

Heber City Corporation
City Council Meeting
March 3, 2016
4:00 p.m.

WORK MEETING

The Council of Heber City, Wasatch County, Utah, met in **Work Meeting** on March 3, 2016, in the City Council Chambers in Heber City, Utah

I. Call to Order
[City Manager Memo](#)

Present: Mayor Alan McDonald
Council Member Jeffery Bradshaw
Council Member Heidi Franco
Council Member Kelleen Potter
Council Member Jeffrey Smith
Council Member Ronald Crittenden

Excused: None

Also Present: City Manager Mark Anderson
City Planner Tony Kohler
City Engineer Bart Mumford
City Attorney Mark Smedley
Chief of Police Dave Booth
Senior Accountant Wes Bingham
Deputy City Recorder Allison Lutes

Others Present: Francis Harrison, Lance Higgs, Carl Berg, Terry Edwards, Mel McQuarrie, Paul Boyd, Laurie Wynn, Dave Hansen, Di Ann Duke Turner, Karen Mair, Barry Hancock, Shawn Davis, Justin Hatch, Jeff Mabbutt, Tracy Taylor, John Saldarriaga, Paul Berg, Dale Stewart, Mike Johnston, Mary Kelly, Zack Goode, Chip Turner, Tom Fowler, Marilyn Fowler, Doug Pope, Diane Pope, Rachel Kahler, Brian Balls, Bob Davis, Diego Payan, Cathy Witt, Fred Schloss, Sara Hall, and others whose names were illegible.

1. Presentation of Second Quarter Financial Results
[Second Quarter Financial Statements](#)
[Airport Revenue and Expenses](#)

Wes Bingham reviewed the financial results for the period ending December 31, 2015, and summarized the points set out in his February 24, 2016 letter to the Mayor and Council, contained in the meeting packet. Projected revenue, excluding contributions and general fund surplus, was estimated to be approximately \$6.5 million. Revenue was projected to be roughly

\$150,000 over budget, and expenditures approximately \$180,000 under budget. A short question and answer session followed.

2. Terry Edwards, Memorial Hill Restoration Committee, Discussion Regarding New Memorial
[Memorial Hill Minutes](#)

Carl Berg and Terry Edwards appeared on behalf of the Memorial Hill Restoration Committee and reviewed the Committee's request for a donation by the City. The request had been brought before the City Council in the summer of 2015, but the budget had already been finalized at that time. Discussion followed concerning the increased construction cost, and the request for \$20,000, rather than the previously requested \$15,000. Midway agreed to donate \$5000 per year over a 3-year period; Edwards indicated Heber City could stretch its donation over a 3-year period as well. Mayor McDonald indicated the Council would be meeting concerning the budget and would vote on the amount the City would donate to the project. Council Member Potter stated for the record that although the Council was certainly in favor of supporting a donation, she wanted people to understand and to keep in mind for projects such as this, that for every dollar the County funded, half was paid by Heber City citizens.

3. Mike Johnston, Discussion Regarding the Tripp Subdivision, a 14 Lot Subdivision Located on East Airport Road
[Staff Report & Subdivision Plat](#)

Dallas Nicoll appeared on behalf of Mike Johnston and indicated that all issues concerning this subdivision had been worked out with Bart Mumford. A short question and answer session followed, whereby Nicoll explained items on the plat map, showing the retention basin, easements and sidewalk improvements. The Council was favorable to moving the agenda item to the next regular meeting for a vote.

4. Discuss Policy for Offering Water and Sewer Services Outside of the City Limits
[Resolution 98-10](#)

Council Member Crittenden requested this agenda item in light of the Wasatch County School Board's request to hook to the City sewer system for the new school, and because of the recent request by Russ Witt, who was advised he must annex his property along Mill Road. Crittenden asserted that if there was a policy, and if there was an exception, it should be brought before the Council and not wait until the person had already purchased the property. Anderson clarified that Resolution 98-10 was policy as it related to service within the Twin Creeks Special Service District, and based on that, he advised Witt to annex his property along Mill Road. He added that any connection outside the City limits had been brought before the City Council for approval.

Anderson confirmed that in most cases, staff would recommend not providing water services without annexation, and as to sewer, any services outside the City limits would be brought before the Council for its approval. The School District approached the City regarding sewer services approximately a year ago, but was advised to bring it before the City Council, and did so in the

last meeting; there was no reason to submit this to the City until after passage of the school bond. Council Member Crittenden argued that the School District should have approached the City regarding the sewer connection before it even purchased the property. Council Member Franco asserted that the City should review the annexation plan, or general plan, to address the larger issue, instead of dealing with a few exceptions, however she added that if exceptions were considered, then they should include the curb and gutter improvements to City standards as part of the conditions. Anderson felt Council Member Franco's idea was a good one, and thought the Council should discuss the foregoing before meeting with County Council. Anderson felt that since they were looking into form based codes, they should address the City boundaries as well. He thought Tony Kohler could have something to discuss by the next work meeting.

6. [Discuss Request to Convert the Hangar Leases from Daniel Hangars 22-30 from Reversionary to Non-Reversionary Leases](#)

[Airport Policy](#)

[Airport Minutes](#)

[Airport Letter - Paul Boyer](#)

[Airport Beacon Report](#)

[Gerry Hall Financial Analysis](#)

[Email Regarding Similar Situated Hangars](#)

[Council Member Smiths Analysis](#)

Airport Board Chairman Mel McQuarrie reviewed that the Board recommended approval of the hangar owners' proposal, whereby they offered to pay an additional \$1500 per year per lease, in exchange for a lease conversion from reversionary to non-reversionary. Council Member Smith analyzed the net present value spreadsheet submitted by Gerry Hall and found some discrepancies in the numbers, which he detailed during the meeting. Based on his revised analysis, Smith concluded that over 50 years, the reversionary lease model was more beneficial to the City, however, he added the caveat that if a net present value calculation was based on anything other than the foreseeable future, it would be difficult to accurately project out 50 years due to all of the unknown variables. Smith added that while the numbers indicated the reversionary lease was better from the City's perspective over the long term, he wondered whether the City wanted to be a landlord, or would it be better for the hangars to be privately owned.

Council Members Crittenden and Franco discussed their concerns regarding the maintenance on the hangars, and whether the proposal would create enough income to the City for maintenance costs. Further, Franco was concerned that the inspection standards were not adequate with regard to the condition of the leased buildings.

Board Chairman McQuarrie noted that the City probably needed the funds concerning these hangars more today than it would in 30 years, thus the recommendation to accept the proposal. Council Member Smith agreed that the cash flow on the non-reversionary lease would come in much sooner than that of the reversionary lease.

Council Member Franco stated the proposal entailed a risk: either the City assumed that risk, or the risk would be assumed by the private owner, but demographic trends indicated that there

would be fewer and fewer pilots over the years, so she felt the City needed to be cautious and to not assume that the reversionary model would somehow be a boon to the City.

Gerry Hall, Dave Hansen, Barry Hancock, and Paul Boyer each gave a short statement in support of the non-reversionary lease.

Board Chairman McQuarrie confirmed that the offer would apply to hangars 23-30. As for hangar 5, because the application was never before the Board, the Board recommended keeping it separate and following the same procedure as hangars 23-30.

McQuarrie next reviewed the Board's position concerning the second FBO application, and whether to seek an RFP. He stated that the Board did not feel the timing was correct, and there were too many unknowns, thus the Board wanted time to figure out the parameters, and then come back to the Council with its recommendation.

The Council was in favor of moving this agenda item to the next regular meeting.

5. [Review Request from the Wasatch County School District for the Daniel Elementary School to Connect to the Heber City Sewer System](#)

Mark Robinson, attorney for the school district, appeared and gave a brief statement on the issue before the Council. He stated that the discussions between the school board and the City needed to be rehabilitated, and stated it seemed to be a good idea to have a joint meeting, currently scheduled for March 10, between the school board and the City Council, and discuss person-to-person, without filter by press, constituents, or legal counsel.

Robinson stated that the grate issue had been a sticky one, which he discussed with Mark Smedley during the evening. Robinson felt there were tools they could use, since both parties were insured by the same risk management pool, there were inter-local agreements that could be used, adding that a little compromise would be necessary as well.

Robinson advised the school board that there was no clear policy saying the school couldn't hook to the sewer, and there was a precedent set by the LDS Daniel church site, which was somewhat analogous; the church issues applied in this case as well. He added that he hoped this issue wouldn't be used as a lever to try and resolve the other concerns, and cited mandatory language regarding sewer connection in Utah Administrative Rule 317-4-3.3.

Finally, Robinson stated that the traffic studies were currently underway.

Robinson confirmed that all of the issues, except the grate issue and the sewer hook-up issue had been submitted before the State Ombudsman last summer, and was currently in mediation. Council Member Franco was surprised the City Council had not been advised of the Ombudsman review. Anderson stated he had sent the Council members an email to provide them with information concerning the Ombudsman meeting. Council Member Crittenden felt it was not prudent to meet with the school board until the traffic study had been completed. Council Member Franco felt the Council needed to have a discussion with the City Attorney to ask

questions regarding the issues, before meeting with the school board. Mayor McDonald advised that they would continue discussion on this item following the evening's regular meeting.

7. Chief Booth - Review Results of Citizen Survey Regarding Deer in the City Limits Staff Report

Chief Booth, accompanied by Steve Gray with the Division of Wildlife Resources and Justin Hatch, Heber City Animal Control, projected a PowerPoint presentation to convey the results of the deer survey, conducted between January 1 through February 2, for which they received slightly over 1000 responses. The survey resulted in a roughly 4-to-1 majority of respondents who did not want the City to do much to mitigate the deer population in the City.

Booth related that the option to capture and relocate the deer seemed to be the most acceptable method to deal with the deer population.

Booth concluded the survey was clear in that the majority of respondents didn't want the City to do much with regard to the deer population, but he added he was sympathetic to those citizens who were experiencing problems with the deer. Booth presented three options: 1) do nothing; 2) trap and relocate the deer, however he would not recommend this option, as it was quite expensive, and most deer died due to shock; 3) euthanasia, whereby the City would contract with certified archers who would kill enough of the herd to make it move elsewhere.

Following further discussion, Booth posed the question for the council: do we proceed with a plan to thin the herds, or not? Mayor McDonald then opened the meeting for public comments.

Residents Shawn Davis and John Saldarriaga gave statements concerning the impact of deer on their yards and on the safety of their children and animals. Davis expressed that there was no help for issues regarding wildlife in the City. Saldarriaga expressed that he understood the cost issues, but he wanted to find a solution so that citizens wouldn't have to endure the intrusion by wildlife.

Tracy Taylor asked whether the City could think of a resolution to allow the affected residents to build a fence higher than the 6-foot height mandated by current City code. Resident Di Ann Duke Turner, agreed with Taylor, and related how the deer had intruded upon her garden. She spoke with Tony Kohler and advised she would be erecting an 8-foot deer fence around her property, despite the City code requirement limiting fence height to 6 feet. She noted the City needed to start enforcing its other code violations before citing her for an 8-foot fence.

Mike Johnston also expressed the impact of the deer on his property. He added the deer used to come down from the mountains and then leave, but now the deer were staying; and there was evidence that predators had come as well. He felt it was a huge problem that needed to be addressed now.

Chief Booth noted certain residents could not afford to build an 8-foot fence. Booth also confirmed that the deer were becoming more used to people, and becoming more aggressive. He

added the City had the ability to euthanize the deer by area as an option, and he shared the results of a recent deer count that found 67 in Timp Meadows, and 233 deer and 44 elk in Red Ledges.

Steve Gray indicated that last year, the State passed a bill whereby municipalities could establish an urban deer management program. A city would be required obtain a certificate of registration from Wildlife Resources by demonstrating that the deer created significant damage and threatened public safety; would need to pass a no feed ordinance, provide proof of \$1 million general liability insurance, agree to the provisions of the Utah Governmental Immunity Act, and provide an estimate of the number of resident deer, including how many the city would want to euthanize. A public hearing on the plan would be required.

Following discussion, Chief Booth asked the Council whether they were interested in euthanizing, then they would move forward on a plan, however he cautioned that public backlash would result if they chose to euthanize.

Council Members Crittenden and Potter were in favor of reviewing the zoning ordinance to allow 8-foot fences, and consider a grant program to assist those who could not afford a fence. Council Member Bradshaw felt that based on the survey results, the City should not enact a deer mitigation program at this time. Council Member Franco expressed that she was in favor of identifying certain neighborhoods with the deer problem, figure out the cost, and implement a deer control program. Mayor McDonald stated this agenda item should be moved to the following year. Chief Booth indicated he could send out another survey at that time as well. Council Member Smith felt there was a need to do something, and would be happy to discuss further if there was a way to change and enforce the code. He added he was willing to consider this sooner than one year out.

Council Member Crittenden expressed that in some areas, individuals should be able to obtain a waiver to allow an 8-foot fence. Tony Kohler offered to go to Ms. Turner's house to see if they could come up with a solution. Mayor McDonald suggested this issue go before the Planning Commission for a possible solution.

At this time, the Work Meeting was suspended and the Regular Meeting was called to order.

[8. Review Request from Bart Mumford for Budget Amendment for Crack Sealing Crack Seal Project Proposal](#)

The Work Meeting resumed at approximately 9:50 p.m., following conclusion of the Regular Meeting.

Anderson related that he had received a text message from the School Superintendent, who advised that it would be best for the City and School District to not meet until after completion of the traffic studies.

Mumford summarized that Heber City road maintenance was done every 5 to 6 years, with crack sealing every 3 years. The crack sealing for this next year would be coming up in the FY2017 budget, however, due to damage and deterioration from this winter, staff felt the City would need

to get a head start on crack sealing this year, and would need to get going on this project this spring. Mumford and Anderson felt it would be best to see whether the Council would be favorable to proceeding ahead and soliciting bids to get this item on a regular meeting agenda for approval. Mumford added a study was necessary to evaluate the various treatments. Staff estimated approximately \$400,000 for the study and the work.

On a separate item, Council Member Franco inquired of Mumford whether the length of 500 East had been measured. Mumford responded that he concluded it would be compliant with the City's 800 foot threshold ordinance, based on what he had reviewed thus far. The proposed school district cul-de-sac would be operating as a temporary cul-de-sac and seemed to be compliant with City requirements.

9. [Review Proposed Meeting Schedule for the form Based Code and Branding Project Meeting Schedule](#)

This agenda item was not discussed.

5. [Review Request from the Wasatch County School District for the Daniel Elementary School to Connect to the Heber City Sewer System](#)

Council Member Crittenden expressed that he wanted to move into closed session, because he felt there had been two potential legal challenges during the evening's meeting: one concerning the school district, the other with regard to OK3 Air's lease, and felt the Council should discuss the issues with City Attorney Mark Smedley. Smedley responded that legally, the City would be in trouble if the Council were to go into closed session, because nothing he had observed during the course of the evening's meeting would meet the legal requirement to enter into a closed session.

Council Member Franco asked Smedley to discuss the Ombudsman issue. He reviewed that there had been an informal telephone conference with the Ombudsman on September 29, during which Smedley, Anderson and Mumford inquired about impact fees. Smedley fully expected the Ombudsman to issue an opinion, since the school district submitted the issue, but the opinion never came. The Ombudsman closed the case, assuming both parties understood what the outcome was. Smedley requested the case be reopened and an opinion issued. The Ombudsman stated that unless a school was creating a new impact, then the City could not ask that the school district pay impact fees. With regard to the cafeteria, the Ombudsman said the City would not be able to assess the impact fee. With regard to roads, specifically in the Daniel area, schools would not be required to pay an impact fee or assist with the building of the road unless that street was specifically needed by the school.

Discussion followed regarding the bulleted list of outstanding impact fee items referenced in Anderson's City Manager Memo, and the following points were considered negotiable items, based on the discussion with the Ombudsman and Smedley's review of the law: 1) water rights .44 feet; 2) bus storage building on Daniel Road; and 3) maintenance of the Lower Wasatch Canal grate.

As to the street impact fees for the bus garage, the City calculated an impact fee and advised the school district that if they disputed the fees, and wanted to conduct their own traffic study, the City would accept that. The school district has not yet come back to the City regarding the traffic study.

With regard to the sewer hook-up issue, Smedley did not agree with the school board attorney's interpretation of the statute, and felt it would be a negotiable item.

Concerning the canal grate, Smedley noted that it was the City's overriding obligation to take care of flood water, and in his opinion it was in the City's best interest to make sure the grate was there and to take care of it, but to push the School District to share in the cost and the maintenance of the grate. He stressed it was the City's indelible responsibility to protect its citizens from flood water.

Discussion followed regarding creating a list, after factoring in what was best for the City and public policy, of the items that the City considered reasonable and present them to the School Board in the negotiations: the grate, the water, the roadway and the sewer.

Smedley cautioned the Council that it could not turn a blind eye to the precedent the City had set with the LDS church sewer connection in its negotiations with the School District.

The Council was in favor of discussing the negotiable items and the costs regarding same with the staff.

10. Other Items as Needed

Discussion followed with City Attorney Smedley concerning OK3-Air's non-disclosure agreement regarding access to its financial information, and the potential second FBO.

Mayor McDonald noted that the Council needed to advise the Airport Advisory Board to put in place the process to seek a second FBO. Council Member Franco requested that Smedley analyze Section 308 of the Federal Aviation Act, referenced in Section 11 of the amended FBO lease agreement, which discusses exclusive rights.

Council Member Crittenden moved to adjourn the meeting. Council Member Franco made the second. Voting Aye: Council Members Bradshaw, Franco, Potter, Smith, and Crittenden.

At 10:45 p.m., the meeting was adjourned.

Allison Lutes, Deputy City Recorder