

**TOQUERVILLE CITY COUNCIL**  
**Regular Business Meeting Minutes**  
**November 8, 2018, at 6:00 pm**  
**212 N. Toquerville Blvd, Toquerville Utah**



Present: Mayor Lynn Chamberlain; Councilmembers: Ty Bringhurst, Paul Heideman, Keen Ellsworth, Alex Chamberlain, Justin Sip; Staff: Public Works Director Lance Gubler, Recorder Dana McKim, Treasurer June Jeffery, Zoning Official Mike Vercimak, Attorney Heath Snow; Others: Hurricane Valley Fire Department Representative Merlin Spendlove, Planning Chair Manning Butterworth; Public: Wayne Olsen, Kathy Pettey, Bruce and Shirley Vanderwerff, Stacy Eaton, Joe Humphreys, Lorin Lowe, Jeff Fry, Douglas Jessop, Ray McQuivey, Gary Chaves, Dave and Marilyn Hawkins, Kathleen Willis, Cornell Willis, Nic Chamberlain, Ryan Stout, Ryan Moore, Kay Chamberlain, Anita Eaton, Annette Kleinman.

**A. CALL TO ORDER:**

Mayor Chamberlain called the meeting to order at 6:02 p.m. The Pledge of Allegiance was led by Mayor Chamberlain and an invocation by Councilmember Ty Bringhurst. There were no statements of belief or conflict declarations. There were no voiced statements of belief.

**B. CONSENT AGENDA:**

*Councilmember Keen Ellsworth made a motion to accept the consent agenda items. Motion was seconded by Councilmember Justin Sip. Motion unanimously carried 5-0. Roll Call Vote: Paul Heideman-aye, Alex Chamberlain-aye, Ty Bringhurst-aye, Keen Ellsworth-aye, Justin Sip-aye.*

**C. CITY DEPARTMENT REPORTS:**

Zoning Official, Mike Vercimak:

At the last meeting, there was a question given to council asked about any future road improvements to be done on Pecan Ave West. He checked with staff and found there are no long-term budget plans to improve the roadway. Staff recommended to not undertake permanent improvements but suggested to grade the roadway.

The Mesa View construction plans were passed around the last development staff meeting. Construction plans should start soon.

Bringhurst asked why Interstate Rock has stopped with their extraction permit in the Mesa View subdivision and inquired where they were at with the restoration plan. Vercimak agreed to make contact with Interstate and get an update. Sip will be in contact with them tomorrow and try to get more information.

Planning Chair, Manning Butterworth:

At the last Planning Commission meeting on November 21<sup>st</sup>, the commission revisited the definition Highway Commercial zone. An application was submitted by an applicant to develop an RV storage and storage facility in Toquerville. It was discussed and decided this use would best fit as a Conditional Use Permit in an Industrial Zone, rather than a Highway Commercial Zone. During the regular meeting, a public hearing was held on several items. An ordinance change for cul-de-sac minimum frontage within an R-1-12 zone was defined. The ordinance corrected where the measurement point will be derived for cul-de-sacs. A second ordinance was heard to replace the term, Board of Adjustment to Appeal Authority throughout the code.

Hurricane Valley Fire Department Representative, Merlin Spendlove:



The fire district was busy this last month. They responded to a structure fire today. The cause of the fire was a dryer where minimal damage to the home occurred. Residential controlled burns end on November 15<sup>th</sup>. Ag users will still be allowed to burn. Citizens are encouraged to log onto the Hurricane Valley Fire Department website to apply for a burn permit or call the fire department.

Public Works Director, Lance Gubler:

No report was given.

Ellsworth gave a kudos to the Public Works Crew on how the rocks are positioned at the south end welcome sign. He would still like to do some landscaping around the sign, but also realizes the rocky bedding of the area. Bringhurst suggested some dirt could be moved in to build it up and maximize landscaping options. Ellsworth would ideally like to plant some vegetation and asked if there was an available water line in the area. Gubler stated there is a water line lateral in the area the city could tie into. Butterworth suggested the city should take serious consideration to landscape the area because he noticed there was some vandalism done to the sign. To landscape the area may prohibit easy access to the sign.

Public Forum:

Lorin Lowe asked if he would have the opportunity to speak in regards to the eminent domain business item. Mayor Chamberlain advised he would during the business portion of the meeting.

**E. BUSINESS:**

1. Discussion and Possible Action on a Zone Change Application submitted by Jeff Fry located at 1180 South Cholla Drive, Toquerville, UT 84774. Tax ID# T-110-A-1. Property is currently zoned A-1: Agriculture (minimum lot size of one acre). Proposed zoning is Single Family Residential, R-1-20 (minimum lot size of 20,000 square feet). *PC recommended approval 5-0:*

A brief explanation of the zone change was given to the public. The applicant, Jeff Fry owns property located at 1180 South Cholla Drive. His desire was to change if from agriculture zoned property to a single family residential zoning of R-1-20. The property is not a part of the surrounding subdivision. The council discussed at length during last week's work meeting. There were no further questions.

***Councilmember Alex Chamberlain made a motion to approve the zone change. Motion was seconded by Justin Sip. Motion was unanimously carried 5-0. Vote: Alex Chamberlain-aye, Paul Heideman-aye.***

2. Discussion and Possible Approval of a Binding Memorandum of Understanding Between Toquerville City and Lowe Land TK, LLC:

Snow suggested the council table this item. Efforts were made between legal counsel of both parties. The memorandum has yet to be finalized.

***Councilmember Keen Ellsworth made a motion to table business item E2 until next month. Motion was seconded by Councilmember Paul Heidman. Motion unanimously carried 5-0. Justin Sip-aye, Keen Ellsworth-aye, Ty Bringhurst-aye, Paul Heideman-aye, Alex Chamberlain-aye.***

Ellsworth asked if terms of the memorandum were underway. Snow advised the information was relayed to both parties.



3. Discussion and Possible Action on Resolution 2018.XX ~ Eminent Domain to Acquire Real Property for the Purpose of Building a Bypass Road for Utah Highway 17:

Lorin Lowe wanted to state a little history for the council and public information. For the past 12 years, the city presented the Lowe family with an unworkable road development plan across his family's property. The proposed roadway would create approximately 35-45 foot expensive cuts and fills, creating unsightly scarring to the land. The raised roadway will create a hardship for the landowners for both connectivity and developability. He wrote letters to the City in 2006, 2009, 2013, 2009, and 2017 with suggestions on how the city and the landowners could move forward, but all the letters were unanswered by the city. Lowe was given a letter by Mayor Chamberlain in February threatening to condemn the land with no prior warning. He believed Chamberlain was unaware of concerns the Lowe family had with the harmful location of the proposed bypass route. Since February, the Lowe family has spent money of their own to identify and stake the property to minimize the cuts and fills. A field trip was taken by a few members of the council and himself in August. Lowe was fully prepared to sit down with the council to discuss the terms of the agreement, which were requested by the council for him to present. He believed there was a misunderstanding regarding the terms presented. A misinterpretation of information led councilmembers to believe the terms would result in the city to require more money to develop the roadway. He was told by the council on several occasions the terms presented would not be paid by Toquerville City, but by UDOT (Utah Department of Transportation). The Lowe family is amenable to the future road development and even willing to give the city immediate access to the property. The city asked the Lowes to provide some master planning for the road but explained this process takes time and they have other projects, jobs, and lives to lead. Mr. Lowe is available to meet with a few of the councilmembers after the meeting if they were willing to do so.

Mayor Chamberlain responded to Lowe by stating the city has met with the Lowe family several times and presented different plans for this road development over the past twelve years. The city would like to move forward with development. He noted the rest of the route has been acquired by other landowners with the perspective development agreements. The city has yet been able to reach an agreement with the last parcel of property, owned by the Lowes to complete the roadway.

Heath followed up with an additional response to Lowe. The city has always been willing to respond to discuss a final resolution with this acquisition. The desire to provide a highly detailed land development of the property before the consideration of a land donation seemed unnecessary. Other adjacent landowners have given the city their conceptual land plans, proposed uses, ideas for open spaces, and suggested main arterial roads, that were filed and recorded against the property. It would seem these entitlements should show proof the city believes the property has value and value to the donation. If the land is donated and built out not at the Lowes expense, it would show there is some sort of added value to the Lowe property.

Lowe said he was told if the family donated the property to the city, UDOT would adopt the road. He has found out during various exchanges with the state they are not committed to build the road. The state may move up the priority to put it on their build list, but as of this date, this road is not one of their top priorities. He asked if the donation of the right of way is given, will it be built during their lifetime. There was a concern the donation may tie up their property indefinitely.

Snow assured Lowe the right of way would be immediately used in one form or another. Whether the roadway is built like a Snow Canyon parkway-style expectation or used to provide emergency



access to the Westfield road area is not the immediate thought. The land would be utilized. The land would be put into public use.

The Lowes wanted to reassure the council and the public they are more than willing to help with an emergency access to the Westfield road area. They do have concerns about the accessibility of the land and would like the roadway to be fenced. Once people start trespassing on the land, it becomes difficult to keep them out and it is difficult to control damage, which usually always occurs once gates are opened to public use. Snow and Lowe discussed the need for fencing and if the city should spend the money on fencing measures of another emergency access route to only abandon the route for another road.

Lorin Lowe wanted the council to know his family has historically worked with other municipalities to benefit the greater good of different communities. His family assisted with the widening of the Westfield road. They have worked with Hurricane City on easement agreements. None of those negotiations were under the threat of condemnation. He admitted the city had approached the Lowes in the past but the conditions were never favorable.

Anita Eaton (Lowe) provided some historical information regarding other adjacent landowner donations to the city for the development of the bypass road. The center section of the road, known as the Westbrook group or Winding Rivers approached the city with a zone change and master plan after they had time to work through their plan. She explained the different changes of the bypass road and has attended several meetings on a city and state UDOT level. She explained the future development of UDOT's plans to update various roadways in the Hurricane Valley area. She was aware of the need for the secondary access to the Westfield road area for emergency purposes. She believed the city should allow the Lowes adequate time to develop a master plan. The Lowe family was contacted by individuals in the past concerning the future bypass road, but some of those parties were not in charge of Toquerville roads. There was never an effort made to provide a sit-down meeting with her family to work out conditions of the road.

Lorin Lowe wanted the council to know, even though their family was contacted over the past twelve years, did not mean the meetings were productive. Lowe asked the council questions regarding the initial appraisal of the land. He wondered why the appraiser told him to not contact them or ask them any questions. He believed the costs of a condemnation would be expensive for the city. Eaton suggested money in the coffers would be better served on installing capital improvements than the expense of a condemnation action. The Lowes are willing to sit down with the city to make terms and agreements for the betterment of the community.

Snow asked Eaton and Lowe if their preferred proposed route, aka the green route, was the route they wanted to go with and explained if they were willing to pursue the master planning process of such route. He asked if they are willing to donate the property, then why hasn't the donation occurred? Lowe believed the threat of condemnation was not a friendly threat. Snow explained the appraisal was done for feasibility reasons. Lowe asked why the city didn't sit down with them to make arrangements with them regarding their property. Mayor Chamberlain stated the letter was given to them in February with a thirty-day notice requesting a response. It is now November, and the city has been patient with receiving a response. Lowe stated he has responded within each time frame the city has issued. Snow suggested a master plan does not have to be a detailed plan, but a basic density and road plan.

Ellsworth asked Snow if the item on the agenda passed, could the city pursue further dialogue with the Lowes in the timeframe suggested. He thanked the Lowes for coming to the meeting.



stated he has made the effort to talk with past councilmembers and Mayor Darrin LeFevre about the past conversations with the Lowes. He acknowledged the fact there are two sides to every story and they could debate those interpretations for quite some time. The real question was if the city is going to move forward, or continue to kick the can down the road. He believed if a vote isn't taken tonight the decision will continue to roll. The city needs the roadway as an emergency secondary access point for the Westfield Road area. He believed growth will continue to occur in Toquerville and was a proponent to plan for the future, rather than have growth without a plan. He would like to move forward with a vote.

Anita Eaton asked the council if the route proposed by the city meets the hillside ordinance, or would the city be exempt. She gave an example of where development occurred prior to the hillside ordinance and why the ordinance was created. Snow and Eaton discussed future roadway development options. Snow asked if the Lowes could provide a master development plan.

Lorin Lowe offered to meet with the mayor and a councilmember to discuss the terms of the roadway during the week of Thanksgiving when members of the Lowe family would be in town

Annette Kleinman would like to see the different proposed routes. Lowe provided Kleinman with a copy of the proposed routes. The maps were not disseminated by the city since the Lowes paid for the engineering of their preferred route.

Mayor Chamberlain asked Snow to explain to the public why the alternate routes have not been disseminated. Lowe showed the map and explained the different routes.

Snow explained the condemnation process and the need for a memorandum of understanding, which includes suggested time frames. He also explained what would be required in the master plan and how it would be recorded with the land.

Bringhurst would like to sit down with Lowe the week of November 20th to discuss access to the property and negotiate terms instead of issuing a condemnation. Mayor Chamberlain wanted to remind everyone before UDOT takes the bypass road, the city has to obtain the right of way. The roadway is slated by UDOT to develop the roadway by 2025. Snow suggested the general development of the property could be basic. The city wants to move forward with the master planning. The council discussed future time frames and the need to negotiate terms for both parties involved. Snow explained councilmembers can speak to the Lowes but he cannot confer with them directly without their legal representation present. He suggested the city members may talk with the Lowes and negotiate with input by both parties of the green route. There was a discussion about the need for the city to develop an MOU to be drafted.

***City Attorney Heath Snow gave a suggested motion wherein Toquerville Councilmember Ty Bringhurst agreed to declare as an official motion: To table item number E3 on the agenda - Discussion and Possible Action on Resolution 2018.XX ~ Eminent Domain to Acquire Real Property for the Purpose of Building a Bypass Road for Utah Highway 17. To table the item indefinitely and place on next month's city council regular business meeting agenda, December 13, 2018. The agenda item will be declared and posted as discussion and possible action on a binding memorandum of understanding to outline the procedure to be followed by Toquerville City and Lowe Land TK, LLC, to work through master planning, entitlement, donation, and time frames of the green route. A second item will be posted on the agenda as discussion and possible action on a resolution to initiate eminent domain for the green route. The motion was seconded by Councilmember Paul Heideman. Motion unanimously***



**carried 5-0. Vote: Ty Bringham-aye, Keen Ellsworth-aye, Alex Chamberlain-aye, Paul Heideman-aye, Justin Sip-aye.**

4. Discussion and Possible Appointment with Consenting Vote to designate an Appeal Authority:

Snow updated the council on the proposals received for the appeal authority designation. The proposal sent out mistakenly had the Toquerville City's physical address, rather than the post office box. He was contacted by a second municipal trained attorney regarding the RFP. He was able to show proof the proposal was mailed out to meet the deadline but was returned by the postal service. The city now has two proposals to decide on. Snow briefly explained both proposals and asked if an extension should be given due to the error. The council briefly discussed the different candidates and how many appeals the city has received in the past. They agreed they felt comfortable choosing one candidate and an extension would not be needed.

**Councilmember Paul Heideman made a motion to authorize the Mayor to appoint Bruce Jenkins as the Toquerville Appellate Authority. The motion was seconded by Councilmember Ty Bringham. Motion unanimously carried 5-0. Vote: Justin Sip-aye, Keen Ellsworth-aye, Ty Bringham-aye, Alex Chamberlain-aye, Paul Heideman-aye.**

5. Discussion and Possible Action on Ordinance 2018.XX ~ Special Event Business License:

**Councilmember Alex Chamberlain made a motion to table the item and send Attorney Snow a version of what he would like to see in the future ordinance. Motion was seconded by Councilmember Justin Sip. Motion unanimously carried 5-0. Vote: Justin Sip-aye, Keen Ellsworth-aye, Ty Bringham-aye, Alex Chamberlain-aye, Paul Heideman-aye.**

6. Discussion and Possible Action on Resolution 2018.19 ~Floodplain Manager and Emergency Management Coordinator Appointment:

**Councilmember Keen Ellsworth made a motion to approve the resolution and name Ryker Steglich as the Toquerville City Floodplain Manager and Emergency Management Coordinator. Motion was seconded by Councilmember Justin Sip. Motion unanimously carried 5-0. Vote: Ty Bringham-aye, Keen Ellsworth-aye, Alex Chamberlain-aye, Paul Heideman-aye, Justin Sip-aye.**

7. Discussion and Possible Action on Resolution 2018.20~Fee Schedule modifications:

An explanation of the fee modifications was given to the public. The resolution would modify the uniform fee schedule to clarify the fee of Grama Requests per state code, deleted fax transmission fees, removed the land management codebook since Toquerville has codified their code, tripled the rate of non-local league fees, added the application fee for an variance application and an appeal authority application, modified the nightly/short-term rental application fee, and included a large parcel subdivision fee as suggested by the Zoning Official, Mike Vercimak.

**Councilmember JustinSip made a motion to pass the resolution fee schedule as drafted. Motion was seconded by Councilmember Keen Ellsworth. Motion unanimously carried 5-0. Vote: Ty Bringham-aye, Keen Ellsworth-aye, Alex Chamberlain-aye, Paul Heideman-aye, Justin Sip-aye.**

8. Discussion and Possible Action on Resolution 2018.21~Utah Local Governments Trust Agreement:



The resolution would define the agreement between Toquerville City and the Utah Local Government Trust. Legal counsel reviewed the agreement. Snow recommended the council to sign the proposal, as the terms were in order

***Councilmember Keen Ellsworth made a motion to approve Resolution 2018.21. Councilmember Paul Heideman seconded the motion. Motion unanimously carried 5-0. Vote: Alex Chamberlain-aye, Keen Ellsworth-aye, Ty Bringham-aye, Justin Sip-aye, Paul Heideman-aye.***

9. Discussion and Possible Action on modifications to Toquerville City Council Policy and Procedures:

Councilmember Bringham would like more time to review the document before adopting it.

***Councilmember Ty Bringham made a motion to table the item until further notice. Councilmember Paul Heideman seconded the motion. Motion unanimously carried 5-0. Vote: Alex Chamberlain-aye, Keen Ellsworth-aye, Ty Bringham-aye, Justin Sip-aye, Paul Heideman-aye.***

10. Discussion and Possible Adoption of Toquerville City's Social Media Policy:

The council decided it would benefit the citizens of Toquerville to create and manage social media interfaces. The social media policy explained and clarified the directives of a designated social media administrator. The policy also directs the expected conduct of all Toquerville elected, appointed, staff members activity on social media. Mayor Chamberlain wanted the public to know

***Councilmember Justin Sip made a motion to table the adoption of the policy until a resolution is officially drafted. Motion was seconded by Councilmember Keen Ellsworth. Motion unanimously carried 5-0. Vote: Alex Chamberlain-aye, Paul Heideman-aye, Ty Bringham-aye, Keen Ellsworth-aye, Justin Sip-aye.***

**F. REPORTS:**

1. Justin Sip-Solid Waste/Mosquito/Tree Board/Trails/Parks-

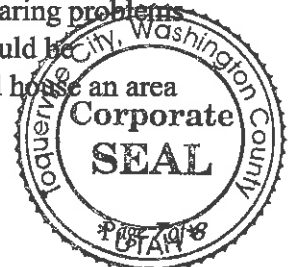
The Washington County Solid Waste District Blu-Can program is losing money every month. The vote to increase a fee of 25 centers per household failed. He described how companies in Germany recycle their waste and how Washington County may take advantage of the same type of recycling program. The council shortly discussed the recycling business and how the county has subsidized the program.

The mosquito season is officially over. The public works crew planted an oak tree for National Arbor Day behind Chief Toquer's memorial plaque in front of City Hall on November 1st.

The Almond heights park drainage quote from Alpha will be forthcoming and he is looking forward to developing the park.

2. Keen Ellsworth-Economic Development/Fire-

He stressed the need for fire safety to develop a secondary access to the Westfield area through the creation of the bypass road. Economic development will also benefit from the roadway as well. The north and south welcome signs are up. The north sign is illuminated and a quote to light the south sign is in the works. Ellsworth asked if anyone has noticed shadowing effects and glaring problems with the south end sign. Mayor Chamberlain suggested a small roof over the sign could be constructed over the top of the sign. This it would assist with both glaring issues and have an area for the downward positioned lighting of the sign.



3. Ty Bringhurst-Water Department/Streets/MPO/TSWS/DTAC-  
Bringhurst asked if the staff has received a grading application or development agreement from Carson Jones. Vercimak explained Carson is working on getting a right of way agreement. Snow verified the action by stating Westbrook approached him about the Jones easement agreement. Jeffery asked how they would like professional billing administered with those types of contacts. The grading permit will not cover the legal fees, nor will the building permit application. There was no finite direction given.

Alpha is working on revising the city specifications and standards.

There was a quick notation from Bringhurst to Gubler about the sewer connectivity on old church road and how the line could possibly run over to the city park area.

4. Alex Chamberlain-PC Liaison/Beautification Committee/Cemetery/Risk Management/City Hall Maintenance-

No report was given.

5. Paul Heideman-Sewer District/Culture and Recreation/Confluence Park

At the last Ash Creek Special Service District Meeting, there was a public hearing about the proposed budget.

The Christmas lighting party will be held on November 24th at City Hall and will begin at 6:00 p.m. Members of the community are encouraged to attend the celebration. A lighting contest will be held by the Toquerville city Council. The winners from last year's competition will serve as the judges for this years' competition.

6. Mayor Chamberlain-TSWS/EMC/DTEC

A Toquerville Secondary Water System (TSWS) will be held on November 28 at city hall at 5:00 p.m. The Toquerville Boulevard clean-up project had two members of the community help clean up the frontage of the Boulevard. A considerable amount of work was done and would like to conduct these clean-ups on a quarterly basis in different areas of the city. Jeffery let the mayor and council know the cost for each one of the dumpsters was approximately \$200.00. Heideman noted the event was scheduled for the same weekend as the church highway clean up. The city may want to make sure to look at the church activities before scheduling a clean-up.

Keen Ellsworth thanked all the members of the public for attending the public meeting.

**G. POSSIBLE CLOSED SESSION:**

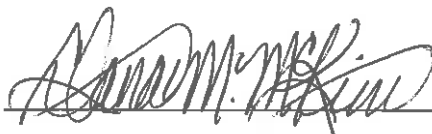
There was no closed session held during the meeting.

**H. ADJOURN:**

Mayor Chamberlain adjourned at the meeting at 8:11 p.m.

  
\_\_\_\_\_  
Mayor - Lynn Chamberlain

12/13/2018  
Date

  
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Attest: City Recorder - Dana M. McKim

