

AMERICAN FORK CITY  
COUNCIL MEETING MINUTES  
FEBRUARY 24, 2016

SPECIAL WORK SESSION

**ATTACHMENT**

*The purpose of City Work Sessions is to prepare the City Council for upcoming agenda items on future City Council Meetings. The Work Session is not an action item meeting. No one attending the meeting should rely on any discussion or any perceived consensus as action or authorization. These come only from the City Council Meeting.*

Those in attendance:

James H. Hadfield	Mayor
Brad Frost	Mayor Pro-Tem, American Fork Councilman
Kevin Barnes	American Fork Councilman
Carlton Bowen	American Fork Councilman
Gary Gygi	Cedar Hills Mayor
Richard Colborn	American Fork City Recorder
Nathan Bracken	Smith Hartvigsen – American Fork City
John Woffinden	American Fork Planning Commission Chairman, Retired Geologist
Dale Goodman	American Fork Public Works director
Jay Brems	American Fork Water Superintendent
Nestor Gallo	American Fork City Engineer
Cherylyn Egner	American Fork Legal Counsel
Derric Rykert	American Fork Parks and Recreation
Robert Moore	Utah County Attorneys' Office
Bryce Armstrong	Utah County Community Development
Richard Nielson	Utah County Public Works
Cathy Allred	Daily Herald

The American Fork City Council met in a special work session on Wednesday, February 24, 2016, in the American Fork City Offices, 51 East Main Street, commencing at 2:30 p.m.

1. DISCUSSION OF WATER QUALITY IN MARY ELLEN GULCH AND MINERAL BASIN INCLUDING STORM WATER REGULATION AND COMPLIANCE.  
*(Requested by Mayor Hadfield)*

Mayor Hadfield stated that this had gone by the Utah County Board of Adjustment. There had been a lot of things that had gone by to this point in time including misinformation at a meeting. The City followed that up with a visit to the Division of Water Quality, Walt Baker and his people, and resolved some issues there. They provided to the City some information and guidance where they thought the City was safe in moving forward and what their involvement would be. He has invited members of the County Staff to be in attendance because he wanted them to be comfortable in the job they were undertaking in the approval process. Right from the

get-go when they started this process and Snowbird wanted to trade property in Cottonwood Canyon for property in American Fork Canyon he was not comfortable.

Mayor Hadfield continued that in Utah County there was a beautiful body of water called Utah Lake. We want to recreate on it and make it better but could not because water rights were held in Salt Lake County. He saw the same kind of practice coming forward with somebody else calling the shots in our valley. American Fork City passed a Resolution asking Utah County to slow the process down and take a hard look. He had no problem with Snowbird developing their property that they own in the Canyon. That was their business and they had those property rights. He was concerned about water quality.

Mayor Hadfield added that the Utah County Board of Adjustments on January 7, 2016, met and gave 60 days to the City to resolve their differences with Snowbird. He met this very morning with a gentleman whom he had admired for a number of years who was an employee of Snowbird, Tom Jones who was the Chief Financial Officer. Mr. Jones shared with him their draft monitoring plan and also the timeline they wished to follow. One concern was that once a base was established if it was found that there were materials there that were harmful, he expected Snowbird to do some remedial work to clean it up. There was nothing in the plan that addressed that. He was willing to give them five years to reduce it by 50 percent and five more years to reduce it 50 percent of that. He felt the plan was a very good first-start.

Those in attendance introduced themselves.

Mayor Hadfield asked Councilman Frost if he had any issues with the Water Quality Monitoring Plan.

Councilman Frost answered that everything he had concern about he referred to Nestor Gallo as he had made comparisons as to what was submitted.

Nestor Gallo provided a handout. It is included in these minutes as an **ATTACHMENT**.

Mr. Gallo stated that he did not get any maps from the Staff report so he had to do his best to make it fit.

Councilman Frost asked if there were no maps available for the staff report. Were they not given to American Fork City?

Mr. Gallo reported that there was nothing showing proposed towers or runs and he reported that one of the most important points was that Snowbird had said that American Fork did not get any of its drinking water from the American Fork River. That was not true. According to the City's latest water report, the City received 3200 acre feet of water from wells in the aquifer and 2400 acre feet of water from springs in the Canyon. They needed to protect public water sources and make sure that it was healthy and that was something that the state regulated.

With regard to the Snowbird proposal to expand from Salt Lake County to Utah County the 2012 Conditional Use Permit allowed for summer activities. There was nothing mentioned about hazards. In 2014 the Utah County Board of Adjustment approved a 10 acre-foot reservoir for

snowmaking. That required a grading and drainage plan and required a submittal of an application to the Division of Water Quality and a submission to the Utah County Public Works Department. In checking with the records of the State there was no record of submission. Right from the beginning he thought this was a violation

Mr. Gallo continued that every two years there had been a new application. This one included three new ski runs, a 2300 square foot accessory building and an 1800 square foot accessory building, four avalanche control devices in Mineral Basin and three avalanche control devices in Mary Ellen. This involved explosives and shaking of the ground. Two new lifts in Mary Ellen. The ski runs and grading were all within the area of the mines. He stated that he would not get offended if he was proved wrong and it was not the truth. They were allowing for snow making and ski lifts why not a zone change to allow for buildings. This area was Critical Environment. The area was 47 acres and was 37 acres for grading for ski runs and that included thousands of cubic yards of fill and cut.

Councilman Frost stated that it was important for all to understand the fact that the tailings piles that they said they could work around that they could see had contamination that they could already assume lies within the tailings piles. In a 2002 report it said that the contamination of soil was way beyond the tailings piles. That was toxic all the same.

Mr. Gallo asked the Best Management Practices (BMP) proposed by Snowbird to reduce the pollution of the site. It would have to be approved by EPA and the State Division of Water Quality and by the Utah County Public Works Department. What are the BMP's? Surveillance, signage, rope line to keep people away. Allowing run off was a violation of the Clean Water Act.

Moving along Mr. Gallo said that the applications should include a grading and drainage plan, which was not submitted with this application. The permit required the protection of critical environment.

Rob Moore responded that it seemed that all of the comments were directed to the County. They were not here to be accused. They were here to listen.

Councilman Bowen expressed that he had been taking notes and he thought that was a good comment.

Mr. Moore added that if it was going to be a total accusation of the County, they could just leave. They were here to try to resolve what they could and work with the City as they could. Their position needed to be heard also.

Councilman Frost would love to hear from the County.

Mr. Gallo said the important one was the construction of the ski lift towers and size of the foundation.

Richard Nielson answered that they hadn't requested a construction permit. They have asked for a Conditional Use Permit.

Mr. Gallo stated that he was not trying to accuse anybody.

Mr. Nielson responded that Nestor Gallo was pointing pretty good right at him.

Mr. Gallo said that the City did not have a map.

Mr. Moore said they were not to the permit process. They were not there. Years ago the County Commission decided that the CE-1 zone was the appropriate zone for ski lifts and accessory buildings. There had already been two ski lifts in Utah County because of that. If they met all the conditions they would be granted the permit by law. Many things were not ready to be addressed at this point. They were concerned about the same things the City was concerned about but at this stage of the game they had not yet made an application under the County Ordinance.

Mayor Gary Gygi asked if Snowbird was invited to this meeting. It would seem to be helpful that they had someone representing them if there were ongoing meetings like this. Cedar Hills' interest was keenly squared on the water that came out of the Canyon. American Fork City had been kind enough to let them have some of that water recently as Cedar Hills had some well issues. It seemed there was a lot of conjecture and some of that conjecture could possibly be discussed in a friendly manner if there were people from Snowbird present to express themselves.

Mayor Hadfield explained that they had a meeting that Snowbird was invited to. They came with a geo-guy that told the City that they had nothing to worry about. Their attorney was there telling the City what rights they had. When it came time to ask questions they informed the City that they had another meeting in Cedar Hills and if American Fork had any questions to write them down and mail it to them and they would answer. The City felt misrepresented. Snowbird knew that this meeting was on the docket for today, he made them aware of it. He also told Snowbird when they got some conjecture in this meeting and felt they were moving ahead they would then have their meeting as directed by the Utah County Board of Adjustment.

Mayor Hadfield continued that they try to take a step forward and end up taking two steps backward. At the last Utah County Board of Adjustment meeting Hilary Arens came and represented herself as a private citizen working for Snowbird when in fact she was on the payroll of the State of Utah at the time and she put out some information that was not correct. It made it hard to find the truth.

Mayor Gygi expressed that they were trying to find out what that truth was. In all future meetings Snowbird should be in attendance because in order for him to understand what Nestor Gallo was talking about and give credence for what he was saying or give credence to Snowbird, he would like to hear what they had to say. Cedar Hills wanted clean water coming out of the Canyon and if they were ever in the situation where their wells were down again they hoped that American Fork City would be kind enough to let them use some of that water again. Part of the discussion was not taking place today because somebody was not in attendance.

Mayor Hadfield noted Mayor Gygi's comments.

Nathan Bracken explained that he had been hired by American Fork City to reach out to Snowbird. They had a meeting with the Department of Environmental Quality (DEQ) and a number of their division directors last week. Part of the purpose of this meeting was to put down and get a better meaning of what the City wanted to do and then reach out to Snowbird. He has been in touch with Snowbird this week and after this meeting he would be working with them on a better understanding. He looked at this meeting as an opportunity for the City Council to express what it could agree to and then move forward.

Mayor Gygi thought that would be helpful and representatives of Cedar Hills would like to be there.

Richard Nielson explained that the Utah County Board of Adjustments was an independent board. They were the factfinders and they made a determination. Decisions could be appealed to District Court. On April 7 the intent he thought was for them to report back on what has happened between American Fork and Snowbird and then make a determination. He did not know if they would open it up for any more public comment.

Mayor Hadfield commented that there was a lot of sides to the equation. American Fork's issue was water quality. There was also the off-roaders and other folks that wanted other things. As he has read through Snowbird's Water Quality Monitoring Plan proposal they were not admitting that there might be problems there now and they were saying that they did not want to elevate what was there. But if there was tainted water coming off that site at the present time he thought that ought to be addressed before they went forward.

Councilman Frost added that they needed to work as team. They were not now a team.

Mr. Nielson stated that they certainly had common goals. Walt Baker Director of the Utah Department of Environmental Quality was not in attendance but they had meetings with Carl Adams of the Utah Division of Water Quality and they were getting a much different picture from what he was telling them. They asked specifically about discharge off Snowbird's property and they were not aware of any. They talked about what effect this application had on water quality. The response they got back was that as long as you were not disturbing mine tailings you were fine. They were getting from him that water coming down the American Fork River was not affecting the City's springs away from the river and the American Fork River was not being utilized for drinking water. That was what they were being told from the State. They were telling them that they had the same thing coming out of Cottonwood Canyon with mine tailings, skiing, and ski lifts, it was a very similar situation and no problems. If something did happen you can go to the source of the problem, find out who was contaminating and have them clean it up. That was what they were telling them. He was hoping Walt Baker would have been in attendance at this meeting to see if that was still their position or if it had changed.

Mayor Hadfield reported that he had a synopsis of the meeting held with Mr. Baker and he would be happy to share that. He felt for Bryce Armstrong as either way he was in the cross-hairs. He thought there had been some misrepresentation on some issues that maybe clouded the picture a little. American Fork's issue was strictly water quality. But if it was coming off

Snowbird's property now and it was tainted he was not accepting the fact that they were going to monitor it to where it didn't increase. He wanted to clean up the water before they moved on.

Mayor Gygi stated that Cedar Hills would wholly support American Fork in that. Their issue was water quality as well.

Councilman Bowen asked if there was currently a problem.

Mayor Hadfield responded that was what the proposed monitoring plan was going to tell them.

Councilman Frost stated that now they were progressing into a construction mode.

Councilman Bowen recognized that construction might disturb the soil. Snowbird hadn't approached him. He skied sometimes at Snowbird, maybe twice a year, but skiing didn't really disturb the ground. He thought Nestor Gallo made a good point that if they were going to make snow would that increase the run off. If it did, he expected that they would file a plan that met the requirements.

Councilman Frost stated that apparently they did not want to make snow in Mary Ellen Gulch but in Mineral Basin.

Councilman Bowen thought that Nestor Gallo had some valid concerns with avalanche control and potentially disturbing things. Some independent monitoring may be necessary. The level he was coming at this was from an American Fork City Councilman and resident and consumer of American Fork's great water, that there were several different layers of rights involved. They included property rights, water rights, mineral rights, which were sometimes separate from property rights. He was concerned that those mineral rights be preserved. There was also public access rights. He wanted to see that everyone's rights were honored.

Councilman Bowen did not think the City should involve the EPA. They were bad stewards. Just look at what happened at the San Juan River. He would like to continue to see the State Division of Water Quality (DWQ) involved because they had the expertise to see that our water remained clear and safe.

Rob Moore responded that it was not the County that wanted the EPA involved, it came from American Fork City.

Dale Goodman answered that was correct. But after what happened at the last Utah County Board of Adjustment meeting it was felt the State needed more oversight. They was a State employee that was also an employee of Snowbird making statements that were clear that the State was not doing their job.

Mr. Moore commented that the EPA could not stop the current process. He noted that on the avalanche control issue, in discussions with Carl Adams, there was no problem with the State. It would be better than if there were a big avalanche to come down. One thing that they suggested to them was to do what Salt Lake County had done with respect to monitoring Little Cottonwood Canyon on a monthly basis and it had been done for 45 years.

Mr. Moore addressed public roads and stated that the Utah County Commission has adopted recent public road maps good for this area at the end of December of last year. They identified at least three roads that went into this property. It was the County's intent to protect those roads. He talked with Snowbird's attorney personally about this and was told they had no issue with the County protecting those rights-of-way. They could request a limited seasonal use. The County Commission could consider that. As far as private easements, the County did not protect private easements.

Councilman Bowen thought mineral rights were under State Law.

Mr. Moore stated that with private rights, the owners of those rights had to protect them themselves. Mineral deeds also give one the opportunity to own approximately 20 acres of property above. The mineral folks came down and met with the County. The County has done some due diligence as they should.

Mayor Hadfield thought that the first step was the monitoring plan and their document met that need. When they get a two year base line they would know exactly what they were dealing with and where they needed to go. He was comfortable with that.

Councilman Bowen expressed that he understood that Snowbird owned a lot of the mineral rights for the land that they were on. There were also surrounding areas that had mineral rights. He was really concerned that they would try to use environmental regulations, water quality, or whatever, to deprive others in other areas in the Canyon of their rights. That was just wrong.

Jay Brems asked if Salt Lake County treated the water after it came out of Little Cottonwood Canyon.

Mr. Nielson responded that once it got out of the canyon they treated their water.

Jay Brems continued that American Fork treated the springs. The wells have not needed to be treated. He believed Highland was the same way.

Mayor Hadfield explained that Snowbird had a treatment plant underneath the parking garage for the Cliff Lodge and it used that water for all of their facilities. They have done a lot of work on the Little Cottonwood side. They were way above the norm as far as efficiency. His concern was the level of contamination coming out of Mary Ellen Gulch now and what could they do to reduce it as they go forward.

Nestor Gallo stated according to some of the reports from the EPA the concentration was 2½ times acceptable levels of arsenic, lead, and zinc.

Mayor Hadfield expressed that in reality there was a conflict because Snowbird was saying there was no problem there yet the State Fishery Biologist has said that he had gone up there numerous times and tried to plant native cutthroat below Snowbird's properties in Mary Ellen Gulch and they won't survive. After the water got down to the American Fork River and with other tributaries feeding it the pollution was sufficiently diluted that the fish could survive.

Jay Brems commented that this was going to be a construction site, just like one in town, and they did not know exactly what was under the ground. That was his biggest concern.

Mayor Hadfield asked if that fell under the MS4 permit.

Richard Nielson responded that they were working toward that. The way their permit was structured with the State they actually had to create an Ordinance this year to start bringing that into place. That permit would come through his office.

Bryce Armstrong added that regarding this pending application, the Utah County Board of Adjustment at their last meeting had contemplated an additional condition above current regulations of some type of an assessment as to the location of underground workings in relation to the location of the towers. They were not here advocating for Snowbird at all. They were dealing with what they had before them.

Nestor Gallo had a couple of questions in the County Code, Section 10-9-1 and Section 10-9-2 that talked about Hazardous Waste and Remediation. In the event of a hazardous spill the County had to respond and take care of the spill and then seek to recover costs. He asked if he was reading that right.

Mr. Nielson did not have an answer.

Councilman Bowen followed up regarding heavy metal levels mentioned by Mr. Gallo and the talk about the State Wildlife person regarding the fish. He had heard Snowbird's presentation and his understanding was that Snowbird was not disputing high levels near some of the sources. Their contention was that as water came down the Canyon it was diluted enough and was getting filtered out by the time it got down to American Fork's wells. Apparently everyone was agreeing that there were high levels and Snowbird's position was that there were high levels before they came in. He asked if they had done work to reduce those levels.

Mayor Hadfield responded that they had in other locations but they did not have a plan for Mary Ellen Gulch.

Councilman Bowen did not know if there was an impact there or not. If there was a potential impact there they should all be confident that it was not going to negatively impact the water quality by anything they were going to do.

Bryce Armstrong reported that in talking with Carl Adams and in the letter he received from Walt Baker, was that it was not clearly impaired. He believed the testing station was right at Tibble Fork.

Mayor Hadfield stated that when they get monitoring for two years they would have some more knowledge and be able to act wiser with regard to future development.

Nathan Bracken thought that part of the reason it was not impaired is that they met with Walt Baker last week because they just did not have enough data to determine one way or the other.

That was part of the value of monitoring. One of the things they discussed with DEQ and Walt Baker and other folks last week was that the status quo right now has been water quality but their biggest concern was what was going to happen if that status quo changed and speaking with Nestor Gallo and some of the other folks in the City, the concern was that they did not feel that Snowbird had given them enough information to know that the status quo would remain and that the current dilution would take place as it has. Part of his job was to help work through that, and, hopefully, they could prove the City wrong as Nestor Gallo said and he hoped that was the case.

Mr. Nielson expressed that was part of his discussion earlier with Carl Adams. The current application going forward had the concern dealing with water issues and had the exception if they were to somehow interfere with mine tailings.

Mr. Bracken stated they were more concerned with towers on the mine tailings and motor vehicles on mine tailings which was already occurring. Usually you had to have a baseline monitoring system. The next step was to sit down with Snowbird with assistance from the County and any other cities that were interested. The DEQ he thought was very forth coming at the meeting and they were willing to provide whatever assistance they could. These things were more difficult to deal with on the backend than on the frontend.

Councilman Frost stated that when they met with the DEQ they thought in terms of the environment as the water, air, and etc. He tried to explain the picture of the political environment and what had brought them to this point. That part was also toxic. It started with an attempted land grab and Utah County did not know. It got off on the wrong foot. There was then some misinformation. He asked how that environment could be changed so that it would not happen again with anyone. When the City could not get pertinent information about their watershed and had to go through an attorney 24 hours ahead of time it was really frustrating.

Councilman Frost explained the box they were in as elected officials. They had people worried about their water and there was a vast group worried about road access and access to the Canyon. Others were worried that their view scape was going away with the construction of towers. The environment around them from all of their constituents was all of the above.

Councilman Frost expressed that as he watched this progress through the system and let's say the boxes got checked that they met the criteria, they looked heavily at staff as they were the paid professionals and that was the way they did in the City, he looked to its engineer, but beyond health and safety there was discretion beyond the box. He wondered how staff came up with that discretion. How was it going to look? How clean was the water going to be? If there was any question, should staff's recommendation be given? Those were tough questions, but that was their frustration. If there was a 10 percent chance of bad water he would not dare to have Nestor Gallo give staff approval. At this point he thought it was already assumed that water quality was not in jeopardy.

Bryce Armstrong responded that it boiled down to the County's Ordinance and definition of preponderance of the evidence. After looking at the activities there, was there a chance; sure there was. The next was to see if that chance could be mitigated by certain conditions. If it was shown that it could be mitigated then there would be approval. He thought that was how staff looked at it.

Councilman Frost observed that this was a tough application. This was not normal. He found it interesting that the gun range went through an Environmental Impact Study (EIS). He understood that this kind of got sideways with the City not being able to see things.

Mr. Armstrong stated that they provided information within 24 hours of the request.

Councilman Frost noted that there was “confidentiality.” Snowbird kept it and the City could not get it.

Mr. Armstrong acknowledged that was true.

Mayor Hadfield commented that they had been here an hour and he felt everyone was aware of the City’s concerns. The City would work with Snowbird and move this thing along and try and have some answers. He believed the bottom line was monitoring and remedial action if there were dangerous elements in those waters. He knew there would be some permitting issues and he believed that the State DEQ would be checking to make sure that those Best Management Practices were put in place. Mr. Baker had assured the City that they would be monitoring what went on up that Canyon.

Councilman Frost stated that he thought that everyone understood liability.

Nestor Gallo repeated his statement of, “prove me wrong.” He had gone over reports for two weeks.

Mr. Moore stated that with all due respect, they understood the criteria. Snowbird has had to prove that they met the requirements. If the City wanted to prove them wrong, the City had to prove them wrong; not the other way around. Snowbird had experts that have testified and made reports and so it became the City’s choice to defeat that. That was how it worked. If Snowbird met the criteria, it would probably be granted.

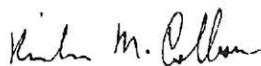
Councilman Frost asked if it was fair to ask indemnification. He was worried about liability. He would like to see all of the other communities take ownership of their liability before the Board of Adjustment meeting. He thought that was a fair factor in giving a staff recommendation.

Mr. Moore thought that if that was appealed to District Court it would be reversed.

Mayor Hadfield thanked all for their attendance.

## 2. ADJOURNMENT

The work session adjourned at 3:36 p.m.



Richard M. Colborn  
City Recorder

