

CITY OF SOUTH SALT LAKE
CITY COUNCIL WORK MEETING

COUNCIL MEETING

Wednesday, March 9, 2016
5:32 p.m.

CITY OFFICES

220 East Morris Avenue #200
South Salt Lake, Utah 84115

PRESIDING
CONDUCTING

Council Chair Deborah A. Snow
Council Chair Deborah A. Snow

COUNCIL MEMBERS PRESENT:

Sharla Beverly, Mark Kindred, Portia Mila, Ben Pender,
Kevin Rapp, Shane Siwik, and Debbie Snow

COUNCIL MEMBERS EXCUSED:

STAFF PRESENT:

Mayor Cherie Wood
Charee Peck, Chief of Staff
Lyn Creswell, City Attorney
Hannah Vickery, Deputy City Attorney
Sharen Hauri, Urban Development Director
Mont Roosendaal, Public Assets Director
Mike Florence, Community and Economic Development Director
Frank Lilly, Deputy Community & Economic Development Director
Alexandra White, City Planner
Craig D. Burton, City Recorder
Niels Melville, Information Technology

OTHERS PRESENT:

See attached list.

Matters for Discussion

- 1. 32-Lot PUD Townhome Project Located at 2255 South 400 East** – After a brief introduction by Mike Florence, Community and Economic Development Director, reminding Council that this agreement had been discussed at prior meetings and was being brought before them again with the changes they had suggested.

City Attorney, Lyn Creswell, presented on changes made to the *Development Agreement for the S-Line Townhomes Project*. A copy is attached to these minutes and incorporated by this reference.

Mr. Creswell informed council that sub-paragraphs D and E were added based on

suggestion made by Council Member Siwik.

Council Member Pender, addressed paragraph G, stating that fifty percent is not high enough and suggested that maybe twenty percent would be a more appropriate number.

Mr. Creswell referred the question to Mr. Florence for a reasonable range.

Council Chair Snow interjected to explain that she owns a townhouse at Waverly Station and their townhouse community has a cap of twenty percent rentals, which made her think the fifty percent was too high. Council Chair Snow believes that her community started out with only ten percent.

Council Member Pender asked Council Chair Snow how many units are there in her community.

Council Chair Snow replied that Waverly Station currently has 160 units and Plymouth Towns, a sister community right next to Waverly, has about 50 units; making it about a 210 unit community of townhouses.

Mr. Florence expressed that he would not add anything to what Council Chair Snow had explained, stating that she provided an accurate depiction of what is the norm.

Mr. Creswell reminded Council that this is only a 32 unit development and he was not sure how the developer was going to feel about it; furthermore the units are smaller than those dealt with in the past, where there was a twenty percent cap.

Council Member Pender found the twenty percent cap very lenient but expressed that he would be willing to be flexible.

Council Member Siwik explained that the fifty percent or twenty percent would only be in place as long as the development agreement is in place and it cannot go into perpetuity because eventually the owners will have the flexibility to amend it.

Council Chair Snow agreed but added that once a community is primarily owner occupied, one sees a lot of resistance within the community to turn it into a rental place.

Mr. Creswell explained that once the development agreement expires, this restriction goes away. However, the CCR's is still in place as a tool for enforcement. Mr. Florence added that the CCR's can still be amended but would require a majority vote.

Mr. Creswell proceeded by presenting on sub-paragraph C. Mr. Creswell explained that Council Member Siwik had expressed concern about the six years at the end of the construction of the project being too long. Mr. Creswell felt this was a policy discussion the City needed to have in order to change the paragraph.

Council Member Siwik referred back to Council Chair Snow's Waverly Station community example, which, according to Council Member Siwik, was built post 2008

and was sold out as they were built. Council Member Siwik stated that these units will not take six years to sell in the current strong real estate market; and stated that three years should be sufficient.

Mr. Florence explained that in the case of Waverly, when one set of townhomes was completed, usually there was a set of five to six townhomes in that row, that's when a certificate of occupancy was issued.

Council Member Siwik inquired if the work on all units needs to be completely done before they can get their certificate of occupancy. Mr. Florence explained that a certain number of units in a row need to be completed before issuance of the certificate of occupancy. After, the developer could get a rental license issued and after another row is completed another certificate of occupancy would be issued.

Council Member Siwik asked if it would be possible to set a chronology. Mr. Creswell suggested that the language could be simplified by picking a date "one year from the execution of this agreement the three years will start", that way the developer will have 3 years to rent while they actively sell and at the end of that period, the twenty percent would be in place; these numbers should be meaningful and motivating to the developer.

Mr. Mitch Fields, Attorney for Developer, came forward to explain about the financial side of the project. The developer applied for a lump sum construction loan for the entire project with the intent to build all units at once. Counsel agreed to change the language to have time count once the first set of units is completed. The attorneys and Mr. Florence discussed what the correct language would be for this part of the development agreement and decided to further work on the technical language.

Mr. Creswell asked Mr. Fields if the change to three years would affect the developer and, if so, how would it affect it

Mr. Fields explained that financing structures with lump sum construction loans have a typical six year completion term. It is very uncustomary for a bank and developers to go less than six years. Mr. Fields stated that even if the bank knows the developer intends to create these units, the bank in their due diligence, has set up very rigid checklists that even one unchecked box could disqualify the developer from the loan, which constitutes a huge concern from a financial perspective. Mr. Fields asked the City for collaboration to be able to get the financing.

Council Chair Snow asked for clarification on the time needed to pay off the loan.

Mr. Fields confirmed that the loan does need to be paid off in six years.

Council Chair Snow asked why they can't sell all units within the 3 years.

Mr. Fields explained that they are motivated to sell as many units as possible, as soon as possible but the problem is the bank will look at this restriction and ask, what happens if the market crashes and the developer is not able to sell within 3 years, and there is no

cash flow to pay off the loan.

Council Member Rapp asked if the lender would be the mechanism that would force the developer to sell units within 6 years.

Mr. Fields replied that would be for sure.

Council Member Rapp concluded that the lender will force the developer to sell all units within the 6 years and although this is a bit longer than the City would like; there is a lot of construction expected along the Trax lines, there still is some uncertainty in the market and therefore the 3 years seem reasonable to him. He doesn't feel the developer is trying to get out of what the City wants to have the units sold.

Council Member Mila agreed with Council Member Rapp's comments.

Council Member Siwik proposed the three years and one year renewal, with no more than three more years.

Mr. Creswell advised that would be doable with a contract rewrite to allow for three successive extensions based on proposed conditions. Mr. Creswell reminded the Council that this would also allow for a new starting date; the current agreement would start down the road but now it would have to start with the first unit being developed, which moves up the time table.

Council Chair Snow expressed her approval for continuous monitoring because she would like to treat extensions as exceptions to the rule and have those closely scrutinized.

Mr. Creswell stated the language in the agreement is very specific and if Council Chair Snow wants more than that, it can be added but the current language is prescriptive the way it was drafted. Mr. Creswell explained that with this direction, he will meet with other City staff and add some additional language to be read at a regular meeting, to make sure council is comfortable with it and go to a vote. Mr. Creswell explained that Counsel Jodi Burnett and Counsel Hannah Vickery will, at that point, talk about the sequence of motions for resolutions and zone changes so that all are adopted appropriately.

- 2. Parks Impact Fee.** Ms. Sharen Hauri, Urban Development Director, introduced Attorney Cami Hamilton, with Lewis Young Robertson & Burningham (LYRB), a consultant who has been working with the City on the parks impact fee study. Ms. Hamilton presented on *2016 Impact Fees - Parks and Recreation*. A copy is attached to these minutes and incorporated by this reference.

Council Member Siwik asked for clarification on the properties not included in the calculations. Ms. Hamilton explained that any county owned facilities were not included.

Council Chair Snow inquired if the Columbus Center was included.

Ms. Hauri explained that only the areas that serve recreational purposes were included.

Council Member Rapp asked if the impact fee would only affect new residents.

Ms. Hamilton confirmed and added that new park impact fees only impact new residents.

Council Member Siwik inquired if the 1% growth was annually or over the 10 years.

Ms. Hamilton clarified that this is a 1% annual growth, which would equate to 2,600 additional residents per year. Ms. Hamilton recommended that if the City experiences a substantial difference in growth rate, in the future, that the City Council reconsider and re-look at City's impact fees. She further explained that with the market crash in 2008, a lot of cities had to re-evaluate what their growth was when everything tanked because, they had impact fees in place anticipating large amounts of growth and they couldn't fund those facilities which they had planned since they did not have the demand in place. If there is a significant change in growth in the future, that is a trigger to re-evaluate impact fees.

Council Member Beverly asked if the indoor recreation space had to be new space or could it include improvements to existing spaces.

Ms. Hamilton explained that it needs to provide additional space, such as an expansion. Impact fees cannot be used to maintain anything; it has to be a new facility.

Council Member Siwik asked why Murray and Midvale show no impact fees.

Ms. Hauri explained that they might prioritize it in their budget. Ms. Hauri added that Salt Lake City fees might have been higher based on the amount of service they provide.

Ms. Hamilton explained that Salt Lake City is currently re-evaluating their impact fees and there is a chance their fees might go up as well.

Council Member Siwik inquired if Salt Lake County assesses impact fees.

Ms. Hamilton responded that, as far as she was aware, they do not.

Council Member Siwik concluded that for any single home that is built in the next 10 years, the City should be charging about \$1,900.

Ms. Hauri and Ms. Hamilton clarified that this is not only for new single family units but also any new multi-family units.

Council Member Siwik asked what else the City charges an impact fee on presently.

Ms. Vickery explained that the City currently charges impact fees for sewer and culinary water.

Council Member Kindred inquired on the current impact fees for sewer and water services.

Ms. Alexandra White, City Planner, explained that a one inch water line is about \$1,500 per home, the sewer is based off the size of the water line; so, a two inch sewer line it is about \$2,500. For a single family home, for both sewer and water, it is approximately \$3,000. If there is an existing line, it is the difference between the upgrade in line; so if it is an upgrade from a 1 inch to a 4 inch line, it would be 3 inch difference in price. If it is a brand new line, it would be the total cost for that inch of line based on the number of connections. Sewer is based off the water per size.

Ms. Vickery added that there is a big difference in the sewer; for example the one inch is just over \$1,000 whereas the 2 inch is close to \$11,000. But if there was an existing facility that had a 1 inch and upgraded to a 2 inch, they would pay the \$10,000, the fee difference. Ms. Vickery informed the City Council that there is currently a mechanism through the City's Ordinance for downward departure, so that applicants always have the chance to make a case to the City to show they think the City's fees are high based on their individual impact.

Council Member Siwik explained that he is not very fond of impact fees because there was a time where there were no impact fees in the City and there was a lot of building coming into the city since there were no impact fees and developers saw it was a great place to invest.

Council Member Kindred asked for an overall comparison of the City's impact fees, in comparison with other cities.

Council Member Siwik agreed that it should be looked at all impact fees across the board.

Ms. Hamilton advised that if Council does not want to charge impact fees but wants to continue park services at the same levels that have been provided in the past, the cost will need to come from other funds, so it would be the general fund or an increase in property taxes across the board for everyone; an impact fee would just put the burden of new facilities on new residents coming in.

Council Member Siwik inquired Ms. White of any comments she may have heard from people coming in and making applications.

Ms. White replied that most developers are surprised the City does not charge impact fees, especially on the larger projects.

Council Member Rapp asserted that of all the things the City could be charging impact fees on, it only charges on three things; the legislature has opened impact fees to a whole lot of different things. With that, Council Member Rapp added that he would also like to see the comparison to other cities, just so not to be an impediment to new growth.

Council Member Snow expressed that she does not believe impact fees deter growth and

thinks that most developers just expect to pay it since the vast majority of cities in the valley charge these; therefore, the City is only losing out on additional funding revenue through new development in the City.

Ms. Vickery explained that the dollar amount on the study is a suggestion and can be adjusted if the City Council feels it is inappropriate. She advised that by charging impact fees the Council is committing the City to maintain the current levels of service.

Council Member Mila emphasized what Ms. White said about developers being “really surprised” and concluded that developers are not coming to South Salt Lake because there are no impact fees. It is her belief that developers do expect to pay for impact fees.

Council Member Pender asked about cities such as Holladay City.

Ms. Hamilton replied that she would have to research it but that there are a lot of cities in Salt Lake County that charge impact fees.

Council Member Pender expressed his curiosity in seeing what other cities, such as Taylorsville and Holladay charge, and see where the City falls’ in line.

Ms. Hauri explained that the margins on the presentation slide dropped off and the presentation had actually 10 cities that were compared and Taylorsville might have been omitted from the slide. Ms. Hauri offered to share said slide with council soon after presentation.

Council Member Siwik inquired if this is a comparison of all impact fees.

Ms. Hauri explained that this is only on park impact fees.

Council Member Siwik asked for an all impact fees comparison between the cities in the valley.

Ms. Hamilton explained that if all impact fees were looked at, a lot of notes would need to be included since they will all include different impact fees, which will not make an apple to apples comparison.

Council Member Siwik asked if any city does not charge any impact fees.

Ms. Hamilton was only aware of Midvale, as the only city that does not charge any impact fees.

Ms. Vickery reminded the Council that both Murray and Midvale are heavily commercial.

Ms. Hauri commented on “getting what you pay for” since the real point of doing impact fees is that when people pay for something they get something, which was the point of the presentation. There are ways of doing an inexpensive recreation center that is going to

last 25 years, if one believes there will not be enough growth to justify it. Ms. Hauri suggested that City Council Members should keep in mind, as they discuss this topic, of what they would like to do with the money because that would give the Council the justification for charging the fee.

Mr. Burnett addressed the 90 days implementation period which is longer than it may seem because when developers apply, they are vested for what the fee is when they make that application; it is not when the permit is issued but when the application is submitted.

3. **Ethics Training.** Mr. Creswell expressed his desire to cover three topics: fiduciary duty; the Municipal Officers/Employees Act, which is ethical legal obligation; and last, the City's Ethics Commission Ordinance, passed in 2012. A copy is attached to these minutes and incorporated by this reference.

Council Member Rapp asked how political contributions for elections fall under the Utah Municipal Officers' and Employees' Act. Mr. Creswell explained that Utah Code 10-3-1304(3)(b) states the exceptions, to which "a political campaign contribution" is an exception.

Council Member Rapp recalled the prior year when business license fees were coming up and the City Council was discussing rentals, a City Council Member at the time was a landlord but did not disclose that information before the discussions started. Council Member Rapp asked if this would have been a violation.

Mr. Creswell quoted the law "An elected official who is an officer, director, agent, or employee or owner of a substantial interest in any business entity which is subject to the regulation of the municipality in which the officer is an elected official shall disclose" (Utah Code 10-3-1305 (2)) Mr. Creswell stated that if a Council Member is a landlord and your rental business is subject to regulation, one needs to disclose that.

Council Chair Snow reminded everyone that earlier she expressed having a business license to rent her townhome in South Salt Lake. The City requires a business license for a one unit rental and therefore she pays her business license fees and is subject to the regulations associated with it.

Mr. Creswell explained that with previous City Councils he has recommended (in three different occasions and it still hasn't happen) a disclosure form that every Council Member fills out annually – both Salt Lake City and Salt Lake County have this form – state all the things that one is doing out in the community that may have an impact on their role with the City. This form would be kept on file, the Mayor would receive a copy and it would be a public record. The form could be updated as circumstances change.

Council Member Pender asked if it would be possible to consult with Mr. Creswell as one goes through the disclosure form.

Mr. Creswell agreed to be available for consultation.

Council Member Pender inquired about the possibility of someone who did not like him, coming in and filing a complaint against him, which would go to the Administrative Law Judge (ALJ), who would know about the Council being disliked; if he would be treated fairly.

Mr. Creswell advised that would be a policy decision. Mr. Creswell added that when the ordinance was put together the City had and still has confidence in the objectivity of the City's ALJ. The City felt the ALJ process was rigorous enough and independent enough to provide the protections suggested; however, if any Council Member at any time felt that, as a Council, they wanted an outside Judge, it could be arranged. Mr. Creswell did request that the City Council provide him with direction so that he could build that into the ordinance.

Council Member Pender expressed his interest in looking further into this possible change.

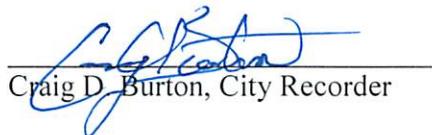
Council Member Siwik stated that in some circumstances the Council may feel that they have a conflict of interest, maybe not in a specific area but enough that would make them abstain from voting; personally one may think that one may have a conflict, disclose it and still want to vote on the issue because the issue is very broad.

Mr. Creswell explained that this only applies to personal conflicts of interest and it would be up to the City Council to decide if they want to change the language to broaden or be more specific.

Mr. Creswell concluded his presentation and invited any Council Member who would like to individually meet with him and discuss these any further, to contact him.

Meeting adjourned at 6:56 p.m.


Deborah A. Snow, Council Chair


Craig D. Burton, City Recorder

