

# SPECIAL CITY COUNCIL MEETING

## Heritage Land Development-Proposed Amendments to Development Agreement & Proposed Changes to Legacy Village Phase 2

Franklin City Building

November 15, 2023

7:00 P.M.

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### MAYOR AND COUNCIL IN ATTENDANCE

John D. Packer  
Lyle J. Fuller  
Stuart Parkinson  
Mark Dietrich  
Kevin D. Beck

### STAFF

Tyona Atkinson, City Clerk

### ATTORNEY

Aaron K. Bergman

The Special City Council Meeting was called to order at 7:05 p.m. by Mayor Packer.

Prayer: Councilmember Lyle Fuller

Pledge: Councilmember Stuart Parkinson

### **Discuss Draft of Proposed Amendments to Development Agreement, Heritage Land Development-Aaron Robertson and Dan Dansie (0:03:46)**

Aaron Robertson, Heritage Land Development, stated that he has received comments back from Craig Rasmussen, Forsgren Engineer, and was waiting for input and feedback from Aaron Bergman, Franklin City Attorney. He indicated that Heritage is ready to discuss the items that the city thinks need adjusted or proposed differently.

Mayor John Packer asked the council if they had any questions, if they were ready to make a motion, or if they wanted to go through each amendment one at a time.

Councilmember Kevin Beck stated that he has had a couple of months to go over the amendments and he is concerned with the number of changes that Heritage is wanting to make. He finds it interesting that there are additions not redlined that are different from the original development agreement, in particular, Amendment 9 under the Improvement Plans states that *“the developer shall pay to City a fee associated with City’s review of said construction plans equal to \$350 per lot...”* That amount was not in the original development agreement and has not been discussed so he is curious as to why it is in black and not in red.

Dan Dansie, Heritage Land Development Attorney, indicated that Attorney Bryce Dalton did the majority of the redlines and the current version is reflective of changes that have been made. He went on to say that his understanding was that the third amendment was proposed, additional changes were made, and the redline changes from the last version of the third amendment. Kevin brought up that it wasn’t red in the previous drafts which would indicate that the city already agreed to that at some point from what he understands a redline to be and the city has not discussed or approved that change. Aaron R. apologized if they missed putting a change in red.

Kevin indicated that he felt that last month there was a good conversation about what the city would like to see in the park and that has not been changed from the last draft. He sees many things that Heritage talked about changed but not what the city mentioned. Kevin stated that the original development agreement provided security and was in the best interest of future citizens and the city, but with all these changes he feels it is taking that security away.

Dan asked Kevin if there were specific provisions that he is concerned about that could be talked through so a resolution could be reached. Kevin brought up that Heritage wants to take out the required deposits of \$4,000 for water and \$4,000 for sewer which is paid to the city. In previous council meetings Heritage had mentioned that adding those deposits in hurts the lot value. Kevin said he has talked to local bankers about the financing, and they have indicated that would not affect someone's ability to get a loan on the property. Then regarding the \$350 per lot fee that has been proposed, the amount wouldn't even cover the expenses that have been incurred.

The city attorney, Aaron Bergman, asked Heritage if the reasoning behind capping the developer's costs at \$350 is in relation to the engineer's review of the plans and those types of things. Aaron R. indicated that was correct and that flat fee was taken from another city that had incurred or absorbed comparable costs. Heritage feels that they are an open checkbook to the city engineer and would like to have a fee schedule given to them like other cities do so they know what fees to anticipate. Craig addressed how the engineering review fees work and that there are different agreements for each city depending on their ordinances. Some cities have a review cap of two and anything after that the developer is responsible for. When you start talking about a smaller development like Legacy Village and propose to cut it down into smaller sections it makes it more difficult to cap per lot. He also stated that the proposed \$350 per lot does not cover the costs of a small subdivision that the engineer and attorney share. Some of these costs include inspections, final plat, construction drawing, meetings like this, etc. along with the attorney reviewing the final plat, verifying reporting information, looking at cost proposals for work for the bonding, etc.

The \$14,000 of outstanding fees incurred by Heritage was discussed and Heritage felt that some of the charges from the city engineer were not fair, reasonable nor applicable and would like to go through them with the city before they pay them. The city's attorney, Aaron B., stated rather Heritage agrees with the fees or not, the city's name is on the bills and the city must pay them which clearly states in the ordinance. Regardless of if Heritage feels it is reasonable, that doesn't impact the city's liability to pay the bill. It was agreed that the city would meet with Heritage at the city building on Monday, November 20, 2023, at 2 PM to go over the outstanding bills.

Kevin brought up the email that was sent out to the council, mayor, and city clerk by Tami Midzinski, Heritage's Project Manager, demanding that the city respond to her email otherwise Heritage assumes that the city approves of all the proposed amendments. He felt it was inappropriate since if any council member replied they would be at fault as a quorum and from his understanding it is illegal for them to communicate in this way according to Idaho law. Aaron R. indicated that he didn't think that Tami's intent was to force council members to reply and apologize if it was taken that way. The underlying intent was Heritage needed an official response from the city and the city attorney on how they felt about the language and the points.

Kevin commented that these new amendments are vague. The wording reasonable, conditioned, and delayed may mean one thing to the city but another thing to Heritage. Dan explained that

the wording is a customary standard used in legal context. Kevin replied that he understood that, but it is just another thing down the road that Heritage and the city would not agree upon. Aaron B. agreed with Kevin's comment and indicated that the biggest problem in the amendments themselves is the uncertainty of the proposed amendments. He stated the fact that Heritage mentions multi phases and open areas but does not say what those are. Aaron B. stated that the Franklin city ordinance is clear, and the plan is supposed to be a plan and not a plan to make a plan. Dan suggested if there is language in the document that is objectionable and needs clarification then let's take the time to talk about it and reach a consensus.

Aaron R. stated that what Heritage has been attempting to do is identify some of these areas. If the city is talking about creating a plan to make a plan for the park that came as a request from the city indicating that they did not want a bike park. He suggested that they discuss whether the city wants a bike park or keep the door open for something else. Kevin indicated that specific things were suggested at the last council meeting such as a green area, pavilion, sport court, kid's playground, and a walking path. Jay Stocking, Heritage Land Development, stated that the bike park is what was agreed upon from the beginning; however, Heritage has made it clear that if the city wants funds in lieu of a park or a different park Heritage is up for that. He mentioned that Heritage heard back from the city's engineer, and it would be a couple million dollars to give the city the park that they want. This is not what Heritage budgeted for in the original development, they budgeted for a bike track. Craig indicated that number was regarding a 3.5-acre park like Kevin was talking about and just the landscaping and irrigation in the park would cost close to \$700,000. Dan stated that the point the developer is making is there is a budgeted amount that the developer is going to contribute to the park and the developer is not committed one way or the other to how it gets spent. The developer just wants to make sure it makes sense to the city. Councilmember Mark Dietrich indicated that when the park was first planned costs were much lower and over time the costs went up. Jay stated that Heritage could get a current bid on the bike track. Craig explained that in section 9.4 in the original signed development agreement under the Common Areas it states: "*the common area will include an open play field around the townhomes, a restroom with attached pavilion area, non-motorized dirt BMX track, sidewalks, parking area, and access roadway. Excluding the BMX track site, the areas will be landscaped with lawn, gravel, and several types of trees and shrubs.*" Craig indicated that there is significantly more than just the BMX track in the original agreement. In talking about costs and what was budgeted for it, the restroom, pavilion, sidewalks, pathway, parking area, access roads, landscaping, irrigation, all those have substantial costs as well. From a cost perspective looking at that one item, \$2100 per lot is very insufficient. He believes it was \$4100 that was discussed at the last meeting as far as a fee in lieu and he was surprised to see \$2100 in the revised agreement. Aaron R. emphasized Heritage is still planning on some of those things affiliated in the area of the townhomes because those are still in the budget. If the city would like to look at the initial layout and get a bid on current costs on the portion that was dedicated to the city and then break the amount up per lot, Heritage would be okay with that. Councilmember Lyle Fuller reiterated his point from the last council meeting that he didn't know if the city could accept money in lieu of the park without an ordinance change. The city's ordinance says that there will be green space X% of development. Aaron R. stated the money in lieu of the park was based on the conversation that if Heritage got rid of some of the park and added lots. He indicated that it sounds like from today's discussion that we are still doing the park, but just changing what the park looks like.

Under Amendment 2, Planned Improvements, Heritage wanted a change from a fixed five phase subdivision to multiple phases, a more open-ended phasing strategy that would allow the developer more flexibility. It was discussed that there needed to be a cap on the number of phases. Many numbers of phases were talked about, and Kevin was concerned that if there were too many phases then the subdivision along with the park may never get completed. Aaron R. said Heritage would make each phase as big as the market could reasonably bear. He went on to say that by scaling the phases down to fewer lots, not only would this be protecting Heritage Land Development but providing an inherit protection to the city in not having more out there than the market can use and creating an eye sore along with maintenance problems where there are no residences. After considering the flow of infrastructure a total cap of 10 phases was suggested. The city attorney's concern with capping the phases at 10 was how the city would know it was going to get the infrastructure that was promised in the overall plan. Dan said the way other jurisdictions do it is if you know the general direction your phasing is going you could say that once the phasing gets to such and such location or after X number of lots this portion of the park improvement will be done. Mark asked what phase the park would be developed in. It was discussed that due to the nature of the project, since the park is at the northeast corner, it would be very difficult to get a park early in the development. The access road would not be paved, and it doesn't make financial sense to build the park until you get to the townhouse phases where the infrastructure has started.

From an engineering perspective, Craig stated that he does not have significant concerns with either putting a cap on a number of phases or an open phase plan and can see the benefits from what Heritage is proposing. However, he did express his concerns with capping engineering fees because if Heritage is doing a five, six, or ten lot phase the engineering fee per lot would substantially increase. There would be more costs from both the city and developer's engineers because there would be more inspections, more final plats, more coming to the council to get approval for this and that. Craig said that it does reduce the exposure for the developer and if the developer's exposure is reduced then it is more than likely things will move forward in a reasonably consistent manner. On the other hand, if the developer says they can't complete phase two or phase three because of economic conditions then it could take five or six years to finish those phases. Craig did indicate that if a smaller development is done then that would add additional time and costs, but it would make things move forward incrementally. He also agreed with the city attorney that if Heritage did not do the next phase in a certain amount of time, then Heritage would need to come back to the city to get approval for the preliminary plat or file for an extension on the original approval. In his opinion, Craig thinks that part of the amendment proposal is reasonable. Aaron R. agreed with the extra costs for the reviews that Craig was talking about, and Heritage would be happy to pay for those costs because of the potential savings and risk reduction.

Aaron B. stated that the way the code is developed, if the developer commits to doing a phase and can't finish that phase because of financial circumstance the developer is bonded for that phase. The reality is that once the developer starts that phase the city is only guaranteed to the end of that phase. If the city is concerned about breaking up the phases because it won't get a park at the end, then maybe the fee in lieu that Heritage proposed earlier is a potential solution to some of the city's concerns. This could be additional protection for the city in case there are problems. Jay stated that he has seen some developments that have an escrow off of every building permit. The development would have to bond \$2,000 a door and that money would go

into an account that would go toward the development. He indicated Heritage had no problem putting something like that in place for Legacy Village if the city was interested. It could be done per lot as building permits were pulled so the city would have money sitting there until Heritage draws upon it when the park is ready to go in. Aaron R. asked the city if they would like Heritage to get some bids on the current design in the park and look at the real costs and then divide it by the number of lots to use as a projection number that could be used for an escrow for the park. Councilmember Mark Dietrich indicated that he thought that would be reasonable.

(1:27:13) Under Section 4 Building Permits, Craig brought up the proposed changes regarding the building and occupancy permits. He said the city is probably getting pressure right now to issue building permits in Legacy Village for phase one. If the city has issued them, it is contrary to the development agreement because Heritage has not finished the improvements in that phase, and it is not fair to the people that are building the homes. It was discussed that the storm water pond is not completed, and the streetlights have not been put in, so the improvements are not done. Then there are the warranty issues with the sewer and water leaking that need to be taken care of. Councilmember Lyle Fuller questioned Craig if he meant occupancy permits because the building permits have been issued since homes are being built. Craig indicated that the building permits have been issued. Basically, in the ordinance once the road is surfaced and the water lines put in so firetrucks and emergency vehicles can get in, most communities can issue a building permit. It is a challenge for the occupancy permit when some of these improvements drag out. The city's attorney stated that the city did a conditional acceptance of phase one and the city may need to relook at that. Craig explained that it was conditionally accepted with those other improvements being completed. Aaron R. indicated that Heritage does have bonds in place, and they would be happy to work with the city engineer to identify if there are things missing and how it is getting done.

The other item that Heritage addressed was the deposit of \$4,000 a plat for each utility and proposed to have those delayed to when a building permit is pulled. Heritage is hoping that it can be consistent with the current city code with when and how the fees are paid. Aaron R. explained that Heritage had a contract and an expectation with Sierra Homes coming in that they would be paying all those fees and now Heritage does not have that contract. Due to the changes in the market, they feel this is a necessary change in order to help protect and make the project viable for everyone. Aaron R. stated that because of how the agreement was written, there are benefits for the city in having the money in reserves; however, Heritage is still paying for all the impact and by charging for that building fee upfront Heritage is essentially paying double. He indicated that if the fees were lower it would improve their capacity to move the development along faster. It was discussed that the fees in the original development agreement are a protection to the city to help mitigate the impact and improvements that would need to be made on the sewer and water systems due to the growth of the city, particularly this development. The question was asked of where the \$4,000 per connection fee came from when the original development was agreed upon. It was discussed that it was the current connection fee at the time and the previous counsel thought it would help offset or prepay the impact concerns that they were having at that time. Kevin stated that the current council has the same thought process. Heritage asked if there was a counter proposal that the city would like to make. It was suggested that some research needed to be done before the city could consider this change in the upfront deposit fee.

The amendment under Special Provisions stating that the city would agree to pay the developer for the cost of the upsizing within sixty days and any reimbursement amount not paid by the city when due shall bear an interest rate of ten percent (10%) per annum until fully paid was questioned. Kevin stated that Heritage's outstanding bills are past 60 days, and the city is not charging them interest. Some council members indicated that they do not agree with the 10% interest and think 60 days is too short of a time. It was also discussed that the language in 32.3 needs to be clear including the definition of an upsize and if a latecomer's agreement is agreed upon there needs to be a time limit.

Mayor Packer asked if the council was ready to make a motion on whether to accept breaking up phase 2 into additional phases. It was discussed that phase 2 would be broken up into smaller phases and would be considered phase 2, phase 3, and phase 4 and that the whole project would be done in a total of ten phases or less. The mayor asked if that would make the plat null and void. Aaron R. replied that the primary plat will stay the same and it isn't null and void, but Heritage will have the ability to submit it as smaller phases that was originally primarily platted.

It was moved by Councilmember Mark Dietrich and seconded by Stuart Parkinson that the city let the land the developers do nine additional phases or less.

Roll Call Vote:

Councilmember Stuart Parkinson-Yes

Councilmember Kevin Beck-Yes

Councilmember Lyle Fuller-Yes

Councilmember Mark Dietrich-Yes

Motion passed. Unanimous

The mayor asked the council if they would like to table the proposed amendment to the development agreement. Kevin said that based on this very moment he does not agree with many of the changes, particularly the fee on section 9. Aaron R. stated that he feels like Heritage has gotten some good feedback that they can agree upon and implement. It was discussed that the biggest holdup is the \$4,000 per utility fee and figuring out an alternative to the park and that the agreement be tabled until a consensus can be achieved. It was agreed by the council members and okayed with the city attorney that they would individually email their concerns and questions to him.


Attorney Aaron B. asked the council if they realized that approving that there be nine phases that the original agreement says this will be done in phase 4 and this will be done in phase 5 and so the whole agreement will need to be reworked of what goes in each new phase. He suggested that since a motion has already been made and passed that the council might want to clarify and make an additional motion to make sure the state of the intent is clear. It was discussed that we break down phase two into three tonight and the rest of the phases be decided in the future.


It was moved by Councilmember Kevin Beck and seconded by Councilmember Mark Dietrich to clarify the previous motion that we are going to break up phase two into three phases. Motion passed. Unanimous.

Aaron R. asked if it would be helpful if Heritage took the summary feedback that he felt that the city and Heritage were in agreement with and email it back to the city. The council indicated that they would appreciate that.

**Discuss Proposed Changes to Legacy Village Phase 2 Phasing Plan, Heritage Land Development-Aaron Robertson and Dan Dansie (included in the above minutes)**

It was moved by Councilmember Stuart Parkinson and seconded by Councilmember Kevin Beck to adjourn the Special City Council Meeting at 9:32 p.m. Motion passed. Unanimous

  
City Clerk

  
Mayor