



MURRAY CITY MUNICIPAL COUNCIL COMMITTEE OF THE WHOLE

The Murray City Municipal Council met as a Committee of the Whole on Tuesday, March 18, 2014, in the Murray City Center, Conference Room #107, 5025 South State Street, Murray Utah.

Members in Attendance:

Brett Hales	Council Chair
D. Blair Camp	Council Member
Jim Brass	Council Member
Diane Turner	Council Member
Dave Nicponski	Excused

Others in Attendance:

Ted Eyre	Mayor	Frank Nakamura	City Attorney
Janet M. Lopez	Council Administrator	Blaine Haacke	General Manager Power
Craig Burnett	Interim Police Chief	Jennifer Brass	Resident
Jennifer Kennedy	Recorder	Kellie Challburg	Council Office
Jan Wells	Chief Administrative Officer	Tim Tingey	ADS Director
Janet Towers	Exec. Asst. to the Mayor	Sally Hoffelmeyer-Katz	Resident
George Katz	Resident		

Budget & Finance Committee

Approval of Minutes

Mr. Brass asked for approval on the minutes from the Budget & Finance Committee mid-year review held on January 30, 2014. Ms. Turner moved approval, Mr. Hales seconded the motion. All were in favor. Meeting was adjourned.

Committee of the Whole

Chairman Hales called the Committee of the Whole meeting to order and welcomed those in attendance. He excused Mr. Nicponski who was absent.

Chairman Hales announced that the scheduled CIW regarding the number of dogs allowed was postponed, due to the fact that Mr. Nicponski was the sponsor and he is ill and not present.

Business Item #1

Discussion of the proposal to replace the Board of Adjustment with Hearing Officers and changes to the Standards for Review- Tim Tingey

Mr. Tingey proposed a significant change in the zoning ordinance. He believes there are some legitimate reasons for change and would like to open it up for discussion.

The proposal is to modify the ordinance from a Board of Adjustment format to Hearing Officers. Currently, there are five Board of Adjustment members, and this would mean there would be one single hearing examiner present at each of the meetings to be the appeal authority. There would be five hearing examiners appointed but one selected for each meeting, depending on schedules.

Mr. Tingey said that State law changed several years ago to allow for this change. This different format streamlines meeting processes.

Mr. Tingey clarified that this change was not related to the current Board of Adjustment members at all. The current members have put in a lot of time and dedication to land use matters and should be commended for their efforts. The issues that they have dealt with are difficult ones. Mr. Tingey and Mayor Eyre met with the Board of Adjustment members and discussed this proposal. This change has been initiated by Mr. Tingey, Mr. Nakamura and Mayor Eyre.

There are three main reasons for this proposal:

- State law has authorized this format. It streamlines meeting processes, and allows the opportunity to hold meetings in a timely manner. Other communities have changed to this streamlined process.
- Complex legal issues are involved. Some of the cases have challenging facts and a potential for lawsuits. If there are ways that the City can insulate itself from lawsuits with a hearing officer with legal expertise, it makes a lot of sense, stated Mr. Tingey. Mr. Nakamura has had concerns that the appeal after the Board of Adjustments goes to District Court. A hearing officer with legal expertise would be valuable at the appeal.
- It is a quasi-judicial forum. The appeals of decisions made by the Planning Commission or Administrative staff include public meetings that are very emotionally charged. This body of five needs to make immediate decisions in that emotionally charged atmosphere. A hearing officer doesn't need to make a decision right away and can take public testimony and deliberate after the meeting and have time to respond.

Mr. Nakamura added that this topic has been discussed since the Legislature allowed this change. He noted that the Board of Adjustment is quasi-judicial with an appeal process. The process is becoming a little more legal and causes a decision that could

ultimately be reviewed by the District Court. The created record is very important, added Mr. Nakamura. The statute that is being decided by the land use authorities is very strict and needs to be followed. Once an appeal is made, there are a lot of property interests involved, and the process needs to be expedited, not only for the City but also for the applicant. Delays can be costly for all involved.

Mr. Tingey stated that the other part of this ordinance is to provide clarification and define standards for review, especially for appeals of administrative decisions. The Planning Commission makes a decision, and if that decision is appealed it goes to the Board of Adjustment. Currently, the ordinance limits what is reviewed. The public record that was submitted in the public process is what is currently reviewed. That works well with the Planning Commission but decisions that are administrative appeals are de novo, meaning that additional information can be provided and is not limited to the public record. This leads to very long meetings with additional testimony. This provides that same standard that limits the appeal review to the record of administrative decisions. That is an important change that he believes is appropriate.

Mr. Nakamura said this was another option that was provided by the changes in the law. Normally, in a legal process, the appellate court reviews the matter on the record. This encourages applicants to raise the issues at the lowest level that gives everyone a fair opportunity to make a good decision. He believes this will streamline the process and is in accordance with most appellate review. Currently, if there is a land use hearing, a person gets a brand new hearing and can bring in brand new evidence. Information brought in at a later time could have altered the original decision. The proposed standard of review would be on the record.

Mr. Tingey said this issue would be brought to the Planning Commission on Thursday, and they would make a recommendation.

Ms. Turner asked how the members of the Board of Adjustments are currently appointed. Mr. Tingey said the appointment is from the Mayor with confirmation from the City Council. The process would be the same with the Hearing Officers. There would be five appointed officers for scheduling reasons. Ms. Turner asked if the appointments would be residents from different areas of the City. Mr. Tingey said the current proposal states that the appointed persons would be those with land use and legal expertise, and not be persons representing the different districts. Mr. Brass asked if the appointees would be Murray residents. Mr. Tingey replied not necessarily. He said it would be up to the Mayor, and they would like to get some representatives from Murray, but believes they would have to go outside the City to find all the expertise. Mr. Nakamura stated that if the goal is to have persons with legal, land use expertise, it would be best to have a large pool of candidates, so there is no resident requirement in the ordinance.

Mr. Hales asked if this change makes the process more personable. Mr. Tingey replied that there would not be as much deliberation, and a Hearing Officer can ask questions, so he doesn't know if it would be more personable. Mr. Tingey said he has previously worked with Hearing Officers and has also been in very emotionally charged meetings, and the emotional element is taken out when the decision can be made at a later time.

Mr. Brass said his concern was changing the decision and responsibility from five persons down to one person that would take all the heat. Mr. Brass recalled an experience asking for a variance similar to the neighboring building, and sees the differing decisions made

from similar cases. Mr. Nakamura said the decisions should have been previously made by the City Council, and this is just appealing the previous decision, and asking for a variance from that decision. He believes the information should be limited. Mr. Nakamura wanted to make sure that the Hearing Officer understands that the City Council and Mayor have gone through the legislative process and enacted the ordinances with these standards. He doesn't want the Board to become a legislative body, so the review would be limited, because the decision is deferring to the City's ordinances. Mr. Nakamura said there are concerns if a Board decides it is the legislative body. He believes the Hearing Officers need to understand the limitations, and the law is clear on the basis of giving variances. He stated that there needs to be a consistent standard. Mr. Brass added that there have been recent multi-million dollar judgments against cities that would bankrupt most cities.

Mr. Brass said he liked representatives from each area of the City making the property decisions. This new process eliminates the local representation. Mr. Brass also understands that land use is becoming increasingly complicated, and believes people with expertise would be valuable. If the Hearing Officers are found outside the City, he would hope that it was because of their legitimate land use expertise, and not for other reasons. Mr. Hales liked the idea of Murray citizens being involved in the process also. Mr. Brass said he understands that if the legal and land use experts cannot be found within the City, then they must be found elsewhere. Mr. Tingey believes it is a strong possibility that some of the Hearing Officers would be from Murray, but probably not all.

Mr. Tingey said from a staff perspective, staff gives the applicant the option of adjusting setbacks, for example, or go through a variance process. Staff tells the applicant that there is a meeting once a month, potentially five weeks out; the streamlined process of a Hearing Officer would be a huge advantage. Mr. Brass agreed that the building season in Utah can be relatively short and a five week delay could be costly, and could cause a person to carry a construction loan through the winter.

Mr. Nakamura stated that the criteria of a Hearing Officer could be further discussed with the Mayor and Council.

Mr. Brass mentioned that he has been contacted by a Board Member, and appreciates the information that helps clarify the situation. Mr. Tingey commented that the Board of Adjustment members are aware of the Public Hearing on the subject this week.

Mr. Camp asked if the Hearing Officers are compensated or volunteers. Mr. Tingey said that still has to be discussed. If a person has significant legal expertise, they may expect some compensation. Currently, the Board of Adjustment members receive a small amount.

Ms. Turner asked how often the hearings would be. Mr. Tingey responded that there is the potential to have a hearing within two weeks of receiving the application, so potentially multiple hearings in a month.

Business Item #2

Discussion related to pending litigation with Reagan Outdoor Advertising- Frank Nakamura

Mr. Hales stated that this issue is a matter of litigation. He stated that Murray seldom closes the meeting, with the exception of a couple issues, including litigation matters. Mr. Nakamura added that this is a pending lawsuit with Reagan Outdoor Advertising, and under Utah law the meeting can be closed. Mr. Nakamura will be discussing a settlement proposal.

Mr. Hales would like the Council to vote on closing the meeting. Mr. Camp made a motion to close the meeting, and Ms. Turner seconded the motion.

Ms. Lopez asked for a vote:

Mr. Camp- Aye
Mr. Brass- Aye
Ms. Turner- Aye
Mr. Hales- Aye

All were in favor. Mr. Nakamura asked those that were not authorized to be in the closed meeting to leave.

At the end of the closed meeting, Council Members concluded with a unanimous vote.

Announcements

Ms. Lopez announced the Murray City Economic Symposium would be held on March 26th, 2014 at 11:30 am. The MCEA (Murray City Employee Association) Golf Tournament will be held on May 17, 2014 at 7:30 am. The Murray City Fun Days Parade on July 4th was discussed, and it was decided that staff would contact Larry H. Miller dealerships for participation.

Ms. Towers announced the availability of seating at the Boys & Girls Club Fundraiser on March 29, 2014.

Mr. Hales adjourned the meeting.

Kellie Challburg
Council Office Administrator II