

Heber City Corporation
City Council Meeting
March 3, 2016
7:00 p.m.

REGULAR MEETING

The Council of Heber City, Wasatch County, Utah, met in **Regular 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
Deputy City Recorder Allison Lutes

Others Present: Tracy Taylor, Dale Stewart, Mike Johnston, Mary Kelly, Zack Goode, Chip Turner, Tom Fowler, Marilyn Fowler, Doug Pope, Diane Pope, Rachel Kahler, Brian Balls, Doug Heiner, Craig Keyser, Nancy Keyser, Bob Davis, Diego Payan Russ Witt, Cathy Witt, Chris Goode, Fred Schloss, Sara Hall, Alan Robertson, Dennis Jensen, Nadim AbuHaidar, Maggie AbuHaidar, Brent Kelly, Paul Boyer, and others whose names were illegible.

II. [Pledge of Allegiance: City Council Member Ronald Crittenden](#)

III. [Prayer/Thought: Council Member Jeffrey Smith](#)

IV. [Open Period for Public Comments](#)

Mayor McDonald opened the meeting for public comments from the audience on items not addressed on the agenda. Rachel Kahler thanked the Council for its diligence in working with UDOT on installing the pedestrian crosswalks; she felt the citizens would feel safer this summer when using the crosswalks. She also asked that the City look at the issue regarding the traffic

that would be pushed to Mill Road, with construction of the new junior high. She asked that the City consider the following intersections and the potential traffic impacts: Center Street, 600 North, and 1200 North and consider that there would be approximately 600 students that would be utilizing Mill Road to get to their new junior high school. Kahler requested that the City Council consider roundabouts or other measures to address the increased traffic.

1. [Approval of Application for Local Consent for On Premise Alcohol Consumption for El Rodeo Grill Located at 734 West 100 South](#)
[Staff Report](#)
[Local Consent Application](#)

Council Member Potter moved to approve the Application for Local Consent for On Premise Alcohol Consumption for El Rodeo Grill, located at 734 West 100 South. Council Member Bradshaw made the second.

Voting Aye: Council Members Bradshaw, Potter, and Smith. Council Members Crittenden and Franco abstained. The motion carried.

2. [Public Hearing – Ordinance 2016-7, an Ordinance Considering the Annexation of a 27.52 Acre Parcel Known as the Witt-Heiner Annexation and Located at Approximately 2800 South US 40; and Approval of the Associated Annexation Agreement](#)
[Ordinance 2016-07](#)
[Witt Annexation Agreement](#)
[Witt Annexation Map](#)

Kohler gave a brief summary of the requested annexation, and indicated that the Planning Commission provided its positive recommendation for the annexation. Kohler added that at the Planning Commission meeting, some of the adjoining property owners expressed concern with the impact to their quality of life and wanted to maintain a rural feel. Additionally, more recently, Wasatch County requested the area east of Mill Road not be annexed, and it was concerned with the City providing services to an area that was in a special service district. Kohler also reviewed that on this date, the Daniel Town Planning Commission sent a letter that echoed some of the concerns with quality of life, and the town of Daniel would like the City to continue discussions with the Rural Planning Organization (the "RPO") regarding access to the highway and the acute road angles of Mill Road and 2400 South.

Mayor McDonald opened the meeting for comments from the public.

Chip Turner, Mayor of Daniel, commented that the proposed annexation boundary from Mill Road south would impact Daniel's future utilities infrastructure. Turner proposed moving the boundary line to the center of Highway 40. Following discussion, Tony Kohler did not foresee any issues regarding the proposed change. It would leave a 50-foot sliver of unincorporated area that would require the Town of Daniel to amend its general plan, however he felt the area would not fall under the peninsula definition. The Town of Daniel would need to work with the County and UDOT to incorporate the area into its plan.

Mayor McDonald closed the Public Hearing and opened the discussion to the City Council. Council Member Crittenden asked whether the adjoining landowners' concerns regarding access to Highway 40 had been addressed. Anderson confirmed they reviewed the modified Annexation Agreement, and gave the impression they would agree to the proposed changes.

Council Member Franco felt the trails that were required on the Strawberry Annexation should be extended to the Witt annexation. In a commercial development, the sidewalk requirement was approximately 10 feet wide. If the Strawberry annexation trail were extended, it would increase the width an additional 8 to 10 feet, to include a berm and landscaping.

Following discussion on this issue, Mayor McDonald polled the Council Members on whether they agreed to amend the Annexation Agreement to require a trail system to link to the Strawberry Annexation trail system. Council Member Bradshaw was not sure whether the Council needed to tie in the trail plan with approval of the Annexation Agreement; he felt that a review of the trail system was a separate issue. Further, Bradshaw felt the Planning Commission should review the proposed plans and the trail system and make its recommendation to the City Council. Council Member Smith agreed with Mr. Bradshaw's position and felt this was not the right venue to be changing the master plan trail system, and also approving an annexation agreement. Council Member Potter was not sure what trail system was currently on the trail master plan, and felt they would need to look at it. Council Member Crittenden recognized there was a concern regarding the trails and felt it could not be defined at this time until the final locations of the roads had been identified; he proposed that the Council add that at the time of approval the trail system would be considered by the Planning Commission as part of the planning process.

Council Member Franco asserted that both Exhibit G to the Annexation Agreement and the Witt Annexation Agreement needed to be modified to reflect what the City Council determined in the Strawberry annexation concerning trails. She also expressed her concern with the C-2 zone change for the annexation area, because under that zone, they could build a big box store, similar to a Day's Market, in a rural area. Franco was concerned with building a very large commercial density project in the outer edge of the City. She felt they could employ the form based codes standard of blending into the City.

Council Member Franco moved to amend the Witt-Heiner Annexation Agreement as follows: Page 4, Number 8(b), Parks and Trails: "At the time of development or redevelopment of the Keyser properties, Petitioner shall dedicate and construct along their respective 2400 South street frontages and Mill Road frontages, and the trails identified on Exhibit G." Council Member Potter made the second.

Discussion followed, wherein Craig Keyser expressed his frustration with this newly proposed trail system requirement that could further encroach on his property, and felt it would look out of place in a commercial development. Council Member Crittenden felt this motion was premature, and that the trails and/or curbs and gutters could be addressed at the time the developers submitted their proposed development. Further, Crittenden noted that the road configuration was still unknown, and it was dependent upon where UDOT would define where the Highway 40 connection would be.

The motion failed.

Council Member Franco moved to amend the Witt-Heiner Annexation Agreement as follows: Page 4, Number 8(b), Parks and Trails: "At the time of development or redevelopment of the Keyser properties, Petitioner shall dedicate and construct along their respective 2400 South street frontages and the trails identified on Exhibit G." The motion failed for lack of a second.

Council Member Bradshaw moved to approve Ordinance 2016-7, an ordinance considering the annexation of a 27.52 acre parcel known as the Witt-Heiner Annexation and located at approximately 2800 South US 40; and approval of the associated Annexation Agreement, and to move the annexation boundary line to the centerline of U.S. 40, from south of the Mill Road intersection to 1200 East. Council Member Smith made the second.

Voting Aye: Council Members Bradshaw, Potter, Smith, and Crittenden. Voting Nay: Council Member Franco. The motion carried.

3. [Public Hearing – Resolution No. 2016-6, A Resolution Amending the 2015-2016 Capital Projects Fund Budget](#)
[Resolution 2016-6](#)
[Bench Quote](#)

Anderson briefly summarized Chief Booth's request for a budget amendment to address communications issues in the Public Safety building, which was estimated to cost \$25,000. The request also included \$7,000 to install additional courtroom benches, and approximately \$6,000 for Justice Court computer equipment and switches. Anderson had since spoken with Court Clerk, Diann Greer and IT Manager, Anthon Beales, and it was determined that the computer request was not a necessity at this time; one of the Police Department computers that was not in use was transferred to the Court. The other request related to a lobby area public laptop, however it was agreed that there was a need for further discussion to ensure the security of credit card payments made on the public computer.

Mayor McDonald opened the meeting for a public hearing. No comments were given. Mayor McDonald closed the public hearing and opened the meeting for the Council's discussion.

Following discussion, it was determined that the requested amount could be reduced to approximately \$35,000.

Council Member Crittenden moved that the City transfer \$35,000 to address in the following order: Public Safety Building communication and switching needs; courtroom benches; and if there was any money left it would be used for computer needs under the discretion of Anthon Beales. Council Member Smith made the second.

Voting Aye: Council Members Bradshaw, Franco, Potter, Smith, and Crittenden.

Anderson clarified that the foregoing did not require a transfer of funds, but rather an appropriation of surplus funds.

4. [Rachel Kahler, Heber Valley Tourism and Economic Development Board, Recap of the 2015 Heber Valley Western Music & Cowboy Poetry Gathering](#)

[Western Music & Cowboy Poetry Presentation](#)

Tom Fowler, member of the Executive Committee of the Heber Valley Cowboy Poetry Gathering thanked the Council for its past support. He added that the gathering would not happen without the grants and sponsorships sales, as ticket sales covered only about 60% of its expenses. Fowler explained that the purpose of the PowerPoint was to summarize the results of the 2015 Cowboy Poetry Gathering and to request the City's continued financial support, as the prior 3-year commitment of \$5,000 per year had run its course in 2015. Fowler commented that they were building a contingency fund to adhere to their pledge to the City that they would not need to come back to ask for additional funding over the three-year term. Their goal was to target a younger audience and bring in a "Diamond Rio" or similar group to obtain a higher ticket value.

Rachel Kahler presented a portion of the PowerPoint to show how the Cowboy Poetry Gathering had been marketed nationally, adding that it was probably the only national event that was owned locally. The total economic impact to the Heber Valley, including all travel related expenses and out of state room sales totaled approximately \$1.3 million. Fowler noted that the Cowboy Poetry Gathering was gaining a reputation as the best western music event by many magazines. The event had been profitable for the past three years, and was able to meet its expenses. Their the overriding plan was to build the contingency fund. However, 2015 was difficult, due to Zion Bank's reduction in their sponsorship funding from \$40,000 to \$25,000.

Fowler demonstrated that the ticket sales were trending slightly downward, and their goal was to reverse that. In order to do that, they felt it would require attracting higher priced entertainers, and increase ticket pricing. In summary, Fowler requested on behalf of the Cowboy Poetry Gathering that Heber City continue its support and commit to a \$5,000 grant for the next three years.

Mayor McDonald expressed his gratitude to Fowler and his committee for their work on the Cowboy Poetry Gathering, and stated that the City Council would discuss this at their next budget meeting and would work to approve some money to support the event.

5. [Nadim AbuHaidar, OK3 AIR Annual Report](#)
[OK3 AIR Report](#)
[OK3 AIR Amended Agreement](#)

Nadim AbuHaidar reviewed that his annual report had been provided for the past ten years in the same format, and in compliance with Article 15 of the lease. AbuHaidar felt it was not necessary to read through each of the PowerPoint slides he submitted to the Council prior to the meeting for its review, and instead invited the Council to ask questions or discuss issues related to the airport.

Council Member Potter asked AbuHaidar to address the gas price issue. AbuHaidar responded that on average, Heber City airport's fuel prices were higher, but not any higher than comparable destination airports in the west, of which Heber City was considered a desirable airport that was one of the fastest growing in the west. He added that only 10% of the fuel sold was avgas, so from a fuel flowage standpoint, the number was relatively insignificant, in terms of the funds Heber City would derive from fuel flowage fees.

AbuHaidar explained OK3 Air's business model, noting they were hypersensitive to the valley. Thus, any business in itself was not ideal from a noise standpoint, and a balance needed to be struck. He stated that if everyone started coming to Heber Airport for fuel, the noise impact would be significant. In fact, the FBO had even given up on some business opportunities, due to the potential noise impact; for example, the FBO encouraged helicopters to avoid Heber City. He wondered why the fuel price issue was a concern to the Council members and their constituents. Council Member Franco asserted that Heber City was currently undergoing a re-branding process, and part of the intent of the process was to not make Heber City exclusive. She felt AbuHaidar was trying to make Heber City Airport exclusive by charging high fuel prices and catering to jet fuel users and trying to be in the same class as Vail, Jackson Hole, etc. She felt it was going against the image and branding process.

Council Member Franco stated that she had never seen a yearly gross income report from OK3 Air, as required by Article 21 of the lease, and asked AbuHaidar when the FBO last provided this information. He responded that it had never been done in the 20-year existence of the lease and would be negotiated with the City Attorney in the following week. Council Member Franco asserted that the request for the income report had been outstanding for two months and wondered why a non-disclosure agreement was necessary. She reiterated the request for the financial information and asked when it would be forthcoming. AbuHaidar responded that his legal team was meeting in the following week. Council Member Crittenden asked whether the meeting related only to the request for financial information and the non-disclosure agreement or to other issues as well. AbuHaidar stated there could be matters beyond the request to discuss.

Council Member Crittenden requested that AbuHaidar provide what the tie-down rates and hangar lease rates were, in addition to the income report Council Member Franco requested, because AbuHaidar stated in his PowerPoint that his business was not a monopoly. Crittenden pressed AbuHaidar to state whether or not he would provide those figures and if so, when. AbuHaidar and Alan Robertson stated that the information was public, it was contained in a 15-page document, and it was comprised of information that had been gathered and vetted from regional airports. They felt their rates were very competitive. AbuHaidar said he would provide the information.

AbuHaidar stated that the FBO's relationship with the City had been ongoing for 27 years, and he felt it was important for both sides to find common ground where both interests were served. He added he was also cognizant of the public's concerns, but he wanted to understand the Council's real motivation for the inquiry. AbuHaidar noted he had been getting mixed messages: on the one hand, pay more for the lease, and on the other, lower his prices; which were incompatible goals.

Council Member Potter responded that her objective was derived from the fact that there was a community of people who were very opposed to upgrading the airport and who were concerned about noise and air quality. They were also concerned about taking any money from the General Fund and upgrading the airport that would appear to benefit only a small number of people, many of whom did not live in this community. Therefore, Potter wanted to ensure the airport was maximizing every dollar so that it could be running itself, and to ensure the City was being a good steward of its asset. She added that the FAA would cut off funding of the airport if the upgrade did not go through, and she wanted to be sure it would not be a burden to the taxpayers.

AbuHaidar expressed that OK3 Air had been a good partner with the City for the past 16 years: it paid rent on time, provided substantial revenue to the City in the form of landing fees, paid \$200,000 for the apron expansion, and worked to mitigate noise issues. He added OK3 once had a large flight school, but they no longer did, because of noise issues. He wanted the Council to look more objectively at the requests they were making, e.g., pay us more and lower your rates, don't turn away business, because he felt these were not compatible with the result.

Discussion next focused on the FBO lease negotiations, which Council Member Franco requested, since she believed the FBO lease rates were likely the lowest in the country. Franco stated that part of the lease negotiations included their request to see the financials, and she felt they were being stonewalled. She added they were trying to obtain the accurate state of the airport and as lessor, the City was entitled to such information.

Council Member Crittenden added that the Council had no way of knowing whether there was any room for a second FBO without seeing OK3's financials. He stated the Council needed to test the market value of the FBO, and added that despite AbuHaidar's comments to the contrary in his report, AbuHaidar currently did have a monopoly on the airport.

Council Member Bradshaw commented that as long as a lease agreement existed between the City and the FBO, he didn't see any legal reason why they needed to renegotiate it, which he then confirmed with City Attorney Smedley. Further, he felt that if the financials hadn't been provided in the past 21 years, and past City Councils had not requested them, then he didn't believe AbuHaidar had violated the contract. Smedley confirmed that statement as well, and added that AbuHaidar had not denied the request for the financials, so he was not in violation. Bradshaw understood the reason for AbuHaidar's sensitivity with regard to providing his financials, adding that there was a right to privacy, and a concern with turning the financials over to the City, in fear they could end up in the wrong hands.

Finally, Bradshaw stated that the City and the FBO should have a good working relationship, and he offered an apology to AbuHaidar for the manner in which he had been attacked during the meeting.

Council Member Smith asked AbuHaidar to address the claims that pilots flew elsewhere for fuel and maintenance because it was cheaper. AbuHaidar responded that it was virtually impossible to be a maintenance facility for every aircraft, and there was nothing that required they do so. He added there was some maintenance they would not do, and related the story of Ed Strauchen, founder of the air museum, who had an old warplane. Because he felt AbuHaidar's quoted price

was too excessive, Strauchen took the plane to "some fly-by-night" operation in Nevada. Strauchen's plane crashed three months later. AbuHaidar concluded that there was a risk associated with cheap maintenance, and there was no requirement that they touch every single airplane. He added it was very typical in aviation to have people fly to certain areas for certain maintenance.

Mayor McDonald closed the discussion on this item, noting there had been two main requests for information: 1) Council Member Crittenden's request for tie-down fees; and 2) Council Member Franco's request for financials, and asked that AbuHaidar that he entertain those two requests and present them to the Council.

Council Member Franco moved to receive the yearly gross income report with a statement of expenses, pursuant to the OK3 Air Amended Lease Agreement, Section 21, and that it be received at the next regular meeting. Council Member Crittenden made the second.

Voting Aye: Council Members Bradshaw, Franco, Potter, Smith, and Crittenden.

[6. Approve 2016 FAA Grant Application – Land Acquisition Project 2016 FAA Grant Application Preliminary Construction Costs](#)

Anderson reviewed that the Maverik property purchase had been finalized; the FAA was willing to reimburse the City for the purchase, but the grant application to do so needed to be submitted. The application included a reimbursement for the land purchase, as well as \$50,000 proposal to open the curb, build a concrete pad and fence the remaining portion of the property. Anderson added that there was currently a 6-foot chain link fence that he understood Council Member Franco felt was not aesthetically pleasing. He put in a call to the FAA to see whether it would fund a 3-rail fence, but had not heard back as of meeting time. However, the FAA previously made it clear that absent a wildlife issue, it would not provide financial assistance to landscape a property. Following discussion concerning the aesthetics of the property, including fencing and billboards, Council Member Franco urged the Council to consider the fencing issue and the aesthetics; Anderson stated he would have those discussions with the FAA. Council Member Potter and Mayor McDonald felt it important to start the ball rolling on the grant application, then address aesthetics and fencing once funding had been approved.

Council Member Potter moved to approve the 2016 FAA grant application for the land acquisition project. Council Member Smith made the second.

Voting Aye: Council Members Bradshaw, Franco, Potter, and Smith. Voting Nay: Council Member Crittenden. The motion carried.

Dennis Jensen inquired whether FAA approval of the grant would have anything to do with the CII upgrade. Anderson responded there was nothing associated with the CII upgrade. Jensen stated that according to the FAA Advisory Circular, the function of master plan studies were to support the modernization or update of an existing airport or the creation of a new airport. Mayor McDonald responded that the Airport Advisory Board was currently looking into the

Master Plan, that would be due in 2017. Even if there was a notation regarding upgrade or expansion on the Master Plan, the Council would still need to approve it. Anderson added that the Master Plan didn't necessarily mean you would end up with a different configuration of the airport. He expected the Plan would include some discussion regarding the CII upgrade, but there were other elements that would be included as well, e.g. how to develop the airport land to support additional hangars, how to develop for additional business.

Council Members Crittenden and Franco inquired about the expiration of the current Master Plan; Anderson responded he would look into it.

Paul Boyer requested a correction of the record as stated by Nadim AbuHaidar concerning the Strauchan crash. The annual maintenance was done in October, 2002 in Spanish Fork, not in Nevada. The National Transportation Safety Board ("NTSB") asked him to participate in the inspection of the aircraft. The crash wasn't due to a mechanical failure; furthermore, the maintenance was not performed by a "fly by night" operation, but by a viable maintenance provider. The crash was due to an aircraft design flaw. Boyer took great offense to AbuHaidar's use of that incident to explain why all aircraft could not be serviced by his operation. Council Member Franco apologized to Mr. Boyer on behalf of the Council for Mr. AbuHaidar's remarks.

7. Closed Meeting as Needed

With no further business, the meeting was adjourned.

Allison Lutes, Deputy City Recorder