

Willard City Council Meeting
November 9, 2023
Willard City Council Chambers

The City Council of Willard City met on November 9, 2023, at 6:30 pm in the Council Chambers of the Willard City offices, located at 80 W 50 S, Willard UT 84340.

Present: Travis Mote, Mayor
John Seamons, Council Member
Mike Braegger, Council Member
Fred Ward, Council Member
Rod Mund, Council Member
Kaleb Kunzler, Council Member

Excused:

Staff Present: Colt Mund, City Attorney
Chris Davis, City Manager
Bryce Wheelwright, City Planner
Susan K O Bray, City Recorder
Kevin Christensen, Judge
Theron Fielding, Police Chief
Jordan Harper, Police Officer

Others present: Ken and Ruth Ormond, Diana Baker, Rew Wiley, Larry Holmes, Chad Braegger, Jeff and Laura Wells, Jordan Hulsey, Brad Sweet (Granite Construction)

1. Call to Order

- a. Mayor Travis Mote called the meeting to order
- b. Invocation offered by Councilman Ward
- c. Pledge of Allegiance led by Mayor Mote
- d. Conflict of Interest Declaration

2. Open Comment Period

- a. Rew Wiley, 75 W 825 N
"I just want to say whoever put on the Trunk or Treat, they need a big thanks. and whoever commented to the garbage pickup people, thanks, they haven't destroyed my garbage can in the last six weeks."

3. Planning Commission Report

- a. No update.

4. Action Items/New Business

- a. Willard Justice Court

Judge Kevin Christensen explained that every four years all Justice Courts are required to do recertification. He explained that the Willard Justice Court is far busier than Tremonton Justice Court, and he is thankful for all the hard work from the court staff and officers. City Attorney Colt Mund recommended the Council approve the resolution.

Councilman Mund made a motion to approve Resolution 2023-10. Councilman Kunzler seconded the motion. Roll call vote. All approved. Motion carries.

- b. Follow up on 200 West preparation for winter.

Councilman Braegger gave an update on the pond. No debris has been removed from the fish pond, but there have been 100 10-wheeler loads removed from the debris basin. They have approved another 100 loads to remove the remaining debris. The Mayor asked if the gate had been opened. Braegger stated, “Kenny took it upon himself, because the water was backed in there enough, so he and Jeremy welded a piece on there that goes on it that’s a square head. Then they welded a four foot piece of pipe on both sides and then got two of them on the thing and they were able to get it open. They got it up and it’s open now. When the water gets out of there Chris, we can direct Payden and his guys go down there and lube the shaft and everything.”

- c. Discussion/Approval of Ordinance 2023-12 to amend Title 11 Chapter 369 relating to dynamic braking devices.

Chris Davis, City Manager, said it might be wise to table this issue because UDOT told him that 750 N would be the only road that qualifies for the Jake Brake restriction sign. He is currently working with them to clarify why Willard cannot have the “Engine Brakes Restricted” sign, which they have in Perry. He would like this item to be tabled so that he can gather more information.

Motion: Councilman Kunzler motioned to table this issue. Councilman Mund seconded the motion. All in favor. Item tabled.

- d. Discussion/Approval of the active Transportation Plan

This item was already approved. Bryce Wheelwright, City Planner, stated there was a section that was identified as a trail that wasn’t a trail, so it was corrected. A resolution was also created. Staff was asked to review the Transportation Plan within Box Elder County and the Wasatch Front Regional Council, which was completed. The Willard City Active Transportation plan is compliant with the Box Elder County plan and Wasatch Front Regional Council plan.

The Active Transportation Plan was adopted into the Master Plan during the last City Council meeting, which adds it to the General Plan. It was already approved and will be approved again when the General Plan is finally approved.

e. Review Title 8 Licensing, Control, and Regulation of Businesses.

Colt Mund, City Attorney, is still working on revising this item. His revision will include recommendations for the City Council. Mayor Mote would like this item to be on the next meeting agenda to follow up.

f. Discussion/Approval of 2024 Maintenance Plan

Mayor Mote clarified that this item is to determine whether Public Works should focus funds and effort on 600 S or 200 S. This item covers item *i* on the agenda as well. The budget breakdowns for these two projects are contained in the previous meeting's packet. The Council was unable to vote last meeting due to lack of quorum.

Councilman Ward believes 200 S should be prioritized as it has flooded several times. "I felt like it's time to take care of 200, it's been an issue for many, many years." He believes 200 S is more of a safety issue than 600 S.

Councilman Mund agreed with Councilman Ward and believes the city should finish 200 S before starting 600 S. 200 S has been a problem for many years.

Councilman Braegger mentioned that many of the issues on 600 S have been generated from the Granite Ridge subdivision. The water is coming from the homes with steep driveways above Granite Ridge. Councilman Braegger said the Flood District is working on putting a debris/water basin between the canal and the homes that got flooded, eliminating some of the runoff during heavy rain.

Mayor Mote reminded the Council that Payden Vine, Public Works Director, said Public Works is spending more time and money on 600 S. Councilman Seamons said the changes that will occur from Flood Control above 200 S will be a large improvement, so he recommends focusing the funds on 600 S. Mayor Mote said 600 S has issues every single time it rains, unlike 200 S that only floods during heavy storms.

Councilman Braegger suggested replacing the PRV meter and completing the 200 S project, which would take up the whole budget. The plan for 200 S includes adding curb and gutter, raised manholes, and adding catch basins, one of each side of the road.

Councilman Fred Ward motioned to approve 200 S for improvements for the 2024 Road Projects, also including chip and seal for previously identified streets within

subdivisions. Councilman Mund seconded the motion. Councilman Ward, Kunzler, and Mund voted for. Councilman Braegger and Seamons voted against. Motion carries.

g. Discussion/Approval of Water Crossing Projects

Chris Davis had previously asked Cami Moss, City Accountant, where the city was financially if they could do these projects, and she told him there is about one million dollars from the water fund that could be used. Councilman Mund asked if the city could use the grant money to improve some of these crossings. Chris Davis explained that the grant money is specific for the line that goes from the tank to 750 N. The crossing that goes out to service the Nelson home could potentially be paid for with grant money.

Councilman Ward asked about UDOT adding storm drains on 750 N. Councilman Braegger mentioned that is a separate issue. Ward believes doing those storm drains at the same time as the water crossings would be best. Mayor Mote mentioned that the UDOT project has been delayed. Zac Burk and Matt Robertson have been meeting with UDOT on a weekly basis.

Councilman Mund would like the crossings to be prioritized. Councilman Seamons would like to have updated pricing and estimates from the engineers. Chris Davis will follow up with the engineers to find out when the Council needs to make a final decision and to have them prioritize the crossings.

This item was tabled until staff has received more information.

h. Discussion/Approval of the October 2023 recertification of the Willard Justice Court.

See item *a*.

i. Discussion/Approval of 600 South or 200 South for improvements.

See item *f*.

j. Discussion of the Land Donation and Easements in exchange for the water for Wells property in the future.

Chris Davis mentioned Granite Construction asked to have item *j* tabled for the time being because they aren't ready to discuss it. Colt Mund and Chris Davis have been working on it and the Council members have been sending in their comments to Colt.

Mayor Mote wanted to discuss this item. He said he has looked into the value of water. He would like the City Council to look at each item and determine the value of each component. He said that the county is very concerned about the water running out.

Canal water has become very valuable because it is being exchanged for culinary water. Last time Tremonton City purchased water for their secondary system out of the irrigation system, it was \$10,000 per acre-foot, according to the Tremonton City Mayor.

Currently, Willard City requires an acre-foot of water be provided per 1-acre lot. This deal requires Willard City to provide about 141 lots of water, which is equivalent to 140 acre-feet of water. He said the Council needs to consider what this could cost the city and what the city will be giving up. He suggested the Council review it again and perhaps develop a counter offer. Councilman Kunzler feels the details of this discussion should be completed in a closed session. Councilman Mund would like the city engineers to be present during this discussion. Councilman Braegger said that the city cannot trade or sell water, but they have to provide it. He said that perhaps the city won't be getting as much as the water is really worth. It was agreed that the Council needs to have a closed session on this item.

Item was tabled.

k. Discussion regarding Granite Construction Lease agreement.

Mayor Mote said, "It's fine for the gravel component, but these other agreements have to come together." Councilman Braegger and Councilman Seamons believed the gravel topic was separate from the water issue. Mayor Mote said, "Let's say the reclamation bond. If we sign this today, it's on the honor system, but there is nothing that says the reclamation bond happens." Colt Mund explained a conditional use permit would include the entire pit, the disturbed area would include the Wells' portion of the pit. Brad Sweet said that is a fact.

Brad Sweet explained that the lease is written in a way that includes 'premises'. "If you refer to the conditional use permit, which has yet to be approved by the county, those premises, the entire disturbed area of the quarry including the Wells' leased property by Granite and the future potential city property. If the lease needs to be explicit on what those premises are, so that you have belts and suspenders on what that premises is, it's not only described in the conditional use permit and also referenced in the lease, we can reference the Wells' property in the lease. It's not a problem." He said it can be added in the lease for clarification. Councilman Kunzler would like the lease to specify how the reclamation bond is calculated. He would like it to reference the Utah **DOGM (?)** reclamation bond formulas.

Brad Sweet said he didn't need to have a closed session about this issue. All the Council members' comments have been added to the agreement by Colt Mund. Councilman Ward asked if his comments had been addressed and Colt Mund said they had been. Brad Sweet said the council members' comments are similar to each other.

Councilman Ward shared his comments. On page 3 of the lease agreement, *section 2.3*, he would like something about the utility provider to be added to this section. He asked if it will affect some sort of easement for the utility provider that needs to be established. His other comment was on *Section 2.5*: he would like more specificity regarding the termination of the lease agreement. He feels it is necessary that both parties come to an agreement, and he would like to see it written that way. Mayor Mote wanted clarification about the status of the reclamation bond if Granite Construction backs out of the contract. Brad Sweet said there are obligations in place, and the Council would like to see those included in the lease agreement.

Page 5, *Section 4.3*, Councilman Ward would like surveys to be performed annually. Colt Mund said Brad Sweet said they will do semi-annual surveys, which will be added to the lease agreement. Councilman Ward said royalty should be based on anything pulled out of the pit. Brad Sweet said the royalty will be based on “whatever we’re paying the Wells, time, and products... any products we pay them for, you guys are going to get the same products and be paid the same.”

Page 5, *Section 4.7, Reduced Royalty*, has been removed from the lease agreement.

Page 8, *Section 12*, Councilman Ward would like to see an addition that states that Granite Construction is responsible to make sure all damages are taken care of.

Councilman Braegger said that it was originally said there would be no blasting of the cliff face. Brad Sweet said that’s the intention, but there are concerns that some of the material might need to be removed with blasts.

Councilman Ward had one more concern on *Section 1.8(b)*. Does it cover asphalt? Brad Sweet said it does. Asphalt won’t be produced, but the product for asphalt will be produced here in Willard. Brad Sweet says the conditional use permit does not permit them to produce asphalt within Willard.

Councilman Braegger had questions about the payment process. He feels the royalties need to come out as the material comes out with no upfront payment. Mayor Mote supported that statement. Councilman Kunzler asked theoretically if Granite Construction backed out at any time, would the city have to refund the money? Brad Sweet said there is zero contemplation of any refund. Councilman Braegger said we avoid this issue if funds are dispersed as the materials are extracted. The rest of the Council agreed.

Colt Mund mentioned that Councilman Braegger had one other comment they had previously discussed in *Section 15.1*. Councilman Braegger felt the agreement should state, “Unless the parties to this lease otherwise agree in writing, this Lease shall be null and void and shall have no effect, if, by December 31, **2024**, a conditional use permit or

other similar governmental authorization has not been issues by Box Elder County or Willard City to allow the Permitted Use on the Premises.” It currently says 2026. Councilman Braegger said, “Originally it talked about the conditional use permit, and if that didn’t happen, it would kick back to Willard. It put us in that position, didn’t it, of having to take care of this ourselves?” Brad Sweet said it provides the option for Willard City to revisit this issue if the County doesn’t approve the conditional use permit. He personally does not believe that will happen. He also said if it stays as 2026, it gives the Council some breathing room and some extra time to make decisions if needed to be able to fix roadblocks. Councilman Kunzler said a longer period of time is better for Willard City.

Rod Mund had concerns on *Section 2.2-a* and *2.2-b*. It was confirmed by Colt Mund that any Extension Period would be added onto the lease expiration date of 2053.

Mayor Mote brought up *Section 3.3-a*. “We don’t have access to warranty. That is beholden upon the Wells, not us. So we can’t enter into that.” He said the City could not give them ingress and egress rights. Brad Sweet confirmed that this statement gives Granite Construction access to be on the city-owned property, and has nothing to do with the Wells’ property. Colt Mund said he can clarify that statement in the agreement.

Mayor Mote also mentioned *Section 3.2*. Brad Sweet said that semi-annual meetings should take place to discuss concerns, permits, and finances. Colt Mund will add this to the agreement.

Mayor Mote brought up *Section 4.2*. “The Tenant will keep record of all fill material imported and exported and those records will be provided to the land owner anytime they claim fill is subtracted from the payments.” The Mayor would like to see the Payment and Royalty sections to be combined and cleaned up.

Mayor Mote said, “Citizens have brought a couple of things to my attention and the other city council members’ attention that I think may play into the conditional use permit. But I just wanted to bring up, for Granite’s knowledge. A citizen suggested that when the original mining happened, the state of Utah had to stop mining in a certain place because of the Native American burial site. I contacted **SHIPO (?)** and asked them for the records. **SHIPO** had no records on it but it may predate the National Historic Preservation Act. What it did say though, ‘If the gravel pit is expanding, I think the mining company will need to pay for a survey or even contact the Division of Oil Gas and mining archaeologist Tessie Burningham.’” Brad Sweet said they have performed surveys on ecological and biological sources up there and they have been cleared. According to Mayor Mote, that site is very close to the original peregrine falcon release site. There may be a structure still up there. Mayor Mote has spoken to the Fish and Wildlife service but hasn’t heard back from them. The biggest concern is fledgling birds and the timing of mining. Birds could be nesting in the cliffs which could pose a timing issue because they

are on the protected species list. Mayor Mote has also spoken to the Department of Environmental Quality about stormwater. Two permits are required from Willard City: a construction permit until infrastructure is in, and an industrial storm water permit. Brad Sweet said both are in place already. He will provide proof of the permits tomorrow. Mayor Mote asked when the Council will be provided a cleaned lease for them to sign. Brad Sweet and Colt Mund are going to work together to get it ready before the next City Council meeting.

Rod Mund asked about the report from Commonwealth and wanted to know if it was on file with the state. Brad Sweet said they tried to file it but it wasn't necessary. This report is dated October 2022. The Quarry Resource Report (dated December 2022) was also completed for Willard City's reclamation plan. Brad Sweet said, "Both of those were performed in anticipation of the things we would need to meet or exceed Box Elder County's conditional use permit." The Mayor was told by DEQ that Willard City's name would need to be listed as the lead name and that Granite Construction would be listed as the Operator. Brad Sweet confirmed.

Councilman Mund would like attached to the lease an exhibit with a description of the 80 acre reclamation bond.

Councilman Kunzler confirmed that the corrected lease agreement should be presented to the city council on December 14, 2023 at the next city council meeting.

Mayor Mote asked Colt Mund about the other easement for Granite Construction with the water tanks. If one lease falters, the others are also affected and other pathways need to be considered for the tanks and water lines. Colt Mund said he doesn't have any issues with those agreements coming forward. Mayor Mote said he disagreed because the value of this easement affects the overall value of the whole. He wants to ensure Willard City is getting the most value for the city. "Are we selling ourselves short on what we truly have? Are we doing right by our community and our citizens?"

Councilman Seamons asked, "How valuable, how tied together, is this lease to the other leases?" He said they are all three separate leases that were done a long time ago. Colt Mund said the three leases are stand alone agreements that aren't contingent on each other. Councilman Seamons said in a previous meeting that the Wells' had said this is a time sensitive issue. The Mayor said this isn't a time sensitive issue, but Brad Sweet said that Brandon Wells said as soon as they see this moving backwards, they are backing out.

Councilman Seamons said, "We have a county meeting on the 16th, and part of the plan is to have this lease agreement in hand so that when we go to the planning commission they can't just blow us off because they don't like the idea of gravel pits... There are going to be a lot of people at that meeting... If we get torpedoed at that meeting, the

only choice we have is to try and get the county commissioners to approve this. We as a City Council have talked about this for over two years. It's been a written document and we broke those six items out a long time ago..." (Councilman Seamons referenced the board in the room with the following items listed: 1. Property 4 easement for Water to North end of town. 2. Property for future secondary water system. 3. Move current water line from spring. 4. Reclamation Bond. 5. Dust Control. 6. Resident access to the canyon.) "This is one small piece of that, and it's not tied together... I don't see why we have to draw this out and tie this back together... So, we've got the meeting on the 16th, I think we need to do our very best to bring this to a head. We don't necessarily have to have it done by the 16th, it would be good if we could." He asked if the agreement could be ready by the 16th and if a meeting could be held before the 16th for the City Council to vote. Brad Sweet and Colt Mund said they could have the agreement ready, and Chris Davis confirmed they could have a meeting if desired.

Councilman Ward said, "This lease agreement, we just went through it. We're going to go through it and finalize it. So a week from now we vote on it and say we're good with this. So we go to the next steps and we have some problems... The next steps might be we run into some issues with the Wells' on this land, trading and the water thing. Is that going to stop you from moving in there and mining?"

Brad Sweet replied, "No."

Councilman Ward said, "Then this is a separate issue." Brad Sweet said that statement is a fair representation of the connection between the separate agreements.

Councilman Mund motioned to have a motion on November 30 to discuss the water value the Mayor brought up, and to further discuss the lease agreement and possibly adopt it. The closed meeting was planned to begin at 5 pm. Councilman Braegger seconded the motion.

Mayor Mote would like to have a closed discussion then move to a public meeting to approve the agreement. Discussion to organize this meeting took place. Councilman Kunzler and Councilman Ward would like to have the completed lease agreement before the meeting to ensure they have the proper information.

Councilman Mund motioned to hold a closed meeting on November 30, 2023 at 5 pm to discuss the corrected and complete lease agreement. A public meeting will take place immediately after at 6:30. Councilman Braegger seconded the motion. Councilman Kunzler, Mund, Braegger, Ward, all in favor. Councilman Seamons opposed.

5. Minutes

- a. Approval of the October 12, 2023 City Council minutes.

Councilman Braegger motioned to approve the October 12, 2023 City Council meeting minutes. Councilman Ward seconded the motion. All in favor. Minutes approved.

- b. Approval of the October 26, 2023 City Council minutes.

Mike Braegger mentioned four typos that need to be corrected.

Councilman Mund motioned to approve the corrected October 26, 2023 City Council meeting minutes. Councilman Ward seconded the motion. All in favor. Minutes approved.

6. Financial

- a. Warrants, Vouchers, and Reports

7. Department Reports

- a. Public Works

Chris Davis gave an update. The two 550's are anticipated to be ready in two weeks. When the trucks arrive, they will be hauling off material removed from the Children's Park.

- b. Police Department

Chief Fielding gave an update. A truck for Officer Conkel is almost ready. He spoke to Zack at Young's to see if there is a 2023 Ram (?) with more benefits. If not, they will let him know what trucks are allocated to place an order for Chief Fielding's replacement.

The City Council expressed appreciation for the police department. It was noted that they have been seen patrolling on Hargis Hill and in Granite Ridge. They thanked Officer Harper for the monthly report.

- c. Fire Department

Van Mund was unable to attend.

8. Council Member Reports

- a. Mike Braegger

He would like to start timing the public comments by setting a timer on his cell phone.

He also asked if there was funding available to thin out the bulrush on the outer rim of the fish pond. There is a six foot layer of clay that cannot be disturbed. The Division of Wildlife will need to be contacted. The City of Willard will be responsible for the cost of removing the bulrush. Chris Davis will check with Payden Vine to confirm the details. Councilman Braegger will contact DWR as well.

Kenny Braegger asked about large rocks at the bottom of the basin he is digging out. He is thinking of putting the rocks somewhere else, and wanted to see if the city had an idea of where they would like to put those rocks. Mayor Mote said Payden Vine had previously pointed out spots where they could use rocks. This item will be taken to Payden Vine as well.

A citizen recently asked him about UDOT's project and suggested putting in a deceleration lane for the cemetery. He agrees this is a necessity. He would like to discuss this with UDOT when the time comes.

b. Rod Mund

He would like to put out a public notice about the phones being down in the city office to keep the public informed.

He asked the Mayor for an update on the Native American plaque. The proposed plaque was taken into Bott Monument. They are waiting for an estimate. They have a spot selected at the cemetery to place the plaque.

Rod Mund expressed his appreciation of the city staff, police, firemen, and other Council members.

c. Fred Ward

Fred Ward expressed his appreciation for his time on the City Council.

He would like to see about putting in secondary power for the city hall and fire station. Chris Davis said they are working with Shane Swenson, manager of Sine Source Engineering. They are working on an agreement not to exceed \$3,000. He hasn't heard from Shane Swenson in several days, but will reach out to him again to iron out the details.

d. John Seamons

He has had a couple citizens ask him about the Fiber Optics. He asked about what the status is of this. Kunzler mentioned that the hang ups are with UDOT. The Fiber Optics companies cannot do anything until UDOT makes some decisions about right-of-ways.

He asked about a welcome packet for new citizens. He would like to see something in place for new move-ins. CERT used to do something similar, but it is no longer taking place. Mayor Mote agreed this would be a good service to provide to new residents.

- e. Kaleb Kunzler

No comment.

9. Next agenda items (December 14, 2023).

- a. Jake Brake
- b. Review Title 8 Licensing, Control, and Regulation of Businesses.

10. Mayor's General Correspondence and Information

The City Manager position was posted and several applications have been received. After Thanksgiving, applications will begin to be reviewed and a hiring panel will be formed. Mike Braegger would like Chris Davis to be included in the process. Chris Davis said typically all members of the Council are present along with the mayor during the interviews. It takes place in a closed session of a public meeting. Video conferences could be planned for candidates out of state. The application is scheduled to close on November 28, 2023.

11. City Manager's Report

Chris Davis gave a quick update on the economic grant. Jason put it together, Lincoln liked it. It's ready to be submitted.

He also mentioned that Willard City reservoirs do not have backup generators. This might need to be considered in the future. Mayor Mote would like to have Payden Vine look into the cost of purchasing a generator.

12. Consideration of Motion to enter a closed session if necessary.

Councilman Mund motioned to move to a closed session at approximately 9:25 pm to discuss a potential litigation. Councilman Seamons seconded the motion. Roll call vote, all in favor. Public dismissed.

13. Adjournment.