



MURRAY CITY MUNICIPAL COUNCIL COMMITTEE OF THE WHOLE

The Murray City Municipal Council met as a Committee of the Whole on Tuesday, October 7, 2014, in the Murray City Center, Conference Room #107, 5025 South State Street, Murray Utah.

Members in Attendance:

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

Others in Attendance:

Doug Hill	Public Services Director	Frank Nakamura	Attorney
Janet M. Lopez	Council Administrator	Jennifer Brass	Resident
Jennifer Kennedy	Recorder	Blaine Haacke	Power General Manager
Jan Wells	Chief Administrative Officer	Kellie Challburg	Council Office
Tim Tingey	ADS Director	Jared Hall	CED Manager
Alex Jackson	First Digital	Wesley McDougal	First Digital
Craig Burnett	Police Chief	Bryan Crane	Sumo Fiber

Chairman Hales called the Committee of the Whole meeting to order and welcomed those in attendance.

Approval of Minutes

Chairman Hales asked for approval on the minutes from the Council Initiative Workshop on September 2, 2014. Mr. Brass moved approval. Mr. Camp seconded the motion. All were in favor.

Chairman Hales asked for approval on the minutes from the Committee of the Whole meetings on September 2, 2014 and September 16, 2014. Mr. Brass moved approval. Mr. Camp seconded the motion. All were in favor.

Business Item #1

**Selection of a Council Member to serve on the
General Plan Steering Committee- Brett Hales**

Chairman Hales asked for the selection of a council member to serve on the Steering Committee.

Mr. Tingey commented that the Steering Committee for the General Plan will evaluate and give input. There will be representatives from the Council and the Planning Commission, as well as staff representatives and community members. The committee will most likely meet about once a month. He added that he is unsure of what specific day the meetings will be held. Ms. Turner asked if community members were still needed. Mr. Tingey said he believes they have the number of residents needed. He wants to keep the committee size to about eight to twelve individuals.

Mr. Brass said he would like to be on the committee. He stated that he sat on the previous committee and has the land use background. Mr. Camp and Mr. Nicponksi expressed their support. Chairman Hales noted that Mr. Brass would serve on the Steering Committee.

Business Item #2

**Additional Funding for Tennis Court Lights at
Murray High School- Jan Wells**

Ms. Wells thanked the Council for their time. She stated that the School District has requested additional funds to help with costs for the lights on the tennis courts.

Ms. Wells went on a field trip with some employees from the Power Department, as well as Dr. Hirase, Mr. Tranter, and the contractor. Ms. Wells stated that she was previously under the impression that the project was not complete and there wasn't any power, but when they arrived at the location, there was power. She asked what the problems were that required additional funding. The contractor replied that there were issues due to building over the repository of the old school that was buried on site. Ms. Wells stated that she hoped that the power employees might find other options to save some of the costs, but that had already taken place and no solutions were found.

After speaking with the Mayor, one option was suggested that the City would split the cost with the School District. The increased cost was \$50,000 and the City would pay \$25,000. The funds would come from reserves but the decision to pay is up to the Council. She added that there has not been any kind of agreement made. If the Council chooses to pay, then there would be a Public Hearing held with a budget opening on October 21, 2014. The funds would most likely come from reserves, or possibly the Power Department.

Mr. Nicponski asked how much the City had contributed so far. Ms. Wells replied \$75,000. He asked if the Power Department had done any work on the project. She replied that they had not.

Ms. Turner asked if there was a signed contract on the original bid. Ms. Wells said she is sure that took place, but the contractor said that they had miscalculated or not realized all of the costs. She stated that she is aware that the City did not create the problem and

the School District would have to cover the whole amount if the City chooses not to contribute.

Ms. Turner asked if the contractor had any liability. Ms. Wells said she didn't believe so. Mayor Eyre said that is not typical in the industry, and the person that gets the lowest bid agrees to the amount. Ms. Wells stated that according to Dr. Hirase, it is a cost that the School District is responsible for. Mr. Brass said he agreed that if the contractor agreed to a price, then that includes any change orders. He added that it would have been nice to get a phone call explaining the situation, before the work was done.

Ms. Wells said she understands and the School District does have a small amount set aside for contingencies. She asked for some direction and said she would report back to Dr. Hirase. Ms. Turner said she doesn't feel good about the increased amount and Mr. Brass said he would like to see the original contract.

Ms. Wells stated that she would contact Mr. Tranter and get more information and report back. Mr. Nakamura added that there are notice requirements for public hearings, and the public hearing could be scheduled and noticed while waiting for more information. He said he could get the notice together and prepare an amended agreement. Ms. Wells said she would keep the Council informed.

Business Item #3

Update on the Bike Lane Task Force- Blair Camp

Mr. Camp commented that there was a presentation by Mr. Hill a couple of months ago in a Committee of the Whole regarding bike lanes.

The Council decided to support the formation of a Bike Lane Task Force, and informally created a group of citizens. Two meetings have been held. After the first meeting, it became clear that this task force should be under the Executive branch of the government and not the Legislative branch. After that discussion, it was explained to the group that the Mayor would take over any future activity of the Bike Lane Task Force. The group is also aware of the upcoming General Plan meetings. The Council is stepping back and the Mayor will take over from this point. The group is very passionate about the issue and there has been some good discussion.

Mr. Nicponski asked about the scope of the group. Mr. Camp replied that the group is reviewing the whole City for possible bike lanes. Mr. Brass commented that he recently read the TOD (Transit Oriented Development) ordinance again and noticed that bike lanes were included. This is something that has been considered for over a decade. Mr. Nicponski commented about 300 South in Salt Lake City and how a lane has been dedicated for bicycles and parking has been shifted out into the road. Mr. Camp replied that there are a variety of opinions about bike lanes and the options that are best. The biggest challenge is to balance the needs of the bicycling community with the rest of the community, he added. Mr. Brass added that education of the cyclists needs to be included also. He stated that more than half of bicycle/auto accidents are due to an error on the bicyclists' part. Education needs to be a component for everyone involved.

Mayor Eyre said that he just received an estimate and it would cost about \$20,000 to paint the sharrows on the road from 900 East to VanWinkle on Vine Street. Those

sharrows would be the type that do not have to be re-painted. It is an expensive proposition.

Mayor Eyre added that he is happy to work with this group but is a little reluctant about starting another permanent board or commission. There are about a dozen commissions currently that function very well, but he does not want to add every special interest group to a permanent commission. He believes the task force can accomplish the necessary goals without becoming a permanent board or commission. Mr. Brass noted that a previous task force in planning and development had a start and end date. Mayor Eyre said there are meetings scheduled in November and January and then it would be re-evaluated.

Business Item #4

Residential Neighborhood Business Zone Discussion- Tim Tingey

Mr. Tingey stated that he and Mr. Hall would like to discuss some elements of the Code relating to R-N-B zoning and limiting density. He wanted to show past projects that had been developed in Murray.

The purpose of the R-N-B zone is a transitional zone in a neighborhood that allows commercial use that transitions from arterial streets or intense commercial areas to more residential areas. It has to provide an appropriate transition and be a good fit for the neighborhood. The goal is to provide harmonious development without unsightly and unsafe strip commercial development.

He pointed out R-N-B zones on the map. There are some elements that currently limit density, he noted. Front yard regulations in most commercial zones are 10 feet, but in this area it is 20 feet in the front and rear yard, side yards are 8 feet and 20 feet if on a corner. There are increased setback standards in this zone, typical to residential setbacks.

This zone also has the most restrictive height limitations. Height is limited to 20 feet for commercial buildings, or 30 feet with approval from the Planning Commission. He added that the height limit in residential zones is 35 feet.

There are also fencing regulations, so any commercial property that abuts a residential land use requires a 6 foot high masonry wall on the property line.

There is a 10 foot landscaping requirement along all access points adjacent to residential zoning. There is also a requirement that 15% of the total site be landscaped.

He added that the commercial projects do not have to look just like a home or be the same scale of a home. Mr. Camp asked who determines if the commercial property is a good fit. Mr. Tingey replied that the Planning Commission does, because every commercial project has to go through a conditional use permit. He added that his staff provides input and recommendations on the projects also. He gave an example of a 15,000 square foot project that did not meet the intent of the ordinance and that was communicated to the developers. This allows for architectural elements and provides for a good commercial project to fit in with a neighborhood.

Mr. Tingey showed a picture of a commercial building on 6268 South and 900 East. The building footprint is close to 5,000 feet, and there have been no concerns or complaints from the residents. He also showed a photo of the Tarbet Dental Office that was approved on 900 East. This footprint was close to 4,000 square feet, and no complaints on this project either.

Clarus Vision on 900 East had a square footage of 6500 feet. The neighborhood had many concerns about the re-zone on this property. When the Planning Commission reviewed it, there were not any residents present, but there have not been any complaints. Some residents commented that it doesn't look like a residential facility, and the Planning Commission went against the staff recommendation based on the fact that not all resident homes need to look the same. He added that it has been a positive project with nice landscaping.

Brockbank Office Building, located on 900 East, had a footprint of roughly 5900 square feet. There have not been any complaints on that project either.

There is a large rectangular property on the north side of Winchester, west of I-215, which was purchased in an R-N-B zone. The permits are currently being reviewed for that property. Instead of building one large building, similar to a strip mall, they broke it up into five smaller buildings. All of the five buildings are approximately 4200 square feet, with parking available.

He stated that the Council may wish to secure more restrictions on density, but he doesn't feel like it is necessary at this time. The height, parking, and landscaping requirements already restrict the type of building that can be developed. Too many restrictions could lead to no viable commercial developments.

Mr. Brass noted that he requested this information because he was getting calls on Winchester. Many people wanted to purchase homes on Winchester and turn them into businesses, and that wasn't allowed at the time because of the zoning. There wasn't anything that allowed a home to convert to a business in certain areas, he added. Those homes would be rented and abandoned and become eyesores. This zone was crafted partly for this reason. The purpose was to fit into a neighborhood with low impact, low scale and low intensity, he stated.

He noted that five buildings up against residential seemed intense to him. His concern is how to fill that space. The greenhouse purchased a house and turned it into a business, as well as a real estate office. It has brought a lot of the properties back, and if they don't work then they are usually torn down and replaced with a nice building. He stressed that a two story residential home is 35 feet, and a two story R-N-B business is 30 feet, so the business could be smaller than a home. This zone was created to protect the neighbors.

He added that you don't want the downtown so commercial that nobody lives there. There is a lot of land that can be redeveloped in the proper areas but this zone was created for the commercial developments to abut neighborhoods. He said it would be difficult to not make the zone change on Winchester because it was master planned that way. People just need to understand that the protections are in there. He added that this zone solved a lot of problems. He believes the zone is restrictive enough yet still gives options that were not previously there.

Business Item #5

First Digital Telecom Presentation- Wes McDougal

Mr. McDougal stated that he appreciated the time to speak with the Council. He had previously spoken with the Mayor, the UTOPIA and UIA boards, as well as Mr. Hill and Mr. Zollinger. He wants everyone to be aware of the different alternatives to UTOPIA.

First Digital was started in 2000, and is a Utah based company. It is a partnership with the Boyer/Gardner companies, which are two of the largest commercial private developers in the Intermountain West. They have a fiber network that runs from Logan to St. George. There is a large customer base of both business and residential customers, and as their customers grow, fiber is built to them. They are a public utility and are regulated by Utah Public Service Commission.

Mr. McDougal gave background on UTOPIA and UIA. There is existing debt on UTOPIA and UIA of approximately \$220 million, which accounts for \$185 million on UTOPIA and \$42 million on UIA. There is approximately \$8 million in revenue. He stated that the audited financials from last year are not available yet.

The situation currently is that the State Legislature has stated that bond money can only be used to build the network. That is the reason that UIA was developed and bond money was taken for that. There is approximately \$2 million remaining on the UIA bond to go towards infrastructure. There is the ability to draw down another \$25 million because the UTOPIA cities approved that, but there is a reluctance to go forward and do that. The State Legislature has stated that bond money cannot be used for operations. The current operating losses are about \$3 million per year. The cities are aware of that and have to vote every six months whether to provide more money for operations. It is a large financial challenge for the UTOPIA cities.

There are also parody issues between the UTOPIA cities regarding build-out and amounts pledged and received. This has created conflict on the board to determine the course of action. Some of the possible solutions mentioned are:

- Continue with the deficits and face the question of putting more money into infrastructure and drawing on more bonds, and the City Councils can vote to keep subsidizing operations.
- Let the system "go dark." Some say that is a possibility, but it is not a real possibility, he noted.
- Sell the network. First Digital made a cash offer to purchase the network almost 6 months ago to the UTOPIA and UIA boards.

He said they see a lot of value in the network and it should never "go dark." First Digital is putting money in the ground now to duplicate what is already there. It makes sense to look at other options including purchasing the network.

He added that one proposal included a utility fee. That is a solution that spreads the cost amongst everybody and gets everybody the base service. Some cities moved forward with that option in Milestone two of the Macquarie proposal to determine the viability of that. That was a part of the First Digital proposal also.

He understands that Murray City doesn't necessarily want to impose a utility fee and is looking for other solutions.

Mr. McDougal stated that there is another solution and that is to move forward in a partnership and do a success based, demand driven build-out. If residences and business want it, then it will be built, he noted.

Of the eleven UTOPIA cities, five cities voted not to go forward with the Macquarie proposal. Those cities are very interested in this proposal and he is sharing it with all the City Councils. Eight of the eleven cities want to keep exploring and vetting First Digital and keep the dialog alive.

In the non-utility fee model, no utility fee would be imposed on the residents or businesses. There would be no more public debt, he stated. First Digital is prepared and committed to make a large investment into these cities and continue the network build. That amount could be close to \$100 million to continue the build-out in a success based model. Mr. Camp clarified that it meant no additional public debt. Mr. McDougal stated that was correct. The cities could always raise more funds, but it would not be required. First Digital has the necessary funds to invest. The existing debt would remain, but there would not be additional debt added. This would give the capital needed to continue the build-out.

First Digital would indemnify the cities against operating losses. They have been in the business 15 years and have the knowledge to do this and the shareholders expect returns. They have seen the financials of UTOPIA/UIA and know what is available in the public domain. They have seen areas that costs can be cut and also the synergies between the two companies. There isn't a need to duplicate services, such as the accounting processes, customer service, engineers and others. Some of those key positions in UTOPIA are vacant.

It will be an open system and the residents or businesses can still choose their provider, which is participating in the network. He has spoken with other providers that would like to enter into the Utah market also. It will still be a fiber based wholesale network with open access to any provider and any application. The system will be ubiquitously available to all the residents. They are building more and more fiber right now. This saves taxpayers money going forward in two ways: the utility fee model that would save hundreds of millions over the contract, or the success based model that has immediate savings and provides cash flow to offset the current debt.

Also, vital to this plan is the focus on local sales and marketing. It will be re-branded and will be city specific. There is a current major disconnect between wholesale and retail. UTOPIA has a huge budget for marketing, but cannot sign up the user or customer and hands it off to a third party. Marketing efforts would be very specific and direct to Murray City. Mr. Brass commented that he finds it alarming that UTOPIA has a huge marketing budget and yet a large percentage of the City residents have not heard of UTOPIA. Mr. McDougal stated that is correct and many residents have said that they have seen zero mailers or advertisements. Occasionally, there is a billboard but that is not effective or specific to the cities. Mr. Nicponski asked if it would be a mailing campaign. Mr. McDougal replied that it would be a direct campaign, with a retail presence and social media used also.

First Digital has met with UTOPIA and UIA boards and are excited about this proposal. There are a few board members still pursuing another alternative, but there are 5 to 8 cities that are excited about vetting this proposal. It is a well-funded and well-thought out proposal he added. They believe there is a great asset in UTOPIA and are willing to pay a significant amount of money to purchase it. The purchase was declined by the board, but a partnership would be great also.

Mr. Camp asked if the proposal was just to the board members, or if there was a public version. Mr. McDougal replied that there was not a public version because of the proprietary information, but that City Councils would have access to the proposal. There is some confidential information that is protected under GRAMA but that part has been marked, he noted. He would like the proposal to get out so people know that there are other alternatives than "going dark."

Mr. Nicponski asked Mr. McDougal to elaborate on the relationship with Boyer/Gardner. Mr. McDougal said that First Digital is part of the Boyer/Gardner companies. That has been a great benefit to First Digital with financial backing and the ability to reach out to customers.

Mayor Eyre said he agrees with Mr. McDougal that the "go dark" scenario is the nightmare scenario, but he is concerned that it could happen. He is worried that if they lose a key individual on the 17th of the month, and they are already at minimum staffing. They are currently at 37 employees and if they lost a couple of key engineers, would they still be able to run the system, he asked.

Mr. McDougal replied that the "go dark" scenario is obviously an outcome, but a very inefficient outcome. There is still time to act, he noted. He stated that they gave their first formal proposal in May and are not any closer to an outcome. He said that he hopes to talk to the board right away if there is a "brain drain" about to occur. It would hurt his business also if the system went dark, he added.

Last month, the system went down for two days in St. George and took down their largest client in the Intermountain West. It was unacceptable and the client wanted off the system. He commented that the system could "go dark" due to ineptitude but is still a valuable asset. Even if the system went dark the following day, it is still an asset, and nobody wants it to "go dark." Mayor Eyre added that there isn't a "dark cloud" on the 17th of the month, but just one individual with another offer of employment. Mr. McDougal said First Digital is constantly hiring engineers and technical people and it is a competitive marketplace.

Mayor Eyre commented that he was there for the first presentation to the UTOPIA board and was impressed enough to vote to continue this discussion, along with seven other cities. The three cities that voted against further discussions controlled 50.7% of the majority vote, commented Mayor Eyre. Mr. McDougal replied that it was made very clear that it was a board vote, but all eleven cities could still entertain an offer. He has reached out to West Valley, Layton and Midvale. West Valley and Layton at this point have declined any further discussions. He expects to gain some momentum and most cities are eager to continue the discussion and may put pressure on the other three cities that hold all the cards. He said this is a great alternative and he will keep talking to those cities.

Mr. Nicponski asked if this was an “all or nothing” proposition, and if all eleven cities would need to commit. He also asked about the mechanics of the proposal and if First Digital would take the seat on the UTOPIA board. Mr. McDougal stated that the mechanics are complicated. There is no technical impediment to them taking over a city and providing service within the city. The proposal can be split among the cities that choose to accept it. He said the UTOPIA/UIA board that own the asset would determine if that is a possibility, although First Digital would welcome it. It is a complicated issue because of the bonds. He said the question is interesting whether the seats on the board can be delegated to a third party and he believes it would be possible but warrants more discussion.

Mr. Brass asked about the ownership. Mr. McDougal stated that “you own what you own.” First Digital also has fiber in the streets that connect to UTOPIA fiber. They currently lease capacity from the existing network and build it to the customers. First Digital would own what they have built to the customer to the point of connection with the network and a fee would be paid for that transport. There may be some type of agreement needed for long-term ownership because the network will be intermingled. Mayor Eyre asked if it could be bought back. Mr. McDougal answered absolutely and that would not be a problem. He stated that the City could participate and put money in along the way if they choose to do so, but it isn’t necessary.

Mr. Nicponski stated that he is intrigued and would like to continue the dialog.

Mr. Camp asked for an introduction of the person with Mr. McDougal. He introduced him as Alex Jackson, Director of Operations.

Mr. McDougal said he is excited about the proposal and would like to continue the dialog.

Announcements

Ms. Lopez stated that Thursday, Oct. 9th at 5:15 is the City-School Coordinating Council and that same evening from 5:00 to 7:00 is the General Plan Open House at Murray High School. Mr. Brass said he would be driving back from Idaho and hopes to make it to the meeting.

Ms. Lopez also stated that there is a meeting with the Mayor, Mr. Brass, and Mr. Camp at 8:30 am on Friday.

Chairman Hales adjourned the meeting.

Council Office Administrator II
Kellie Challburg