

MINUTES

Regular Meeting – Aurora City Council Monday, February 11, 2008

CALL TO ORDER – EXECUTIVE SESSION

Mayor Tauer convened the Executive Session of City Council at 4:05 p.m.

ROLL CALL

PRESIDING: Mayor Tauer
COUNCIL MEMBERS PRESENT: Beer, Broom, FitzGerald, Hogan, Peterson, Pierce
OFFICIALS PRESENT: City Manager Miller, City Attorney Richardson,
City Clerk Johnson
COUNCIL MEMBERS ARRIVING
AFTER ROLL CALL: Frazier, Markert, Sandstrom, Wallace

Assistant City Manager Janice Napper announced the proposed items for discussion at Executive Session.

CONSIDERATION TO RECESS FOR EXECUTIVE SESSION

Motion by Peterson, second by Pierce, to recess to Executive Session.

Voting Aye: Mayor Tauer, Beer, Broom, FitzGerald, Hogan, Peterson, Pierce

The Executive Session was recorded pursuant to the requirements of State law.

1. **RECONVENE REGULAR MEETING OF FEBRUARY 11, 2008 AND CALL TO ORDER**

Mayor Tauer reconvened the regular meeting of City Council at 7:30 p.m.

2. **ROLL CALL**

PRESIDING: Mayor Tauer
COUNCIL MEMBERS PRESENT: Beer, Broom, FitzGerald, Frazier, Hogan, Markert,
Peterson, Pierce, Sandstrom, Wallace
OFFICIALS PRESENT: City Manager Miller, City Attorney Richardson,
City Clerk Johnson

3. **MOMENT OF SILENCE**

4. **PLEDGE OF ALLEGIANCE TO THE FLAG**

5. **APPROVAL OF THE MINUTES OF THE MEETING OF JANUARY 28, 2008**

Motion by Markert, second by Peterson, to approve the minutes of January 28, 2008 as presented.

Voting Aye: Mayor Tauer, Beer, Broom, FitzGerald, Frazier, Markert, Peterson, Pierce,
Sandstrom, Wallace

Abstained: Hogan

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6. **CEREMONY**

<u>Name</u>	<u>Board or Commission</u>
Marita Kenney	Aurora Fox Arts Center Board
Reno Carollo	Art in Public Places Commission
Jovan Barker	Aurora Youth Commission
Laurie Boever Cook	Aurora Youth Commission
Humberto Escobedo	Aurora Youth Commission
George Dumas	Business Advisory Board
Helen DiBartolomeo	General Employees' Retirement Board
Chris Bray	Visitors Promotion Advisory Board
Jill Eden	Visitors Promotion Advisory Board

Presiding Judge Richard Weinberg administered the oath of office to the board and commission members. Mayor Tauer and City Council congratulated the members and thanked them for their service to Aurora.

7. **PUBLIC INVITED TO BE HEARD (non-agenda related issues only)**

Dewayne Ford, 22704 East Rowland Drive, Aurora, CO 80016, President of the Starfast Homeowner's Association and Director of District 4 of the Saddlerock South Metro District, spoke to Council regarding Section 146-1614 of the City Code relating to signs. The homeowners he represents would like the code changed to require a written, notarized response from landowners before any sign permit is issued by the City. He stated 20-30 foot permanent signs are being erected on private property without permission from the landowner, which has caused over \$100,000 in property damage to the Starfast community. Not one of the signs had a valid permit, and trees, flowers, shrubs, sprinklers and turf have been damaged. The sign companies are violating the City Code, and he has fought with them for over two years. He also has been in contact with Ron Moore in Neighborhood services regarding the problem, and he believes Mr. Moore is working to change the code. He asked the City to review all of the code related to temporary and permanent signs, and revisions be made to protect the landowners. He offered to work with the Code Enforcement Policy Committee to resolve the problem.

Mayor Tauer asked for verification that concrete bases were poured for these signs. Mr. Ford stated yes. The Mayor stated the City Manager, Ron Miller would get with Mr. Moore to discuss the matter and thanked Mr. Ford for bringing this to Council's attention.

8. **ADOPTION OF THE AGENDA**

The agenda was adopted as presented.

9. **CONSENT CALENDAR - 9a-9f**

General Business

- a. Consideration to award a SINGLE SOURCE CONTRACT to Roth & Sheppard Architects, Denver, Colorado in the not-to-exceed amount of \$75,000.00 for professional architectural design and planning services associated with the Regional Public Safety Training Facility project.
- c. Consideration to AWARD A SOLE SOURCE CONTRACT to Siemens Water Technologies Corp., Vineland, New Jersey in the amount not to exceed \$300,000.00 to cover the cost of water treatment chemicals (Sodium Chlorite) through February 2009.

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- d. Consideration to AWARD A SINGLE SOURCE CONTRACT to Pure Technologies US, Inc., Phoenix, Arizona in the not-to-exceed amount of \$147,000.00 for providing condition assessment consulting services for the Rampart pipeline.

Motion by Beer, second by Broom, to approve items 9a, c, d.

Voting Aye: Mayor Tauer, Beer, Broom, FitzGerald, Frazier, Hogan, Markert, Peterson, Pierce, Sandstrom, Wallace

- b. Consideration to AWARD A SINGLE SOURCE CONTRACT to L.L. Johnson Distributing Company, Denver, Colorado in the not-to-exceed amount of \$176,000.00 to cover the cost of Toro brand repair parts and services as required through February 2009.

Council Member Pierce asked why the contract for this year is almost 10% higher than last year. Dennis Lyon, Manager, Golf, stated the amount for this year is an estimate of how much money might be needed, and that it won't be spent if it is not needed. The increase takes into consideration higher prices from the vendor and an increase in the amount of parts needed to repair older golf cars.

Motion by Pierce, second by Hogan, to approve item 9b.

Voting Aye: Mayor Tauer, Beer, Broom, FitzGerald, Frazier, Hogan, Markert, Peterson, Pierce, Sandstrom, Wallace

- e. Consideration to APPROVE THE PURCHASE of 5 Shares of the New Brantner Extension Ditch Company Stock, by the City of Aurora acting by and through its Utility Enterprise.

Council Member Beer stated the cost for these shares is \$815,000, and asked how much water will be yielded through this purchase and the cost per acre foot. Peter Binney, Director, Aurora Water, stated approximately 17acre feet of water will be yielded with a cost of about \$11,000 per acre foot. Council Member Beer asked that the total dollar amount for these types of agenda items be included in the title on the agenda similar to how the other contracts are written. The dollar amount should be included when Council votes on items. Ron Miller, City Manager, stated staff will make sure that happens in the future.

Motion by Beer, second by Wallace, to approve item 9e.

Voting Aye: Mayor Tauer, Beer, Broom, FitzGerald, Frazier, Hogan, Markert, Peterson, Pierce, Sandstrom, Wallace

Final Ordinances

- ◆ f. Consideration of an ORDINANCE FOR FINAL of the City of Aurora, Colorado, acting by and through its Golf Enterprise, authorizing the execution and delivery of a Lease-Purchase Agreement with Yamaha Motor Corporation, U.S.A., for the purpose of acquiring golf cars for the City's several golf courses.

Motion by Sandstrom, second by FitzGerald, to approve item 9f.

Voting Aye: Beer, Broom, FitzGerald, Frazier, Hogan, Markert, Peterson, Pierce, Sandstrom, Wallace

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10. **RESOLUTIONS**

- ◆ a. Consideration to APPROVE A RESOLUTION of the City Council of the City of Aurora, Colorado, appointing a member of the Board of Directors of the Havana Business Improvement District.

Motion by Markert, second by Beer, to approve item 10a.

Voting Aye: Beer, Broom, FitzGerald, Frazier, Hogan, Markert, Peterson, Pierce, Sandstrom, Wallace

- ◆ b. Consideration to APPROVE A RESOLUTION approving a contract between the City of Aurora, Colorado, and the Colorado Department of Transportation for Intelligent Transportation Systems.

Council Member Sandstrom asked why this item did not go through the Transportation & Airports Policy Committee for discussion before coming to a formal meeting for approval. Dick Havercamp, Manager, Traffic Services, Public Works, stated the amount needed is relatively small and was applied for a year ago through the Denver Regional Council of Governments (DRCOG). He stated staff could take it to committee if Council wished.

Council Member Sandstrom stated it is not so much the issue of money but that video cameras are being installed at 22 intersections in the City. Anna Bunce, Traffic Engineer, Public Works, stated the video cameras are already in existence, and will be used to monitor traffic. A module is being added to allow live viewing of the programming to help technicians observe traffic problems without having to drive to the locations. The video will not be recorded or stored.

Council Member Markert stated that since there are questions, it would be helpful to have discussion at a committee meeting with those minutes included in the backup when it comes to Council. She suggested if this partnership with DRCOG continues, these items should go through the policy committee.

Council Member Pierce noted a typographical error on page 12 of the contract. The address for the City should be 15740 East 32nd Avenue rather than West 32nd Avenue.

Motion by Broom, second by Hogan, to approve item 10b.

Voting Aye: Beer, Broom, FitzGerald, Frazier, Hogan, Peterson, Pierce, Sandstrom, Wallace

Voting No: Markert

Mayor Tauer asked if there is any reason these items can't go through committee. Ron Miller, City Manager, stated no and staff will make sure they do in the future.

- ◆ c. Consideration to APPROVE A RESOLUTION approving an Intergovernmental Agreement between the City of Aurora, Colorado, acting by and through its Utility Enterprise, and the City and County of Denver, acting by and through its Board of Water Commissioners, (The Board), regarding a study of potential joint operating concepts and other means to increase water system efficiency.

Motion by Peterson, second by FitzGerald, to approve item 10c.

Voting Aye: Beer, Broom, FitzGerald, Frazier, Hogan, Markert, Peterson, Pierce, Sandstrom, Wallace

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11. **ORDINANCES FOR INTRODUCTION**

- ◆ a. Consideration of an ORDINANCE FOR INTRODUCTION amending Chapter 130 of the City Code of the City of Aurora, Colorado, regarding the use of a Certified Statewide Electronic Database to determine liability for local sales and use taxes.

Council Member Sandstrom stated she supports this and asked if there is a plan to notify existing sales and use tax accounts that this is available to them and the benefits of using it. Robin Peterson, Manager, Tax & Licensing, stated yes, this will be accessible on the City's Web site and the City offers programs and training that will explain this process. The Colorado Municipal League (CML) is behind this program and is advocating the use of the database. The business community has also been involved with this process as well.

Council Member Beer stated he will not be supporting this, as he is concerned with imposing a cost of compliance to small businesses. One provider offers free service for a reduced level of functionality but charges for additional services, while the other provider charges for even occasional use. A process should be established for our businesses to be secure in their sales tax audits, with a fair, no-cost method.

Motion by Sandstrom, second by Pierce, to introduce item 11a.

Voting Aye: Broom, FitzGerald, Frazier, Hogan, Markert, Peterson, Pierce, Sandstrom, Wallace

Voting No: Beer

- ◆ b. Consideration of an ORDINANCE FOR INTRODUCTION amending Section 138-223 of the City Code of the City of Aurora, Colorado, regarding water rates.

Peter Binney, Director, Aurora Water, gave a brief introduction of the item, noting the rate structure has been completely redone from last year based on significant feedback from customers and Council. What comes before Council tonight is the result of a reassessment of the needs of the Water Department. Numerous public meetings and focus groups met through the winter to reflect a series of values from the community. The message being sent out tonight is this rate structure is fair and equitable, and meets the needs of the Water Department to fulfill obligations related to acquisitions, operations and the Prairie Waters Project. The program reflects the current status of our water supply system, noting that our reservoirs are 80% full at this time, and with the snow in the mountains, staff expects a return to normal operations this year. The rate structure is going from a steep 4-tier block rate to a 3-tier flat rate. A strong ethic of water conservation is still being reinforced, with a surcharge implemented for excessive use by multi-family, irrigation, and commercial users. The item has been through the Water Policy Committee, Council Study Session and Council workshop.

Council Member Wallace thanked staff for all of their hard work and acknowledged the need for water storage, but will be voting no. She doesn't believe the new rates to be fair to citizens that fall into the 1st tier.

Tom Tobiassen, Aurora, CO, Chair of the Citizens' Water Advisory Committee (CWAC), stated they worked extensively with staff in reviewing the new rate structure; examining the rate determining process, department budget, and the analysis of billing records; as well as attending numerous public meetings. The CWAC voted unanimously to support the new water rate structure for the following reasons: it continues to insure the viability of the Prairie Waters Project, water conservation continues to be a very high priority, attractive landscaping is encouraged while using less water, and is fair and equitable to Aurora residents.

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Bruce Perry, Aurora, CO, a resident of Village East, submitted a handout regarding the City's past history with water rates to the City Clerk. Water problems have existed in the City before. Many homes in the City have large lots, and many residents have conserved water long before restrictions were in place. Commercial, irrigation and homeowner associations were to be compared to 110% of 2005 and 2006 usage with a 20% penalty for going over that amount at the last public meeting. Now that amount has increased to 125% of previous usage, which does not promote conservation. He put in 1500 square feet of xeriscape and water saver sprinkler systems and is still paying the same amount if not more on his water bill. The City needs to do better. Aurora is in the top 9 for sales tax in the State and last year had the highest water bills in the state.

Council Member Peterson stated the Prairie Waters Project is essential to the City's future. It has been a difficult process to determine who pays for the water, and the Water Department has involved the public in the process. She commended staff for the process, but will be voting no as she feels the low volume users are subsidizing the high volume users. This plan does not teach conservation to high volume users.

Council Member Beer also thanked staff for their hard work and extensive staff time involved in developing this new rate structure. He stated it is a close call for him, but he will be voting yes. He stated it is probably not possible to come up with a water rate system that pleases everyone, but living in an arid community means that water in the entire State of Colorado will never become less expensive. The City is doing everything it can to guarantee the citizens a high quality and dependable source of surface water. We don't have to depend on wells or aquifers. It would have been better for the City to have made small increases over the past 20 years than to have the recent large "catch-up" increases. This is a good plan that is fair and equitable, which promotes conservation without extremes on the high end, and extensive public input was involved. The plan allows for more customers to pay \$5-10 more per month rather than fewer customers paying hundreds of dollars more per month. He will be supporting the efforts of the Water Department regarding the Prairie Waters Project (PWP) during the year. He has encouraged staff to look into shifting some of the debt service for the PWP onto growth measured by tap fees, which will put more of the cost of the project onto the edge of the City.

Council Member FitzGerald stated he also will be supporting the new rates structure. The City's location and climate necessitates more water usage. More sources of water in Colorado are not easy to find and transport. The new flat rates and tiers will help increase the amount of gallons available for use. During the public meetings, there seemed to be conflict between small lot and large lot owners, creating a need for a balance between the groups. While it is not perfect, it is the best solution that pays for water in the City for years to come.

Motion by FitzGerald, second by Pierce, to introduce item 11b.

Voting Aye: Beer, Broom, FitzGerald, Frazier, Hogan, Markert, Pierce, Sandstrom

Voting No: Peterson, Wallace

12. **PLANNING MATTERS**

- ◆ a. PUBLIC HEARING and consideration of an ORDINANCE FOR INTRODUCTION of the City Council of the City of Aurora, Colorado, approving an Intergovernmental Agreement between the City of Aurora and the City and County of Denver, Colorado to establish a mutually binding and enforceable Comprehensive Development Plan for Hampden Town Center and vicinity.

Michael Smyth, Planning, gave a brief introduction of the item, noting the Hampden Town Center is bordered on the north by Hampden Avenue, the east and south by I-225, and on the west by Boston Street. The intent of this Intergovernmental Agreement (IGA) is to allow changes in the

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current agreement that provide for development that responds to current and future conditions on the undeveloped portions of Hampden Town Center, pedestrian and bicycle access to the Dayton Street light rail station, and for securing a 100-foot no-build buffer along the west edge of the property. This IGA with the City and County of Denver is proposed as a joint exercise in planning land development and contains a comprehensive development plan.

Mayor Tauer asked for verification that the agreement in this same form has already been approved by the City and County of Denver. Mr. Smyth answered yes.

Council Member Broom asked since Kennedy Golf Course separates this parcel from Aurora proper, how is it contiguous to the City. Mr. Smyth stated this is a product of an IGA with Greenwood Village that gives lands use regulations for that parcel to the City of Aurora.

Council Member Markert commended staff for the many meetings and discussions that were held regarding this project, and noted she will be supporting the IGA, and urged the rest of Council to do the same.

Keirstin Beck, 2595 Canyon Boulevard, #200, Boulder, CO 80302, and Lynea Hansen, 950 17th Street, #1750, Denver, CO, were present to answer questions.

Mark Johnson, 1200 Bannock Street, Denver, CO, 80204, represents Civitas, a planning and design consultant firm hired by David Chaknova, owner of Nova Plaza LLC. who owns the parcel in question. He has been working with Denver and Aurora on refining the agreement for the past eight months, through many meetings, e-mail and telephone conversations. They followed the process that Aurora staff asked, and worked cooperatively and productively with them. The result was an amended IGA that Civitas was told staff was prepared to bring to Council and that Denver staff had also agreed to. None of those refinements are in the IGA being brought to Council tonight, and they are confused as to why. He feels their work has been ignored. There are provisions in the IGA as it is being presented that make development unlikely to occur. By limiting the development to a minimum of seven stories, buildings on the site will be forced into the life safety code, necessitating dual elevator cores and fully fireproof construction. Seven story buildings are rarely built, as they are not economical, and with the 145 foot height limit on the site, they are limited to buildings between seven and eleven stories. This IGA is rare in that it tightly constrains land use and defeats the proper planning use. They agree with staff that the site deserves to become a high class transit oriented development (TOD), with a mix of density and uses, and shows a commitment to high quality urban development. When Denver passed this same IGA last fall, Denver Council Member Peggy Lehman told Civitas the issues of height and quality should be taken up with Aurora, and after the amendments were approved by Aurora, she would re-introduce the IGA to Denver City Council. They just learned on January 29th that the IGA was coming forward tonight without the amendments. He respectfully asked Council to consider the hard work put forth on the amendments, so that the revised IGA will create the kind of development the City desires.

Council Member Beer asked if revisions agreed to are not in this IGA before Council tonight, or if revisions Civitas wanted but were not agreed to are not in the IGA. There is a big difference between the two. Mr. Johnson stated the first statement is correct, there are many provisions that Civitas, Aurora staff and Denver staff all agreed to that are not in this IGA. Council Member Beer asked staff what their perspective is on this issue. Mr. Smyth stated that many changes have been incorporated into the final version and nothing is missing that wasn't agreed upon.

Mayor Tauer stated he and Council Member Pierce met with Denver Council Member Lehman a few weeks ago, and he disputes Mr. Johnson's contention that all of the revisions were agreed to. He stated that members from Mr. Johnson's team have stated they would prefer to eliminate all height restrictions and not have a TOD site. It comes off disingenuous to have Mr. Johnson come tonight saying they want a TOD site, when representatives of Mr. Chaknova have said they would prefer three story or even one story buildings. The Nova team came to Council years ago, saying they would be building a high density, high-rise development project near this transit site.

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It didn't get built then and now Nova is trying to pull back on that promise, instead trying to change the agreement in order to sell the property for more money than if it stays as is. If a development was in the works which could show Council how changes to the IGA could produce a quality development, that would be one thing, but the only reason for wanting this change is to sell the property for more money. That is called speculative zoning, and Aurora does not do that.

Council Member Frazier asked for clarification as to if there are revisions agreed to that are not in the IGA. Bob Watkins, Director, Planning, stated staff worked in great depth with the landowner and entertained a number of suggestions and offered counter-suggestions how to improve their proposal. Staff never agreed to the final revisions, noting that City Council needed to determine if this was the appropriate thing to do. Many changes were made to the agreement, but the key issue of minimum height requirement was never finally agreed to, even though other options were discussed.

Mr. Johnson noted he has an e-mail stating that Mr. Watkins would recommend to Council that replacing the minimum height limit with a 60-unit per acre project be a substitution. He read a quote from the e-mail, "If we can have that, then staff can make a positive recommendation to Council concerning your proposed language".

Mr. Watkins stated that e-mail is being taken out of context. Many meetings and discussions with Council were held after that e-mail was sent, but ultimately, it was decided staff could not recommend this change. Mayor Tauer noted that Denver did not support the change either.

David Chaknova, 8631 Monte Vista Avenue, Longmont, CO 80503, the owner of the property in question, stated there has been a huge misunderstanding regarding this item. He stated he has never been part of any previous planning process for this parcel prior to meeting with Mr. Watkins. Trammel Crow sold the property to him under an option agreement, and they were supposed to bring the planning process to Council for approval. They didn't follow through on their end. The property is owned by a family trust, and this issue is very personal to him. He stated to penalize him because of hostility towards Trammel Crow is unfair. When he found out that Denver and Aurora were working on this a little over a year ago, he came to Bob Watkins to see what he needed to do to come to an agreement, because the current IGA has some flaws. Mr. Chaknova and the City agreed to work together to forge an agreement that not only makes sense for the City, but makes sense for everybody. He stated if the agreement before Council tonight is approved, it will only penalize the City and his family. He complimented the Planning staff, and stated everyone is in a difficult position. There were 15-20 suggestions that made this IGA better, and this plan needs to go back to committee so more time can be taken to review changes such as architecture and the Plaza that are not in this version before Council. He brought on Mr. Johnson for his experience and knowledge of what the City wanted on the property. If this agreement makes the property not buildable, nobody wins. This proposed agreement has no input from the landowner, and he urged Council to send it back to committee to allow a better agreement to come forward that a developer can build on and make something exciting for the City of Aurora.

Council Member Markert thanked Mr. Chaknova for being here tonight. She stated a committee has been working on this for quite sometime already. The issue boils down to how many stories are quality development. All of the Hampden Town Center is developed except for this parcel. Three-story walk-up buildings are not part of the City's vision for the area. She stated she realizes he is not Trammel Crow, and is sorry that he bought the property without knowledge of the constraints that are associated with it. No one is attempting to deceive or do anyone harm. Council is trying to uphold a vision for what the City wants at Hampden Town Center. That vision includes density higher than three-story walk-ups. It boils down to Mr. Chaknova's ability to make profit on the land. While she appreciates his concern and what he has put forward, Denver has approved this IGA and she hopes Council will approve this tonight for the City's vision for Hampden Town Center.

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Council Member Beer stated this is nothing personal, but the sense of Council and staff is for this property to be developed with higher density, high-rise buildings with elevators. The zoning for this property needs to be in place to direct developers of the site to create that type of environment. He asked if it would help to remove the upper limit of 145 feet. Mr. Chaknova stated he did not believe Denver was okay with that. He agrees that more than three stories are needed, but doesn't feel that density means height over number of units. The requirements put a stipulation of what has to go there and developers that he has spoken with say seven to eleven story buildings are not economically feasible.

Council Member Frazier stated he appreciates Mr. Chaknova's sincerity, and that the vision should be shared by the City and the landowner. The major issue seems to be the number of stories for the buildings. He asked what the status was of the other 14 issues. Mr. Chaknova stated Denver asked for Aurora to approve the IGA first before bringing it back to them. All of the issues were addressed in the revisions, but are not in this version. Council Member Frazier asked staff why they are not included. Mayor Tauer suggested coming back to staff a little later, as the issue ends up being what was agreed to.

Council Member Markert stated the Development Around Dayton Square (DADS) group has been meeting over the past three years discussing various issues for this site. It has not been an easy process and has included much conversation with Denver, Aurora and Greenwood Village to come up with the acceptable vision. She questioned Mr. Chaknova about his statement that making the revisions would make the property easier to sell to a developer. Mr. Chaknova stated the object is to have the property developed for high density at the light rail station. Council Member Markert reiterated Mayor Tauer's comment that Mr. Chaknova's request becomes speculative zoning, and she does not find that request to Council very civic.

Council Member Pierce agreed that many years of work have been done regarding this site, and that it appears the height issue is the only sticking point on this item. He stated that having seven to eleven stories gives the project the quality the City is looking for regarding the vision of Hampden Town Center.

Mayor Tauer clarified that Mr. Chaknova purchased a remnant parcel of the Hampden Town Center development from Trammel Crow that already had restrictions on it. Mr. Chaknova stated he regrets purchasing the parcel four years ago, and only knew about restrictions from what he was told by Trammel Crow. Mayor Tauer stated Mr. Chaknova had the opportunity to review any City records regarding the site. Trammel Crow decided they weren't going to build, and now Mr. Chaknova is asking for the existing requirements on the parcel changed. There was a buffer on the Denver side that could not be built on, which has been relaxed, giving more property on which to build. This shows that changes were made which made the property more valuable. This last requested revision is to make the property more valuable for the sole purpose of being able to sell it. Mayor Tauer stated he has met with people on the Nova team who were told repeatedly that when a developer comes to Council asking for changes in order to build a project, Council is receptive to that idea. Council is unreceptive to making changes in order to make the property easier to sell. The only other way to get the density without the height is to remove the buffers from the Denver side, which they will not agree to. The Nova team stated they would like to remove the height restrictions altogether. Mayor Tauer told them if they wanted to go higher, the City did not have a problem. He stated the Nova team stated three-story walk-ups would be just like Paris, and suggested the team may not have relayed the City's message back to Mr. Chaknova. Staff has made changes to the agreement, but some of the changes asked for do not make sense.

Eldon Campbell, 3911 South Boston Street, Denver, CO 80237 stated the IGA approved by Denver was badly written. He had documentation of a court ordered settlement for the property, noting that Trammel Crow is legally bound for another 60 years to complete the work agreed to in the original development agreement. The settlement was set for 86 years in 1986, and re-approved by Denver, Aurora, Greenwood Village and Trammel Crow in 1998. None of the work has been completed, including a water detention area that has become a health and safety

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issue. This court document protects Denver and Aurora. He asked Council to hold Trammel Crow accountable to finish the site, by placing a lien on any of their property in the state. This new IGA before Council tonight, which does not cover any of these issues, will not help anyone. It will cost \$80M to finish the work not done by Trammel Crow, who should not have been issued occupancy permits until the work was completed. He stated the document he has is worth reading, and includes remedies and contact information for the person assigned to handle disagreements. This document is still on file, and shows no requests to vacate.

Caryn Wenzara, 201 West Colfax Avenue, Denver, CO 80202, a Senior City Planner for the City and County of Denver, and Project Manager for this project, stated Denver City Council voted unanimously to support the IGA on September 10, 2007. The agreement is an important collaboration between Denver and Aurora, effectively addressing the responsibilities and opportunities at Hampden Town Center brought about by the successful completion of the transit system. Denver is very excited and supportive of this document, and has enjoyed working with the staff in Aurora.

Council Member Markert thanked Ms. Wenzara for coming to speak to Council tonight.

Council Member FitzGerald asked Ms. Wenzara if she is familiar with the court document Mr. Campbell spoke about. Ms. Wenzara stated the IGA before Council tonight is basically a supplement to the original agreement, and does not replace the original. The original agreement addresses items still pertinent to the development that are not included in the item tonight. Denver researched vacating court orders and other points made by Mr. Campbell, and came to the conclusion that there was nothing different that should have been done than the process that was followed.

Mr. Rogers stated he was involved when the original IGA was approved. Bill Walters annexed the property to the City, which had an obscure utility agreement with a promise that the City would never annex across Cherry Creek. That constituted a waiver of the City's legislative authority and did not stand up. Denver started litigation over the issue. The original project was called The Galleria with at least three anchor stores. Those stores ended up going to the Cherry Creek mall instead. The Galleria was supposed to have 676,000 square feet of retail space and 20-story office buildings. The City settled the litigation. The original IGA governs the development of the original project. The property didn't develop as planned, so Denver and Aurora are in need of a new agreement that applies to what is going on with the site. State law allows the City to do a comprehensive development plan which is mutually binding, to allow two governments to decide on development regulations on the property. That is the purpose of the IGA before Council tonight.

Council Member Broom asked what will happen to the site if this IGA is not approved tonight. Mr. Rogers stated the property has a general development plan (GDP) on it that includes a TOD amendment. That existing zoning would stand. Tonight's agreement only changes current zoning if it is addressed specifically in it, such as the height requirement.

Council Member Beer asked what the current zoning regarding height is on the site. Mr. Smyth displayed a map of the site, and described some of the restrictions. He stated height requirements are currently between 18 to 22 stories, with no minimum height requirement.

Mayor Tauer asked for clarification that if the IGA is not approved tonight, the developer couldn't build on as much property, but could build all one-story, which is not the intent of the original GDP. Mr. Smyth stated yes. Mr. Watkins stated the idea of the GDP was to achieve a certain density over the entire site which has not yet been achieved, and could not be achieved with one-story buildings. Mayor Tauer stated when the GDP was approved, the developer would have reached that density, but current zoning does not require a minimum height. Mr. Watkins stated that is correct, but there were expectations established at Council and through the process for more density. Mayor Tauer asked if there are any restrictions under the current agreement if they don't hit the projected density. Mr. Watkins stated the new IGA is intended to

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achieve the kind of density the City wants. Mayor Tauer asked if the developer were to hire a builder for the site, and the builder presents a terrific six-story project that has all of the density and amenities the City is looking for, can Council entertain that project under this revised IGA. Mr. Watkins stated this revised IGA asks for a minimum of seven stories. Mr. Rogers stated the existing GDP includes a policy statement making this a TOD zone. That policy would control review of any proposed site plan. A one-story development may be proposed since there is no minimum height requirement, but if it doesn't meet the TOD restrictions, it can be denied in the site plan. The purpose of this IGA is to firm up the vision between Denver and Aurora as to what the development should be. Aurora wants TOD, with Denver wanting to limit impacts they would get from TOD, resulting in a minimum and maximum height requirement.

Council Member Hogan stated the IGA before Council tonight would have to be changed to get anything less than seven stories. Denver and Aurora would both have to agree on the changes.

Mayor Tauer asked that if an actual project is brought forward with less than seven stories, can Council still consider it if worked through with Denver. Mr. Rogers stated yes, by a simple amendment to the IGA.

Council Member Markert urged Council to support this item.

Motion by Pierce, second by Markert, to introduce item 12a.

Voting Aye: Beer, Broom, FitzGerald, Frazier, Hogan, Markert, Peterson, Pierce, Sandstrom, Wallace

13. **RECONSIDERATIONS AND CALL-UPS**

None.

14. **GENERAL BUSINESS**

- a. Consideration to appoint two members to a three-year term on the Civil Service Commission.

Nominations for applicants Dave Williams, Bernard P. Celestin, Larry Brown, Francis Cunningham, and Gaurdie Banister were voted on, with Dave Williams and Bernard Celestin receiving the majority votes.

Motion by Markert, second by FitzGerald, to appoint Dave Williams and Bernard Celestin to the Civil Service Commission.

Voting Aye: Mayor Tauer, Beer, Broom, FitzGerald, Frazier, Hogan, Peterson, Pierce, Sandstrom, Wallace

Voting No: Markert

- b. Consideration to reappoint one incumbent member to a three-year term on the Building Code & Contractors Appeals and Standards Board.

Motion by Hogan, second by Pierce, to reappoint George VanDorpe, Jr. to the Building Code & Contractors Appeals and Standards Board.

Voting Aye: Mayor Tauer, Beer, Broom, FitzGerald, Frazier, Hogan, Markert, Peterson, Pierce, Sandstrom, Wallace

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- c. Consideration to appoint one new member to a three-year term on the Cultural Affairs Commission.

Nominations for applicants Thomas Sullivan and Sydney Hadden were voted on, with Thomas Sullivan receiving the majority votes.

Motion by Sandstrom, second by Wallace, to appoint Thomas Sullivan to the Cultural Affairs Commission.

Voting Aye: Mayor Tauer, Beer, Broom, FitzGerald, Frazier, Hogan, Markert, Peterson, Pierce, Sandstrom, Wallace

15. **REPORTS**

- a. Report by the Mayor
- b. Reports by the Council

Council Member Peterson asked the men in the City to remember their sweethearts for Valentine's Day.

Council Member FitzGerald also reminded the women to remember their men for Valentine's Day.

Council Member Markert urged people to drive by the former Buckingham Square mall on Havana Street to see the progress that is being made at the site.

Council Member Broom announced his Ward VI Town Meeting will be held Tuesday at the Mission Viejo Library to discuss the new water rates and the southeast traffic signal timing program.

Council Member Wallace reminded everyone that the Target Store at Buckingham is still open. She reported that the Baby Duds store on Colfax had to close due to new development. Eric Bush, of Bush Developers, donated \$10,000 to the store to help them relocate. This is a case of a developer going over and above, recognizing it was the right thing to do. Work on this site should start within the next month.

Council Member Beer noted it is great to see the on-going metamorphosis in many areas of the City. He announced his Ward III Town Meeting for Thursday, February 21st, at 7:00 p.m. in the Aurora Room, with the issue of RTD's FasTracks being discussed. His Ward Town Meetings will be held the 3rd Thursday of every month in the Aurora room.

16. **PUBLIC INVITED TO BE HEARD**

None.

17. **RECESS**

Mayor Tauer recessed the regular meeting of City Council at 9:20 p.m.

EDWARD J. TAUER, Mayor

ATTEST:

DEBRA JOHNSON, City Clerk

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CALL TO ORDER – EXECUTIVE SESSION

Mayor Tauer convened the Executive Session of City Council at 9:29 p.m.

ROLL CALL

PRESIDING:	Mayor Tauer
COUNCIL MEMBERS PRESENT:	Beer, Broom, Frazier, Hogan, Markert, Peterson, Pierce, Sandstrom
COUNCIL MEMBERS ABSENT:	Wallace
OFFICIALS PRESENT:	Deputy City Attorney Rogers, City Clerk Johnson
COUNCIL MEMBERS ARRIVING AFTER ROLL CALL:	FitzGerald

Assistant City Manager Janice Napper announced the proposed items for discussion at Executive Session.

CONSIDERATION TO RECESS FOR EXECUTIVE SESSION

Motion by Markert, second by Pierce, to recess to Executive Session.

Voting Aye: Mayor Tauer, Beer, Broom, Frazier, Hogan, Markert, Peterson, Pierce, Sandstrom

The Executive Session was recorded pursuant to the requirements of State law.

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