##  Salt Lake County Council

Committee of the Whole

~Minutes~

Tuesday, April 9, 2013

9:00 A. M.

Committee Members

Present for Site Visit: Randy Horiuchi

 Jim Bradley

 Arlyn Bradshaw

 Sam Granato

 Max Burdick

Site Visits of Planning & Zoning Agenda Items

 Application #28268 – **Michael Winder** to reclassify property located at 4415 South Garden Drive (970 E.) from R-1-10 to the R-4-8.5 zone.

 The Council inspected the property. The applicant and several concerned neighbors joined a conversation with the Council.

 **Mr. Spencer Sanders**, Planning & Development Services Division, stated the applicant requests the rezone to build seven more dwelling units on the land. Two buildings, each with three units, will be built on the open, grassy area. One more unit will be built between the existing structures on the west side of the property to house an on-site manager. Fenced off back yards would be opened up to accommodate a playground. There appears to be enough room to accommodate the required parking.

 **Mr. Michael Winder**, applicant, distributed a document outlining 20 reasons to rezone the Garden Acres apartment complex. He stated Nate Broadbank and Walt Plumb are the owners and would like to upgrade the property and provide housing for an on-site manager. The additional seven units would add 13 percent more traffic on Garden Drive.

 **Council Member Horiuchi** asked how these proposed changes fit into the master plan.

 **Mr. Sanders** stated the master plan encourages a broad range of residential types within the Millcreek Township. This location is considered medium density, and is consistent with the general plan. However, what is unique is this is a medium density residential area that spills out onto a predominantly single family street.

 **Council Member Horiuchi** asked if there was anything that could be done with the interior circulation of traffic.

 **Mr**. **Sanders** stated the proposed project would open the existing secondary entrance, which would help alleviate congestion and would be better for police and fire.

 **Ms. Barbara Allcott** spoke in opposition to the rezone. She stated there is also a rezone project across the street.

 **Mr. Sanders** stated the project across the street was approved by the Council a couple of months ago to add a flag lot to the property. The change also split the remaining property into two separate lots, allowing the property owner to refinance and make some much needed repairs. However, building the additional home will not start for some time.

 **Mr. Winder** stated he was confident that any concerns the residents bring up can be handled.

 **Mr. Arnold Wilcox** spoke in opposition to the rezone. He stated what is most troubling is the past history of this complex. One of the reasons the second exit from the development was fenced off is because cars would race around the complex in circles, creating dangerous conditions for children.

 **Ms. Terry Staple** spoke in opposition to the rezone.

 **Mr. Wilcox** stated the ideas for improvement of the apartments are welcome. The increased congestion is a concern.

 **Ms. Allcott** stated drivers in these apartments do not stop on their way out of the complex. She cannot get out of her driveway because of the volume of traffic on Garden Drive.

 **Council Member Horiuchi** suggested the County Transportation Engineer look into the traffic issues.

 **Mr. Armen Giorgina** spoke in opposition to the rezone. There have been problems with these units since they were built. He asked that an on-site manager be included in the plan.

 **Ms. Maria Barton** spoke in opposition to the rezone. She asked that something be done about the traffic on Garden Drive.

 **Mr. Jens Day** spoke in opposition to the rezone. He stated that he also has concerns about the traffic situation on Garden Drive.

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 Application #28270 – **Laurel Osborn** to reclassify property located at 2254 and 2257 E. Alva Circle (3510 South) and 3502 South 2300 East from R-1-10 and R-2-10 to R-1-21 zone.

 The Council inspected the property. The applicant and one adjacent property owner joined a conversation with the Council.

 **Ms. Kerri Nakamura**, Council Aide, asked if there was an issue between the County Engineering & Flood Control Division and the owner of this property.

 **Mr. Spencer Sanders**, Planning & Development Services Division, stated apparently some work was done on a stream on the property without the proper permits. This was not done intentionally. The homeowner hired a contractor to do bank stabilization, and it was a contractor the County has had issues with in the past. The homeowner is now working with the County to resolve the problem.

 **Council Member Horiu**chi stated the Council should look at resolving Ms. Osborn’s request with a more global ordinance that encourages urban farming and allows flexibility. This would take some time to create. Any decision today would be a definite yes or no.

 **Ms. Heather Mastakas**, Council Aide, stated the Council’s Legal Counsel is working on a preliminary ordinance, but there is still a lot of work that needs to be done on it.

 **Ms. Nakamura** asked if the Council Members present would like to send the ordinance through the community council process.

 **Council Member Horiuchi** stated yes.

 **Council Member Granato** stated he favored urban farming, but needed more understanding to determine to what degree it should be allowed.

 **Mr. Zach Shaw**, Deputy District Attorney, stated a proposed ordinance would have to be reviewed by all six township planning commissions. It could also go to the community councils if the Council chose to do that.

 **Council Member Granato** asked how long it would be before an applicant could reapply for a zone change after the Council had voted it down.

 **Mr. Sanders** stated it would be one year.

 **Ms. Julie Peck-Dabling**, Open Space and Urban Farming Manager, asked if the Council was concerned about the current ordinance, which allowed areas zoned R-1-21 to keep large quantities of animals.

 **Council Member Horiuchi** stated the main concern of the Council was the ability to house eight horses.

 **Council Member Bradley** stated the issue was not the quantification of the animals, but rather the uniqueness of each property in the unincorporated area. The County needs an ordinance that allows for the uniqueness, almost like each property would be a conditional use.

 **Ms. Laurel Osborn**, applicant, stated she read the County ordinance and did not understand where the idea of eight horses being allowed on her property came from.

 **Mr. Sanders** stated the ordinance states a homeowner can have four horses per half acre of land. Ms. Osborn has a half acre, but not one full acre. The number of horses could probably be prorated for the second area of land, giving her perhaps one or two more.

 **Council Member Bradley** stated the area for the animals is very close to neighboring duplexes and the small chain link fence is probably not a good barrier.

 **Ms. Osborn** stated she plans to install a six-foot picket fence around the land.

 **Ms. Peck-Dabling** asked if the applicant was going to put any horses on the land.

 **Ms. Osborn** stated one pony would be lovely, but if that was a deal breaker, there will be no pony.

 **Ms. Peck-Dabling** asked what Ms. Osborn planned to do with the manure.

 **Ms. Osborn** stated she planned to have one trash can devoted to manure that was emptied weekly.

 **Council Member Bradshaw** stated he was very sympathetic to this rezone request, but also concerned about the large amount of animals that are permitted if the change is approved. It would be appropriate to work out some arrangement where only a limited number of animals are permitted.

 **Ms. Osborn** stated in 40 years her family has never had more than two animals at one time.

 **Ms. Nakamura** stated the ordinance covering the R-1-21 zone is very outdated for an urban environment. Crafting a new, more flexible ordinance is the only way to get urban farming in built out areas.

 **Mr. Gary Pimentel** stated what he objected to was the all or nothing nature of the rezone. He asked if there was some way to put conditions on the rezone so Ms. Osborn could have what she wants, but a future landowner would not be able to increase the number of animals.

 **Ms. Nakamura** asked if he could live with some conditions on the property.

 **Mr. Pimentel** stated yes.

 **Ms. Nakamura** suggested the applicant withdraw her rezone request until a new ordinance is in place.

 **Mr. Sanders** stated a withdrawal would allow Ms. Osborn to reapply without paying additional fees.

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*[The Council then adjourned until* *2:03:30 PM* *for its regular Committee of the Whole meeting.]*

Committee Members

Present: Randy Horiuchi

 Richard Snelgrove

 Jim Bradley

 Arlyn Bradshaw

 Michael Jensen

 David Wilde

 Sam Granato

 Max Burdick

 Steven DeBry, Chair

Salt Lake County 2013 Budget in Brief (2:03:30 PM)

 **Mr. Lance Brown**, Director, Planning & Budget Division, Mayor’s Office, presented a 2013 budget in brief booklet. The booklet provides a concise overview of the County’s 2013 budget, report on the financial state of the County, key financial metrics and statistical indicators. He reviewed the financial statement, which included information on key bench marks, Triple A bond rating, financial measurement assessment rating, fund balance, and ongoing fiscal challenges. The County receives $.17 for each dollar of property tax revenue collected by the Treasurer. Government wide uses of funds were reviewed to include; elected offices, legally segregated functions, General Fund, Municipal Services Funds, Enterprise Funds, Library Funds, Internal Service Funds, full time equivalent employees, capital projects, county debt, and debt services. Statistical indicators were reviewed and include: operating expenditure per capita, capital and debt service expenditures per capita, and full time employees per 1000 county residents. The County is projected to collect $50 million in 2013.

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Salt Lake County Cultural Facilities Master Plan and Support Program (2:17:41 PM)

*During the April 2, 2013, Committee of the Whole meeting, the Council reviewed a draft of 2013 criteria recommendations regarding regional cultural facilities and school partnerships within the Cultural Facilities Master Plan. Council Members recommended some changes to the document, and moved to bring the item back to the April 9, 2013, meeting for approval.*

 **Ms. Erin Litvack**, Director, Community Services Department, stated changes were made from the document presented last week in order to accommodate Council Members concerns.

 **Council Member Bradshaw, seconded by Council Member Snelgrove, moved to approve the amendments with the following addition to Section Four of the Criteria & Conditions for Schools as a Community Cultural Arts Facility:**

***Provide defined procedures of policies for booking, advertising, and presentation of cultural activities that distinguishes the school’s policy from the community art facility policy in an effort to protect and reserve the right of the public free speech as guaranteed under the First Amendment to the United States Constitution.***

 **Council Member Wilde** asked if that change will work in practice. He did not want to impose non-community standards for entertainment on schools.

 **Council Member Bradshaw** stated the standards would be set by the local arts council that puts on the show. There would still be local input and local control over what the content would be. This language will help distinguish any cultural performance from a school performance.

 **Judge Lee Dever**, Chair, Cultural Facilities Support Program Advisory Board, stated the performance would be not presented by a local high school, but in a high school auditorium being used by the area arts council. It is critical for people to know it is not the school putting on the production. This will allow the school district to explain to a complaining citizen that it was not the school district approving the show.

 **Council Member DeBry** stated most people who attend a show at a high school would automatically assume it is a presentation sponsored by the school, regardless of the reality of the situation.

 **Council Member Snelgrove** stated he supported the motion. It created additional clarification or a firewall between the school district and the arts council. The motion helps establish a clear definition of what is policy on one side versus what is policy of the arts group on the other.

 **Council Member Bradley** stated the distinction between the arts groups and the high schools must be made clear. If this is the worst thing the Council has to deal with, it is still a good deal given the access to a tremendous amount of stages.

 **Council Member Wilde** stated he was very uncomfortable putting certain performances inside the schools, which may otherwise be permitted at the Capitol Theatre.

 **Council Member Jensen** stated he was going to vote for the motion because it will help clarify which group is putting on the performance. The audience perception may be one thing, but legally there is a difference. Not everyone sees things the same way and it is the Council’s job to let people have the right to do things that others may find offensive.

 **Council Member Bradshaw, seconded by Council Member Snelgrove, moved to approve the amendments with the following addition to Section Four of the Criteria & Conditions for Schools as a Community Cultural Arts Facility:**

***Provide defined procedures of policies for booking, advertising, and presentation of cultural activities that distinguishes the school’s policy from the community art facility policy in an effort to protect and reserve the right of the public free speech as guaranteed under the First Amendment to the United States Constitution.***

**Council Member Wilde** asked that the motion be bifurcated.

 **Council Member Bradshaw, seconded by Council Member Jensen, moved to add the following language to Section Four of the Criteria & Conditions for Schools as a Community Cultural Arts Facility:**

***Provide defined procedures of policies for booking, advertising, and presentation of cultural activities that distinguishes the school’s policy from the community art facility policy in an effort to protect and reserve the right of the public free speech as guaranteed under the First Amendment to the United States Constitution.***

**The motion passed 8 to 1 with Council Member Wilde voting in opposition.**

 **Council Member Bradshaw, seconded by Council Member Jensen, moved to approve the amended document as presented by the Community Services Department. The motion passed unanimously.**

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GRAMA Appeal of Kyle Prall (2:32:45 PM**)**

 **Mr. Jason Rose**, Legal Counsel, Council Office, stated Mr. Kyle Prall, appellant, made a request for mug shots and the Sheriff’s Office denied that request citing copyright law. Mr. Prall also asked for booking information, which the Sheriff’s Office did not have.

There is one procedural issue: Mr. Prall’s attorney was just hired yesterday and he submitted written information last night. The rules technically require submissions to be made ten days before the appeal hearing. However, Mr. Prall’s attorney did make some legal arguments, which will likely be the same arguments he will be making today. Since the information is not evidentiary, he did not see the harm in admitting the documents, but the District Attorney’s Office may have a response to it.

 **Mr. David Johnson,** Deputy District Attorney, asked the Council to strike the written response that was filed last night by Mr. Prall’s attorney. Mr. Prall was made aware when the appeal was noticed that he had ten business days prior to the hearing to respond with any written arguments. He hired his attorney last night, and his attorney did file. The filing of the written information was untimely and should be stricken and not be considered.

 **Mr. David C. Reymann**, Attorney, Parr Brown Gee & Loveless, stated he represents Kyle Prall and Information Freedom, LLC. He did get hired last night and wanted to provide some minimal written notice to David Johnson, Deputy District Attorney, and to the Council of what the arguments he would be presenting today are. He thought that was better than showing up and making the arguments here. He understood there is a rule requiring ten days prior notice for statements of position. His letter outlines legal arguments; it is not evidentiary issues that the other side would be unaware of. The most important thing here is to get this right. This is a very significant issue that has the potential to do substantial damage to the GRAMA law. The Council should be fully informed of what the stakes are.

 **Council Member DeBry** asked for the Council’s position on the written document.

 **Council Member Bradley** stated he was not opposed to taking a look at the document.

 **Council Member Bradley, seconded by Council Member Horiuchi, moved to include Mr. Reymann’s document in today’s hearing.**

 **Council Member Bradshaw** asked what the difference was between Mr. Reymann’s document and what he plans to argue at today’s hearing.

 **Mr. Johnson** stated advanced submission of arguments would provide notice for the County to respond to the issues.

 **Council Member Bradshaw** stated he would be opposed to the motion because the Council would get the information anyway. It is important to uphold the procedures for GRAMA appellants.

 **Council Member Bradley** withdrew his motion.

 **Council Member Bradshaw, seconded by Council Member Burdick, moved to not allow the written comment because it was not received timely. As part of that, the Council recognizes that it will be getting the information in the hearing today. The motion passed unanimously.**

 **Mr. Reymann** stated he represents Information Freedom, LLC which is the entity that submitted the GRAMA request along with Mr. Prall, who is the principal of that entity. This appeal concerns whether a governmental agency can assert proprietary right to public records, and by using those propriety rights deny the public access to records that would otherwise be public. The records at issue in this case are booking photographs, commonly called mug shots, which are taken when someone is arrested and booked into jail. The issue of whether those records are public under GRAMA has been litigated before in Utah. Both the State Records Committee and the Utah District Court have concluded they are public records under GRAMA for obvious reasons. The mug shots show the public who has been subjected to the criminal justice system, and who is convicted of a crime and who is not. The identities of the people who come into contact with the system are important public information. Both the Records Committee and the Utah Courts in a judicial GRAMA appeal, much like what will happen in this case if the records are denied, have looked at this issue and concluded they are public records under GRAMA. The reason is because GRAMA is based on a presumption that records are public unless there is an express provision in the statute that says otherwise. There is no provision in GRAMA that says mug shots can be classified as private, protected, or controlled.

The Sheriff’s argument is that because it created the records, it has a copyright in the records. Because it has a copyright in the records, it can deny public access to those records even though they would be public records under GRAMA. This argument can be made about almost any public record that is created by an agency. It is not just limited to booking photographs. Anytime an agency creates a record, it would pass the minimum threshold of originality for copyright protection and an agency could claim copyright on an internal memorandum. That is what is at stake in this appeal. It is not just limited to booking photographs; it is limited to the reach of a government agency’s right to assert proprietary rights to public records. If that were the law, virtually all public records would be off limits and GRAMA would be gutted.

One provision the Sheriff’s Office has cited to justify this sweeping reading of GRAMA is a subsection under the statute that deals with protected records. A record can be classified as protected, *“only when access must be limited for the purposes of securing or maintaining the governmental entity’s proprietary protection of intellectual property rights.”* What this was designed for was something that was confidential, like a computer code. For example, if a government entity creates a propriety software program, arguably it has a copyright in that computer code, but if it releases the computer code to the public, someone can use the computer code to write their own program. It infringes on the agency’s common law copyright. It was never designed to apply to every record that an agency creates. If it was, it would gut the entire statute. It certainly was never meant to apply to non-confidential records. It is designed for a situation where the very act of disclosing the record hurts the intellectual property rights of the agency by eliminating its secrecy, like a trade secret. It was not designed for a photograph of someone who was arrested. That does not interfere with their intellectual property rights.

The Council does not need to decide the issue of whether the Sheriff’s Office has a copyright in the booking photographs it creates. Even if it does, the one exception they have cited in GRAMA clearly does not apply to this situation. There is no authority that says a government agency owns a copyright in the booking photographs it is often required to take of people who are booked into the County jail. The few times this has come up involves situations where an agency hires a contractor to create very complicated maps or hires a software programmer to create a software program, and then under certain circumstances, gives a copyright in those very difficult records to create. That is not like taking a picture. This situation is also found in states where there is a law entitling a governmental agency to assert propriety rights of copyright.

There is no authority that says the Sheriff’s Office has copyright on booking photographs. The reason is obvious, it would gut the public records law. The Legislature has advanced a very clear purpose for GRAMA that every record is public unless it is expressly classified otherwise. There is no express statute dealing with mug shots as protected records and there is no expressed statute allowing the assertion of copyrights.

The Sheriff’s Office obviously disagrees with the business his client is in. One of the bedrock principals of GRAMA and one that will probably never change because it is likely to play both ways, is that GRAMA cannot discriminate against people who are requesting public records based on who they are and what they want to use them for. If it is public, it is public, and it does not matter why it is being asked for and its intended purpose. If the Legislature or the Sheriff’s Office has a problem with the way mug shots are being used in commerce, it can seek to regulate it. However, what they are not entitled to do is use their disagreement with the way mug shots are being used as justification to choke off access to public records in the first instance. That is what this appeal is about. It is not limited to the way Mr. Prall uses mug shots. It is not even limited to mug shots. It is a question of whether a government agency can assert that it owns records that it is required to create, and because of that ownership, that it is entitled to deny the public access to those records entirely. That is not what GRAMA says. He urged the Council to reverse the determination of the Sheriff’s Office.

 **Mr. Johnson** stated Mr. Reymann argues the classification of mug shots was previously public and available on the Sheriff’s website, so the Sheriff’s Office is prohibited from changing that. GRAMA allows a governmental agency to reclassify at any time.

Mr. Reymann also argues the Federal government is prohibited from holding copyrights in certain materials, or in materials period. That is absolutely true for the Federal government, but not for the County. Mr. Reymann has made some very broad assertions and conclusions. His arguments are essentially concluding without supporting. He is stating these are public records, non-confidential records. The Sheriff’s argument is these records are classified as protected because of copyright. Mr. Reymann states that it is well established in Utah that mug shots are classified as public and, as support for this, he cites to the Records Committee decision, which is inapplicable to Salt Lake County. Although it may be viewed as persuasive, it is not binding. Additionally, he cited a case that occurred in Juab County. This case involved a news organization’s request for a single mug shot to go along with a story the news organization was running. The person was convicted by the time the case went to District Court. It is distinguishable here because this appeal involves 1,300 mug shots, the majority of whom are pretrial detainees. Further, although Seventh District Court decisions may be persuasive, they are not binding. Therefore, this is not a well-established principal in Utah, and not a well-established principal nationally. The Tenth Circuit Court recently decided that mug shots, under the Freedom of Information Act (FOIA), not under GRAMA, were classified as private. It is not a foregone conclusion that mug shots should be freely available at all times and in all circumstances.

The classification section the Sheriff’s Office used, subsection 35, reads, *“Materials to which access must be limited for purposes of securing or maintaining the governmental entity’s propriety protection of intellectual property rights including copyrights if classified by the governmental agency properly are protected.”*

Nothing in that section talks about being limited to computer code or limiting to certain types of records beyond records that are subject to copyrights or trademark. Essentially, Mr. Prall is asking the County to write in language that does not exist in the statute.

Mr. Reymann argues that a governmental agency cannot hold a copyright because the mere act of creating a record gives the governmental entity the authority to hold a copyright in everything, which would nullify GRAMA. This is an exaggeration of the practical impacts and the practical interactions between GRAMA and copyright law. GRAMA is not blind to copyright law. GRAMA understands the copyright law is going to come into play for governmental agencies, and specifically addresses it. Following Mr. Reymann’s argument to the logical conclusion, the conclusion would be the only information such as computer coding would be copyrightable by a governmental entity. If the Parks & Recreation Division created a logo for a specific event and wanted it copyrighted, under this analysis it would not be classified as protected under GRAMA.

The argument really does fly directly in the face of GRAMA itself, which recognizes the County’s rights in three separate locations to hold copyright. First, in the definition section where it defines as *“not records for the purpose of GRAMA,”* it says *“material to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by a governmental entity.”*  This specially recognizes that a governmental entity can hold a copyright or a patent.

The second place is in 201 subsection 10.B, which specifically states *“nothing in GRAMA shall be construed to limit or impair the rights or protections granted to the governmental entity under Federal copyright or patent law as a result of its ownership of the intellectual property.”* No one is arguing that the County does not own these records. The County created them and it does own them.

The third place that copyright is mentioned is in the classification section itself.

Mr. Reymann’s argument seems to presume the conclusion that these records are public records. However, GRAMA does specifically allow governmental entities to control by policy records that it holds under copyright. In fact, Countywide Policy #2060 specifically states *“citizens may inspect such records and have access to such records in accordance with fair use principals of copyright law.”*  This goes directly to Mr. Reymann’s assertion that governmental entities cannot look at the intent of the user. When it comes to copyrighted materials, Countywide policy and GRAMA does give the County the right to look at what the use of the record may be. It gives the County the right to look and examine whether or not the use is consistent with the fair use doctrine. That provision is also in State statute. It allows the County to create such a policy to control the dissemination and distribution of copyright records.

Mr. Prall argues that appellate cases from Florida and California have stated that in order for a local governmental entity to hold copyright in a record, there has to be a State statute that specifically authorizes that. That restriction if found nowhere in the copyright act. The only restriction found in the copyright act is the restriction that the Federal government cannot hold it.

The proper question to ask is not whether a governmental entity is authorized by State statute to hold a copyright, rather as the Second Circuit Court of Appeals has stated, the proper question is whether the State Legislature in enacting an open records law, has abrogated a governmental entities’ rights to copyright. GRAMA has not abrogated Salt Lake County’s right to its copyrighted records.

 **Council Member Wilde** asked if it was conceivable the County or another county could overcome GRAMA entirely by saying all of its records are copyrighted.

 **Mr. Johnson** stated copyright only applies to a certain specific set of records. While the District Attorney’s Office has not contemplated what other records might possibly fall under that rubric, photographs certainly do. Making the claim that memoranda and rosters of team schedules and things like that fall under the copyright protection exaggerates the protection the Sheriff’s Office is seeking.

Mr. Prall also requested jail logs and included a list of information that was to be included in those logs – name, birthday, date of arrest, things of that nature. The Jail does not have a log that complies with every request.

 **Council Member Jensen** stated the jail would have to create that record.

 **Mr. Johnson** stated there is no obligation to create a record. The jail maintains a daily log, which is available online for free for anybody to look at. Mr. Prall was directed to the log and the printed response to Mr. Prall’s GRAMA request included some printed pages from the log. There is no issue to appeal on that matter.

 **Mr. Reymann** stated the issue of the log has not been appealed.

 **Mr. Rose** stated he agreed with the petitioner that the Sheriff’s argument in this case is a novel argument; that does not mean it is a bad argument. It is a good and interesting argument. It would have been helpful to have the benefit of a more thorough briefing on this. The proposition the Sheriff’s Office brings forward goes to Council Member Wilde’s question – just because something is copyrightable, whether that gives the County the right to not disclose it under GRAMA. That is the issue the Council needs to grapple with.

 **Council Member Jensen** asked what was required to get something copyrighted.

 **Mr. Reymann** stated the easiest threshold to pass is the originality threshold for copyright. Virtually anything created is copyrightable so long as it is original. That has been applied in the past to things as mundane as the phone book. It would apply to a roster that is created by an agency. It would certainly apply to an interoffice memorandum. For the type of records the public cares most about, there is no question they would be copyrightable. Whether the government has the right to say it owns the copyright and preclude others from using it, is a totally different question. However, the idea of how far copyright would extend into government records, there is no question about that; it would extend to almost everything.

 **Mr. Johnson** stated the use of the phone book as an example is a good one. The Supreme Court found that was not copyrightable. So the mere copying of facts is not copyrightable. Not every record held by the governmental entity would qualify as copyrightable because there is a cutoff point.

 **Council Member Jensen** stated the State Legislature has been dealing with certain aspects of governmental records being used by private companies for their benefit. He was struggling with why mug shots are so valuable that the County cannot let them out. He has checked the Jail website on occasion and has pulled up mug shots in the past.

 **Council Member DeBry** asked if the State Legislature passed a law about mug shots. He stated individuals requesting mug shots would put them online and extort money from that person, or charge a huge amount of money to take the mug shot offline.

 **Mr. Johnson** stated the Governor has signed that law, but it is not retroactive; it would not apply to this particular request.

 **Mr. Sim Gill**, District Attorney, stated there has been some concern with law enforcement agencies around the country where such photographs have been taken, put on a website, and then gone onto a public domain. Then the person whose mug shot it is, may then have to pay some sort of a processing fee to actually have the photo removed from the website. As counsel for Mr. Prall, he has indicated, regardless of what the end use may be, that is probably not the appropriate basis for the inquiry right now. The question is whether the statute gives the County authority to reclassify certain documents if the Sheriff thinks there is a good basis, but still make the photos available through other normal channels to examine. The Council needs to decide if the Sheriff acted appropriately and within the conscript of the authority given by GRAMA to reclassify these documents.

 **Council Member Jensen** stated the Sheriff has made these mug shots available, but not in the way Mr. Prall wants them.

 **Mr. Johnson** stated the change in classification is based on Countywide policy, which has been in effect for some time. It specifically addresses records that are copyrightable. If the Council gets past the question of whether or not the mug shots are copyrightable and the County holds the copyright, then County policy allows a governmental agency to control the dissemination of that record.

 **Council Member Wilde** asked if Mr. Gill agreed with Mr. Johnson’s conclusions.

 **Mr. Gill** stated yes; he supported the analysis.

 **Council Member Wilde, seconded by Council Member Granato, moved to uphold the denial based on the advice of counsel. The motion passed unanimously.**

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Ordinances (3:06:25 PM)

 **Ms. Nichole Dunn,** Deputy Mayor, reviewed the following ordinances, which have been placed on the 4:00 p.m. Council meeting for introduction. (Final adoption of the ordinances will be considered at the Tuesday, April 16, 2013, Council meeting.)

*Salt Lake Valley Health Department Name Change*

 Ordinance regarding the name change in the definitions of the Board of Health and Health Department

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 Ordinance regarding the creation, authority, membership, powers and duties of the Salt Lake County Board of Health, and the appointment, powers, and duties of the director of Health and Public Health Rules and Regulations.

 **Ms. Dunn** stated the County is working to better define the Health Department’s mission to serve all municipalities and residents by making sure it is clear the Health Department falls under the prevue and authority of Salt Lake County.

 **Ms. Lori Bays**, Director, Human Services Department, stated the request today is for Council approval to change the name to the Salt Lake County Health Department and the ordinance changes that go along with that.

 **Council Member Burdick** stated he thought this was great. There are a lot of things the County does where the name of the County is moved away. It then becomes confusing as to who is providing the service. This will allow the County to get credit where credit is due, and it also helps citizens see where their tax dollars are being used.

 **Council Member Burdick, seconded by Council Member Horiuchi, moved to forward the ordinances to the 4:00 p.m. Council meeting for formal introduction**

 **Council Member Bradshaw** stated this change was presented to the Board of Health last week and the board voted unanimously to support the change.

 **Council Member Wilde** stated he thought the name included “Valley” in order to show the Health Department was for the entire valley and not just the unincorporated areas.

 **Ms. Dunn** stated that was correct. The original intent was to make it clear the Health Department was not just for Salt Lake City. However, there are constituents and employees who are still not clear that the Health Department is part of Salt Lake County government.

 **Mr. Gary Edwards**, Director, Salt Lake Valley Health Department, stated the Town of Alta is served by the Health Department, but it clearly is not in the valley. Even Congressman Chris Stewart expressed confusion about what the Salt Lake Valley Health Department covered. He is unaware of any other County health department that does not have the County’s name on it.

 **Council Member DeBry** stated anything the County does should have the Salt Lake County name on it. The County provides services to everyone – incorporated and unincorporated areas alike. Some facilities, like libraries and recreation centers, feature the city name in big letters, but a microscope is needed to detect the Salt Lake County name.

 **Ms. Dunn** stated she also wanted direction on how to proceed with funding the signage replacement on the Health Department buildings. It is estimated to cost $45,000 to replace all the signs at once, or they could be phased in over several budget cycles.

 **Council Member Burdick** asked if the Mayor’s Office could replace the signs within the current budget.

 **Ms. Dunn** stated she thought so.

 **Council Member DeBry** stated the Mayor’s Office should bring back the budget adjustment next week.

 **Council Member Burdick, seconded by Council Member Horiuchi, moved to forward the ordinances to the 4:00 p.m. Council meeting for formal introduction. The motion passed unanimously.**

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Mid-Term Vacancy of County Assessor (3:21:06 PM)

 **Mr. Lee Gardner**, County Assessor, stated he and his wife have been called to serve a mission for the Church of Jesus Christ of Latter-day Saints in Barcelona, Spain. There is a significant lack of understanding of the statutory process for filling a midterm vacancy.

 **Mr. Sim Gill**, District Attorney, stated the statute is fairly straightforward. Ultimately, the Assessor’s replacement is a decision to be made by the Republican party. There may be multiple entities interested in the position, but it is the party that chooses one name and forwards it to the Council.

 **Council Member Jensen** asked if it was the party delegates who chose the replacement.

 **Mr. Gill** stated it would be however the party chooses to do it. Once the name comes to the Council, the Council can choose to appoint or reject the name. If the name is rejected, it goes to the Governor who can then appoint the individual.

 **Council Member DeBry** stated none of this can take place until the Assessor has officially resigned.

 **Mr. Gill** stated that was correct.

 **Council Member Bradley** stated he thought other qualified individuals could apply for the position directly to the County.

 **Council Member Jensen** stated everyone has to go through the Republican party system.

 **Mr. Gardner** stated the position is not vacant until the elected official is officially gone.

 **Mr. Gill** stated the Council will send a notice to the party to trigger the process. When the Council receives the letter of resignation, it also sends a notice to the liaison of the Republican party.

 **Council Member DeBry** asked if a Council vote was needed to accept the letter of resignation.

 **Mr. Gill** stated he did not know if there was a vote process required.

 **Mr. Jason Rose**, Legal Counsel, Council Office, stated there are a couple of provisions dealing with midterm vacancies that need to be studied further. He recommended that the Council not send a letter to the Republican party until there is an actual vacancy.

 **Council Member DeBry** asked what constitutes the actual vacancy.

 **Mr. Rose** stated it would be Mr. Gardner stating that as of a specific date, he is resigning his position.

 **Mr. Gardner** stated he reports to the Missionary Training Center on August 26, 2013, and plans to work up until that date. He will submit his resignation toward the end of August.

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Letter Thanking Governor Herbert for Rejecting Snake Valley Water Agreement (3:36:14 PM)

 The Council reviewed a proposed letter to Governor Gary R. Herbert expressing the Council’s appreciation for rejecting the Snake Valley aquifer agreement, and encouraging the Governor when renegotiating terms of a new agreement to remain mindful of how this will affect counties in Utah.

 **Council Member Jensen, seconded by Council Member Granato, moved to approve the letter to Governor Herbert, and to forward the matter to the 4:00 PM Council meeting for formal consideration. The motion passed unanimously.**

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Review of Proposed Hires (3:37:17 PM)

 The Council reviewed the following proposed hires, which have been placed on the Council agenda for formal consideration:

*Public Works Division*

 Requests to fill a Traffic Signal Worker 15/17 position, and a Construction Project Inspector 22/24 position.

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*Recorder’s Office*

 Requests to fill four Land Recorder Specialists 17/19/21 positions

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*Clerk’s Office*

 Requests to fill a Management Analyst 28/30 position.

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*Library Services Division*

 Requests to fill the following positions:

FTE Position Location

1.00 Associate Director 36 Library Administration

 .50 Library Assistant 19 Jail Library Services

1.00 Custodial Maintenance Worker 13 West Valley Library

 .50 Custodial Maintenance Worker 13 Viridian Events Center

 .50 Library Shelver 11 Holladay Library

 **Council Member Jensen, seconded by Council Member Horiuchi, moved to approve the requests and forward them to the 4:00 p.m. Council meeting for formal consideration. The motion passed unanimously.**

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***CONSENT AGENDA***(3:38:23 PM)

Resolution and Interlocal Agreement

 The Council reviewed the following resolution and interlocal agreement. The resolution authorizing execution of the agreement has been placed on the Council agenda for final approval and execution:

 *Redevelopment Agency of Draper City* regarding a change to the original interlocal agreement for the Draper FrontRunner Community Development Project Area.

 **Council Member Bradshaw, seconded by Council Member Jensen, moved to approve the resolution forward it to the 4:00 p.m. Council meeting for formal consideration. The motion passed unanimously.**

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Treasurer’s Report Regarding 2012 Annual Final Settlement of Taxes Collected

 The Council reviewed the Treasurer’s report of the 2012 Annual Final Settlement of Taxes Collected.

 **Council Member Bradshaw, seconded by Council Member Jensen, moved to approve the report and forward it to the 4:00 p.m. Council meeting for formal consideration. The motion passed unanimously.**

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Business License Appeals

 The Council reviewed the following recommendations from the Administrative Hearing Officer for business license appeals. These recommendations will be formally considered at the 4:00 p.m. Council meeting:

*Recommended to rescind the penalty ($32.50) charged for late payment:*

Precision Therapy Body Work & Massage

*Recommended denial of the appeal:*

B. Petersen Investments

Associated Window Cleaning

David L. McCann, MD

Laboratory Corp of America

Scott R. Stein, DDS

Mask Costumes

 **Council Member Bradshaw, seconded by Council Member Jensen, moved to approve the recommendations and forward them to the 4:00 p.m. Council meeting for formal consideration. The motion passed unanimously.**

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Gift to Salt Lake County

 The Council reviewed the following gift to Salt Lake County. The Declaration of Gift form has been placed on the Council agenda for final approval and execution:

*Clark Planetarium*

 *Mountain West Small Business Finance* has offered to donate $2,500 to the Clark Planetarium to support science education programs.

 **Council Member Bradshaw, seconded by Council Member Jensen, moved to accept the gift and forward the Declaration of Gift form to the 4:00 p.m. Council meeting for formal consideration. The motion passed unanimously.**

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Other Business

*Meals on Wheels*  (3:15:58 PM)

 **Council Member Bradley** stated the April issue of the Cottonwood Heights News Journal contains an article with photographs touting the City’s involvement in the Meals on Wheels program. The County is fully responsible for its Meals on Wheels program, not the individual cities. The article even changes the County Meals on Wheels logo to include the name “Cottonwood Heights.” This is a problem the County is facing with a lack of recognition for its own programs, and it should not go unnoticed.

 **Council Member Wilde** cautioned against pushing this issue too far. It may create a divide between the cities and the County.

 **Council Member DeBry** stated Cottonwood Heights Mayor Kelvyn Cullimore is a friend and good partner with Salt Lake County. He was concerned about this issue, but believed it should be addressed the right way. He will call Mayor Cullimore about the matter; he is a very reasonable man.

 **Ms. Nichole Dunn**, Deputy Mayor, stated this was a joint event where the County invited Mayor Cullimore and others to come on a Meals on Wheels ride along. It is a national event to recognize providers of Meals on Wheels.

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*Citizen Public Input* (3:38:39 PM)

 **Council Member Snelgrove** stated he would like to propose the idea of opening the Committee of the Whole (COW) meeting to public comment so citizens could express their thoughts to the Council before a decision is made. This would be in addition to, not a replacement for, Citizen Public Input at the 4:00 PM Council meeting.

 **Council Member Jensen** stated comments by citizens was the reason for the “gentleman’s agreement,” which allows any Council Member to table an agenda item if he wants to do further study. He is not opposed to the idea of citizen comments during the COW meetings, but a mechanism is already in place to accomplish that.

 **Council Member Burdick** stated the other option was to hold the same debates during the COW, but take the final votes in the Council meetings after Citizen Public Input.

 **Council Member Bradley** stated this is a troublesome issue. It makes the Council appear to be rubber stamping everything.

 **Council Member Horiuchi** stated the COW has traditionally been treated as the decision making meeting. He would hate to move the votes to another venue. He was not opposed to moving the COW to Tuesday mornings and maybe moving the 4:00 p.m. meeting up to 2:00 p.m.

 **Council Member DeBry** stated this would be put on the April 16, 2013, Committee of the Whole meeting for discussion.

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*Acceptance of Minutes*

 **Council Member Bradshaw, seconded by Council Member Jensen, moved to approve the minutes of the Salt Lake County Committee of the Whole meeting held on Tuesday, March 26, 2013. The motion passed unanimously.**

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The meeting was adjourned at 3:44:08 PM**.**

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Chair, Committee of the Whole

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Deputy Clerk

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