

Heber City Corporation
City Council Meeting
April 21, 2016
4:00 p.m.

WORK MEETING

The Council of Heber City, Wasatch County, Utah, met in **Work Meeting** on April 21, 2016, in the City Council Chambers in Heber City, Utah

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

Present: Mayor Alan McDonald
Council Member Jeffery Bradshaw
Council Member Heidi Franco (Arrived at 4:04 p.m.)
Council Member Kelleen Potter
Council Member Jeffrey Smith
Council Member Ronald Crittenden

Excused: None

Also Present: City Attorney Mark Smedley
City Planner Tony Kohler
Chief of Police Dave Booth
City Recorder Michelle Limón

Others in Attendance: Phil Sarnoff, Rick McCloskey, Darren Tuddenham, Bev Zimmerman, Rich Hansen, Dennis Jensen, Maggie AbuHaidar, Craig Hoggan, Ed Parkinson, Russell Funk, Jason Bleyl, Dave Hansen, Paul Boyer, Paul Berg, Mel McQuarrie, Dale Stewart, Matt Parker, Nick Lopez, Richard Clark, Larry Newhall, Laurie Wynn, Jeremy McAlister, Klay Nelson, Francis Harrison, and others whose names were illegible.

Mayor McDonald called the meeting to order and welcomed those in attendance. He asked Bart Mumford to introduce the new Assistant City Engineer, Russell Funk.

1. Joint Meeting with the Planning Commission to Continue Discussion on Proposed Amendments to the Heber City Zoning Ordinance
[Draft Form Based Code Version 2 \(updated April 20, 2016\)](#)

Mayor McDonald advised this item had been moved to a later date, to be determined.

3. Darren Tuddenham and Ed Parkinson - Request to Vacate a Stubbed Roadway/Public Right of Way Located at 680 North Mill Road and Quit Claim the Property the Adjacent Property Owners For a Private Driveway

Staff Report
Tuddenham/Parkinson Proposal
Stone Creek Phase One Amendment

Darren Tuddenham presented his and Parkinson's rationale in support of their proposal to vacate the 700 North stubbed roadway; they believed it was redundant and unnecessary, given that construction on the initial piece of the bypass road was scheduled to begin soon. Tuddenham and Parkinson were seeking to convert the stubbed roadway to a private driveway, narrowing the road to 25 feet, removing the curb and gutter on both sides and reclaiming the area with landscaping and trees. They believed the City would benefit by not having to maintain the roadway, it would increase the property tax revenue by increasing lot sizes, and it would help control the traffic onto the bypass road and Mill Road. It would also benefit Stone Creek in that they would not have to build a connecting road piece, and there would be contiguous lots along the back side of the development.

Tuddenham then addressed each of the 17 items outlined in Tony Kohler's staff report for the Council.

Tuddenham confirmed they were seeking to have the City quitclaim the roadway to them, with no financial consideration to the City. The cost to them to convert the roadway into a private driveway and to remove the utilities was estimated at approximately \$25,000. Mumford confirmed there would be no additional cost borne by the City, over and above what the City normally did with a developer. He clarified the current proposal was to take care of all of the costs to make the City whole to convert and remove the utilities, and in return, the City would quitclaim the right-of-way to the owners. Mumford next reviewed the history of the bypass road and the anticipated traffic patterns. He felt the proposed vacation of the road stub would not have a significant impact on the traffic. He opined that it was a "kind of a wash" to anticipate what impact it would have, and it was not something one could easily determine.

Tuddenham addressed the bulleted concerns Anderson raised in his City Manager's Memo: 1) regarding the 1300 East section, Tuddenham explained that initially, it could increase the traffic slightly, but once the east side connection with the bypass road was constructed, the residents in that area would see a significant decrease in the traffic flow through that area; and 2) regarding the approval generating additional similar requests, Tuddenham felt this was a unique situation, with two accesses within 5 houses of each other, less than two blocks; and 3) regarding the City potentially being criticized for having given away property that could have served as a transportation corridor, Tuddenham stated it could happen, but he felt the pros outweighed the cons in this case. Finally, Tuddenham asserted that he felt their proposal addressed the State code requirements outlined in Kohler's staff memo, that A) good cause existed for the vacation, and B) there would not be any resulting material injury; it was a "win win" proposal for all parties.

Rick McClosky, the developer of Stone Creek, expressed his support for the proposal, noting that they never liked the stub road, but it was put in due to the uncertainty as to the bypass road. He added they would use their contractor to cap the utilities and reconstruct the area, and in fact they had already received a bid from the contractor to do so. Council Member Franco expressed

concern with having only two outlets for the development. Discussion followed concerning the timing of the phases of the development and the bypass road.

Council Member Crittenden asked whether Stone Creek's concerns had been addressed in the negotiations with Red Ledges regarding the bypass road. McClosky was confident that all of the issues were being addressed, and would be resolved in time for the public hearing, which he understood would be May 19. Council Member Franco inquired whether the value of the land could be determined to see if it was equal to or greater than the cost of the capping. Mayor McDonald stated that there were enough questions regarding the proposal, and it would warrant putting the issue back on another work meeting. In the meantime, staff would work on addressing some of the questions from the Council.

2. Phillip Sarnoff - Executive Director of Bike Utah, Discussion Regarding the Economic and Safety Benefits for Communities to Provide Trails for Bikers and Walkers
[Bike Utah Presentation](#)

Council Member Potter introduced Mr. Sarnoff, and added that the City could not underestimate the importance of transportation bicycling; further, a safe environment should be ensured for those who biked and walked within the City. She added that a local event, "Road Respect", was planned for June 9 to elevate awareness regarding the benefits of bicycle riding and bicycle safety. Sarnoff presented a PowerPoint regarding Bike Utah and the state of bicycling in Utah, currently and in the future. He also highlighted how bicycle tourism would add economically to the area. Police Chief Booth added that the "Road Respect" campaign started when he was approached by an area bicyclist to raise awareness regarding bicycling, and in 2015, the first "Road Respect" campaign began. As a result, Booth noted that bicycle/road rage complaints dropped substantially. He felt it was a very successful campaign.

4. Request for a Zone Map Amendment of 16.04 Acres of Property Located between 300 and 500 East to 750 North from the RA-2 Residential-Agricultural Zone to R-1 Residential Zone

[Staff Report](#)

Tony Kohler reviewed the re-zoning request from RA-2 Residential Agriculture to RA-1 Residential. The request was consistent with the General Plan; however the Planning Commission continued the request until the City had studied the Transfer of Development ("TDR") rights issue. The TDR analysis found that the TDRs would not function as originally hoped, and the petitioner requested the item be placed back on the agenda for consideration. The Planning Commission recommended approval of the re-zoning request.

Discussion followed regarding concerns with up-zoning from RA-2 to RA-1 and a possible offer by the City to purchase the property. Council Member Franco expressed concern regarding how the IRS would view the property owners' tax deduction based on the higher density and the City's possible purchase at the RA-2 price, rather than the RA-1 price; she wondered whether it was a legal transaction. City Attorney Smedley recommended the City seek guidance from the IRS regarding any concerns to ensure everything was on record. It was noted that any transaction with the property owners would need to be open, transparent and considered an arm's length

transaction. Council Member Bradshaw cautioned that any offer should not in any fashion be perceived as being tied to the re-zoning. It was further noted that another third party submitted a purchase offer, so if the City were to make an offer, it should be within the same parameters of the third party purchase. Council Member Bradshaw added that the IRS would require an objective appraisal, and the credentials of the appraiser. He didn't believe the IRS would view a potential City purchase as problematic. Smedley agreed with Bradshaw's assessment, as long as the City offer was within the same parameters as the other third party offer, and there were objective appraisals of the property.

Paul Berg noted that the Dukes were moving forward with their proposed zone change, they had a concept, and were discussing the plan with developers. They became aware the City had some interest in the property, so Berg approached the City on their behalf. The Dukes were aware the property would likely be sold at a discount to the City, as the City proposed the use for cemetery land. In discussions with City staff, Berg learned the City did not have the cash available for a lump sum payment, so the Dukes offered the following proposals: 1) the City could propose a payment plan; 2) offer tax credits; or 3) offer naming rights. Up until present, the City had not submitted a formal offer to the Dukes.

Council Member Crittenden expressed that an up-zone was not a legal right, but rather a right to submit a request, and as a legislative body, it was the Council's decision whether to do it or not. Berg countered that should the Council decide not to up-zone, then it would be going against the General Plan, as this zone change was consistent with the General Plan. The Zoning Plan was not consistent with the General Plan, thus the need for the Dukes to submit their re-zoning request. Kohler reviewed the history concerning the evolution of the City's General and Zoning Plans. He then stated that this was not a unique request, it had been done before by other property owners in the past, and in general, it was good practice to make the zoning consistent with the General Plan. Smedley commented that the Master Plan was considered a recommendation, and the Council would not be bound by the Plan.

Following discussion, the Council was in favor of moving this item to the next regular meeting.

5. Discussion Regarding a Resolution Opposing the Heber City Airport Becoming a CII Airport and Asking Our Congressional Delegation and Governor for Assistance in confirming with the FAA the Financial Ramifications of Our Choosing to Stay as a BII Status Airport

Council Member Crittenden reviewed that the pending discussion would relate to a resolution that he would like to vote on in the regular meeting, and what financial or liability impacts may result should the City Council state it did not want to expand to a C-II category airport. He asked Kelsey Berg, with Representative Jason Chaffitz' office to discuss the process to involve Federal representatives. Berg stated she had attended the County airport meeting, as well as other City Council meetings, and was aware of the main issues: 1) regarding safety, and which jurisdiction had the authority to exclude large aircraft landings at Heber City, whether the FAA could override that authority; and 2) what were the consequences if Heber City didn't want to expand the airport, in spite of an FAA request to do so.

Berg explained the process they would undertake with Senator Hatch and Senator Lee to join in a letter to the FAA. It would include a list of questions and would request a response by a certain date. She asked the Council to give them a list of questions to include, and estimated the process could take about a month before they had a response. Mayor McDonald polled the Council on whether they wanted to proceed with a resolution. The Council was favorable to the foregoing.

Airport Advisory Board Chairman Mel McQuarrie felt there was some confusion about expansion, and stated that a C-II conversion would stay within the airport fence, and while the Runway Protection Zone ("RPZ") would increase, it would not take what was already on the land, it would limit what could later be placed on the land. He added there were many unknowns, and the study needed to be conducted.

Richard Clark expressed that the citizens of the valley had a right to live without excessive pollution and noise; he felt Heber City had a right to make a resolution that it wanted a B-II airport and go forward with that. He felt some, including the FBO, encouraged as many large aircraft to come into the airport to try and encourage the FAA.

6. Discussion for the Consideration of Budgeting for and Seeking a Full-Time Airport Manager

Council Member Crittenden felt the airport issues had taken an inordinate amount of City Manager time, and the part-time Airport Manager position was not sufficient to address the issues with the airport. Further, Crittenden felt there would be more public support if there were more activities going on at the airport to involve the public, but the position would require full-time. Council Member Franco felt the need was for an Assistant City Manager to oversee the airport, Public Works, Planning and Human Resources. Council Member Potter noted that the City qualified for a full-time human resources position. After further discussion, the Council was in favor of putting the issue on a budget meeting agenda, scheduled for April 28.

7. Discuss Airport Landing Fee Increases and the City Sponsor Providing Public Airplane Parking Space at the Airport

Council Member Crittenden felt the City was not receiving its fair share of the fees larger aircraft were paying, noting that large aircraft paid a lot of money to park in the FBO hangar, and a relatively small amount in landing fees. Crittenden felt the fees could be based on aircraft weight. He added that the City should consider public aircraft hangars and tie-downs, apart from those offered by the current FBO and its current fee structure. Mayor McDonald agreed with Crittenden regarding the public parking spaces and that landing fees should be increased. It was agreed that this issue would be put before the Airport Advisory Board for discussion.

Craig Hoggan, OK3-Air's legal counsel noted that the FBO was concerned about this issue as well, and they wanted to be involved in the discussion, since they were in the business of collecting the fees for the City. He noted there was already a fee structure in place based on aircraft weight, whereby those weighing below 8,000 pounds were not being charged landing fees. Further, Hoggan addressed the conception that there was not a public ramp - the ramp in front of the FBO was a public ramp, that wasn't necessarily free, but it was a public ramp, as

confirmed with the FAA. Hoggan then addressed the issue regarding passage of a resolution opposing the C-II category upgrade. He felt the City did not need a resolution to talk to the FAA and get answers to their questions. He felt the process should play out before making a decision and urged the Council to let the planning process proceed, find what would be recommended, then make an informed decision.

Council Member Franco requested that OK3-Air provide the financial information that had been requested by the Council in a motion passed in the prior month. Hoggan responded that he had been working with Mark Smedley for over a month; OK3-Air felt it was appropriate to have a non-disclosure agreement ("NDA"), because without it, the information would be subject to GRAMA. Franco argued that the information had been requested since January, it was a public airport, and it should be public information. Hoggan disagreed, stating that it was a private enterprise and it was important that OK3-Air's information be protected from disclosure to competitors.

Discussion followed concerning the type of information sought. Mark Smedley opined that if the Council was looking simply for a profit and loss statement, it should always be open for review by the Council Members; however, if the Council wanted hard copies of the financial information, or if it was going to be discussed, it was not unreasonable to ask for a minimum NDA. Smedley asked that the Council clarify what they were looking for.

Maggie AbuHaidar, General Counsel of OK3-Air, stated that six years ago, there was a request for financial information, and at the time there was discussion on the issue that it had never before been requested under the lease, and whether that right had been waived. In an attempt to avoid a legal discussion, the City Council members went to OK3-Air, and Nadim AbuHaidar did provide the information. Since that time, there had not been another request for financial information. AbuHaidar clarified they were not in the business of withholding their financial information, but they were in the business of protecting their financial information, and in light of recent interest in a potential second FBO, the financial information would be of interest to other parties, thus the need to protect the information. Finally, AbuHaidar stated the information would be with the Council soon.

Council Member Crittenden asked that Mark Smedley report back with his opinion on what the lease meant, had it been complied with, and what could the Council ask for without an NDA.

8. Consideration of Closed Meeting Pursuant to Utah Code Annotated §54-2-205 (1)(a) discussion of the character, professional competence, or physical or mental health of an individual AND (1)(c) strategy sessions to discuss pending or reasonably imminent litigation

Council Members Crittenden and Franco stated there were issues that needed to be addressed in closed session prior to the regular meeting, as those issues had some bearing on certain items to be addressed during the regular meeting.

Council Member Potter moved that the Council get dinner then use the break before the regular meeting to move into a closed session. Council Member Franco amended the motion to state

that the purpose of the closed session was to discuss pending or reasonably imminent litigation and personnel.

Council Member Potter amended the motion as stated. Council Member Franco made the second. Voting Aye: Council Members Bradshaw, Franco, Potter, Smith and Crittenden.

9. Other Items as Needed

With no further business, the meeting was adjourned to enter into closed session as stated, prior to the scheduled regular meeting.

Michelle Limon, City Recorder

APPROVED 6-2-16