**Tooele City Council and**

**Tooele City Redevelopment Agency of Tooele City, Utah**

**Business Meeting Minutes**

Date: Wednesday, October 19, 2016

Time: 7:00 p.m.

Place: Tooele City Hall, Council Chambers

90 North Main Street, Tooele, Utah

**City Council Members Present:**

Brad Pratt, Chairman

Steve Pruden

Dave McCall

Scott Wardle

Debbie Winn

**City Employees Present:**

Mayor Patrick Dunlavy

Roger Baker, City Attorney

Glenn Caldwell, Finance Director

Captain Adrian Day, Police Department

Paul Hansen, City Engineer

Rachelle Custer, City Planner

Heidi Peterson, Communities that Care Director

Michelle Pitt, City Recorder

Lisa Carpenter, Deputy Recorder

Bucky Whitehouse, Fire Chief

Minutes prepared by Cami Cazier.

Chairman Pratt called the meeting to order at 7:00 p.m.

1. **Pledge of Allegiance**

The Pledge of Allegiance was led by Councilwoman Winn.

1. **Roll Call**

Brad Pratt, Present

Steve Pruden, Present

Debbie Winn, Present

Scott Wardle, Present

Dave McCall, Present

1. **July 2016 Fire Recovery Update & Presentations**

Presented by Bucky Whitehouse

Chief Whitehouse gave an update to the recovery process on the July fire that destroyed many homes in our city. As of the last month or so, a tremendous amount of work has been done by way of debris removal. Several property owners have even had replacement modular homes brought in to their property. A few are in the process of pouring foundations. Six of the property owners are very committed to re-establishing their homes in the same place, while the other four are still deciding their future plans for their property.

Previously, Chief Whitehouse has recognized a couple of volunteer groups during City Council Meeting who were instrumental in the debris removal process. Several more agencies were recognized tonight. These organizations became involved in the recovery process immediately upon hearing of the event.

The first agency recognized was RD Yates & Sons. They are a dumpster company and took much of the waste from the sites, except for the metal. Over twenty dumpsters were provided to the sites, which is a considerable expense for their company. The next company recognized was Green Box Recycling. They took charge of all the metal debris removal. They had over fifteen different debris removal containers on site. The next organization recognized was a community service group from Home Depot. They were involved with Team Rubicon and the Southern Baptist group, who were recognized previously. The service group donated supplies and many volunteer hours. Broken Arrow and England Construction were also recognized for their donation of equipment. The total labor hours and services provided by these agencies exceeded $54,000.

Chief Whitehouse hopes to have the first damage assessment report ready by next week that will give the grand total of damages from this event.

Chairman Pratt thanked Chief Whitehouse and all those involved in the recovery and clean-up process.

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

Presented by Mayor Dunlavy, Heidi Peterson and Captain Adrian Day

Mayor Dunlavy welcomed everyone present, especially the young people that were being recognized. He expressed his appreciation for the opportunity to recognize these youth and let them know how special they are. He turned the time over to Heidi Peterson, the Director of Communities that Care, and Captain Adrian Day. The police department is always involved in this ceremony because of their involvement in the schools with the youth.

Ms. Peterson thanked those in attendance. She first desired to talk about Communities that Care, and why it makes Tooele such a special place to live. Several years ago, Tooele City received a grant from the University of Washington to try a new prevention system that was based on a couple decades of research by some doctors and researchers at the University of Washington. The system was implemented in Tooele and data was collected to see where the youth of Tooele were at the most risk. Evidence-based programming was brought in to address those risks. It was found that problem behavior decreased when the system was used. The problem behavior included underage drinking and tobacco & marijuana use. When the grant was over, our Mayor and other city officials decided to vote and keep the programs in Tooele. It has been sustained for over a decade now. To have these programs in our state and country is quite unprecedented. In fact, last spring Washington DC contacted Ms. Peterson to have her come talk about what Tooele does and how it is sustained. The National Academies of Science with the Board on Children, Youth, and Families invited Ms. Peterson to talk about the process. She expressed her appreciation for the high priority that our Mayor and elected officials have put on these programs.

One of these programs offered to families in the community is in cooperation with the public schools, and is called Second Step. It is a prevention based program that teaches kids the importance of empathy, how to build strong relationships, how to deal with anxiety, anger and stress, and also the importance of staying drug and alcohol free. This is also partnered with the police department, and every spring, a fabulous officer goes into the sixth grade classrooms to bond with the kids and talk with them about staying drug free.

The next program is a free parenting workshop that lasts five weeks. It is a great asset for our community, and Ms. Peterson encouraged those in attendance to try it. The next class starts Nov. 1st, and signup is done through the Tooele City website.

The last program Ms. Peterson wished to spotlight is relatively new to the community but very important. It’s a suicide prevention program called QPR. The data collected a few years ago showed that suicide is becoming more of a growing concern. This training is also offered free of charge and takes an hour and a half. Life saving techniques are taught, as well as being able to recognize the signs and risk factors related to suicide. A three step process is taught on what to do if someone you know and care about is at risk and how to provide them with the help they need. This program has saved lives. The next class will be held Nov. 3rd, and registration is also done through the city website.

Ms. Peterson went on to say that part of having a successful community is recognizing students for the great things that they do. The students receiving this award will be receiving backpacks that include donations from local agencies and business that want to congratulate and support these students. There is also a certificate signed by the Mayor.

Ms. Peterson then presented the Mayor’s Youth Recognition Awards to the following students:

Tanner Erickson, Copper Canyon Elementary

Olivia Wozab, Overlake Elementary

Haven L. Jarvis, Sterling Elementary

Aurora Gallegos, Settlement Canyon Elementary

Allianna Vinson, West Elementary

Alexus Armas, West Elementary

Mayor Dunlavy again expressed his appreciation for these students and the great things they have accomplished. These kids help the leaders of our community know what a special place we live in. Their parents, grandparents, and other relatives have been great role models for them. Their teachers have been a great support as well. Mayor Dunlavy also expressed his appreciation for the Communities that Care programs, and for all the efforts that are made to strengthen the youth and their families.

A brief recess was taken for a picture of the recipients and their certificates with the City Council members and Mayor. The photo will be included in the Tooele Transcript.

1. **Public Comment Period**

Chairman Pratt opened the public comment period to anyone who would like to come forward and address the Council. He requested that those who come forward to please sign the roster at the podium and state their name clearly because the meeting is being recorded. He asked that comments be limited to 3 minutes.

Christie Black came forward to discuss recycling again and wanted an update on the program. The Mayor responded that, unfortunately, Tooele City residents have yet to meet the required opt-in amount of twenty percent. They are still 700 residents short of meeting the requirement. Ms. Black was concerned that the only information sent out about the program was the one included in the utility bill. The Mayor stated that several other methods of advertising were used as well, such as the newspaper, flyers in the schools, and information on the city website. Ms. Black also asked about when the program would start. She understood that it wasn’t until January, which the Mayor confirmed. She already has a blue dumpster and has been filling it. The Mayor stressed that this program would only be implemented if enough residents opt-in to participate.

Chairman Pratt closed the public comment period at 7:41 pm.

1. **PUBLIC HEARING & MOTION on Ordinance 2016-15 An Ordinance of Tooele City Amending Tooele City Code Chapter 7-5 Regarding Conditional Uses, Eliminating the Board of Adjustment, and Referring Land Use Appeals to the Administrative Hearing Officer**

Presented by Roger Baker

This effort began with an attempt to continue to improve our City Code and city laws as the result of training received by Mr. Baker and other staff members about certain laws. Specifically, improvement is needed on the chapter on conditional uses. The courts have found more and more frequently in this country that certain words commonly contained in City and County Codes are so vague that they cannot be easily defined. The outcomes of using these words cannot be predicted. For example, a developer who sees in a Code a requirement that his development be harmonious with the surrounding development, really cannot predict what the City will agree is harmonious and what the outcome of the application will be. Courts have struck down ordinances that contain standards with the words harmonious, consistent, compatible, desirable, and other vague words. Courts have upheld ordinances that have specific objective definable criteria, such as “a building must have this percentage of its façade built from a certain type of building material.” Everybody can know what that means and if an application is submitted that meets that criteria, it will be approved, instead of saying “it has to look nice.”

Therefore, this effort was begun to clean up this chapter. It’s a housekeeping item to eliminate the vague, subjective criteria and replace it with clearer objective criteria. It was noticed, however, that many appeals, not just variances, of various provisions of the City Code were routed to the Board of Adjustment. The Board of Adjustment is common throughout the United States. It hears appeals of zoning decisions and requests of people to waive or alter provisions of the Zoning Ordinance to make their development application work. Frequently, subdivisions will create lots of a certain dimension. Over time, City Codes change to require lots of a different dimension. When that happens, the original, older lots can become nonconforming. Also, the housing market changes, and it can be hard to locate today’s housing product on lots created a hundred years ago, which creates conflict. A variance is where a landowner would request that in order to make their lot work, for example, a change is needed in the side yard setback requirement.

In 2005, the state legislature passed Senate Bill 60 that created a chapter on appeal authorities. An appeal authority is any person or body that has the authority by law to hear an appeal. For example, in our City Code, if someone wants to appeal a denial of a records request, they appeal to the Mayor. If other decisions are appealed, they appeal to the Planning Commission, the Administrative Hearing Officer, or the Board of Adjustment. There are many types of appeals. But according to the training received from legislative bodies and associations of cities and towns, appeals dealing with land use issues, like conditional use permits and zoning items, are better taken before an Administrative Hearing Officer or an Administrative Law Judge. Giving this person a specific set of criteria that tells them how to conduct a hearing, what kind of evidence to accept, how much evidence is required, will create a standardized due process for appeals. It would also give a standardized process for appealing further to the district court for review.

Tooele City has a Board of Adjustment that has been around for a long time. Over the years, they have had very few opportunities to meet to consider variances and appeals. More recently, a new chapter of the City Code has been enacted entitled Administrative Hearing Officer. An appeals process has been set up for several of kinds of appeal hearings such as code enforcement appeals, parking ticket appeals, watering restriction appeals, and dangerous animal appeals. There used to be a Citizens Board that heard appeals in animal cases. These cases have all been rerouted to an Administrative Hearing Officer. There are now so many different appeal authorities for so many different kinds of actions that Mr. Baker is recommending to the Council that due process is best provided by streamlining our administrative appeals process by taking them to the Administrative Hearing Officer.

While the term “eliminating the Board of Adjustment” sounded harsh to Mr. Baker, he believed that it was the best term to use for clarity. He believes that going through an Administrative Hearing Officer is the better way to provide due process in land use appeals. Mr. Baker emphasized that there were no concerns with any members of the Board of Adjustment that are currently serving. They are qualified and intelligent people that have performed their duties well. However, they have not been able to perform them very often; the last hearing was in 2011. Mr. Baker doesn’t believe that the new Administrative Hearing Officer will be overwhelmed with appeals as the result of this action. It will, however, simplify things for everyone involved, staff, appellants, and the hearing process itself.

A public hearing was held before the Planning Commission on October 12th. There were no public comments, but there were some questions and concerns by one of the Commissioners. Mr. Baker explained the process of legal due process to the Commissioner to help alleviate those concerns. Due process is a difficult term to understand and grasp. It basically says that your rights will not be taken away without giving a process to appeal having your rights being taken away. In many cases, if those rights are taken away, you must be paid for them. This all goes back to the Fifth Amendment of the Constitution.

There were many chapters in the Code that needed to be amended to route the appeals to the Administrative Hearing Officer instead of the Board of Adjustment. It is also suggested that variances be heard by the Administrative Hearing Officer. A variance is not an appeal; it is a request for a different kind of approval.

This is not a question of a good process versus a bad process. It’s a question of a better process, Mr. Baker said, and we as a city always want to improve.

Chairman Pratt opened the public hearing.

Kevin Shields came forward. He is a current member of the Board of Adjustment. He desired to clarify a few points on what the Board of Adjustment does. He stated that they haven’t met for a long time because of the good City Staff and rules that are already in place. Mr. Shields clarified that the Board of Adjustment does not deal with conditional use permits. They do, however, deal with administrative appeals on current development projects. He quoted that “the Board is not empowered to create new law, even if the law is considered outdated, impractical, or just plain dumb. It is the responsibility of the petitioner to prove to the Board that there was an error made by the Zoning Official in issuing his/her decision.” So there has to have been an error made. Ninety nine percent of the issues dealt with by the Board were variances. They are under State Law to look at five criteria in order to issue a variance. The second criteria says that there are special circumstances attached to the property that do not generally apply to other properties in the same district. They have to meet ALL five criteria, not just one or two. This second criteria gives the most problems, because usually it means that there is a river running through the property, or a floodplain, or they are located on a mountain or some other unique area. It is not subjective to the property owner’s desires.

Mr. Shields emphasized that they, as a Board, always follows State Law in any decision that they make. He also pointed out that the Board has always provided their services free of charge to the City. He is concerned about only one lawyer making all the decisions as opposed to a Board coming together to make decisions. Additionally, he is concerned that a lawyer may cost the City more than they anticipate. He will accept either decision that the Council makes but wanted to clarify some important points as explained above.

Councilwoman Winn expressed her appreciation for the work that Mr. Shields has put into his position as a Board member. He took the time to investigate and understand the law to perform his duties well.

Mr. Shields pointed out that when he was first appointed to the Board, they were meeting monthly because they were unsure of their responsibilities, as were the City Staff. Over the years as clarifications have been made, the Board has not been needed as often.

Mr. Baker added that the five criteria that Mr. Shields mentioned were created by State Law and are included in the City Code. They are very important criteria, and the amendments included in this ordinance do no eliminate those provisions from the City Code. The way this ordinance is drafted, whoever the appeal authority or land use authority is, they must follow those same five criteria. Another important criterion is that the variance can’t be granted if the only hardship to the applicant is a financial one, or is self-imposed. Mr. Baker agreed with Mr. Shields that the Board of Adjustment has no role in approving conditional use permits. However, currently the Board of Adjustment hears appeals regarding conditional use permit decisions. If the Planning Commission were to deny a conditional use permit or impose conditions on the approval that the applicant disagrees with, the appeal would currently go to the Board of Adjustment.

Chairman Pratt closed the public hearing at 8:01 pm.

**Councilwoman Winn moved to approve Ordinance 2016-15.** Councilman Pratt seconded the motion. The vote was as follows: Councilman Pruden, “Aye,” Councilwoman Winn, “Aye,” Councilman Wardle, “Aye,” Councilman McCall, “Aye,” and Chairman Pratt, “Aye.”

Councilman McCall thanked Mr. Shields for being willing to help the community by donating his time on the Board of Adjustment.

Chairman Pratt also thanked Mr. Shields for his service to the community.

1. **Resolution 2016-47 A Resolution of the Tooele City Council Accepting the Completed Public Improvements Associated with the Canyon Village Phase 4 Subdivision**

Presented by Paul Hansen

This action is a result of City Ordinance. The City is currently holding a bond for a subdivision known as Canyon Village Phase 4. It is located just west of Copper Canyon Elementary. It is a small subdivision. The City’s inspectors and public works people have inspected the project, and Mr. Hansen represents to the Council that all public works have been completed and asked that they be accepted at this time.

**Councilman McCall moved to approve Resolution 2016-47**. Councilman Pruden seconded the motion. The vote was as follows: Councilman Pruden, “Aye,” Councilwoman Winn, “Aye,” Councilman Wardle, “Aye,” Councilman McCall, “Aye,” and Chairman Pratt, “Aye.”

1. **Resolution 2016-48 A Resolution of the Tooele City Council Accepting the Completed Public Improvements Associated with the Shields Residence**

Presented by Paul Hansen

This action is similar in nature to the previous Resolution, except that it is an occupancy bond as opposed to a subdivision bond. The residence is located on West Vine Street. Mr. Hansen requests that the public improvements be accepted.

Councilman Wardle pointed out that his packet did not include the certificate for this Resolution. Mr. Baker stated that instead of an electronic file, he received a hard copy of the inspection report. He did not scan it to attach it with the packet, but it is attached to the original Resolution.

**Councilman Pruden moved to approve Resolution 2016-48**. Councilwoman Winn seconded the motion. The vote was as follows: Councilman Pruden, “Aye,” Councilwoman Winn, “Aye,” Councilman Wardle, “Aye,” Councilman McCall, “Aye,” and Chairman Pratt, “Aye.”

1. **Minutes: September 21, 2016**

**Councilman McCall moved to approve the minutes for the meeting held on September 21, 2016 as presented**. Councilman Pratt seconded the motion. The vote was as follows: Councilman Pruden, “Aye,” Councilwoman Winn, “Aye,” Councilman Wardle, “Aye,” Councilman McCall, “Aye,” and Chairman Pratt, “Aye.”

Councilwoman Winn was excused from the September 21st meeting, however she read over the minutes and wished to include her positive vote.

1. **Invoices**

There were no invoices to present.

1. **Adjourn**

**Councilman McCall moved to adjourn the meeting**. Councilman Wardle seconded the motion. The vote was as follows: Councilman Pruden, “Aye,” Councilwoman Winn, “Aye,” Councilman Wardle, “Aye,” Councilman McCall, “Aye,” and Chairman Pratt, “Aye.”

The meeting adjourned at 8:09 pm.

*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 2nd day of November, 2016

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Brad Pratt, Tooele City Council Chair