

**NORTH OGDEN CITY COUNCIL WORK SESSION
MEETING MINUTES**

October 1, 2019

The North Ogden City Council convened in an open meeting on October 1, 2019 at 6:04 p.m. at the North Ogden City Office at 505 East 2600 North. Notice of time, place, and agenda of the meeting was posted on the bulletin board at the municipal office and posted to the Utah State Website on September 26, 2019. Notice of the annual meeting schedule was published in the Standard-Examiner on December 28, 2018.

PRESENT:	M. Brent Chugg	Mayor
	Ryan Barker	Council Member
	Blake Cevering	Council Member
	Cheryl Stoker	Council Member
	Phillip Swanson	Council Member
	Carl Turner	Council Member

STAFF PRESENT:	Jon Call	City Administrator/Attorney
	Annette Spendlove	City Recorder/HR Director
	Evan Nelson	Finance Director
	Tracy Preece	Police Officer

VISITORS:	Kevin Burns	Frank Hare	Stefanie Casey
	Brenda Ashdown	Lynn Satterthwaite	Janis Christensen
	Randy Winn	Neal Berube	Melanie Barker
	Robert Bolar	Julie Anderson	Charlotte Ekstrom
	Meg Sanders	Bob Buswell	

Mayor Chugg called the meeting to order. Council Member Turner offered the invocation and led the audience in the Pledge of Allegiance.

WORK SESSION AGENDA

1. PUBLIC COMMENTS

Stefanie Casey, 2444 Barker Parkway, referenced the agenda item relating to the Council receiving training on the Open and Public Meetings Act and noted she felt it appropriate to again request copies of the minutes of the Amphitheater Design Committee; this Committee consisted of Mayor Taylor, Council Members Stoker and Satterthwaite, City Administrator/Attorney Call, Parks and Recreation Director Tiffany Staheli, Weber High

School Theatrical Director, Architect Team, and Wadman Construction Team. She first requested the minutes on December 18, 2018 during a City Council meeting and she was then told there was no need for that Committee to be public or to have minutes. She spoke with City Recorder Spendlove after the meeting was over and the conversation ended with Ms. Spendlove asking her to email her the timeline for the Amphitheater project. She sent an email with a very detailed timeline as requested, but she received no response or even an acknowledgement that the request had been received. This is no longer about the Amphitheater project, but rather about the treatment she and her neighbors have experienced on the part of the City. They have been called many names perpetuated and often instigated by elected officials and they have been told that all proceedings were public and that they had just not been involved and “how dare they question”. She asked if the Committee’s proceedings violated the Open and Public Meetings Act; this Committee decided the design of the Amphitheater – to this point – has cost taxpayers over \$3 million and sits 450 feet from her house. She would like for the issue of whether the Amphitheater was actually designed behind closed doors to be cleared up. She submitted a formal Government Records Access and Management Act (GRAMA) form to Ms. Spendlove.

Melanie Barker, 2524 Barker Parkway, stated she too is concerned about the meetings of the Amphitheater Design Committee and she does not believe they were open and public in nature. In her reading of the Open and Public Meetings Act, it specifically says that if tax dollars are spent, minutes must be kept, and the meetings of a body must be open to the public. She then referenced the agenda item relating to the 2550 North detention basin and noted one commitment that has been made is that the City would act as the developer; that is what the City did for the Barker Park project and the subdivision that surrounds it. The City failed those residents miserably and she asked that the City refrain from acting as the developer for any future project.

2. **TRAINING ON THE OPEN AND PUBLIC MEETINGS ACT**

Brent Bateman, Lead Attorney for the Utah Property Rights Ombudsman’s Office, provided the City Council with the statutorily required annual training regarding the Open and Public Meetings Act (OPMA). The principle of the Act is to ensure openness and fairness in dealings of a government entity. He would advise the Council to err on the side of openness in instances when a question arises about whether it is necessary to comply with the Act. He referenced the comments made during the public comment period and noted that any group that is doing the public’s business is a public body and the OPMA applies to them. He provided the definition of a meeting for the purposes of the OPMA; any time a quorum of a public body is present for the purpose of discussing public business or receiving public comments regarding business, this is a meeting and it must be publicly noticed. A social gathering or chance meeting does not constitute a meeting.

City Manager/Attorney Call inquired as to the definition of a public body in the OPMA. Mr. Bateman stated that a public body is any group that is conducting the public's business or spending public money. Mr. Call asked if the Mayor and Department Heads, who meet regularly, are considered a public body. Mr. Bateman answered no and indicated they are not conducting the public's business. A committee created by the City Council and given a specific assignment is a public body if they have the ability to spend public money or to make decisions; however, if a committee is tasked with simply fact finding or developing a plan that would be recommended to the Council, they are not necessarily a public body. Discussion briefly centered on what creates a quorum of a public body, with Mr. Bateman noting that the body has the ability to set their own rule regarding what constitutes a quorum; if no rule is set, a quorum is the majority of the public body and for the City Council, the quorum would be three Council Members. If a quorum is not present, public decisions cannot be taken and public discussions should not take place.

Council Member Turner asked if a text message between all Council Members would constitute a meeting. Mr. Bateman stated that issue is not addressed in the Act, but he would advise elected officials to err on the side of caution and assume that a text sent to all Council Members will be discoverable.

Brenda Ashdown stated that if Council Members are texting, the public may not know about that. Mr. Bateman stated that is true, but no decisions can be made outside of a meeting, which includes via electronic communications.

Meg Sanders asked if the intent of the OPMA is to protect elected officials or the public. Mr. Bateman stated it is to protect the public and that is why he has advised the Council to err on the side of openness and following the OPMA. Oftentimes, people believe their rights have been violated by a government entity, but that is not the case; rather, people do not always understand their rights and he welcomes questions from the public about any perceived violation of the OPMA.

Lynn Satterthwaite offered a hypothetical situation; the Council convened in a public meeting and made budgetary decisions to complete overlays on five different sections of road in the City. Following the meeting, the Public Works staff met with contractors for the project and during this meeting, one Council Member was present; decisions were made regarding who to award the contract to and about the details of the project and he asked if that would have been considered a public meeting. Mr. Bateman answered no because a quorum of the public body was not present. The public's business relative to the allocation of funds took place during a public meeting, but the details of how that expenditure should be administered were delegated to City Administration. He then reviewed the noticing requirements for public meetings and noted that minutes and recordings of the meeting must be kept; the approved written minutes are the official record of the meeting. He then reviewed the purposes for which the Council can close a meeting to the public; actions cannot be taken during a closed meeting and a meeting can only be closed upon a majority vote of the Council. An audio recording of a meeting

must be kept and could eventually be made public if a court of law determines that the meeting was held in violation of the Act. He then briefly discussed the provisions for calling an emergency meeting or allowing electronic participation in the meeting by a member of the public body. He concluded that violating the OPMA is a criminal violation, Class B Misdemeanor. He reviewed common violations of the OPMA that he has seen throughout the State of Utah.

Council Member Barker asked for Mr. Bateman's opinion regarding whether the Barker Park Design Committee referenced during public comments was a public body that should have been required to follow the OPMA. Ms. Spendlove interjected that there are other committees in the City that are made up of elected officials and staff, such as the Technical Review Committee, that are not considered public bodies. Any recommendation made by the Barker Park Design Committee was ultimately brought to the entire Council for their action and the Committee did not have the authority to make any decisions on their own. Ms. Barker stated she was told that when the design was brought to the Council, it was a 'done deal'. Mr. Bateman stated that he is only able to comment on any violation of the OPMA; it is not uncommon at all for a city to create a committee that is tasked with planning or proposed expenditures and then bring their proposals back to the Council for the ultimate decision. Whether people should have been allowed to participate in the Barker Park Design Committee meetings is a completely different question than whether their meetings were a violation of the OPMA. Discussion among the Council, staff, residents in attendance, and Mr. Bateman centered on opportunities for improving transparency and openness for committees that may be created in the future in the City. Ms. Casey emphasized that the problem she has with the Barker Park Design Committee is that there was no formal vote of the Council to create the Committee or assign them a specific task. Yet, when the design was presented to the Council, there was reference to the amount of time they had spent designing the project.

Melanie Barker asked whether the OPMA applies to a City Facebook page and if it addresses an action to ban a person from that page. Mr. Bateman stated that residents do have a right to make comments during a public hearing that has been advertised; the OPMA does not preserve a resident's right to make comments on social media or in any other public forum. If the City wants to accept comments from some and ban comments from others, they will not be violating any person's rights. The recourse residents have if they feel that something inappropriate has taken place is to vote for other candidates in the next election.

Julie Anderson asked why an agenda must be published 24 hours in advance if the City is not required to accept public input on any item. Mr. Bateman stated that the 24-hour requirement is in place to ensure that the business being done by the public body is publicly noticed. Residents are not required to have a vote on every item, but they can express their feelings. Elected officials are elected to make a decision.

Mr. Bateman concluded by commending the Mayor and City Council for the difficult job they do.

3. MAJOR PROJECTS: DISCUSSION ON 2550 BASIN PROPERTY SALE

A staff memo from City Manager/Attorney Call explained the City has received a few inquiries by groups interested in purchasing the existing 2550 detention basin property. In the conversations I have had with those individuals I have told them the Council has not yet selected a process for selling the property. Now that plans are moving forward on the future location of the basin it may be an appropriate time to look into putting this property on the market officially and soliciting offers.

The Council has already declared this property as surplus and so we will be able to proceed with the sale without holding any additional public hearings, though any official contracts will be approved by the Council in a public meeting.

The purpose of this discussion is to determine if the Council wants to list this property, and then determine how to list the property. If the Council decides it is time to list the property for sale, we then would have the following options:

- Contract with a broker to list the property on the MLS or other similar service. This typically requires a seller's fee which can be as high as 10% or more depending on the property. Staff has not spoken with any commercial brokers about listing this property.
- Put the property for sale by owner and solicit bids from interested property owners.
- Subdivide the property ourselves and do the development with a partner selected by the Council.
- Other options.

The Council may also decide what type of offers they are looking to receive. For example, the Council may make a decision that in the offering the Council is most focused on getting the maximum dollar value and are willing to approve, in a development agreement, any type of development proposed. The Council could also decide to take a lower bid if the developer is proposing the type of development the Council would like to see on the property. There are lots of options in between all these areas and the purpose of this discussion is to find what the Council feels is the best approach for this particular property. Staff recommends that the Council require an individual or group submitting a proposal to include at minimum:

- Price per sq. ft. to be paid;
- Type of development to be constructed;
- Any potential requests for CDA funds;
- Any other incentives or concessions;
- An affirmative statement understanding that the sale of the property will not be completed until the detention basin is relocated.

There will likely be additional details which we should require in the official proposals so it would be helpful for the Council or other interested individuals to provide those during the meeting so we can begin to get our hands around the process for the sale of this property.

Mr. Call reviewed his staff memo. He referenced Ms. Barker's comments during the public comment period and her feelings that the City should not be the developer for this project. He noted staff agrees with that assessment and the only involvement staff feels they should have is to review potential development plans and approve a development plan along with the sale of the property. This is not an action item tonight; rather, staff would like feedback from the Council so they can bring back an actionable item on a future agenda.

Council Member Stoker stated she does not believe the City should be the developer.

Council Member Swanson inquired as to brokerage fees the City could expect to pay for this type of transaction. Mr. Call deferred to Council Member Cevering to answer that question. Council Member Cevering stated there is not an exact amount as any rate is negotiable; he has only sold one commercial property and the brokerage fee was six percent, but the transaction was not this sizable. He expects that there may be greater room for negotiation for a larger transaction.

Council Member Barker stated that he is supportive of listing the property for sale without a broker and if the property does not sell, the option of hiring a broker can be explored. He agreed the City should not be the developer for the project.

Council Member Cevering stated he is not opposed to a for sale by owner action, but if that takes too long, he would like to be proactive and pursue listing the property with a broker in order to get the money generated by the sale back into the City. Council Member Turner agreed.

Mr. Call stated that he will use the feedback provided by the Council to bring back an actionable item; he would like to refrain from assigning a specific listing price for the property, but rather advertise the amount of land available and ask interested parties to communicate the price they are willing to pay and what their development plans may be. The Council could choose to require sealed bids and opt for selling the property to the highest bidder with no guarantee that the buyer's development plans may be approved.

Council Member Cevering stated that he would like to require proof of funds or a lending pre-qualification letter.

Council Member Barker stated that it would be possible for the City to sell the property for more than what it most recently appraised for and he would like to know the appraised value for the property. This led to discussion about options for securing a comparative market analysis (CMA) or appraised value for the property, after which Mr.

Call stated that the Council would have the ability to review those values in a closed meeting so that making the information public does not have the potential to jeopardize any transaction.

4. **DISCUSSION ON RDA PROJECTS**

A staff memo from Finance Director Nelson explained the North Ogden Redevelopment Area was created in 1990 as a tool to spur and facilitate economic development in a specific area of North Ogden City. The RDA has provided funding for the North Shore Aquatic Center and continues to service debt payments on that facility. RDA funds have also been utilized on City beautification efforts including benches, planters, decorative garbage cans, streetlights, and hanging baskets. Additionally, the RDA has provided funding in connection with redevelopment at Lee's Marketplace, Hug Hes Café, and Smiths Marketplace. Also, for the last few years, the RDA has been a primary sponsor of the annual Chalk Art Festival held at King's Plaza. RDA funds must be utilized on projects that benefit the redevelopment area. The redevelopment area is set to receive revenue through December 2023 at which time a final plan must be in place for the expenditure of remaining funds.

At the end of Fiscal Year 2019, the RDA Fund had a balance of approximately \$1.3 million. It is anticipated that the RDA will have an additional \$2.89 million by December 2023, after meeting annual debt obligations.

From a financial perspective, the City has an opportunity to strategically leverage RDA money to expand the City's property and sales tax bases. Opportunity also exists to continue efforts in beautification. The Redevelopment Agency Board has the responsibility to determine the best use of these funds.

Several potential projects have been discussed in the past and are reviewed below with a brief description of each. Other possible uses of the money may also be considered. Staff would like to ask for Board discussion and direction related to the priorities for RDA funds. It is assumed that any options under serious consideration will require further analysis and evaluation. Board direction will help focus time and resources toward higher priority options.

Mr. Nelson reviewed his staff memo.

Council Member Cevering inquired as to the current financial status of the RDA. Mr. Nelson reported that at the end of FY 2019, the RDA fund had a balance of \$1.2 million and he anticipates the RDA will generate an additional \$2.6 million by December 2023. After satisfying debt obligations for the Aquatic Center, the RDA will have approximately \$4 million available by 2024. Council Member Cevering asked if that money can be used to completely pay off the bond debt. Mr. Nelson answered yes, after which Mr. Call noted that when the bond was refinanced, the City agreed to not pay it off

for at least 10 years in order to secure a lower interest rate. He summarized the bond structure and options available to the City for repaying a large portion of the debt earlier than 2024.

Mr. Nelson then facilitated discussion among the Council regarding their strategy for utilizing RDA money for various purposes in the coming years; he provided a map illustrating the entire RDA area. Administration has developed some optional projects for Council consideration, and he summarized them as follows:

1. **RELOCATE WETLANDS WEST OF CITY OFFICES:** It has been proposed that the wetlands west of the City Offices be relocated to free up the land for development as part of the commercial core of the City. The City has already purchased the properties to the north of the wetlands and demolished the homes as part of the road widening project. Relocating the wetlands would expand the potential of the properties fronting 2600 North.
2. **IMPROVEMENTS AT BICENTENNIAL PARK:** The topography at Bicentennial Park has proven to cause some challenges due to the drastic change in elevation. Park improvements are also dated and in need of revitalization. It has been proposed that the park be redesigned to bring the park up to ground level, improve the design of the water feature, and enhance the beauty of the area.
3. **LANDSCAPING BEHIND LEE'S:** The Redevelopment Agency has approved \$60,000 in the current fiscal year budget for use on the landscaping behind Lee's. The project includes a retaining wall that is expected to help facilitate additional commercial development.
4. **AQUATIC CENTER UPGRADES:** It has been proposed that prior to the expiration of the RDA, remaining funds be used to pay for facility upgrades at the Aquatic Center. The Aquatic Center was first constructed in 2005 and would be approximately 20 years old when the RDA expires.
5. **STREETSCAPE IMPROVEMENTS:** The City recently approved a streetscape design for Washington Blvd. The design includes wider sidewalks, bike lanes, planted medians, street trees, and street lighting. Much of the street lighting in the RDA has been installed. RDA funds could be used to implement the other elements of the streetscape design.
6. **VACANT LAND SOUTH OF SMITH'S MARKETPLACE:** A sizeable parcel of undeveloped land just south of Smith's Marketplace is within the RDA boundary. The property is currently owned by Intermountain Healthcare. The City is not aware of development plans for this property.
7. **BURY POWERLINES ON WASHINGTON BOULEVARD:** It has been suggested that burying the power lines along Washington Boulevard would improve the aesthetic appeal of the downtown. This could, in-turn, improve the draw for shoppers as well as new businesses. Downtown Ogden has successfully implemented this strategy.
8. **REDEVELOP KING'S PLAZA:** The North Ogden City General Plan outlines goals for various neighborhoods in the City. One of the goals for the Southtown Neighborhood is to revitalize the North Ogden Plaza in the Kirt's area, also known as

King's Plaza. The City initiated a process in 2013 to accomplish this goal. A consultant was hired to guide the City through the process. An architect was hired and provided the City with some drawings. The project subsequently lost momentum and was placed on the backburner. Part of the revitalization strategy was to re-route Coldwater Creek through the Plaza, bring it to the surface, and create a public space for gathering. The General Plan also promotes the idea of mixed-use development in this area allowing for a combination of residential and commercial uses. The Redevelopment Agency has been a sponsor of the annual Chalk Art Festival held in King's Plaza. The festival has played a role in bringing attention and economic activity to the area. This event may provide an opportunity for further exploration of the redevelopment of King's Plaza.

Council Member Turner stated that he would like to continue to offer financial support of the annual Chalk Art Festival, which is held at the King's Plaza. Mr. Call suggested that a chalk artist be paid to illustrate what the public open space may look like in the redeveloped plaza. Additionally, trees could be placed on the site to give visitors the feel of what the site might look like if one of the two concept plans were followed. The City could then solicit feedback from residents and visitors about what they like or do not like about the concept. Mr. Nelson agreed and stated that Administration needs feedback from the Council relative to whether the King's Plaza is a priority for the City.

Council Member Covering asked if RDA funding could be used to preserve or improve Coldwater Creek as has been requested by Spencer Alexander and others living near the Village at Prominence Point project. Mr. Call stated that in order to receive RDA funding, the project must benefit the RDA area. He stated it may be possible to argue that a trail or other improvements along the waterway would benefit the RDA area by encouraging pedestrian activity.

High level Council discussion centered on options for improving the Aquatic Center to make it usable year-round and the Council concluded to support exploration of the option of placing a bubble over the pool during winter months.

Continued discussion included a focus on support of opportunities for business recruitment, public amenity improvements, making City property available for commercial development, and burying powerlines on Washington Boulevard. Mayor Chugg thanked the Council for their feedback and indicated it will be used to formulate policy documents for further consideration by the Council in future meetings.

5. PUBLIC COMMENTS

Frank Hare, 1785 W. 225 E., asked if the zoning of the detention basin property should be changed to commercial before it is sold so that any potential buyer knows that it is intended for commercial use. Mr. Call stated that if the Planning Commission and City Council were amenable to that suggestion, it would take approximately four weeks to

change the zoning. Mr. Hare stated that the property may be more marketable if the zoning reflected the intended use.

Randy Winn, 2412 Barker Parkway, agreed with Mr. Hare. He then addressed the list of potential projects that could be completed using RDA funds; he stated that he would not support using money for relocating the wetlands west of City Offices or improvements to Bicentennial Park. The landscaping behind Lee's should be done as planned, Aquatic Center upgrades are not necessary, he is unsure about streetscape improvements, the property owned by Intermountain Healthcare should be left alone as development will likely occur in time, burying the powerlines on Washington Boulevard would be nice, but he does not want the City to spend too much on that project, and first priority for him would be the redevelopment of King's Plaza.

Melanie Barker, 2524 Barker Parkway, stated she knows the Council gets tired of her and she is sorry about that, but 20 years ago when her in-laws sold their property to the City, the City had a design for Barker Park. That is why she and her husband chose the lot they chose in the development. They knew there would be nothing like the amphitheater in the park other than a tiny facility for teaching. It is ironic that the City came to the Barker Family when creating the Barker Park Committee to design Barker Park. The past design was approved by the Council and there were minutes about all those actions, but now there are no notes whatsoever for a Committee that the Mayor and two Council Members sat on for the Amphitheater Design Committee.

Brenda Ashdown, 193 E. Pleasant View Drive, asked why the City would be considering using RDA funds for improvements to the Intermountain Healthcare property if that entity already owns it. She asked if that means that the City would take care of her property for her if she chose not to take care of it. She stated she would have the same question about the King's Plaza; the property is owned by another entity and she asked why the City would be spending money to make that property nicer. She stated she and other residents pay for their own property maintenance and they also pay taxes, yet they don't have access to the same kind of assistance the City would be giving to developers. Mayor Chugg stated a partial answer is that the RDAs commonly contributes tax increment to a commercial development project, similar to what was done with the Smith's Marketplace project. Council Member Barker added that offering RDA funding can help to recruit businesses and fill empty spaces, which ultimately benefits the entire City.

6. COUNCIL/MAYOR/STAFF COMMENTS

Council Member Cevering stated he received an email from Lori Haines today and she was very pleased that the City's Public Works Department addressed the issues at Fruitland Drive and Mountain Road that were causing safety concerns for motorists. He thanked Public Works for their efforts. Mayor Chugg echoed Council Member Cevering's gratitude.

Mr. Call stated that the City was planning to operate the burn pit at the green waste facility, but it was too wet, and that activity would have generated too much smoke so it will not happen until next week. He then reminded the Council of the City's upcoming Trunk or Treat event, for which the Council has been invited to host a 'trunk'. He reported the landscaping and sidewalk installation around the skate park is nearing completion and he encouraged the Council to visit the park to see those improvements. He noted the Glow Run will be held October 25 this year. He then commended City staff and Department Heads for being proactive in fixing issues throughout the City and working collectively to pursue the best things for the City.

City Recorder Spendlove noted General Election Day is 35 days away and ballots will be mailed October 15.

Mayor Chugg thanked all residents and staff in attendance for their participation this evening.

7. ADJOURNMENT

Council Member Barker motioned to adjourn the meeting. Council Member Swanson seconded the motion.

Voting on the motion:

Council Member Barker	aye
Council Member Cevering	aye
Council Member Stoker	aye
Council Member Swanson	aye
Council Member Turner	aye

The motion passed unanimously.

The meeting adjourned at 8:04 p.m.


M. Brent Chugg, Mayor


S. Annette Spendlove, MMC
City Recorder

12 Nov. 2019
Date Approved