

FRUITA CITY COUNCIL MEETING
February 20, 2024
7:00 P.M.

1. CALL TO ORDER AND ROLL CALL

Mayor Kincaid called the regular meeting of the Fruita City Council to order at 7:02 p.m. The meeting was held both in person and with virtual access provided through Zoom.

Present: Mayor Joel Kincaid
Mayor Pro Tem Matthew Breman
City Councilor Jeannine Purser
City Councilor James Williams
City Councilor Ken Kreie
City Councilor Amy Miller
City Councilor Aaron Hancey

Excused Absent: (None)

City staff present: City Manager Mike Bennett
Assistant City Manager Shannon Vassen
Finance Director/City Clerk Margaret Sell
Deputy City Clerk Deb Woods
Communications and Engagement Specialist Ciara DePinto
Parks and Recreation Director Marc Mancuso
Planning and Development Director Dan Caris
City Planner Henry Hemphill
Chief of Police Dave Krouse

Also present: Members of the public (in-person and virtually)

2. MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE

Mayor Kincaid called for a moment of silence for all faiths and beliefs to have the opportunity for a silent prayer. He then led in the Pledge of Allegiance.

3. AGENDA – ADOPT/AMEND

- **COUNCILOR KREIE MOVED TO ADOPT THE AGENDA AS AMENDED. COUNCILOR WILLIAMS SECONDED THE MOTION. THE MOTION PASSED WITH SIX (6) YES VOTES.**

4. PROCLAMATIONS AND PRESENTATIONS

A. PRESENTATION – DOWNTOWN ADVISORY BOARD RECOGNITION

Ciara DePinto, Communications and Engagement Manager, let the City Council know that this evening, they were recognizing all members, past and present, of the Downtown Advisory Board

(DAB). She began with a brief overview of the Downtown Advisory Board. She explained that in September 2023 the Board met with the City Council in a workshop session for a discussion on next steps. It became clear during that meeting that the DAB had met all the goals set forth from its inception in 2012. Because the Board had fulfilled its goals, it was decided to disband the board and explore the transition to a board that focuses more on localism.

Councilor Purser said that she had had the privilege to serve on the Downtown Advisory Board from the beginning as a citizen of Fruita. She said that the group has done many collaborative things, and she was proud of how the downtown has grown organically through their efforts. She said some of the things the Board had done was design the logo for the City, work with the Future Farmers of America students putting up a tree lot on Mulberry Street, starting Cups for a Cure, helped with Fruita Forth Fridays, and many other wonderful things.

The members of the Downtown Advisory Board were then brought before the City Council, and each introduced themselves. Honorees were given a pass to the Fruita Community Center, an “I-Heart-Fruita” pin, and an “F” gear sticker. Photos were taken of the members with the City Council.

B. PRESENTATION – THE FRUITA LOCALISM COMMITTEE RECOMMENDATION TO CITY COUNCIL

Ms. DePinto gave a brief background on the Localism Committee. She explained that once disbanding the Downtown Advisory Board, the City Council appointed the Fruita Localism Committee. The committee consists of nine (9) community members, and they have met four (4) times since November 2023. She said that they are now ready to share their recommendation with the City Council along with their mission statement. Ms. DePinto then introduced Shanachie Carroll from the Localism Committee to give that recommendation.

Mr. Carroll said that he had attended some of the Downtown Advisory Board (DAB) meetings and he thought that the difference between the DAB and a Localism Board is that DAB was about where Fruita was, and the Localism Board will be about where Fruita is going. As Mr. Carroll is a librarian, he wanted to take a moment and define “localism” for the City Council. He said “Localism” is often defined as preferring one’s own area or region, characteristic, or particular locality. He gave an example of the name of where people go mountain biking in the desert up north. Locals call it “18 Road” and visitors to the area may refer to it as “the north Fruita desert.” Mr. Carroll said that the committee found the fundamental question was how to get information about events and City goings on out to all citizens. He also said that influence was a big part of this potential board. He said that is where the mission statement comes into play. The mission statement is: “The Fruita Localism Board represents and relays the needs and opinions of our diverse community and shares this feedback within the City to ensure all locals have a greater opportunity to live and “Play Like a Local”, reach out, receive, and engage.” He said one of the functions of the board, if created, is community outreach and helping to disseminate information. He said that it was the consensus of the committee to recommend to City Council to form a Localism Board. Mr. Carroll then asked if there were any questions.

Councilor Miller said that she was behind it and thought it was a great way to hear all community voices.

Councilor Breman wanted to have a discussion at the Workshop. He said that there is an opportunity here, but he wanted to understand more than the mechanics. He said he wanted to understand the structure of the Board before approving it so that things don't overlap with other boards or get misconstrued.

Mr. Carroll said that there was a discussion about how the Board would keep a handle on this and he said that they would be relying on their staff liaison and their Council representative.

Councilor Purser wanted to ask all the members of the Localism Committee to stand up so that they could be recognized. The City Council gave them a round of applause.

Councilor Williams thought that there were some more conversations that need to be had around forming a Localism Board and figuring out some of the finer details.

Councilor Kreie said that he was happy that there is a focus on the locals and was for the creation of the Board, but he was happy to talk about it at Workshop too.

Councilor Hancey said that it was very exciting to see what this Board could do. He said that it was important to set it on a trajectory for success. He said that he, too, wanted to talk more about it before instituting it.

Council Breman requested a copy of the mission statement.

Councilor Williams asked for a quick workshop date if possible while it is still fresh in everyone's mind. City Manager Mike Bennett said that the discussion could go on the March workshop agenda. Mayor Kincaid asked if there was any homework needed from Staff. He said he would like to see the resolution and timeline for bylaws. Councilor Hancey thought that would be a good idea so that they could be at their most efficient in the workshop.

C. PRESENTATION – PRESENTATION ON GRAND VALLEY SECONDHAND TAX INITIATIVE FROM GRAND JUNCTION CITY COUNCILOR CODY KENNEDY

Grand Junction City Councilor, Cody Kennedy, gave a presentation, speaking on behalf of himself, about the secondhand tax plan. Mr. Kennedy said that, initially, he was trying find a way to encourage people to reuse and resell items and supporting the circular economy. He said that he wanted this to be a Grand Valley initiative that encourages people to reuse where possible and utilize this tax break as a targeted tax break to help people in the community who need it the most. He said this initiative would remove sales tax from used goods such as clothing or bikes. It doesn't include resale of motor vehicles. He said that there is a cost to it in foregone tax revenue. He stated, for the City of Grand Junction, the loss is projected to be \$675,000 in tax revenue. Mr. Kennedy said that he believes in the multiplier effect and believes that the money will be spent in other areas of the community. His hope is to get all municipalities to embrace this plan and to have a press release announced on Earth Day. He then took questions.

Councilor Kreie asked if all sales taxes paid were county taxes in municipal sales or were there state taxes in there as well. Mr. Kennedy said that there was some state sales tax in there, and that tax would still be collected at this point. He said that the County had already agreed to do it and if he can get local municipalities and the State to do it as well, it could be anywhere from 8% to 10%

removed from the cost to the customer. Councilor Kreie then asked about secondhand sales on the internet. Mr. Kennedy said that he wasn't going to get into internet sales, it would only be at the local level. He also explained that he had suggested a cap of \$5,000 on purchases, so that tax may be collected on high end antiques and those types of things.

Councilor Hancey thought this was a great idea. He said that there were a lot of opportunities for benefits from this. He thought forgoing the tax revenue would spur some other revenue generating activities. Councilor Hancey asked Staff if they knew what the loss would be to Fruita's tax revenue. Mike explained that they didn't. He said that they would have to look by category and if there is only one business in that category, they cannot release the information. He explained that Fruita does not collect its own sales tax. He said that isn't a deal breaker, just something to work through.

Councilor Miller thinks that this would be a great collaboration. She said that she just staged 92% of a home with secondhand goods. She explained that she thought that because these items have already been taxed that there should be no reason to tax them again and was 100% on board with the plan.

Council Purser said that she had been following it and thought it was a fantastic idea.

Mayor Kincaid asked how eligibility was going to be determined for stores. Mr. Kennedy explained that he wanted to keep things simple and, if it's a used good or secondhand good it won't be taxed.

Mayor Kincaid asked, since Mr. Kennedy mentioned Earth Day, what a realistic timeline is for the City to do this. Mr. Kennedy said that if they could announce on Earth Day that Fruita is on board, they could work the language out later.

Mayor Kincaid asked the City Council if they were on board with secondhand tax plan, to be part of the Earth Day announcement, or if they wanted some additional discussion at a Workshop. The City Council was on board but wanted to discuss it more at a workshop.

Councilor Williams asked if Southwest Arbor Day Festival in Lincoln Park would be a good day to make the announcement. Mr. Kennedy said that he hadn't thought about utilizing it in that setting but thought that was a great idea. Councilor Williams said he thought it was a great idea and liked the idea of the entire valley being behind it.

Mayor Kincaid asked when there was room to add it to a workshop. Mike said that there was room on the March Workshop Agenda. He also clarified with Mr. Kennedy that the Arbor Day announcement was more of an announcement that the valley would be working together to achieve the secondhand tax plan, not that the plan was in place. Mr. Kennedy said yes, that was correct. He said if the attorney's come together and find that it can't work, then that is fine.

D. PROCLAMATION – AFFIRMING A COMMITMENT TO COUNTERING ANTISEMITISM TO BE ACCEPTED BY LESLEY GOLUB, BOARD PRESIDENT FOR CONGREGATION OHR SHALOM (AND OTHERS)

The Proclamation was read by Councilor Williams and accepted by Lesley Golub, Board President for Congregation Ohr Shalom (and others). Ms. Golub gave a brief overview about the Jewish community in the Grand Valley and anti-semantic behavior that has been occurring for over 100 years. She wanted to thank the Fruita City Council for their commitment to countering antisemitism.

Mayor Kincaid then presented the Proclamation to the Congregation members who were present. A photo was taken with Congregation Ohr Shalom and the Fruita City Council.

5. PUBLIC PARTICIPATION

Mayor Kincaid made an announcement regarding Public Participation. He explained that there would be no public comment portion to the appeal hearing regarding the Conditional Use Permit for a City Market fuel station. He then told the audience that anyone wishing to speak regarding this item needed to do so at this time. Mayor Kincaid said that each speaker would have three minutes to speak. He then opened the floor to public comment.

John Philps, 831 Alyssa Ct. - Mr. Philp wanted to know why the Planning Commission would negate the fuel station at the Fruita City Market when every other City Market has a fuel station. He explained that it affected the carbon footprint by wasting gasoline. He also thought it was narrow-minded to make residents drive into Grand Junction to do their fueling and possibly having residents spend their money in Grand Junction rather than in Fruita.

Ryan Brown, 106 S. Park Sq./155 N. Cherry Street – Mr. Brown is the owner of the Go-Fer Foods/Sinclair Convenience store. He is here to support the Planning Commission’s decision to deny the conditional use permit for the fuel station. He explained that it would gravely hurt his business which has provided jobs and paid taxes in Fruita since the 1950’s. He also said that he believed that the increased traffic in residential neighborhoods, possibly creating more traffic congestion and accidents between other motorists as well as pedestrians and cyclists.

Bob Jackson, 402 W. Applewood Dr. - Mr. Jackson explained that he has lived in Fruita for 20 years and he shops at the local City Market. He explained that he believes that fuel stations are for the benefit of the community and that he believes that the grocery store needs to be expanded to service the community. He thinks that a fuel station will encourage people to stay in Fruita.

Jim Hirschinger, 520 E. Harrison Ave – He said that while he agrees that a fuel station needs to be added to Fruita, he does not believe that the location chosen is an appropriate location. He said that he believes that there will be problems with traffic. He thinks that City needs to realize that is becoming even more of a residential area with the housing development going in across the street. He also understands that, while one of the goals of the City is to increase grocer opportunities, he didn’t believe adding a fuel station would help meet that goal.

Robert Armenta, Loma – Mr. Armenta said he is a native of the valley and has shopped at the local City Market a lot. He said that the City does need a fuel station as well as a bigger grocery store. He is in support of the station being added as it does provide jobs and contributes to the tax base.

Brett Jones, 432 Forty-Niner Dr. – Mr. Jones also owns a home at 405 W. Aspen Ave. Mr. Jones stated that his property is two (2) properties away from the proposed location. He said while he agrees with some of the comments about needing a fuel station and grocery store, he does not believe that this is the best location for it. He said there are two residences there and he does not believe that the people living in that area would appreciate cars driving past their homes at all hours of the night. He also thinks that there is not enough room for the fuel station.

Ken Henry, 968 17 ½ Road. – Mr. Henry is here to strongly support the fuel station proposed by Kroger. Mr. Henry explained that he had approached the City Council on three separate occasions,

he went on to explain each one and how they were successful with each proposal. Mr. Henry's three (3) minutes were up at this time.

Tony Stolarczyk, 1824 J 2/10 Rd. – He agrees with both points of view on this topic. He said that although he agrees that he would like a City Market fuel station in Fruita, he finds the location to be poor.

Mayor Kincaid asked if there was anyone else who was there for public comment on any subject. After seeing no one, Mayor Kincaid closed the public comment portion of the meeting.

6. CONSENT AGENDA

- A. MINUTES – A REQUEST TO APPROVE THE MINUTES OF THE NOVEMBER 14, 2023, JOINT CITY COUNCIL AND PLANNING COMMISSION WORKSHOP MEETING**
- B. MINUTES – A REQUEST TO APPROVE THE MINUTES OF THE NOVEMBER 28, 2023, CITY COUNCIL WORKSHOP MEETING**
- C. MINUTES – A REQUEST TO APPROVE THE MINUTES OF THE DECEMBER 5, 2023, JOINT CITY COUNCIL AND FRUITA HOUSING AUTHORITY MEETING**
- D. MINUTES – A REQUEST TO APPROVE THE MINUTES OF THE DECEMBER 19, 2023, REGULAR CITY COUNCIL MEETING**
- E. LIQUOR LICENSE RENEWAL – A REQUEST TO APPROVE THE RENEWAL OF A HOTEL AND RESTAURANT – MALT, VINOUS & SPIRITUOUS FOR TMPTF8 DEUX, INC. DBA RIB CITY GRILL LOCATED AT 455 KOKOPELLI BLVD.**
- F. LIQUOR LICENSE RENEWAL – A REQUEST TO APPROVE THE RENEWAL OF A HOTEL AND RESTAURANT – MALT, VINOUS & SPIRITUOUS FOR MIKE'S FAMOUS CHICKEN LOCATED AT 233 E. ASPEN AVE.**
- G. RESOLUTION 2024-05 – APPROVING THE LEASE OF THE FRUITA MUSEUM PROPERTY LOCATED AT 432 E ASPEN AVENUE TO THE FRUITA CHAMBER OF COMMERCE**
- H. ORDINANCE 2024-09 – FIRST READING – AN INTRODUCTION OF AN ORDINANCE APPROVING A LEASE AGREEMENT BETWEEN CITY OF FRUITA AND REGION 10 FOR THE USE AND MANAGEMENT OF THE FRUITA CARRIER NEWTRAL LOCATION FOR PUBLIC HEARING ON MARCH 5, 2024**
- I. ORDINANCE 2024-10 – FIRST READING – AN INTRODUCTION OF AN ORDINANCE AMENDING THE FRUITA MUNICIPAL CODE AND CREATING A NEW TITLE IX CHAPTER TO REGULATE UNMANNED AIRCRAFT SYSTEMS**
- J. FINANCIAL REPORTS – A REQUEST TO APPROVE THE JANUARY 2024 FINANCIAL REPORT**

Mayor Kincaid opened the public hearing on the Consent Agenda. Hearing no comments from the public, he directed it to the City Council.

- **COUNCILOR BREMAN MOVED TO APPROVE THE CONSENT AGENDA AS PRESENTED. COUNCILOR MILLER SECONDED THE MOTION. THE MOTION PASSED WITH SIX (6) YES VOTES.**

7. PUBLIC HEARINGS

A. QUASI-JUDICIAL HEARINGS

B. LEGISLATIVE HEARINGS

- 1) **ORDINANCE 2024-04 – SECOND READING – AMENDING CHAPTERS 2.41 AND 2.42 OF THE FRUITA MUNICIPAL CODE TO ELIMINATE VOTING RIGHTS FOR COUNCIL MEMBERS APPOINTED TO THE POLICE AND PARKS AND RECREATION COMMISSIONS, AND EXCLUDING THEM FROM QUORUM CALCULATIONS – *FINANCE DIRECTOR/CITY CLERK MARGARET SELL***

Margaret Sell, Finance Director/City Clerk, gave an introduction, saying that last year, the City Council met with the Boards and Commissions, reviewing their purpose and achievements, provided guidance for aligning with Fruita's goals, and evaluating the roles of council members on some of those boards. As a result of those meetings, the City Council would like to establish the independence of some of those boards and commissions. There are two boards and commissions that are established by Fruita City Charter and require a Council appointee to those commissions. They are the Police and Parks and Recreation Commissions. The Council has asked that the Ordinance that establishes the boards and commissions be amended to have the Council Liaisons voting requirement as well as their being included in the quorum calculations removed. The City Council member would maintain a seat on the board or commission.

Mayor Kincaid opened the public hearing on Ordinance 2024-04. Hearing no comments from the public, he directed it to the City Council.

Councilor Hancey wanted to comment that the City Council wanted to enable these two boards to be advisory and when City Council members are voting or count as part of the quorum, that doesn't promote that.

- **COUNCILOR PURSER MADE A MOTION TO APPROVE ORDINANCE 2024-04 AMENDING CHAPTERS 2.41 AND 2.42 OF THE FRUITA MUNICIPAL CODE TO ELIMINATE VOTING RIGHTS FOR COUNCIL MEMBERS APPOINTED TO THE POLICE AND PARKS AND RECREATION COMMISSIONS AND EXCLUDING THEM FROM QUORUM CALCULATIONS. COUNCILOR MILLER SECONDED THE MOTION. THE MOTION PASSED WITH FIVE (5) YES VOTES AND ONE (1) NO VOTE. COUNCILOR WILLIAMS VOTED NO.**

2) ORDINANCE 2024-05 – SECOND READING – AMENDING SECTION 3.18.240 OF THE FRUITA MUNICIPAL CODE CONCERNING MEMBERSHIP REQUIREMENTS FOR THE TOURISM ADVISORY COUNCIL – FINANCE DIRECTOR/CITY CLERK MARGARET SELL

Margaret Sell, Finance Director/City Clerk, explained that this Ordinance is very similar to the previous Ordinance, but it will remove a City Council liaison from the Fruita Tourism and Advisory Council. It is a little different because the City Charter does not require a representative to sit on this Board.

Mayor Kincaid opened the public hearing on Ordinance 2024-04. Hearing no comments from the public, he directed it to the City Council.

Councilor Kreie asked if there would still be a Council liaison for this Board. Ms. Sell explained that it would remove the liaison from the Fruita Tourism Advisory Council.

Councilor Purser explained that she had thought that it would remove the City Council member from voting and from quorum requirements but that the liaison would remain, but that isn't how this read. Ms. Sell said that the City Council could vote on it as amended or they could remove it and bring it back.

Councilor Miller said that she still would like a liaison on that board.

Councilor Williams said that because the FTAC has actual hands-on funds, a liaison is necessary. He explained that some of the conversations that happened in the FTAC meeting are things that the City Council wouldn't plan.

Council Breman had a procedural question regarding whether they can vote on an amended Ordinance or if they have to come back with a new Ordinance.

City Attorney, Mary Geiger, explained that the Ordinance needs to be republished with the correct language with what the City Council would like to do.

Mayor Kincaid wanted to address a comment made from Councilor Williams. Mayor Kincaid explained that the budget for the FTAC Board is approved through the City Council.

Ms. Geiger explained that the City Council will take no action until the new ordinance is brought before the City Council.

Mr. Bennett explained that there will be a first reading on the revised Ordinance on March 5th and a second reading at the first meeting in April.

9. ADMINISTRATIVE AGENDA

- A. APPEAL – THIS IS AN APPEAL OF THE FRUITA PLANNING COMMISSION'S DECISION ON A REQUEST FOR A CONDITIONAL USE PERMIT FOR A DRIVE-THRU FACILITY FOR A RETAIL FUELING STATION – PLANNING DIRECTOR DAN CARIS**

Planning Director, Dan Caris, gave a presentation to the City Council regarding the Applicant's appeal of the Planning Commission's denial of a conditional use permit for a drive-thru facility for a City Market Fueling Station in the DMU zone district. Mr. Caris read the application information into the record. He then provided the following information:

- A zoning map and aerial view of the property.
- Planning Commission vote to approve failed with a 3-4 vote on 12/12/2023.
- Not just the applicant may appeal, it can be any aggrieved person.
- The City Council hears the appeal.
- The applicant is appealing the decision, and they have the sole burden of proof.
- Noticing Timeline
- Appeal received states that the Planning Commission failed to interpret the City's Strategic and Comprehensive plans as well as the Land Use Code for Conditional Use Permits.
- Description of the Land Use Code for the Downtown Mixed-Use Core.
- Permitted uses with associated Conditional Uses.
- Vehicle Stacking image.
- New drive-up/drive-through facilities are not permitted within 40 feet of Aspen Avenue.
- CDOT comments
 - Require Traffic Study and Access Permit
- Public comments from 12/12/23 Planning Commission hearing
- Options presented to Council.

Tarah Bailey, Land Use counsel for the applicant, MJ Property Investors, gave a presentation regarding the appeal of denial of a Conditional Use Permit (CUP) for a City Market fueling station. She explained that this appeal is only for the CUP and that the project will still go through administrative site plan review. She then went over the agenda and introduced the project team.

Ms. Bailey gave an overview of the property. She explained that the property is close to the highway and to the City Market grocery store location. The property is already zoned to allow a fuel station. Ms. Bailey showed a concept plan for the drive-through use. Next, she explained the application timeline. Ms. Bailey went on to say that the fuel station will enhance not only the health of the grocery store but be a benefit to the community. She explained to the City Council that the criteria for their approval included consistency with the land use code, consistency with the City's comprehensive and strategic plans, and compatibility with surrounding uses, will not endanger public health/safety, and adequate public services.

Ms. Bailey then went over the grounds for the appeal. The first one is that the denial is inconsistent with the City's Comprehensive Plan. The Comprehensive Plan explains under goal #3 that the City is directed to work with City Market to expand and grow their store. Ms. Bailey explained that the fuel station will revitalize the foot traffic in the grocery store. The next point Ms. Bailey made was regarding transportation. The City has a goal to make downtown pedestrian oriented and easy for visitors and vehicles to navigate. She included several reasons that the Planning Commission gave for denial, and they all relate to walkability. When reviewing the list, Ms. Bailey explained that the reasons given for denial were not based on the criteria of approval. Next, Ms. Bailey gave a list of nearby properties with drive-throughs and auto-centric uses. She explained that in this area of the City, there are several properties that already have drive-thru's and walkability isn't a core characteristic of this area. The second reason given by Ms. Bailey was that it was inconsistent with the City's Strategic Plan. She said that the reasons for this were similar to the reasons given for the

inconsistency with the City's Comprehensive Plan so she would not go over that information again. Ms. Bailey explained the third claim as showing that the fuel station is outside of the "Downtown Core". There were some comments made that the fuel station is in the Downtown Core, but it is in Downtown West area, which has separate characteristics. The final reason Ms. Bailey gave was that the Planning Commission failed to properly apply the code. She explained that it seemed like the main reason Planning Commission denied the Conditional Use Permit was simply because they did not want the fuel station and not by what criteria was in the code. Ms. Bailey gave a recap of her presentation and asked the City Council to reconsider the application for a Conditional Use Permit.

Fruita City Market Manager, Ray Cordova, explained that having a fuel station will enable City Market to serve the customer at a new level. He talked about the convenience that it will provide the community. He went on to explain that there are many fuel points that go unclaimed, or fuel purchases made in Grand Junction that add to the Grand Junction tax base and could, instead, be kept in Fruita. Mr. Cordova went on to say that City Market is focusing on the people of Fruita by adding a fuel station.

Mayor Kincaid opened the meeting to questions from the Council.

Councilor Kreie asked a procedural question about the CUP. He asked if it would go to an administrative site review or would it come back to the City Council. Ms. Geiger said yes, it would be an administrative review and would not come back to the City Council.

Ms. Geiger also explained that the City Council is only allowed to ask questions related to the presentation and letter given by Ms. Bailey and Mr. Cordova and not on the Public Comment portion of the meeting held prior to the appeal. Mayor Kincaid said that this is just for a Conditional Use Permit for the drive-through portion of the concept plan. Ms. Bailey said that the concept plan is not something that is before the Council, she explained that in their experience City Council's like to have an idea of what the site will look like, which is why it is included in the presentation.

Councilor Hancey asked about the difference between the Downtown Core and the Downtown West areas, as he was not familiar with those terms. Mr. Caris explained that when the City engaged with SE Group to complete the Comprehensive Plan, they labeled the subareas as part of a workshop. This was a foundational piece in creating a future land use map.

Councilor Hancey asked if Mr. Caris could clarify the pieces in the Land Use Code explaining by use and by right. This is a drive-up/drive-through facility and requires a Conditional Use Permit. Mr. Caris explained that drive-up/drive-through facilities need to go through the Conditional Use Permit process separately even though the retail fuel sales is a use by right.

Councilor Hancey asked what the criteria is for not endangering the public health or safety. Mr. Caris said that it doesn't have its own set of approval criteria to determine the effects on public health and public safety. He explained that it was covered by other sections in the code.

Councilor Miller said that she was happy to bring up the trucking piece and the intersection in question. Councilor Miller asked how many trucks Ms. Bailey anticipated going through that intersection and what does that route look like for deliveries. Ms. Bailey explained that this is the route that trucks take for the City and is designated by the City. Ms. Bailey asked Brian Horan, traffic engineer for the project, to answer this question. Mr. Horan stated that he didn't think they were approving the site-plan circulation route tonight, but he thought that the gas trucks would be

delivering gas three to four times a week, but no more than once a day. Mr. Caris also explained that CDOT would require Applicant to complete a traffic study and Applicant would need to get an access permit from CDOT, and this would be part of a subsequent application. Councilor Kreie asked if that application would also include hours of operation, music, and lighting. Mr. Caris said that it would.

Councilor Purser asked Ms. Bailey to explain how adding the fuel station will help accomplish goal #3 of the strategic plan which is to expand food and grocery shopping options in Fruita. Mr. Nick Tompkins, Weld City Market Real Estate, manager of all King Sooper and City Market stores, said that he understood that it was hard to make the connection between fuel and grocery. He said that Kroger views it as a total customer offering, making it a department just as one would view it the bakery or pharmacy. Councilor Purser said that she understands that City Market is trying to make it a one stop shop and a full customer offering, but she is still having a hard time connecting it to food and grocery. She explained that the citizens of Fruita are hoping to have a larger grocery store, and this would this somehow lead to a larger grocery facility. Mr. Tompkins said that he understood that, but those are two separate decisions. He said the decision tonight is how to better serve the Fruita customer and keep the customers at the Fruita store.

Councilor Breman asked Mr. Caris what the impact of the CDOT traffic study is and how that will affect this project going forward. Mr. Caris explained that the applicant needs to submit a methodology to CDOT and that will need to be accepted by CDOT. He said that could mean that they need to provide improvements to the area or their site. CDOT will need to approve a methodology for the traffic study. Sam Atkins, City Engineer, also stated that they would need to do a queuing study through CDOT to make sure the cars don't back track up into intersections.

Ms. Geiger said that this information is not part of the criteria required for a conditional use permit, and they will not get to that step if the Conditional Use Permit is not approved.

Councilor Breman wanted to clarify that this was a drive-up facility rather than a drive-through facility. Mr. Caris said that that was correct. He also wanted to clarify that even if they do receive the CUP, they may not receive the CDOT access permits.

Councilor Breman asked Mr. Tompkins to clarify his statement about the fuel station not having a direct correlation to a larger store being built in Fruita. Mr. Tompkins said that it was their job to support their store in the best way that they can. He said that if an expansion was needed, then that was something they would explore. But there is no direct correlation between a fuel station being added and a larger store being built.

Mayor Kincaid asked if there was a slide available that listed the criteria for the appeal and the criteria for a Conditional Use Permit.

Councilor Purser asked if the Planning Commissions decision can be overturned based on one of the criteria or if they must meet all of the criteria. Ms. Bailey said that it can be overturned based on only one. Ms. Geiger stated that it would still need to meet all the requirements of a Conditional Use Permit.

Councilor Kreie asked if there was a reversal, did that approve the CUP or does it need to go back to the Planning Commission. Ms. Geiger stated that it would not go back to the Planning Commission and would be approved tonight.

Councilor Breman stated that he said that when they look at the area, Coloramo Bank and Burger King, already have drive-throughs. He said while he is struggling with the location, in terms of criteria, they have already set precedent for walkability, it is consistent with the comprehensive plan, and there is already similar usage in the Downtown West Corridor.

Councilor Kreie said that he was similar in his thinking. In his opinion, they are bound by all the criteria that they are supposed to use to gauge this. Mayor Kincaid asked if Councilor Kreie felt it met the criteria. Councilor Kreie said that he felt it met the criteria and didn't see anything to support the Planning Commissions denial.

Councilor Purser said she agreed that the criteria had been met. She did say that the location is very concerning.

Councilor Williams said that as a City Councilor he has found that it does meet the criteria, but as a citizen he was struggling with the location.

Councilor Miller said she was struggling to make the connection between the fuel station and expansion of the food and grocery goal.

Ms. Geiger said that the City Council could give direction to Staff on things to consider while looking at the site plan. While it is an administrative decision, the City Council can point out possible mitigating factors.

Councilor Williams said that he was able to understand the way it adds to food and grocery shopping as it will encourage shopping to get more fuel points.

Mr. Caris asked if there was a correlation between fuel traffic and expanded food and grocery spending. Mr. Tompkins said that they have completed a study, and it shows a projection of a 1% to 2% lift in the grocery store.

Ms. Geiger explained that if the City Council has found all the criteria for a CUP have been met, then that is enough to reverse the Planning Commission's decision.

Ms. Bailey wanted to make a follow-up comment to a comment Mr. Tompkins had made. She said the Strategic Plan states that the City would like to work strategically with City Market to create those opportunities. She said that would include approving a CUP so that the store could increase its foot traffic and explore other opportunities. She said another goal in the Comprehensive Plan is to reduce shopping trips to Grand Junction. She explained that when consumers go to Grand Junction to purchase fuel, they will buy their groceries in Grand Junction as well.

Councilor Purser asked if the projection was the same for on-site fuel station and off-site fuel stations. Mr. Tompkins said that they were very similar. He said for safety and customer service reasons, it is important to keep the fuel station close to the store.

Councilor Williams asked Mr. Caris to expand on what Ms. Geiger had said about adding Staff direction. Mr. Caris explained that it would essentially be a reversal of the Planning Commission's decision but with conditions. He then gave an example about the City Council requesting that Staff consider lighting or walkability factors.

- **COUNCILOR PURSER MADE A MOTION TO REVERSE THE PLANNING COMMISSION'S DECISION DENYING THE CONDITIONAL USE PERMIT WITH A FINDING THAT THEY ERRED IN FINDING THAT THE CRITERIA HAD NOT BEEN MET AND THAT CITY COUNCIL SPECIFICALLY FINDS THAT ALL OF THE CRITERIA FOR A CONDITIONAL USE PERMIT HAD BEEN MET BY THE APPLICANT FOR A DRIVE-THROUGH WITH AMENDMENTS AND ADHERE TO ALL CONDITIONS FROM CDOT PLACED ON THE ORIGINAL CUP APPLICATION. COUNCILOR KREIE SECONDED THE MOTION.**

Mayor Kincaid opened the motion up for discussion.

Councilor Breman said that he didn't understand the motion as it wasn't part of the Conditional Use Permit criteria.

Mayor Kincaid said that the Planning Commission was concerned with walkability and thought that the walkability amendment was relevant in addressing the Planning Commission's concerns. Councilor Breman said that walkability was a statement and not a change in the CUP.

Councilor Kreie explained that the City Council would direct Staff that landscaping, lighting, and music is addressed.

Ms. Geiger said that some conditions can be put on a CUP. She also explained that when the applicant comes in for site-plan review, they will also need to meet all lighting requirements for the zone district. She went on to say that the City Council could ask for advanced screening for neighboring residential properties, crossing signals for pedestrians, and to ensure there is good pedestrian safety.

Mayor Kincaid asked if the amendment to the motion covers it or does it need to be more specific.

Mr. Bennett explained that they will need to be more specific if there are specific things that the City Council wants.

Mr. Caris clarified that for screening or buffering to the north or to the east to be contemplated. Also, for safe pedestrian crossing to be contemplated across Coulson Street and Aspen Avenue.

Councilor Hancey asked how that related to the criteria for the Conditional Use Permit. Ms. Geiger explained that it was compatibility with the surrounding uses. She also said that it would be up the applicant to decide if these are conditions they can live with. Ms. Bailey asked for a moment to speak to her team. Mayor Kincaid said they would reconvene at 10:15 pm.

Mayor Kincaid resumed the meeting at 10:15 pm.

Ms. Bailey turned the podium over to the architectural team leader, Nate Abbott with Galloway, and he gave an overview of the planned landscaping and buffers including trees or bushes so long as there is room for them to remain viable. He also explained that they aren't going to add any additional access points. He said that they were able to offer stripping or integrated colorful concrete to help with pedestrian crossings.

Councilor Purser asked if hours of operation could be included as a condition. Mr. Caris said that no, they do not control the hours of operation for businesses.

Councilor Hancey wanted to make sure that he was clear on what they were doing. He clarified that they were deciding if the City Council should reverse the decision made by the Planning Commission. He stated that the Council had to use the criteria in the Land Use Code to apply it the application for the Conditional Use Permit and not based on their personal opinions. Mr. Caris explained that there was an understanding that the City Council was willing to reverse the Planning Commission's decision to deny the Conditional Use Permit with the three conditions listed above.

Mr. Abbott asked what the minimum lighting levels were, as fuel stations had very strict lighting level requirements and he didn't want to agree to anything that was outside of the standard lighting levels required by Kroger. Mr. Caris said that was why he had made some adjustments to the lighting standards regarding canopy or streetlights.

Councilor Miller and Councilor Purser wanted the applicant and Mr. Cordova to know that they love City Market and want them to stay and have no hard feelings.

Mayor Kincaid closed discussion on the Motion and called for a vote.

- **COUNCILOR PURSER MADE AN AMENDED MOTION TO REVERSE THE PLANNING COMMISSION'S DECISION DENYING THE CONDITIONAL USE PERMIT WITH A FINDING THAT THEY ERRORED IN FINDING THAT THE CRITERIA HAD NOT BEEN MET AND THAT CITY COUNCIL SPECIFICALLY FINDS THAT ALL OF THE CRITERIA FOR A CONDITIONAL USE PERMIT HAD BEEN MET BY THE APPLICANT FOR A DRIVE-THROUGH WITH AMENDMENTS TO ENHANCED MARKING OF CROSSWALKS, ADDITIONAL SCREENING FOR ADJACENT RESIDENTIAL PROPERTIES, ALLOW FOR LIGHTING ADJUSTMENTS AS LONG AS IT DOESN'T CREATE A SAFETY ISSUES, AND ADHERE TO ALL CONDITIONS FROM CDOT PLACED ON THE ORIGINAL CUP APPLICATION. COUNCILOR KREIE SECONDED THE AMENDED MOTION. THE MOTION PASSED WITH SIX (6) YES VOTES.**

10. CITY MANAGER'S REPORT

City Manager Mike Bennett provided the following updates to the Council:

- The following week's Workshop is largely regarding The Beach project. He explained that they would receive the due diligence report, guiding principles discussion, and conceptual phasing of the project that will lead into future negotiation discussions.
- He also explained that at that workshop Staff would like to present the research and market comparisons for leasing the Co Op Tower.

11. COUNCIL REPORTS AND ACTIONS

- A. EXECUTIVE SESSION – DISCUSSION AND POSSIBLE ACTION TO CONSIDER A MOTION TO CONVENE IN EXECUTIVE SESSION REGARDING PERSONNEL**

ISSUES UNDER C.R.S SECTION 24-6-402(4)(F) FOR THE CITY ATTORNEY'S ANNUAL INFORMAL REVIEW

Mayor Kincaid asked for a motion to be made to move the review of the City Attorney up the Agenda to before Council Reports and Actions as she has a long drive home.

COUNCILOR KREIE MADE A MOTION TO MOVE THE EXECUTIVE SESSION PRIOR TO COUNCIL REPORTS AND ACTIONS. COUNCILOR HANCEY SECONDED THE MOTION. THE MOTION PASSED WITH SIX (6) YES VOTES.

COUNCILOR WILLIAMS MADE A MOTION TO CONVENE INTO EXECUTIVE SESSION FOR DISCUSSION FOR PERSONNEL ISSUES UNDER C.R.S SECTION 24-6-402(4)(F) FOR THE CITY ATTORNEY'S ANNUAL INFORMAL REVIEW. COUNCILOR PURSER SECONDED THE MOTION. THE MOTION PASSED WITH SIX (6) YES VOTES

COUNCIL CAME OUT OF EXECUTIVE SESSION AND WENT BACK INTO OPEN MEETING AT 11:05 PM.

B. COUNCIL REPORTS AND ACTIONSCOUNCILOR KEN KREIE

Councilor Kreie had nothing to report.

COUNCILOR AMY MILLER

Councilor Miller asked if the City of Fruita had a block party kit. It is an enclosed trailer that has folding tables and chairs, corn hole boards, and other items for a block party. Councilor Miller asked for it to be put in a workshop. Mr. Bennett said that Staff would do some research and see how much it would cost and what it would entail and then Staff will present it to Council and see if they would like to move funds this year or put it in the budget for next year.

COUNCILOR AARON HANCEY

Councilor Hancey asked about the sanctuary letter. Mr. Bennett explained that Mesa County had sent their letter and there was no need for the City to be part of that. Mayor Kincaid said that groups would be coming to present to the City Council asking them to support their cause and he wanted to make sure that those items were put on a Workshop in order to further discuss. Councilor Hancey agreed with that as he wanted the City Council to be able to react at their own speed.

COUNCILOR MATTHEW BREMAN

Councilor Breman had nothing to report.

COUNCILOR JEANNINE PURSER

Councilor Purser had nothing to report.

COUNCILOR JAMES WILLIAMS

Councilor Williams wanted to know why the Fruita City Council wasn't invited to the Naturalization Ceremony that happened at Fruita Monument High School. Mr. Bennett said that he had already contacted the Senator's office and let them know that, if it happens again in Fruita, the City would like to be invited. Councilor Williams also explained that he thought there should be a Workshop discussion around events that the City Council should attend. Mr. Bennett explained that there are different charity events around Mesa County and there was some discussion around which events the City should purchase a table for.

MAYOR JOEL KINCAID

Mayor Kincaid said that he had sent out an email regarding proper reports and actions and wanted to know what everyone thought. Councilor Miller said the only one she didn't agree with the piece around Boards and Commissions. Councilor Purser seconded this feeling. Councilor Breman explained that while he appreciates the update, he doesn't need to go into the whole process that led to a decision, only what the decision is. Councilor Hancey agreed with that. Mayor Kincaid said that he was just trying to establish some parameters around updates and how to keep discussion concise and on point.

12. ADJOURN

With no further business before the Council, Mayor Kincaid adjourned the meeting at 11:20 p.m.

Respectfully submitted,

Jennifer Cupp
Executive Assistant
City of Fruita