**Tooele City Council**

**Business Meeting Minutes**

Date: Wednesday, March 4, 2015

Time: 7:00 p.m.

Place: Tooele City Hall, Council Chambers

90 North Main Street, Tooele Utah

**Council Members Present**:

Scott Wardle, Vice Chairman

Debbie Winn

Steve Pruden

Dave McCall

**Council Member Excused:**

Brad Pratt, Chairman

**City Employees Present**:

Mayor Patrick Dunlavy

Roger Baker, City Attorney

Glenn Caldwell, Finance Director

Michelle Pitt, City Recorder

Lisa Carpenter, Deputy Recorder

Jim Bolser, Public Works and Community Development Director

Chief Ron Kirby, Chief of Police

Paul Hansen, City Engineer

Heidi Peterson, Communities that Care Director

Rachelle Custer, City Planner

Minutes prepared by Elisa Jenkins

Vice Chairman Wardle called the meeting to order at 7:00 p.m. He excused Chairman Pratt from the meeting. He welcomed Boy Scout Troop 168 to the meeting.

1. **Pledge of Allegiance**

The Pledge of Allegiance was led by Councilman Pruden.

1. **Roll Call**

Brad Pratt, Excused

Scott Wardle, Present

Dave McCall, Present

Steve Pruden, Present

Debbie Winn, Present

1. **Water Division Presentation**

Presented by Jim Bolser

Mr. Bolser invited the members of the water division to come forward. He introduced Water Superintendent Albert Buck, Team Lead Kevin Grover, Jimmy Lawless, Morgan Evans, Jeff Harkness, Adam Shosted, and Pat Langan (unable to attend). He said he is grateful and honored to work with these gentlemen every day. They are the seven members of the crew that the deal with the entire water system every day and they do a great job. Mr. Bolser had the opportunity last week to attend the Rural Water Association of Utah yearly conference. There was an award banquet at the conference and Tooele’s Water Division was awarded the Award for Excellence for Service Districts and municipalities serving populations of 10,000 or more for the year 2014. He presented the Water Division with the award.

Mr. Buck stated that he is grateful to work with this crew, they are great individuals.

1. **SR-36 Main Street Reconstruction Project**

Presented by Mr. Bolser and UDOT

Mr. Bolser introduced UDOT Project Manager Jessica Rice, the Project Manager for the design team; Jason Phillips, with Lochner; Design Team Manager Jeff Simms, with Lochner; and Public Information Manager Carlye Sommers, also with Lochner.

Jessica Rice, Project Manager for the construction project on SR-36 from 3 O’Clock Drive to Stansbury gave an overview of the project on the overhead screen for the Council and the audience. Ms. Rice then turned the time over to Carlye Sommers, Public Information Manager. A copy of their presentation is attached to these minutes as Exhibit “A”.

Councilman Pruden thanked UDOT for working with Tooele City to make accommodations in the project for the 4th of July parade.

Mayor Dunlavy also thanked UDOT for working with Tooele City and the input they have had on this project.

Councilman Wardle stated that there is a Chamber luncheon hosted by UDOT on March 18th to help answer questions regarding this project. He encouraged anyone interested to contact the Chamber to reserve a spot.

1. **Mayor’s Community Youth Recognition Awards**

Presented by Mayor Patrick Dunlavy, Heidi Peterson, and Chief Ron Kirby

Mayor Dunlavy welcomed all that had come to support these students. He said that this award recognizes special young people in the community. It is very gratifying to him to listen to these students’ stories. These young people go above and beyond and it is an honor to recognize them for the good things they do. He introduced Heidi Peterson, the Communities that Care Director and Chief Ron Kirby from the Tooele City Police Department. He stated that he appreciates Chief Kirby and his officers for all that they do with this program.

Ms. Peterson thanked everyone for coming and supporting these students. She congratulated the students who will be receiving this award. She stated that the Communities that Cares program evaluates the risks that kids are up against in the community and then they put programs into place to help them. She mentioned that there are three programs that the Communities that Care program offers in the community which are; 1) Second Step program which is in the elementary and secondary schools 2) Guiding Good Choices which is a family program, there is a session beginning at the end of March; and 3) QPR, which is a new suicide prevention program, the next meeting will be held March 17, 2015. She encouraged anyone interested in the Guiding Good Choices Program or QPR to contact her. She explained that the students receiving this award will receive a backpack filled with donations from various businesses in the community and she thanked those businesses for their donations. She thanked the Tooele School District and the teachers for their support of the Communities of Care program in the schools. Ms. Peterson recognized teacher Curtis Orton and Principal Renee Milne in the audience. She also thanked the Police Department for their role in this program.

Ms. Peterson then presented the following students with the Mayor’s Community Recognition Award:

Alex Kerwood, Copper Canyon Elementary

Shad Smith, East Elementary

Kelsie Erickson, Harris Elementary

Taya Burbidge, Harris Elementary

Brandon Hadlock, Northlake Elementary

Jill Morrison, Overlkake Elementary

Ireland Tinnes, West Elementary

Ms. Peterson congratulated these students and thanked their families for their support.

Mayor Dunlavy asked the recipients of this award to stand and he recognized them again for receiving this award. He noted that as he listens to the awards as they are given, he is always impressed by what these young people have accomplished. He said that he is very proud of these students and noted that they will be the future leaders of the City. He also recognized the families for the important role they play in these young people’s lives.

1. **Public Comment Period**

Vice-Chairman Wardle opened the public comment period to anyone who would like to come forward and address the Council. No one came forward.

Vice-Chairman Wardle closed the public comment period at 7:49 p.m.

1. **PUBLIC HEARING & MOTION on Ordinance 2015-03 an Ordinance of Tooele city Amending Tooele City Code Chapter 7-26 Regarding Water Rights to Clarify Water Rights Conveyance Requirements and to make Technical Amendments**

Presented by Roger Baker

Mr. Baker stated that this ordinance has gone through a long process of careful consideration, many meetings, many revisions, and much discussion with the Council on how to best update the City’s water rights policy and how to clarify the ordinance. He would like to touch on the highlights of the ordinance by showing some slides. (A copy of the slides included with the minutes as Exhibit “B”.) He explained that the general rule for water rights has been and remains that if there is a new development in the City that development must pay its own way. This means that if that development has an impact on the City’s infrastructure system that development must pay an amount that is equivalent to the impact, which is done through impact fees. Tonight they are talking about water rights. In order to supply water to homes and businesses in the City they have to purchase and maintain water rights. Water rights is a legal right obtained from the state of Utah to pull water out of the ground through wells or collect water that is flowing through springs and streams. That policy remains unchanged. The administration staff is proposing some clarifications in the existing policy.

There have been some questions that have come up from time to time when there is a home on a piece of property and that home is torn down and an owner wants to put a new home on that property if water rights are required. The proposed policy says no; even if the replacement home is larger than the historic home the City’s proposed policy says that no new water rights are required. It becomes impossible to determine the difference in usage from the past to the future usage. It is impossible to determine the number of occupants over time and how much water they would use, the number of fixtures, the capacity of the fixtures, the length and capacity of the pipes, the outdoor irrigation, all of these factors make it too difficult to compare to the new home. The City is suggesting a policy that is a house for a house.

The next scenario is also a house for house policy. In this scenario they contemplate a building permit for a new home on property that has had a historic house but additional land and irrigation has been added to the house that was not present in the historic house or additional land has been added to the lot. The City would determine how much water would be needed for landscaping or outdoor use and calculate and assess the amount of water rights that would be required.

The next scenario is replacing a historic non-dwelling structure with another structure whether it is a house, a store, a barn or anything else. The policy says in this scenario water rights would be required for the new structure unless the owner of the property can prove that water rights were previously conveyed. Mr. Baker said that there are more than two dozen footnotes that explain the details of the policy recommendations.

The next scenario, scenario C, is a change of use. This is where an existing structure is used for one purpose and then the purpose changes and the existing structure is used for something else. He used an example of a law office changing to a restaurant. The restaurant would use significantly more water than the law office so the City would calculate the anticipated new use and subtract it from the historic use and come up with the net water rights requirement that the new use would be required to provide. Under the current ordinance a commercial user would be able to pay a fee to the City to utilize the City’s water rights instead of going out and purchasing water rights from someone else and have them transferred to the City. He said also proposed in this ordinance is a de minimus policy where if there is a change in use that results in a very small increase in the amount of water usage additional water rights would not be required. After tonight’s action by the Council, the administration would come back with a proposed administrative policy that would define de minimus and ask the Council to approve that as part of implementing tonight’s action.

The next scenario deals with expansion of use. This is both a change of use and a change in the floor plan or expansion of the floor plan. The formula would be the same; the new use minus the existing use would equal the amount of water rights that would be required

The next scenario is similar; they look at a single building that is subdivided into two or more structures within the building. They could be leased or purchased spaces. If the subdivided use results in a higher water usage than the historic water use they would subtract the current use from the anticipated future use to come up the amount of water rights that are required for that subdivided use.

The next scenario gives developers the benefit of the doubt when it comes to water wise landscaping. The City does not want to discourage low water landscaping and encourage high water landscaping. Previously the City has had the discretion to decrease water rights demands for low water landscaping but it has left the City unprotected. This proposal says that if someone is going to implement low water landscaping the City would give them the benefit of the doubt that the landscaping will go in and stay in and not be taken out and replaced later with higher use water landscaping. This proposal gives the owner the ability to do what they want and reduce their water right requirement, but if they change their landscaping later or abandon it in a way that uses much more water the proposal has a mechanism to require additional water rights.

In the next scenario the City has had businesses ask the City to give them water rights credit for technologies that they incorporate to save water such as recycling their water. He said that until now the City has had little choice but to assume that they would use all the water that they take into their process and put it all into the sanitary sewer system. This proposal would allow the City to give them credit for using more water efficient technologies. If the business abandons their technologies and all the water goes into the sanitary sewer system the proposal has a mechanism to require additional water rights. The City is only requiring water rights for the water that they use or anticipate they will use. They are not requiring more water rights than someone would use.

The most recent addition to the ordinance addresses the use of secondary water. At the suggestion of the City Council they have added the language that says if someone has secondary water through the City or an irrigation company then the City would allow the water right requirement to be reduced by the secondary water that they have available. If they stopped using secondary water and began using the City’s culinary water the City would be able to assess the additional water rights increment for that increased usage.

Mr. Baker said that they have tried to clarify a few other technical items in the ordinance such as when the water rights need to be conveyed for each type of different land use application such as in the case of a re-zone, subdivision, or a commercial building permit. This way the City does not have to debate with the developer when the water rights are due. The City is not trying to require water rights sooner than they are needed but they do not want to delay it either. The City is trying to strike a good balance. He said that the Council has seen this before and studied this ordinance. He said that the Planning Commission has forwarded a positive unanimous recommendation.

Vice-Chairman Wardle stated that this is a public hearing if anyone would like to come forward and address the Council. No one came forward.

Vice-Chairman Wardle closed the public hearing at 8:05 p.m.

**Councilman Pruden moved to approve Ordinance 2015-03.** Councilwoman Winn seconded the motion. The vote was as follows: Councilwoman Winn, “Aye”, Councilman Pruden “Aye”, Councilman McCall, “Aye”, and Vice-Chairman Wardle, “Aye”.

1. **Bach Homes Assignment Request**

Presented by Roger Baker

Mr. Baker explained that there are several development agreements within the City and every development agreement has been very careful to say that the developers in those agreements cannot assign their rights and obligations under those agreements to anyone else without the Council’s prior written consent. The City wants to make sure that whoever steps into the shoes of the developer has the commitment and wherewithal to fulfill the terms of the development agreement, not just to build homes but to fulfill the terms of the agreement. The City has a development agreement for Copper Canyon Planned Unit Development and the developer would like to sell the development and property from one of their company units to an affiliate company all within Bach Homes. Selling the asset is not the same as assigning rights under a contract. One is a property transaction and one is a contract transaction. In order for it to be done correctly they have to transfer the property through a deed but you also have to transfer the rights and obligations under the contract through an assignment agreement. The affiliate of Bach Homes that currently owns Copper Canyon would like to assign their rights to another Bach affiliate. Mr. Baker said that it does not raise any red flags or concerns to him. The last time Bach Homes did this they assigned some of their rights and obligations without the City’s prior written consent and it caused a lot of trouble on both ends. Bach Homes is being careful this time to do it right. This appears to be in order and he does not know of any reason why this assignment should not be approved. It is his recommendation that the Council approve the assignment. If the Council approves this then Mr. Baker will send them a letter because it has to be a written consent.

Councilman Pruden asked who the affiliate is.

Mr. Baker said that the affiliate is Bach Land and Development LLC; the current owner is Phoenix of Copper Canyon, LLC. They are both a part of the Bach Homes Company.

Councilman Pruden asked if they are still pulling permits.

Mr. Baker said they are pulling permits in phase 3 and phase 2 still has some permits as well.

Councilman McCall asked why the new company would not come to the City and work out a new development agreement.

Mr. Baker said that the principals involved in the current ownership of Phoenix LLC are the same principles involved in Bach Land LLC; they are the same people and the same company. They are just transferring it from one arm of the company to the other.

Councilman Wardle said that it is probably for bookkeeping or financing.

Mr. Baker said that it is for bookkeeping on their end. Bach Homes speculated if it was necessary to do this assignment request but because they got in trouble last time they wanted to make sure they were doing it right, out of an abundance of caution. If it was being assigned to some company other than Bach Homes Mr. Baker would have them come to the Council so everyone knew exactly what was going on.

**Councilman Pruden moved to approve the Bach Homes Assignment Request**. Councilman McCall seconded the motion. The vote was as follows: Councilwoman Winn, “Aye”, Councilman Pruden “Aye”, Councilman McCall, “Aye”, and Vice-Chairman Wardle, “Aye”.

1. **Ordinance 2015-08 An Ordinance of Tooele City Amending Chapter 4-9 of the Tooele City Code Relating to Street Excavations**

Presented by Jim Bolser

Mr. Bolser said that this ordinance has been in the works for revision for some time. The vast majority of this ordinance is fairly straight forward; they are proposing some housekeeping and clean up measures. The City is proposing to establish a workable approved contractors program. Right now any contractor that comes in to pull a permit to do street excavation within a public right of way or on public property they have to post a small bond as well as their application fee. That bond currently does not cover the cost of restoration if they walked away. Contractors have to do this with every permit. There are contractors that they see regularly and each time they have to post a bond and the City has to track them and it consumes a lot of time. The City is proposing to approve an Approved Contractors List, if the contractor wants to be on the list they would post a larger master bond and then they can pull as many permits throughout the year as long as their master bond is current, then they would just have to pay their application fee each time. This has come at the request of the contractors. There are provisions in the ordinance if there are issues contractors can be removed from the list. The other proposed change is to clarify and make sure that the City has adequate provisions for service restoration.

**Councilwoman Winn moved to approve Ordinance 2015-08**. Councilman McCall seconded the motion. The vote was as follows: Councilwoman Winn, “Aye”, Councilman Pruden “Aye”, Councilman McCall, “Aye”, and Vice-Chairman Wardle, “Aye”.

1. **Resolution 2015-12 A Resolution of the Tooele City Council Approving a Contract with Whitaker Construction, for Construction of the 2015 SR-36 Waterline Replacement Project**

Presented by Paul Hansen

Mr. Hansen said that earlier in UDOT’s presentation to reconstruct Main Street in Tooele City, they talked about the need to improve certain utilities. The part of the roadway from 3’OClock Drive to 1280 North, UDOT plans to build a uniform cross section which takes out approximately 24 inches of roadway. The impact of that is that the City has some water utilities that are very shallow and some of the water lines will be exposed, and there are also some pressure reducing vaults that are in the reconstruction zone. Some of the City’s utilities are in direct conflict and need to be replaced. As a result the utilities need to be relocated and UDOT is helping the City with the cost of some of that relocation work and it is directly impacted by the work they are doing. It is the City’s recommendation to replace the main water line from Old Canyon Road just south of 520 South up to approximately 550 North. Also as part of that work they are replacing a main line crossing at 700 South, which is a 16” diameter water line that comes out of the water storage tanks and serves the west side of town. They are also replacing three pressure regulating vaults. There are also two sewer projects, one on 400 South and one at approximately 930 North. This project was sent out to contractors for statements and qualifications, and the City received 8 responses. The City narrowed the number of invitees to 5 based upon their ability to complete the work and the information they submitted. The City’s concern was getting a contractor to get in and to do the work efficiently before UDOT needed to come in and begin their roadway work. Of the 5 contractors, the City received 3 bids. The other 2 felt like they could not complete the work in the time frame the City needed. The low bid was from Whittaker Construction in the amount of $1,707,700 which is about 5% less than the City had estimated the cost to be. Administration believes the price is fair and reasonable. It is the staff’s recommendation to authorize the Mayor to sign a contract in the amount of $1,707,700 with an additional 5% contingency to use for unanticipated conditions. The 5% contingency amount is $85,385. Depending on the approval from the Council, staff plans to meet with contractor on Friday and begin work in the next two weeks to get the water line in and get the work completed. The Project Summary is included with these minutes as Exhibit “C”.

**Councilman McCall moved to approve Resolution 2015-12**. Councilman Pruden seconded the motion. The vote was as follows: Councilwoman Winn, “Aye”, Councilman Pruden “Aye”, Councilman McCall, “Aye”, and Vice-Chairman Wardle, “Aye”.

1. **Minutes: February 18, 2015**

**Councilman Pruden moved to approve the minutes for the meetings held February 18, 2015 as presented.** Councilman McCall seconded the motion. The vote was as follows: Councilwoman Winn, “Aye”, Councilman Pruden “Aye”, Councilman McCall, “Aye”, and Vice-Chairman Wardle, “Aye”.

1. **Invoices**

Ms. Pitt stated that there are no new invoices to present.

1. **Adjourn**

**Councilwoman Winn moved to adjourn the meeting.** Councilman McCall seconded the motion. The vote was as follows: Councilwoman Winn, “Aye”, Councilman McCall, “Aye”, Councilman Pruden, “Aye” and Vice-Chairman Wardle, “Aye”. The meeting adjourned at 8:23 p.m.

*The content of the minutes is not intended, nor are they submitted, as a verbatim transcription of the meeting. These minutes are a brief overview of what occurred at the meeting.*

Approved this 18th day of March 2015

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Scott Wardle, Vice-Chairman Tooele City Council