropriate time, but to impose on the applicant now, a requirement to have a deed restriction, that opens a whole can of worms as to what the deed restriction says. Is it a traditional deed restriction that's on a deed given to a homeowner or is it part of some CC&R's that are imposed generally at the time of final plat? That one example demonstrates how difficult this becomes and how it's going to be really hard for the applicant to understand exactly what is expected because it is going outside of what is typically required at this stage. **Dale Coulam** indicated that short-term rentals are already prohibited by Ivins Ordinances. Unless there is a short-term rental overlay or it is part of a resort, he did not think it was necessary because it is already prohibited. This is outside of the resort portion of the project so Ivins Ordinances would control that. Those cannot be rented as short-term in the residential zone. **Council Member Scott** stated that the CC&R's are not anything that the City Council is involved with so the Council has no control over what is put into the system. **Mayor Hart** indicated that there would be a Development Agreement when a

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Project Plan comes forward for approval. **Dale Coulam** stated that was correct and now all subdivisions require a Development Agreement. **Council Member Scott** indicated that he understood what everyone was talking about on the deed restrictions. Regarding the other conditions, he would like to require that 400 South be closed at the border of Cordero Drive and the SITLA property until construction is completed and the Western Corridor is opened between Snow Canyon Parkway. **Mayor Hart** inquired if the City could impose something like that as a temporary thing? **Council Member Scott** commented that the goal was that it would not function as a construction access. **Mayor Hart** inquired if that was something that would qualify as a zone restriction or if it was something that would be part of a Development Agreement? **Dale Coulam** stated that unfortunately, it is beyond what the City can impose because those are public streets. The hope would be to come to an agreement with the developer on routes that are allowed during construction and emphasizing the immediacy of construction of the Western Corridor. There are already subdivision applications from Black Desert and they will be installing their portion in the near future. The agreements between Black Desert and this applicant will trigger requirements in Black Deserts Development Agreement to do certain things. For example, Black Desert is going to blast out some of the rock where the Western Corridor goes, and the applicant here tonight will put in at least a minimal portion of the pavement. There have been discussions internally at the City as to how to get five (5) lanes right away so that area does not appear scarred. The developer would be required to put in two (2) lanes at a minimum, through that whole development, as access and egress. There can't just be a single access point anyway on 400 South if development occurs. Some of the infrastructure would be part of a Development Agreement that is reached and how that is implemented. The number of ERU's (equivalent residential units) limits the ability to plat, sell and build lots based upon just having a single access. There would need to be an agreement in the Development Agreement as far as what's going to be the access for construction to put in the infrastructure. That will probably come after a subdivision is approved and the development has been approved. The developer is not going to go put in infrastructure without having a plat approved. **Mayor Hart** indicated that there are several hurdles to get over and Ivins has every opportunity to impose conditions in the Development Agreement when that comes before the Council. **Council Member Scott** continued with his list of concerns. Traffic on Cordero and Puerto was a concern and he would like that addressed. The developer has offered graciously to limit homes to one story with flat roofs. The problem is, residents think one story homes will be half the height of a two-story home but that's not necessarily the case. Limiting the height would be advantageous and maybe the developer is already planning on 15-foot heights anyway. He suggested requiring the developer to comply with the section of the short-term rental ordinance that covers design and management requirements, section 16.07.806 that outlines 20 design requirements. It has been recently discovered from neighboring communities that those design requirements probably aren't even sufficient. There are more problems with short-term rentals than ever anticipated. More than eight (8) years ago when those requirements were written, short-term rentals were a new creature with no real-world experience. Now, there is in St. George, Santa Clara and elsewhere where cities are seeing those problems and Ivins requirements are even insufficient. Technically short-term rentals can be done under Resort Commercial, but these requirements don't apply because those only apply under the overlay. **Council Member Anderson** agreed with all of those things as it related to parking, garbage cans and similar but for him, height isn't the issue. It's the other areas. like colors, landscape, parking, garbage and all of those things that are important. **Council Member Scott** stated that the height issue just gets

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addressed elsewhere and regarding the deed restriction for short-term rentals in residential, as Dale Coulam indicated, Ivins does not allow those. He referred to his next item on the list, to require the same 35% open space. The developer had been willing to provide that before and that would create about 27 1/2 acres of open space, which he would like a requirement for that space to be contiguous, open and accessible to the public. That would be a huge benefit for the development and for the community. In 2019, Ivins staff proposed that the wash area and the City interior bluff ridge line east of Puerto, be shown as open space. The Minutes of the City Council meeting on September 19th, 2019, stated that the Sensitive Lands Ordinance would prohibit construction in those areas. **Mayor Hart** indicated that the major question was does the Council believe that these restrictions need to be placed on zoning? The Council heard Dale Coulam say the City is standing on very shaky ground with that and there is another option to impose any or all of those at a later time. **Matt Ence** stated that the applicant was happy to discuss all of those conditions at the appropriate stage, whether it's through a Development Agreement or a Conditional Use Permit or whatever is appropriate to the particular issue. He clarified that would not necessarily be a commitment to any of those, but he was happy to work through those and discuss those with the City at the appropriate time. **Gregg McArthur** with SITLA and representing the landowner, indicated that the conditions that Council Member Scott wants to be placed, those are appropriate when the Development Agreement comes in and that is when those things get ironed out. He has been with SITLA for a year now and before that he worked in commercial real estate. For SITLA, he manages commercial developments and large forum residential developments throughout the State, like this one in Ivins City. When SITLA starts really moving and working forward with developers, they pick good developers. As he has worked with and compared all the developers throughout the various projects and throughout the State, Scott (Stowell) and Jerry (Miyahara) the applicants, are very good developers. He has worked with them on other projects and has seen how responsive they have been. As the Council can see, SITLA has worked with the developer and heard the concerns of the City to work with changing the zoning and listening to concerns and changing things which are not in the benefit of SITLA. It is moving away from SITLA's goal, which is making revenue for the trust. SITLA has been open to that and has worked with SITLA and they have been very pliable, open, and accessible. The reason he wanted to make this comment is as he and the applicant work on the Development Agreement with SITLA to address these concerns, they will be working openly with Ivins City. **Mayor Hart** inquired if it has been established that these concerns would be better served in a Development Agreement or pursued in a motion? **Council Member Scott** inquired if all of his concerns that he has stated as requirements, could be addressed in a Development Agreement? **Dale Coulam** stated that they could be addressed, but there was no guarantee that the outcome would be exactly as what was stated. The Development Agreement is negotiated with the developer. A Conditional Use Permit on the other hand, are conditions imposed by the City. The City has more control over the RC portion than guaranteeing what ends up in a Development Agreement, but a lot are concerns that are addressed in every Development Agreement like design guidelines, trash and similar. Regarding open space, it is not necessarily 35%, realizing that multi-family has very strict requirements for open space and amenities. For single family homes, the open space would be the setbacks but in multi-family there are requirements in the Ivins City Ordinances for open space and developed open space, to give amenities for those who live in that community. That doesn't show here because that would be part of a development application. In an open space zone, for example the wash or the floodplain, that could be designated as open space and would be a modification of

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the application and of the Planning Commission's recommendation. There is a zone and there is a clearly defined area that should be open space because it's in the floodplain. If the applicant wants to risk a flood damaging a basketball court, that could be placed in the floodplain but dwellings cannot go in the floodplain. **Matt Ence** stated he agreed with Dale that it's possible, but he was not clear as to why because of the floodplain would restrict development in that area. **Council Member Murphy** indicated that given the concerns of Council Member Scott's, she renewed the motion she previously stated.

MOTION: Council Member Murphy moved to approve Ordinance No. 2022-08, an Ordinance of Ivins City, Utah, approving a Zone Amendment per the application and per the compromise map for the property located at approximately Puerto Drive and 400 South, based on the transitional zoning, the added RM zoning, and the reduction of the amount of short-term rentals

SECOND: Council Member Anderson

VOTE: The motion carried.

Council Member Johnson	AYE
Council Member Murphy	AYE
Council Member Anderson	AYE
Council Member Scott	NAY
Council Member Mehr	NAY

Roll call vote. Council Member Anderson, Council Member Murphy and Council Member Johnson voted "aye". Council Member Mehr and Council Member Scott voted "nay". **The Motion carried three (3) to two (2).**

5) DISCUSSION AND POTENTIAL ACTION ITEMS

B. Presentation and discussion on the Planning Commission's recommendation on the Moderate Income Housing Plan as an element of the General Plan

Mike Haycock indicated that the Planning Commission came up with four (4) strategies from the list that the State of Utah provided, although Ivins is only required to choose three (3). That resulted in a paragraph in the General Plan under Moderate Income Housing. **Mayor Hart** indicated that the City Council has had a change to read through that but some discussion needs to take place. **Mike Haycock** stated that the four (4) recommendations from the Planning Commission were that the City look at Accessory Dwelling Units, two (2) of the recommendations have to do with zoning, either along transportation corridors or outside of transportation corridors and the fourth one was to get with other cities, local governments and make alliances to work with other municipalities or government agencies to work on the affordable housing/moderate income housing problem. **Council Member Mehr** had some suggested modifications to the paragraphs. Referring to the first paragraph that reads in part "Ivins City desires to have different housing types...As construction and land costs increase," he suggested that should read "as construction and land costs vary" because they do not know if it is increasing or decreasing and that will not bind the City to some future interpretation. He would like the following also added "As construction and land costs vary, Ivins will continue to evaluate new solutions and potential financial opportunities" and not for new, but to evaluate solutions and potential financial opportunities. The **Mayor and City Council** agreed. He referred to the last paragraph and would like it to read "We will strive to accomplish these goals by considering amending our Land Use Plan and setting agendas for discussing each solution..." That doesn't bind the City. Finally, the City should not be giving up any sovereignty as a governing body. He felt that they should strike "we will form alliances" and

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instead say that "We will meet with other cities and other inter-agencies to see where common ground can be found." A future alliance could be something where a group comes in and per our General Plan, Ivins is bound to perform. The City Council agreed. **Council Member Anderson** requested that the paragraph that reads "Ivins City proactively looks for ways to modify casita/guesthouse requirements to expand housing options for our neighborhoods." be completely removed. **Council Member Mehr** commented that he thought that what Council Member Anderson was trying to say was remove that paragraph because the City has already solved that issue. **Council Member Anderson** agreed. **The City Council** agreed. **Mayor Hart** commented that what they're looking at is the three (3) modified paragraphs. The **Mayor and City Council** agreed. **Dale Coulam** clarified this is just a presentation with a little discussion. The next City Council meeting will be a public hearing and the Council will formalize the amendment to the general plan. The modified version will be shown at the public hearing. The publication requirements of the Spectrum require an even more advance notice for a public hearing. Typically, when the Planning Commission moves something on, a presentation is made with the Planning Commission's recommendation so that the Council understands it before going into the Public Hearing.

C. Presentation and discussion on the Planning Commission's recommendation on a proposed amendment to Chapter 16 of the Zoning Ordinance regarding Short-Term Rentals

Dale Coulam indicated that due to the publication requirements, even more advance notice is required for publication of Public Hearings. Typically when the Planning Commission moves something on, a presentation is made with the Planning Commission's recommendation, so that the City Council understands it before it goes to a Public Hearing. The purpose of the presentation tonight is so that the Council knows in advance what it is.

Mike Haycock referred to the Planning Commission's recommendation on the short-term rental overlay and commented that it is completely stricken, meaning that a developer could not request that zone. The requirements for that zone would stay in place because there are existing zones that the City needs to be able to enforce the ordinance. The Planning Commission has recommended leaving the guidelines in place, but removing the ability to request that zone. **Council Member Anderson** commented that the thought on short-term rentals was opposite of the current thinking and the City has outgrown this ordinance. **Dale Coulam** stated further discussion will take place after the Public Hearing so the Council can also consider public input and then make any changes that the Council would like. The Public Hearing has been noticed for the next City Council meeting. **Mayor Hart** inquired if the Council was ready to move onto a Public Hearing for at the next City Council Meeting. **Council Member Anderson** referred to removing the short-term overlay and inquired if they did that, what would take its place? **Mike Haycock** stated nothing. The Planning Commission recommended some type of business licensing but the consensus of the Council has been that they did not want to see that as an option. **Dale Coulam** indicated that if something is zoned Resort, then there can be short-term rentals. **Mayor Hart** commented that would confine all short-term rentals to a resort environment. **Dale Coulam** stated that the suggestion for a business license component was because that is what the City of St. George is doing. **Council Member Murphy** stated that Hurricane City and the City of Santa Clara both have business licenses for short term rentals and there are a lot of subdivisions where it's a choice to rent short-term but the whole subdivision can be a short-term rental. None of them have central booking systems, they're all on VRBO and Airbnb. She referred to short-term rentals like Arcadia and Paradise Village at Zion in Santa

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Clara and indicated that they are required to pay business taxes to the County and the City and the City receives a portion of that, which is the business personal property tax. If you were to dump that house upside down, anything that is inside that house falls out, must be reported. There is a $25,000 exemption but if the assets in that home are more, which in some of those larger homes are, some of the homes are reporting $150,000 worth of personal property. That is also a business personal property tax, which is an additional tax. The business license goes to the County Assessor's Office and the Assessor's Office looks at a whole subdivision and mails out signed statements.

D. Presentation by the Arts Commission regarding exterior building color (light reflective value/LRV) and discussion

Mayor Hart stated that he sent the Arts Commission home and requested this be continued.

MOTION: Council Member Anderson moved to continue the presentation by the Arts Commission regarding exterior building color (light reflective value/LRV) and discussion
SECOND: Council Member Murphy
VOTE: The motion carried.

Council Member Scott	AYE
Council Member Mehr	AYE
Council Member Johnson	AYE
Council Member Murphy	AYE
Council Member Anderson	AYE

E. Discussion regarding request for proposals, surveys, committees and similar to assist in updating the General Plan

Dale Coulam indicated that he previously provided the RFP that the City of St. George issued. At the next City Council meeting, he would need to know the scope and how much that would cost.

MOTION: Council Member Mehr moved move agenda 5)E to a future City Council agenda
SECOND: Council Member Johnson
VOTE: The motion carried.

Council Member Scott	AYE
Council Member Mehr	AYE
Council Member Johnson	AYE
Council Member Murphy	AYE
Council Member Anderson	AYE

6) CONSENT AGENDA

A. Approval of expenditure for two Public Works vehicles
B. Approval of City Council Meeting Minutes for August 4, 2022

MOTION: Council Member Mehr moved to approve the Consent Agenda
SECOND: Council Member Scott
VOTE: The motion carried.

Council Member Scott	AYE
Council Member Mehr	AYE
Council Member Johnson	AYE
Council Member Murphy	AYE

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Council Member Anderson	AYE

7) CONSENT AGENDA ITEMS FOR DISCUSSION

8) REPORTS

A. Council

Council Member Anderson - no report

Council Member Murphy - no report

Council Member Johnson reported that Heritage Days is coming up and the Mayor and City Council will be in the parade using a bus and carefully handing out candy.

Council Member Mehr referred to the roundabouts on Snow Canyon Parkway and commented that the mindset of drivers somehow think they have the right-of-way and that they do not have to yield when in those roundabouts. He inquired if a different kind of signage that calls out that they need to yield, in addition to that yield sign or a something else that tells all vehicles to yield.

Council Member Scott no report

B. Mayor

Mayor Hart reported that he was involved in a team meeting with the executives of TDS after the last discussion when Tyler Hunsaker made his presentation to the City Council. After that presentation, Mr. Hunsaker went back to the TDS Executive Board and TDS has made the decision to completely overbuild Ivins City. TDS is committing to run fiber optic all through the City, except Kayenta where there are obstacles. CenturyLink has also committed to a substantial investment in Ivins City and has already begun the overbuild process. TDS already has a tremendous amount of conduit in place and unlike what UTOPIA that proposes to run fiber to every home, TDS is running fiber through the backbone system.

C. City Manager/Attorney Dale Coulam

D. Items to be placed on future agendas

9) CLOSED MEETING

10) ADJOURNMENT

MOTION: Council Member Mehr moved to adjourn

SECOND: Council Member Anderson

VOTE: The motion carried.

Council Member Scott	AYE
Council Member Mehr	AYE
Council Member Johnson	AYE
Council Member Murphy	AYE
Council Member Anderson	AYE

The meeting adjourned at 9:53 p.m.

Respectfully,

Kari Jimenez
Ivins City Recorder

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