MINUTES
ENOCH CITY COUNCIL
August 17, 2016 at 6:00pm
City Council Chambers
City Offices, 900 E. Midvalley Road

Members present:
Mayor Geoffrey Chesnut
Council Member David Harris
Council Member Steve Johnson
Council Member Jolene Lee
Council Member Dave Owens
Council Member Shawn Stoor

Staff present:
Julie Watson, Recorder
Dan Jessen, Treasurer
Gary Kuhlmann, City Attorney
Robert Dotson, City Manager
Jackson Ames, PD Chief
Earl Gibson, Pub.Works

Public present: Todd Sheeran, Carolyn Bauer, Ilene Hamblin, Kenny & Monica Brunson, Ben Dial, Quinn Ohms, Ben Oviatt, Case Reynolds, Christian Oviatt, Christian Biggs, Andrew Biggs, J.D. Carter, Dell Carter, Riley Howard and Katherine Ross

1. **CALL TO ORDER OF REGULAR COUNCIL MEETING-**By Mayor Chesnut at 6:00pm. He welcomed the audience.
   - a. **Pledge of Allegiance-**Led by Council Member Lee
   - b. **Invocation-**Audience invited to participate-Given by Riley Howard
   - c. **Inspirational thought-**Given by Mayor Chesnut
   - d. **Approval of Agenda for August 17, 2016-Motion to approve agenda by Council Member Owens. Motion seconded by Council Member Harris and all voted in favor.**
   - e. **Approval of Minutes for August 3, 2016-Motion to approve minutes by Council Member Stoor. Motion seconded by Council Member Harris and all voted in favor.**
   - f. **Conflict of Interest Declaration for this agenda-**none stated

2. **TREE COMMITTEE PRESENTATION/ TAKE ACTION ON REQUEST**

Katherine Ross came forward to represent the Tree Committee as the Chairperson. She said they would like to do is apply for a Community Forestry Grant for improvements to Cottonwood Park. They would like to plant more trees and shrubs for a windbreak and create a walking path. She passed out a plan map for the project. She explained the grant requires an upfront match and when the work is completed the City is reimbursed. They are requesting $7,000 which would cover 60 shrubs and 70 trees for the wind break. Volunteer labor by the Tree Committee Members, City staff and other volunteers will count as "in kind" match. She gave a few more details of the plans adding there would need to be an expansion of the sprinkler system to accommodate the new trees. Council Member Johnson asked if there are Cottonwood residents working with them. Katherine said Riley Howard, Tree Committee secretary, lives in Cottonwood Subdivision.

Mayor Chesnut asked for clarification on the grant match. Essentially if they go for $7,000, they put in $7,000 worth of improvements but they don't get the $7,000 grant money until the project is done. It has to be earmarked it in the budget to apply and if granted then we move it to be spent and then we get reimbursed. We only spend it if we are approved for the grant. Riley noted that the volunteer hours are worth $22.55 an hour towards the "in kind" match. She added they would get a substantial improvement to Enoch with that park improved.

Mayor Chesnut said there are always concerns about the budget and we want to make sure there is no cost to residents. There will be some cost because park staff will have more maintenance and watering will go up. Council Member Stoor said the biggest impact is the initial install. Then it is upkeep and the benefit will outweigh the cost. Mayor Chesnut confirmed they are asking the City Council to promise to be a partner and front the $7,000 to apply. Dan said we would open the budget and show the expense and the grant on the other side. If we don't get grant it goes away.

Council Member Stoor made a motion to partner with the Tree Committee and to commit funds in the amount of $7000 to apply for the Community Forestry Grant. Motion was seconded by Council Member Harris and all voted in favor except Council Member Johnson who abstained.

3. REVIEW PLANNING COMMISSION RECOMMENDATION ON CHANGES TO COMMERCIAL ZONING

Mayor Chesnut referred to the packet saying there is a map and minutes from the last three Planning Commission meetings where this was discussed. He asked City Manager Dotson and Council Member Harris to give some context to this. City Manager Dotson read from the minutes of August 9th which recapped the reason for the changes. He said the zoning definitions changed and this action is to make the zoning map match the zoning ordinance definitions. He referred to the map on the wall showing the red colored areas as Regional Commercial (R-C) on Hwy. 91 and Minersville Highway. He explained Community Commercial (C-C) is where the businesses are smaller and where the local community goes to shop. This is also based on traffic patterns. It made no sense to have R-C because that is the definition of a Walmart type store at a busy interchange. C-C is more like what we have in Enoch by definition. Neighborhood Commercial (N-C) is where businesses are intermingled with homes and retain the appearance of the neighborhood. The new map shows that all R-C is being changed to C-C. Only the north end on City property will remain R-C. Willow Glen Inn on Bulldog Road and Enoch Motor Sports on Midvalley Road are N-C. There was some discussion of the homes on Minersville Highway that were zoned R-C at some time in the past. This is residential use except for one owner who has a business in his home. He attended the public hearing and wanted his lot to stay commercial. His business would be grandfathered. There were no other changes to the map.

Council Member Harris elaborated on the definitions saying this is more appropriate to what we can accommodate in Enoch. No property taxes are affected or will change. Businesses in areas changed are grandfathered and the zone change being made will be more appropriate for their businesses. Regarding the one home on Minersville Highway the primary use is still residential although they run a business there. It is called "spot zoning" to leave one home as C-C and those around it as R-1-18. Spot zoning is not illegal but is not the best idea or practice. This area is primarily residential and he recommends we make that Single Family Residential (R-1-18) and not leave the one lot commercial. It will not affect their ability to do business or their property value. Council Member Harris said he agrees with the Planning Commission other than that one thing.

City Manager Dotson said he had a couple of phone calls from residents who were notified by letter of the pending zone change. There were a couple of concerns about the tax rate. He explained that everyone is taxed at the commercial tax rate with a 40% discount for residential use. This action affects no one's taxes. There were also calls in support of this action which will aid economic development. This will help with our update of the CFP because that has some basis in zoning when planning infrastructure for the future. The Planning Commission and the EDC did their due diligence. Council Member Harris said there were no replies on the comment forms mailed out but the public hearing produced a few comments and there was no opposition.

Council Member Johnson stated his views on zoning saying he is opposed to it and prefers the model used in Houston, TX. Council Member Lee questioned Council Member Johnson on his views on zoning. He said he does not believe in forcing people to give up property rights due to zoning when no harm is being done. Council Member Lee asked if he thinks we should not have rules and regulations on zoning. Council Member Johnson said private property rights are first. There was more discussion of the one lot considered for spot zoning and noted that if the business were sold the new owner would be required to apply for a conditional use permit. Only the current owner is grandfathered. City Attorney Kuhlmann said the business in a residential zone can go on as long as it is not changed or expanded. Council Member Stoor said he sees Council Member Johnson's point however zoning helps protect the rights of other property owners. There was no other discussion.

4. ORDINANCE NO 2016-08-17 AN ORDINANCE AMENDING THE GENERAL PLAN LAND USE MAP AND THE ENOCH CITY ZONING ORDINANCE ZONING MAP BY CHANGING THE ZONING OF COMMERCIAL PROPERTY LOCATED THROUGHOUT ENOCH CITY FROM REGIONAL COMMERCIAL (R-C) TO COMMUNITY COMMERCIAL (C-C) AND NEIGHBORHOOD COMMERCIAL (N-C)

Mayor Chesnut asked for a motion. **Council Member Harris made a motion to approve Ordinance No 2016-08-17, an ordinance amending the General Plan Land Use Map and the Enoch City Zoning Ordinance Zoning Map by changing the zoning of commercial property located throughout Enoch City from Regional Commercial (R-C) to Community Commercial (C-C) and Neighborhood Commercial (N-C) with the amendment to include the one lot at 3711 N. Minersville Highway to be zoned Single Family Residential (R-1-18) and not Neighborhood Commercial (N-C). The motion was seconded by Council Member Owens and a roll call vote was held as follows:**

Council Member Harris-Yes	**Council Member Stoor-Yes**
Council Member Johnson-No	**Council Member Owens-Yes**
Council Member Lee-Yes	**Motion passed 4-1**

5. DISCUSS USING IMPACT FEES

Mayor Chesnut said Council Member Stoor wanted this on the agenda. Council Member Stoor said there are impact fees we can use for improvement of the City and he would like to take a look at what needs to be done and get the fees working. There was brief discussion of the new culinary well which is being funded by impact fees and other funding. City Manager Dotson said we should discuss the rules of impact fees. Just because there is money in an account does not mean it can be used. Impact fees come from growth and are collected at the time a building permit is issued. They can only be used for the impact of growth. One example is the Rec Complex which came about as the result of growth. City Manager Dotson said impact fees cannot be used to raise the level of service. They cannot be used to make things better or maintain existing things. He asked how we really know what the level of service is. He explained the Capital Facilities Plan saying we hired an engineer in 2011 to create our CFP based on zoning and projected growth of the City. It covers the systems we have and what they will need to be enlarged to in order to keep the impact of new growth from impacting or costing those already here while maintaining the "level of service". Sewer, water, PD, parks and streets are the things we charge an impact fee for. We don't have a drainage impact fee yet because we need an analysis to tell us what that fee should be. We need to know what the drainage system will be when built so we have a plan for the community as it grows.

We have a system of parks, roads, sewer, water and public safety which is the PD. Those who come in pay for the growth based on a "nexus". In other words the fee is based on a plan.

The plan lists the projects that are in line for the fee use. Dan explained this is very strictly regulated in a separate account from other City funds and it is noted who paid into it and when. Every year he State makes us do a report in which we have to tell the State what we plan to do with the money we have sitting there and when we plan to do it. City Attorney Kuhlmann said it has to be spent for a system improvement identified in the CFP. City Manager Dotson read from the CFP regarding the "level of service". Between now and 2040 we need to have four acres of community trails and various parks created by developers. Previous planning documents said we told the State we would build Iron Mountain Park but the project has not been built yet. The PD impact fees we have been saving is for a new police facility. They do not need it right now so we had to do a resolution saying it will be built by 2023 to defer that expense and be able to retain the impact fees collected. The plan sets a minimum and maximum range that the impact fee can be set at and the City Council chooses within that range. We have only raised one fee over time and that was the water fee which went up to the maximum. Dan said the upgrade on the treatment plant did not take as much money as we thought so have a surplus in the sewer impact fee account now and other things have changed too. We need to update the plan so we can spend that money where it really needs to be spent.

Council Member Johnson said one option is fees can be refunded and we did that once with the secondary water impact fee. Dan noted the issues with that saying any refunded fees have to go to the one who paid it. In many cases builders pay that and many have gone out of business. Besides that we need the funds collected and have some projects planned. Council Member Stoor suggested we look at the CFP and see where it makes sense to put funds right now and he asked if we could do that by the next meeting. City Manager Dotson said we are getting quotes to update the CFP and some impact fees can be used for that update. Council Member Stoor asked how often we do this. City Manager Dotson say we should to do this every five years. After we update the plan then we will look at where we go with spending fees. The funds most in peril now are the sewer fees. Dan said the street impact fees are aging out too. We identified to the State that we were going to build Ravine Road and now we have to change that plan and build a different road. One of the challenges is the high cost to build a new road. We have nowhere near the money to do that now and need to continue to save impact fees for that. We used to be able to accrue fees for a long time and now the State legislature has moved the time frame up to six years which doesn't allow time to save for big projects. The best plan now may be to pass resolutions to put things out into the future. The example was given of the new PD facility. Dan said water impact fees can be used to pay our bond principal and interest and also for the new well which was needed due to growth. Council Member Stoor confirmed that in order to use impact fees it has to be in our CFP and if not in the plan we can't do anything. City Attorney Kuhlmann confirmed that is right. He added engineers come up with the level of service based on standards and models. We can't raise the level of service. It has to stay the same. If not spent within six years we pass a resolution and give a final date we will spend the fees.

Dan suggested we could widen a road because it is in the plan. Midvalley Road has been designated in the CFP for widening because it is the main east/west corridor. City Attorney Kuhlmann said a lot of this law was written for bigger communities who accumulate more fees. Dan said another way to fund projects is to tax or bond when needed. We are updating the CFP and we budgeted some but not enough so we will open the budget soon and update it. The CFP has to be the foundation for discussions. It will be brought back to the City Council when we are ready to do this. City Attorney Kuhlmann said we have to place a notice that we intend to update the CFP and impact fees analysis. In the meantime the City Council can come in and get familiar with this and how it works. Dan said if our future needs are not there and we need to refund some fees that can be done. If the fees are too much we can change it too. This protects existing property owners from paying for the impact of the cost of new growth on the community. City Manager Dotson clarified we are hiring an engineer to do the update. When we got the estimate

our purchasing policy mandated that we go through a bid process to hire the engineering firm because of the cost. When done the City Council approves the plan. City Manager Dotson said we are moving on it and will be advertising for bids soon. The RFP is ready to go. Hiring is based on competency rather than the price tag. No action was taken.

6. APPROVE SALE OF SURPLUS PROPERTY

Mayor Chesnut said there is a list of surplus property in the packet. City Manager Dotson said we want to put it on the public surplus website. Dan explained how it works saying that will work better than our first attempt to auction things locally where there was very little exposure despite a month of advertising as required by law. Mayor Chesnut asked for a motion to approve the sale of the surplus property. **Council Member Harris made a motion to approve the surplus property list. Motion was seconded by Council Member Owens and all voted in favor.**

6. PUBLIC COMMENTS

Mayor Chesnut invited public comments asking residents to state their name for the record.

Carolyn Bauer of Tomahawk Drive said she is confused about the partnership mentioned with the City and the grant. Who is in charge? Who administers this project and oversees it? ***Mayor Chesnut said the Tree Committee is in charge under the City Council. Council Member Stoor, who is over the Tree Committee said the Tree Committee is a volunteer body and they have no funding so the City has to commit to funds for the matching grants.***

Ilene Hamblin of 3793 Minersville Highway passed out a petition that said the residents along Minersville Highway were in favor of being changed back to R-1-18 as was just approved. She gave the history of the Nelson-Esplin Subdivision also known as Sunset Subdivision and gave the history of CC&R's. She said they were rezoned at some time to commercial and no one knew it. The CC&R's say no lot shall be used for anything other than residential. She cited the one lot in use for business saying things are going on that are not appropriate for a residential neighborhood. Because of the CC&R's they cannot allow this business. She went on about issues with the Bronsema's business saying this is a detriment to the neighborhood. She maintained it could not be grandfathered due to the CC&Rs from 1976. They are concerned that the property is being ill used. In going around getting signatures and talking to people there is a lot of concern about this use of the property. If EPA inspected they would be fined. She has been told Enoch is aware and ignores it and wondered if maybe individuals could take action against them. The restrictions are there and they have to abide by them. ***Mayor Chesnut asked if there is an active HOA and was told there is not. He said HOA's are the enforcing body. Mayor Chesnut said if a homeowner wants to use their property and it does not violate City ordinances we must allow it.***

Kenny Brunson said they approached the City when he applied for a business license due to chemicals and porta-potties in his yard and the business license was revoked at one time.

Mayor Chesnut said we as City do not have jurisdiction to enforce CC&Rs. City Attorney Kuhlmann said the court looks at this as a contract and when you buy there you agree to be bound to that contract. If violation occurs you can sue to enforce it. Mayor Chesnut said what we can do is if there is someone who is violating a CUP the community can bring that to the attention of the Planning Commission to investigate. We need specific allegations. According to our statutes he is grandfathered and he adhered to our requirements when he applied for the business in a commercial zone. If he is violating the CC&Rs they could seek Council to see if the community has a cause of action for breaching them. We as a governing body cannot enforce this. Mayor Chesnut said we need to know about the problems and you have to put your name to it in an affidavit. They have maintained that someone is living in a trailer on the lot and we can investigate that and enforce our ordinance when proof is submitted. Mayor Chesnut said we can't do anything about the CC&R enforcement but they can get legal

council. He encouraged then to communicate with City Manager Dotson on this so we can investigate.
People have due process and we want to protect all rights.

7. COUNCIL/STAFF REPORT

Chief Ames said our two new officers graduated from POST and are on the job. He was told they were outstanding candidates at POST. They had taser training last week. He said they have had 1800 calls this year and written 763 reports.

Earl Gibson said the public works crew is working on many maintenance things. Water use has slowed a bit but we are still just barely filling the tanks.

City Attorney Kuhlmann introduced Todd Sheeran from his office who will work on City issues adding he has a good background in municipal law.

Dan Jessen said the audit is next week. He holds the June financials until we have it sewed up for the audit. We are hoping for no findings and he is prepared. They certify our financial statements and report to the State auditor. He asked the Council if they want the auditors to make a report to them in a Council meeting where they can ask questions. Council Member Harris said certainly if there are findings but if not, there is no need.

Council Member Johnson said he would want the auditors to come but voted no last year and got talked to by citizen about that.

Council Member Stoor said kudos to the Tree Committee on presenting their plan and he thanked Katherine Ross.

Council Member Harris said the Planning Commission has been reworking some language in the Zoning Ordinance regarding CUP's and agonizing over it based on what we have seen the last few months. What to limit and what to permit is tough. Council Member Stoor asked about CUPs and Council Member Harris explained. City Attorney Kuhlmann said State statute requires CUP's to be allowed. He explained it says you must allow a conditional use if you can put conditions on it to mitigate adverse effect. If not you can deny it. Council Member Harris said we don't want to eliminate opportunities but there are many things to consider. He added the Planning Commission is thinking long and hard and it will be well hashed out but the City Council needs to do that too.

City Manager Dotson gave more information about conditional use permits or CUP's saying there is the absence of specificity. In our Code we put in an avenue to get a CUP but it is not specific so we run into "arbitrary and capricious". In the last State legislature a lot was based on land use. They are trying to reduce the power cities have on their land use laws. That is a huge concern for us. When we leave it so broad and so open then people perceive their rights are being trampled on. The changes coming involve separating land use and home based uses and making it more specific and at the same time being very specific on what is not allowed for a CUP. It helps take away the subjectivity. They will say automotive repair is not allowed in a residential area.

Council Member Lee reported on the state of the outdoor recreation grant discussed in the last meeting. She said they did not submit it after all because the time frame was too tight to get the information together. City Manager Dotson and Susan have compiled a lot of information now and we will in better shape to apply for other grants. She reported she attended her first Water Board meeting and it was very enlightening. We have some very water smart people in this City.

Council Member Owens reported the EDC did not meet last month but will meet tomorrow.

8. ADJOURN- Mayor Chesnut asked for a motion to adjourn. **Council Member Harris made a motion to adjourn. Motion was seconded by Council Member Owens and all voted in favor.** The meeting ended at 8:20pm.

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Julie Watson, Recorder Date