

CITY COUNCIL MEETING

Franklin City Building

August 9, 2023

7:00 P.M.

MAYOR AND COUNCIL IN ATTENDANCE

John D. Packer

Lyle J. Fuller

Stuart Parkinson (Did Not Attend)

Mark Dietrich

Kevin D. Beck

STAFF

Tyona Atkinson, City Clerk

Council meeting was called to order at 7:00 p.m. by Mayor Packer.

Prayer: Councilmember Lyle Fuller

Pledge: Councilmember Kevin Beck

It was moved by Councilmember Kevin Beck and seconded by Councilmember Mark Dietrich to approve minutes of July 12, 2023, Council Meeting. Motion passed. Unanimous

It was moved by Councilmember Mark Dietrich and seconded by Councilmember Lyle Fuller to approve minutes of Franklin City Council Budget Workshop July 26, 2023. Motion passed. Unanimous

It was moved by Councilmember Lyle Fuller and seconded by Councilmember Kevin Beck to approve the bills for July 2023. Motion passed. Unanimous.

Heritage Land Development Agreement Amendments – Aaron Robertson (5:11)

Aaron Robertson, Heritage Land Development, stated he would like direction from the council on how to proceed. Aaron talked with their executive team and their attorney and got further advice on how to make sure they were going about this in the right direction. Aaron stated that they want to work with the city, they have made a massive investment in the city and there is more to do. They want to move forward in a much more systematic and friendly way. The city deserves to have a good development that would be a quality asset to the city. Through Phase 1 of the development there have been some misunderstandings and frustrations on things that have worked and things that did not work. Because of that Heritage feels that it would be appropriate to improve the development agreement as it currently stands. He stated they have made efforts to address the development agreement with the mayor and haven't been able to get that done. Aaron stated that he sent a letter to Tyona Atkinson seeing that their information was marked as an action item and was concerned about what that could mean because they are not ready to take action on what changes need to happen. Tyona walked Aaron through the reasoning of action item on the agenda and now he understands that. Aaron stated that he talked with their attorney, and he feels that it not appropriate to negotiate all the details of the contract in a public forum but

if that is how we get this done they are willing to do that. Aaron does not want to talk about all the ideas, brainstorm, and free float the issues at hand at the risk of an action being taken without being properly vetted by their attorney and the city attorney going through the proper channels. The traditional or normal approach that they are used to is meeting with the mayor, staff and or council members to be there in just a meeting or work group meeting where they can discuss items as a full council but in a closed format. Their attorney suggested that they go through some of their issues and items now but with a commitment not to take action at this time.

Councilmember Kevin Beck stated that he is under the impression that there is nothing that we will agree on. The reason this was put on the agenda is because this is the only time, we can be together, outside of Councilmember Stuart Parkinson being gone tonight, that all of us can be in the room at the same time. Aaron Robertson stated that they would work with the council and meet whenever possible in the evening if that works better. Councilmember Kevin Beck stated that no action has to be taken, but the action item on the agenda is there so the Council has the ability to take action if they choose to. Councilmember Lyle Fuller agreed with what Councilmember Kevin has stated. Councilmember Lyle Fuller would like to have some idea of what the developers are thinking. Councilmember Lyle Fuller stated that if you have a separate work meeting with more than two council members then it has to be publicly noticed and a publicly open meeting.

Aaron Robertson stated that for clarity purpose this is the best time to talk about the development but that no action will be taken tonight. We will talk about ideas and potential directions to go and discuss items.

Aaron Robertson clarified that no action will be taken, they will discuss ideas and potential directions to go.

Aaron Robertson stated that Heritage Development has twelve (12) spots that they have concerns with in the development agreement that they would like to discuss.

Section 1. Planned Improvements. The Development Agreement states that there are five phases. They feel that this is restrictive, and they know there will be multiple phases and they see no reason to lock this into just five (5) phases. They would like to strike out the word five and have multiple phases as agreed upon by the city and the developer. Councilmember Mark Dietrich stated that with phases it means there is a beginning and an end to each phase, so you know where the roads begin and end along with other infrastructure. If the phases are smaller, then the roads will be shortened as they are only going to this point and the roads will hold up better in larger sections. Aaron stated that he agrees with this, most of the breaks will be at natural places because they are a benefit from doing so in the construction process. The roads will be terminated at intersections as the water and sewer lines need to go in. Heritage is willing to change the placement of the phases, but they do not want to be locked into the five (5) phases. Councilmember Lyle Fuller asked how this would impact the open space requirement. Aaron stated that some phases have open space, and some do not. Most of the open space is in phase 4. Aaron stated that they would like phase 2 to be smaller and they would like to get started on this phase soon. If the market picks up, they would like to make the phase a little bigger. Mayor Packer stated that Heritage would like to break up phase 2 into 2A, 2B and 2C. Councilmember Lyle Fuller stated that if you follow the market and build Phases 1-2-3 then stop for 10 years before the open space is completed in Phase 4 then the first three phases would not have green

space. This is a concern for him. Aaron Robertson stated that this is a valid concern, and he is open to hear suggestions on how to mitigate that.

Section 5 – Potable Water. Section 5 is about potable water but the way this was written makes an assumption that the developer is the builder. When Heritage first started this project there was an expectation that their sister company Sierra Homes would be the builder of all of it. Aaron stated that the city put this section in erroneously, but this is not the case they have sold lots to other builders. Aaron stated in Section 5 there is a requirement that they prepay a portion of the connection fees of \$4,000. They have gone back through their notes as to why this was here, there was concerns that there would be potential upgrades to the water system that would be needed to facilitate the development. Aaron stated that this was agreed to initially, for us this was a prepaid connection fee with the sister company, and they could account for this in house. They can now see the problems with this today. He feels this is a big accounting problem with the bigger phases coming. The agreement already contemplates in later sections the potential need for portions of the city's infrastructure to be upgraded so that Heritage would bear that burden. So, if they are already obligated to upgrade any systems in the city to facilitate services of their development, he does not see why they need to pay a portion of the connection fee when everyone else pays at the time a building permit is issued. In the first phase Heritage paid this money and as far as he knows the money is just sitting there and to his knowledge it is not being used. If the city is not using the money, why is Heritage paying it. If there is something that needs to be upgraded, Heritage is already paying for that as per the agreement. Aaron does not understand why this is an extra requirement that creates an accounting problem and confusion. Heritage would be putting out more money upfront for no benefit. He stated that he wants to go back to the city code which states that connection fees are paid with the building permit and the city collects them as the city sees fit. Aaron asked the council the reason why this needs to be in there. Councilmember Kevin Beck stated that he wants to listen to everything Aaron Robertson has to say first.

Craig Rasmussen, Forsgren Associates, stated that he is here representing the city engineers, and there are benefits of the prepayment from the city standpoint. This money can be used for a payment on the water tank and there is an impact to the city's infrastructure expansion based on this development and other growth. These are valid places those funds could be applied immediately to supplement the existing funding sources, that is what impact fees are intended to be used for so this allows the city to get an earlier large amount of money for these respective lots that can be used to pay off loans. Having the money up front to make a payment helps to reduce debt service going into the future rather than waiting a year or two until those respective lots are built on that is an immediate benefit to the city. Craig recognizes Aaron's desire to let the cost be borne by the individual lot owners at the of building permit. He stated there are advantages on both sides and suggested the council take additional time and think about it. Craig stated he would like to hear what Aaron's suggestions are.

Councilmember Mark Dietrich stated that when Marshae first approached the council, there was not two companies involved. The contract was written for one company. Now there are two companies, one doing the development and the other sister company building and lots being sold. Now there is a split in the perception of what is taking place versus what was stated originally.

Mayor Packer stated that he can add to what Craig was saying the money can be used for the rapidly decaying filters.

Jay Stocking with Heritage asked if the city is willing to do that with every person from here on out that comes and asks for this because the city cannot play favoritism. Craig stated that this is in the Development Agreement, and Heritage agreed to that and that is not playing favoritism. This is completely legal. Craig stated that attorneys for both sides have reviewed the agreement. Tami Midzinski had a question about how Mayor Packer mentioned the money would be spent for improvements at the water plant, but the city also charged Heritage an additional \$10,000 as an impact fee for a filter that was approved from the Department of Environmental Quality (DEQ) and on top of that Heritage is required to pay a deposit fee for a connection fee for water and sewer. Craig stated that a filter is one component of the infrastructure. Aaron stated that if there are improvements to be made to the system the development agreement states that Heritage agrees to pay for those. To pre-pay for additional things seems burdensome Aaron is not arguing the impact fees need to be paid it is the time of payment. He stated if Heritage has already pre-paid to accommodate an upgrade to the system for this phase, then they should not be charged an additional up-front cost to be held in perpetuity by the city. Jay stated Heritages fees are there to improve the impact that is put on the system, not for the neglect on the system.

Section 6 – Stormwater. Aaron stated there are some valid concerns from a letter received from Craig regarding the storm water, Heritage is reviewing those concerns with their engineers and will address them appropriately.

Section 7 – Irrigation. Heritage is to give the city water to service the park and open space dedicated to the city. Heritage felt the wording could be clarified better to protect both Heritage and the City. Heritage is transferring their rights for anything they give the city. They don't want to give the water rights they need for the open space that is not city maintained. Heritage wants to make sure there is good clarification on who is getting water rights. Heritage has enough to take care of their open space and they want to make sure the city has enough to maintain their open space. Aaron stated that they are fine with the idea of providing open space and creating a park in the development, but they would also be happy to entertain the idea of using the money they would amenitized the parks and give that money back to the city to develop and maintain existing parks to create a better system for that.

Section 8 – Wastewater. This is a repeat concern from section 5 in that he is paying for connection fees up front, and it should be at time of building permit.

Section 9.2 Common Area. Heritage would like to modify the language to accommodate the phase the common area would be in. Instead of saying Phase 2, it would state in reference to the plan already attached to the development plan. Where the open space is, is where the open space is or gets developed.

Section 9.4 Common Area. Aaron stated that he is still waiting for the mayor to get back to them on what the city wants in the park. Mayor Packer stated that he will get with the city council to get ideas of what is wanted for that park and get back to Aaron. Councilmember Kevin Beck

stated that the city does not want the liability of a bike track. Aaron Robertson stated that they are open to suggestions from the city of what is wanted. They have talked to other small cities, and they have taken money from the developer and use that money in the other parks. They would then shrink the park area and put in more houses. Some of the money they would make from selling the extra lots would go back to helping enhance the existing parks. Councilmember Kevin Beck asked Aaron for a list of cities that have gone in that direction. Aaron will get a list emailed to Kevin. Craig Rasmussen stated that the city needs to be very careful when they consider this other option. This would make this area a denser population and taking the money to develop existing parks could create a problem. He again stated that the city needs to be very careful in this decision. Aaron stated that it is not an either/or situation, they would be willing to do both. Councilmember Lyle Fuller wanted to know how many acres would be in the open space. Aaron stated that there is 5 acres in one area but there is another area around the townhomes that is double that. Councilmember Lyle Fuller stated that his concern is having the children playing in the streets instead of in a park.

Section 12 -Traffic Study. There is a request for a traffic study to be done. Heritage is fine with a traffic study being done if deemed necessary, but it may not be in phase 3. It would be when the street goes in that phase 3 was on. It is more of the wording which is at the end of phase 3 and that phase is changing. Councilmember Kevin Beck stated, to be clear Heritage is not opposed to the traffic study you just want the clarification of phase.

Section 14 – Improvements. Aaron stated that they have a big concern about paying engineering fees. Aaron stated that the engineering fees are beyond excessive. They have been comparing pricing with other cities on engineering fees and they are paying more for review than the cost of design, which seems a little excessive. They have paid some of the engineering fees and they are still receiving bills. There are lots of reasons for that to be the case, he stated that the city will be seeing Heritage push back in the future on some specific bills. Heritage would like to change the wording in the development agreement that they would reimburse up to a certain amount for reviews. Heritage would like to propose a cap of 50% of the cost of design. They would bring in their bill of the cost of design and they would pay up to 50%.

Craig Rasmussen stated that the reviews go faster and more efficiently when a full and complete design is submitted. Forsgren has had to review things five or six times and keep going back with more iterations with comments, it does take a lot of time to review.

Section 16 - Future Phases. Heritage would like to take out phase 3 and put in all future phases.

Section 22 – Bonding. Heritage would like to add the phrase as accepted by the city engineer and shall not unreasonably be withheld.

Section 26 - Acceptance of Improvement. Heritage would like to clarify that it also includes parks, retention ponds and infrastructure that is dedicated to the city. Because some things are retained by the HOA (Homeowners Association). The city does not need to accept the things that they are not taking. They would like to take out phase number one and two and put in all phases.

This concludes Aaron Robertson list of concerns in the development agreement. He stated that if there are concerns that the city has with this document they need to be brought up, this is not a one-way street.

Craig Rasmussen stated that the city can work with this and make some adjustments. The city is not accepting the HOA's landscaping to be city owned but they are accepting the plan to be a benefit to the people in the HOA.

Aaron Robertson stated that they would like to table the Heritage Land Development Phase 2A Review as it is not finished. He asked the council if this is how they want to have communication in council meetings or other meetings. Aaron asked the council if they could get council approval to write draft language for this agreement. He asked if the council would like to see the draft before it goes to the attorneys. Councilmember Kevin Beck stated that if the draft is sent by email first, they can look at it before the next city council meeting and talk about it then. Aaron would like to see feedback from the council prior to the meeting. The draft will be sent to the clerk's office, and she will send the draft out to the council.

Craig Rasmussen recommended the proposed changes be made with tracking.

It was moved by Councilmember Mark Dietrich and seconded by Councilmember Kevin Beck to table the review of the draft by Heritage Land Development. Motion passed. Unanimous.

Heritage Land Development Phase 2A Review – Aaron Robertson (1:01:55)

In the previous discussion with Heritage Land Development Aaron Robertson stated that phase 2A was not ready for review.

Placement of Speed Limit sign – Clay Roberts – Tabled Item (1:01:55)

Clay Roberts came to hear the council's decision on where to put the speed limit sign. Councilmember Kevin Beck asked Clay where he would propose the sign be placed. Clay stated, back where it was originally. Mayor Packer stated he has a problem with that placement. Councilmember Kevin Beck stated if that area is 150 to 200 feet before the intersection, the sign can be placed where it was originally. Councilmember Lyle Fuller stated the minutes reflected that there was concern in the winter about the visibility of the sign and that the sign was not high enough. There was four feet from the bottom of the sign instead of 7 feet which is the legal height.

Craig Rasmussen read from the Federal Highway Administration; If the existing highway features prohibit opposite installations; the signs may be installed a maximum distance of 300 feet apart or offset up to 150 feet in either direction from the speed zone boundary. Meaning the speed zone boundary may be adjusted. Basically 300 feet apart on opposite sides of the road. If there are features that prevent the sign placement it can be adjusted. Opposite each other is the preferred placement.

Clay showed a picture to the council where the ground had been marked for placement of the sign which would be near a driveway.

Councilmember Kevin Beck stated that there should be a speed limit sign there because they get complaints about people flying around that corner. Kevin stated that there is 300 feet to find the best place to put the sign as long as it is somewhere in that realm and 150 feet off of the

intersection. The city can make sure that it is not in line with a driveway. Originally the sign was west of 215 E. Main Street, if that is off the road 150 feet from the intersection the sign can go back there. It is not in the way there; the only complaint was not being able to see the sign due to being buried in the snow. Clay stated he did not want the sign by his place. Mayor Packer stated let's just not put the sign anywhere.

Councilmember Lyle Fuller stated that Councilmember Stuart Parkinson stated in July's Council Meeting that the city needs more not less signs. Lyle stated he would be more inclined to put the sign back where it was and raise it to legal height.

It was moved by Councilmember Lyle Fuller and seconded by Councilmember Mark Dietrich to put the speed limit sign back where it was but raise it to the 7-foot level, so it is more visible in the winter. Councilmember Kevin Beck voted no.

Motion passed.

Cost of Living Raise for Fiscal Year 2024 – Tabled Item (1:18:10)

Mayor Packer asked the Council for a motion to accept a cost-of-living raise of 3% which was discussed at the Budget Workshop.

I was moved by Councilmember Kevin Beck and seconded by Councilmember Lyle Fuller to approve a cost-of-living raise of 3% for fiscal year 2024. Motion passed. Unanimous

Adopt Fiscal Year 2024 Preliminary Budget (1:18:40)

Mayor Packer asked the Council for a motion to accept the Preliminary Proposed Budget for Fiscal Year 2023-2024.

It was moved by Councilmember Mark Dietrich and seconded by Councilmember Kevin Beck to accept the Preliminary Proposed Budget for Fiscal Year 2024.

Motion passed. Unanimous

Donation to 4-H/FFA Animal Market (1:19:12)

Mayor Packer stated in the past Franklin City has given a donation of \$150.00 to the 4H/FFA Animal Market.

It was moved by Councilmember Lyle Fuller and seconded by Councilmember Kevin Beck to give a donation in line with the past years of \$150.00. Motion passed. Unanimous

Mayors Report: (1:20:50)

Councilmember Lyle Fuller asked about the stop sign being put in at Legacy. Mayor Packer stated that he had been given the wrong information from his employees about a stop sign being available. A sign is now available, and it will be put in.

Councilmember Mark Dietrich stated that the landscaping at the 4-plexes on 2nd South should be done. Mayor Packer will write Mike Balls a letter.

Councilmember Mark Dietrich noticed the park (old ice rink in the highway park) had been leveled, he asked if he should take his pre seeder and final grade it. He stated September is a good time to plant and that it would be good to check the sprinkler system.

Mayor Packer would like to put this subject on the September agenda.

Mayor Packer stated the potholes will be fixed on Parkinson Road within the next couple of days.

Mayor Packer stated the new tank still has problems. Councilmember Kevin Beck stated that there is something in the agreement with Dome about going past the due date that there is an amount of money the city can charge them. Mayor Packer stated he just had this discussion with the engineers. He stated there are pros and cons. Craig Rasmussen stated the pros to liquidated damage charges is a legal penalty for a contractor that has gone past the schedule. It can present legal issues and drag things out. If the contractor has shown due diligence to try to stay on schedule with the project, a lot of communities will either delay or not seek liquidated damages. If a contractor puts other projects as a priority, then liquidated damages is basically letting them know they need to put more priority on this project.

Councilmember Mark Dietrich asked if the leak was from where the equipment was removed to put the patch on. Mayor Packer stated it is leaking in the overflow tube. The tank is losing about 4 inches in twelve hours. Dome is going to use a camera to find out exactly where the tank is leaking and go from there. The city is still asking the residents to minimize water usage.

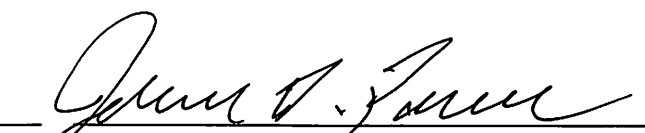
RS Jobbers is the one who has the contract to replace the filters, they are waiting for WesTech to get the materials. WesTech is way out and unable to get the materials. The engineers had to go back to RS Jobbers because the date of the contract had passed and ask if they would honor the contract or if the city needed to go out for new bids. RS Jobbers said they would honor the bid as long as they can start before the end of the year. Mayor Packer was told they should be able to start in September. The project should take 120 days. Craig stated RS Jobbers is a good contractor and, in his experience, they stay on the project and get it done.

Mayor Packer stated the last update he had on the bridge was to let him know they will start working on it in the spring. They have done the geotechnical work and they are working on the design.

Mayor Packer gave an update on Crooked; he met with the Loveland's and a couple of people from the county up there. The county went above and beyond what they needed to and said they would go up and replace the culvert and make the road passable. The fish and game made the Loveland's take down the signs.

It was moved by Councilmember Mark Dietrich and seconded by Councilmember Kevin Beck to adjourn at 8:36 p.m. Motion passed. Unanimous


City Clerk


Mayor