

NORTH OGDEN CITY COUNCIL MINUTES

October 8, 2013

The North Ogden City Council convened in an open meeting on October 8, 2013 at 6:30 p.m. in the North Ogden City Council Chambers at 505 East 2600 North. Notice of time, place and agenda of the meeting was delivered to each member of the City Council, posted on the bulletin board at the municipal office and posted to the Utah State Website on October 3, 2013. Notice of the annual meeting schedule was published in the Standard-Examiner on January 30, 2013.

PRESENT:	Richard Harris	Mayor
	Kent Bailey	Council Member
	Wade Bigler	Council Member
	Justin Fawson	Council Member
	Cheryl Stoker	Council Member
	Brent Taylor	Council Member
STAFF PRESENT:	Ronald F. Chandler	City Manager
	S. Annette Spendlove	City Recorder/ H.R. Director
	Jon Call	City Attorney
	Craig Barker	Community Development Coordinator
	Gary Kerr	Building Official
VISITORS:	Joan Brown	Bob Buswell
	Blake Welling	Jim Urry
	Lynda Pipkin	Alesa Hofmeister
	Jeff Grunou	Craig Call
	Janine Call	Michael Dufrene
	Charles Crippen	Brain Reese
	Brenda Nelson	Gary Attebery
	Matt Hartvigsen	

Mayor Harris welcomed those in attendance.

Council Member Stoker offered the invocation and led the audience in the Pledge of Allegiance.

CONSENT AGENDA

1. Consideration to approve business licenses

Council Member Fawson motioned to approve the consent agenda. Council Member Bailey Seconded the motion.

Voting on the motion:

Council Member Bailey **aye**
Council Member Bigler **aye**
Council Member Fawson **aye**
Council Member Stoker **aye**
Council Member Taylor **aye**

The motion passed unanimously.

ACTIVE AGENDA

1. PUBLIC COMMENTS:

Michael Dufrene, 587 E. 3600 N., stated that he has prepared a written statement that he would like included in the record of this meeting. He read the statement (see Attachment A) Mr. Dufrene added one comment; in an email he sent out earlier today. He commented that he was confident that the Standard-Examiner would still continue to follow this. He stated that was a hopeful assumption on his part and there has been no promise or commitment made by the Standard-Examiner or any of its representatives to continue writing about this issue. He thanked the Council for their time and noted he provided a copy of his statement to City Recorder Spendlove.

Jim Urry, 1615 N. Mountain Road, stated he has a question about his utility bill. He stated he follows his bill very closely and keeps a history of his meter readings and associated charges, but he has been told that is not available over the internet. He stated all other utility companies offer that type of history and it would be very handy if North Ogden offered it as well. City Manager Chandler asked Mr. Urry if he is interested in seeing the meter reading. Mr. Urry stated he likes to view his meter reading and the amount he is paying per 1,000 gallons. He stated he tracks that kind of data for all of his utilities on a spreadsheet so that he can see what changes are taking place from year to year. He stated he believes it is something that would be easy to offer.

Alesa Hofmeister, 1652 N. 225 W., Harrisville, stated her property is directly behind the Country Boy Dairy estates and she has been in contact with Community Development Director Barker several times. She stated she lives directly behind one of the proposed subdivision lots, which is located in delineated wetlands. She added there is a manmade gully that collects ground water and in the last three years her home has flooded three times and it had never done that in the 20 years she had been there until the property in North Ogden was developed. She stated it concerns her to think that the property is for sale and part of it is delineated wetlands and is in the flood plain; she has a huge easement off the creek and the flood plain and to see the property available for development is concerning to her. She asked what kinds of easements will be put in place and what types of control there will be on the groundwater. She stated that the last time she talked to Mr. Barker he told her that the issue was not on the Planning Commission agenda for the meeting held last Wednesday, but he then came door to door through her neighborhood yesterday telling residents that the issue was being presented to the City Council. She stated that means it has already been through the Planning Commission. She stated she thinks something has been sped through to ignore the residents of the area. She stated she knows there is a border between North Ogden and Harrisville, but it is a community. She stated she does not believe there was proper notice given to residents living within 300 feet of the development like there should have been.

Mayor Harris stated that issue will be addressed during item three on tonight's agenda; however, the City does have a subdivision approval process and that process was followed.

2. DISCUSSION AND/OR ACTION TO CONSIDER A RESOLUTION APPROPRIATING UNCLAIMED PROPERTY FOR PUBLIC INTEREST USE

A memo from the City Attorney explained the Police Department ends up with many items of personal property which we cannot legally dispose of unless we follow the statutory requirements. Every so often we need to clean out our evidence/property closets so we will be bringing a resolution similar to this one to the Council for approval. Specifically the statute requires that any property which is used for a "public interest use" be approved by the local legislative body. A "public interest use" includes: keeping the property, such as small hand tools, or other items that any of our departments could use; donating items to a charitable organizations, such as Deseret Industries, or the Boys and Girls Club; and selling the property at auction and using the proceeds in the Department for maintaining future Police Custody Property. Several of the items on the list will be destroyed because they have no real value. Though the Council does not have to approve the destruction of these items, it provides an additional opportunity for individuals who have lost items to find their items because of the additional notice requirements for our City Council meetings. We are asking that the council look at the resolution and attached property list and approve the Department's recommendations as to which property should be donated to a public interest use. There are a few items on the list which still need to be determined. Typically these items are in sealed containers or original packaging and we don't want to open them until we have exhausted our search for the real owner. Once the Council approves these items for a public interest use we will open the items, determine if there really is any useful life in the item, and then allocate the property according to its value.

City Attorney Call summarized his staff memo and referenced the exhibit to the resolution, which is a list of all items to be appropriated as unclaimed property for public interest use.

Council Member Bailey asked if there is a standard period of time for the City to keep items before going through this process. Mr. Call reported the City is required to hold items for at least three months before they can legally be disposed of; however, items are typically kept for a longer period of time because it is more convenient to dispose of items in large batches.

Council Member Bigler stated there is a wallet listed on page two of the exhibit and it is noted there is no identification and it is suspicious. He asked if the wallet was taken from a suspect. Mr. Call stated all items in the evidence log have been taken from someone who was ultimately charged with a criminal offense. He added RTO means the Police Department is still trying to find the owner and if they are unable to do that the item will be disposed of. He summarized the notice requirements dictated by the State of Utah that must be followed before items can be disposed of and noted the City is trying to provide the public with as much notice as possible that the items are in the City's possession and if they have lost something they should talk to the Police.

Council Member Bigler asked what DE stands for. Mr. Call stated it stands for 'destroy' and those are items the Police Department has deemed worthless or as contraband that should not be given back to anyone.

Council Member Fawson asked if the City utilizes any type of website that would assist in the auctioning of the items. Mr. Call stated in the past when the Police Department has tried to auction items they have had difficulty covering their costs to participate in an auction. He stated items marked DD on the list will be donated at the Chief's discretion; if an item is worth selling he will make that determination as well.

Council Member Fawson moved to approve Resolution 10-2013. Council Member Taylor seconded the motion.

Voting on the motion:

Council Member Bailey aye
Council Member Bigler aye
Council Member Fawson aye
Council Member Stoker aye
Council Member Taylor aye

The motion passed unanimously.

3. **DISCUSSION AND/OR ACTION TO CONSIDER A REQUEST TO REMOVE THE FENCING REQUIREMENT FOR THE FLOOD PLAIN OF COUNTRY BOY ESTATES PHASE IV**

A staff memo from the Community Development Director explained the developer of Country Boy Subdivision Phase IV has submitted an application to the City Council to not require the piping or fencing of the Four Mile Creek drainage. This historic drainage carries both irrigation water and natural drainage from the mountains to the east. The Country Boy Subdivision was approved years ago but, the property adjacent to this drainage was taken out of the subdivision proposal because of wetland and floodplain issues. The developer's engineers performed the necessary studies required by the Army Corps of Engineers and the Federal Emergency Management Agency to revise the FEMA Flood Maps and the identified Wetlands at the site. The drainage channel extends from east to west and cuts through the property which is now Mystery Meadows Subdivision. The drainage area and wetlands adjacent to this subdivision was left out of the subdivision and, the Army Corps of Engineers accepted the revisions to the wetland designation identified by the developer's engineer. The same is true for a revised Floodplain map. This drainage channel crosses 200 West just north of Country Boy Drive. Where it crosses, the property it enters is Lot 54 R of Country Boy Subdivision Phase IV. This lot is over 24,000 sq. ft. to accommodate non-buildable wetland areas on the north side of this lot. The remaining lot area is buildable. The required piping means additional study and determination by the Army Corps of Engineers of the advisability of doing so. This timeframe may be quite lengthy. The subdivision ordinance (12-6-12) allows the council to determine that "the area(s) should remain open and unfenced." Additionally, Section 12-6-13 states "...Existing features which would add value to a residential development or to the city as a whole, such as trees, historic spots, and similar irreplaceable assets, are encouraged to be preserved in the design of the subdivision." Previously, the North Ogden City Council was asked not to require fencing and piping of the drainage channel in the Country Boy Estates development. Staff has received calls again from concerned residents in Harrisville that whose land abuts this drainage.

Mr. Barker reviewed his staff memo and referenced a plat map to identify the location of the four lots that will be available upon the removal of fence previously installed to contain the flood plain. He also identified the location of waterways in the area of the subject properties. He noted Ms. Hofmeister addressed the Council during public comments and noted that she assumed this item had already been approved by the Planning Commission without proper notification of residents living within 300 feet of the subject property, but that is not the case; the developer must know the City Council requirements in regards to the ditch and drainage stream in the area so they can complete their engineering work in order to submit their application for final subdivision approval. He noted after that is done, the item will be considered by the Planning Commission and the nearby residents will be notified accordingly. He then provided a brief history of the purpose of the storm drainage channel in the area of the subject property.

City Manager Chandler reviewed the plat map of the area of the subject property and highlighted the location of the open drainage channel, noting most of it appears to be in North Ogden. He also identified the location of the boundary between North Ogden and Harrisville and stated that at one point the channel crosses into Harrisville and it is piped and remains piped until dumping into another canal. A visitor, no name and address given, stated the ditch flows through a park and under the highway. He reviewed the plat map and identified the route of the piped ditch.

Council Member Bigler asked Mr. Chandler to clearly explain what the City Council is being asked to do tonight. Mr. Barker stated the City's ordinance regarding this matter is somewhat unclear because it states irrigation ditches that cross subdivision lots must be piped, or if a ditch abuts a subdivision it must be fenced, but the channel in question is a combination of a natural drain and an irrigation ditch. He stated the City Council can waive that requirement if they so choose and he noted the developer is present to summarize his request that the fencing not be required.

Chris Cave, Reeve and Associates Engineering, 920 Chamber Street, Ogden, stated he is the engineer for the project and what the developer is seeking is to give the purchaser of any of the four lots the choice to either fence around the canal or incorporate it into their landscaping. He stated there are other lots in the subdivision in which the owners have incorporated the canal into their landscaping and it looks very nice. He then added that the Army Corps of Engineers (ACOE) and the Federal Emergency Management Agency (FEMA) have expressed their desire for the channel to be left open rather than piped. He stated the portions they wanted piped travel under roads and that work has already been completed.

Council Member Bigler asked who owns the canal. He stated that he is concerned about legal liability; if one property owner chooses to leave the canal open and their neighbor's child is involved in an accident there could be problems. He stated he feels a fence is a safety precaution. He asked who would be responsible in that type of situation. Jeff Grunou, 1588 N. 225 W., Harrisville, stated he has been attending all of the meetings since this development began and it was established approximately eight years ago that this is a free running stream because of the willow trees that are about 80 years old that are located along it. He stated it is not owned by anyone and in the history of the State if it is a natural stream and no one owns it; it has riparian rights.

Mr. Chandler stated that in his discussions with Terrell Grimley regarding these different types of water ways he has learned two things: first is that if a waterway of this type crosses private property, the owner of that property is responsible to ensure the water can convey through their property; and second, the users of the irrigation water are responsible to keep the ditch cleaned. He stated it is either the property owner or the irrigation water user that is responsible.

Council Member Bailey asked Mr. Chandler and Mayor Harris to provide the Council with some history regarding why the City's ordinance dictates that waterways crossing properties must be piped or a waterway running adjacent to a property must be fenced. He asked for the justification behind that ordinance and an explanation of the liability the City would incur if the ordinance is not imposed in this case. Mr. Barker stated he assumes the piping requirement was added to the ordinance because waterways and children living on subdivision lots usually do not mix very well. He added the same is true for the fencing requirement; both are safety issues. Mr. Call added that liability is directly related to the City's duty and in this situation the City is not responsible to maintain the water channel or control the water so there is not a safety duty imposed on the City. He stated that if someone were to fall in the ditch or drown the City will most likely not be responsible for that.

Jim Urry, 1615 N. Mountain Road, stated he was appointed to the City Council in 1983 when the City experienced flooding problems in the area of the stream that runs to Oaklawn Park. He stated in some areas people had installed fences near the stream and the City had to remove those fences to clean out the

waterway to prevent further flooding. He added people had also built bridges and installed other landscaping features around the waterways and that had to be removed as well. He stated his feeling is that there should be some study regarding the type of fencing that should be used in the event that the City is required to repair any flood damage associated with the waterway.

Council Member Bigler stated that Ms. Hofmeister referenced flooding and he asked how the action being requested of the Council tonight will affect flooding of existing homes in the area. Mr. Grunou stated that his home is located just to the west of the subject property. He provided a brief history of the development of the area and stated the previous City Council told the residents the creek would not be piped in the area for a couple of reasons; one is the old willow trees located along the creek banks that use the creek as their water source. He then talked about the potential piping of the creek through the four lots being considered for development, but did not give an impression of how development of the lots could impact the existing residences relative to flooding. City Engineer Hartvigsen added there are two conflicting requirements; City ordinance requires piping or fencing of the channel depending on the location of the waterway. He stated if the Council allows the waterway to remain open there is still a requirement from the ACOE for the use of a wildlife friendly fence to help delineate the location of the wetlands; that is required by the deed restrictions that were established in the ACOE's approval of the delineated wetlands. Council Member Bigler asked for an example of a wildlife friendly fence. Mr. Cave stated a split cedar fence is an example of a wildlife friendly fence. Mr. Hartvigsen agreed and noted the fence is in place to delineate the exact location of the wetlands because the owner of the lot needs to understand that once they cross that fence line, they no longer have the right to do what they want with that property; if they desire to do something in that area they must first receive approval from the ACOE. Mayor Harris stated that requirement differs from the City's ordinance and he summarized that the developer is simply asking tonight for the City Council to approve a variation from the City's ordinance to not require fencing or piping along the waterway.

Council Member Fawson stated he is not sure why the City Council would agree to a variation of the ordinance. He stated that aside from liability reasons, a precedent has been set regarding this type of issue and he does not know why this case warrants an exception. Mayor Harris stated there is precedence on both sides of the issue; there are other developments in the City where that requirement has been waived. Mr. Barker stated the requirement was waived in other phases of this same development. Mr. Hartvigsen added that in the Fernwood development there were lots that had the same issue; there were wetlands delineated behind the lots and the property owner was required to install split cedar fences, but the fences were later removed because the deed restrictions on those properties were later removed. He stated piping was not required because of the conflict with the ACOE and FEMA and their opposition to piping the waterways because they do not allow utilities to run through wetlands. Council Member Fawson asked if there was a creek or irrigation ditch on that property. Mr. Hartvigsen stated it was spring water that surfaced east of the development that ran through the development causing a continual flow of water. He stated wetlands were formally delineated and restrictions were placed on the lots requiring fencing. He added the development abuts the Quail Ponds development and there were wetlands issues with that development as well.

Ms. Hofmeister referenced the map of the area and stated she and her neighbors have a view of the beautiful creek and the surrounding area and, though she is not opposed to development, she feels the creek should be left open in keeping with FEMA's suggestion. She stated that if piping is required, the willow trees located along the creek's bank will die.

Council Member Taylor stated this is his neighborhood as well and he referenced the homes that abut the creek on 1750 North and stated he has been in their backyards and there is no piping or fencing along the creek there. He asked why the requirement was waived for those lots. Mr. Barker stated the City Council at the time received the same request and agreed to leave the waterway open. Council Member Taylor

stated that means the precedent has been set in this same neighborhood in the past. Mr. Barker stated that is correct. Council Member Taylor asked if the same is true for the homes along Country Boy Drive. Mr. Barker stated those lots are located along the west side of the creek and the property directly alongside the creek will be dedicated to the City. He stated the homeowners there do not directly abut the creek; instead they will abut the wetland preservation area. He reviewed the map and identified the location of the wetland preservation area that will be dedicated to the City. Council Member Taylor asked if staff has a recommendation regarding this action. Mr. Barker stated from a municipal planning point of view he believes the Council has a good reason to approve this request because if the creek is piped the existing trees will die. He stated the Council needs to make a decision regarding whether allowing those trees to die is appropriate. He added there is not a lot of water running in the creek and his opinion is the hazard is minimal.

Council Member Stoker referenced the five criteria considered by the Board of Adjustments when considering a request for a variance to City ordinance and stated this request meets the criteria that this is not a self-induced hardship; it is peculiar to the situation; and it would change the surrounding area. Mr. Call stated this is a slightly different situation because the Council has some leeway to grant a special exception to the ordinance.

Council Member Bigler asked how the Council should determine if it is appropriate to grant a special exception to the ordinance versus requiring someone to formally apply for a variance. Mr. Call stated it depends on the direction from which the question comes. Mr. Barker added that this is particular to subdivisions, while variances are in regards to subdivision standards. He then read the Section 12-6-12 of City Ordinance (also included above in the staff memo). Mr. Call stated the City Council would essentially be complying with the ordinance by granting the exception.

Mr. Chandler added that Council Member Stokers reference of the criteria used when considering a variance is a very sound application; although this is not a variance, the principles used to grant a variance are a very sound basis for making a decision.

Council Member Bailey inquired as to what action the Council must take to approve the request to provide an exception to the fencing requirement. Mr. Barker stated a simple motion can be taken. Mr. Call agreed and stated the developer is simply asking how the Council will react so they can proceed with submitting final approval plans to the Planning Commission.

Council Member Bailey moved to approve an exception to the piping and fencing requirements for the flood plain located in Country Boy Estates Phase Four as requested. Council Member Stoker seconded the motion.

Council Member Taylor stated the four lots and a few additional lots along the creek are still undeveloped and everyone in that neighborhood will appreciate the fact that the lots will be developed and sold to someone that will take care of them to enhance the neighborhood.

Council Member Fawson stated he has not been to the area, but he would hate to cause it any harm and he appreciates the clarification regarding the need to keep the creek open to allow the beauty of the area to continue.

Voting on the motion:

Council Member Bailey aye
Council Member Bigler aye

Council Member Fawson aye
Council Member Stoker aye
Council Member Taylor aye

The motion passed unanimously.

**4. DISCUSSION AND/OR ACTION TO CONSIDER AN ORDINANCE ANNEXING
PROPERTY LOCATED AT APPROXIMATELY 2197 NORTH WASHINGTON BLVD
NORTH OGDEN, UTAH**

A memo from the City Recorder explained Anthony and Shawna Bown submitted an application petitioning for annexation for property located approximately 2197 North Washington Blvd., North Ogden, Utah. It was brought before the City Council for consideration to accept the application to be processed on July 23, 2013 which the City Council did accept. It was certified by me the City Recorder on August 26, 2013. The Public Hearing was held September 24, 2013. The protest period expired on September 30, 2013 and if there were no protests submitted. An Ordinance to consider this annexation is on the October 8, 2013 City Council meeting agenda for your consideration.

Ms. Spendlove summarized the memo.

Council Member Fawson moved to approve Ordinance 2013-14. Council Member Bigler seconded the motion.

Voting on the motion:

Council Member Bailey aye
Council Member Bigler aye
Council Member Fawson aye
Council Member Stoker aye
Council Member Taylor aye

The motion passed unanimously.

**5. DISCUSSION AND/OR ACTION TO CONSIDER AN ORDINANCE AMENDING THE
PURCHASING POLICY**

Mayor Harris reported there are some technical issues with the proposed ordinance to amend the purchasing policy and he informed the Council the item has been pulled and will be added to a future agenda.

**6. DISCUSSION AND/OR ACTION TO APPROVE A RESOLUTION APPROVING A
POLL WORKER AND THEIR COMPENSATION**

A memo from the City Recorder explained Utah Municipal Election Code 20A-5-602 requires the governing body to appoint poll workers and alternates; Utah Municipal Election Code 20A-5-602 4(a) requires the municipality to compensate the poll workers for their services. As the Election Official for North Ogden City, I selected the Poll Managers from those whom had previously worked in this position.

I asked Weber County to contact the Poll Managers and have the Poll Managers select Poll Workers for their polling locations. The Poll Managers know who will work well as a team and who understands and is trained to make the election process smooth for the voters. The General Municipal Election will be held on November 5, 2013 and for Early Voting which will begin October 22 through November 1, 2013. At the last Council Meeting I was not present. Stephanie Peterson's name was in two places: As a Poll Worker and as a Poll Manager. For Early Voting she is the Poll Manager and for the General Election she is a Poll Worker. She will be compensated at a different rate for each position. Before Council is a resolution to consider the poll worker and her compensation.

Ms. Spendlove summarized her staff memo.

Council Member Fawson moved to approve Resolution 11-2013. Council Member Bigler seconded the motion.

Voting on the motion:

Council Member Bailey aye
Council Member Bigler aye
Council Member Fawson aye
Council Member Stoker aye
Council Member Taylor aye

The motion passed unanimously.

7. PUBLIC COMMENTS

There were no public comments.

8. CITY COUNCIL, MAYOR, AND STAFF COMMENTS

Council Member Fawson thanked Linda Pipken and the group that organized the recent debate; it was an amazing event and he appreciated all the candidates participating. He stated there is another event scheduled for October 15 and he hopes it is as well attended as the last event.

9. ADJOURNMENT

Council Member Bigler moved to adjourn the meeting. Council Member Bailey seconded the motion.

Voting on the motion:

Council Member Bailey aye
Council Member Bigler aye
Council Member Fawson aye
Council Member Stoker aye
Council Member Taylor aye

The motion passed unanimously.

The meeting adjourned at 7:35 p.m.

Richard Harris, Mayor

S. Annette Spendlove, MMC
City Recorder

Date Approved

Attachment A

Mr Mayor, Mr Chandler, Council,

I'm here this evening to once again highlight a statement made by Councilman Bigler at the 28 May, 2013 City Council meeting, a statement he has chosen not to defend with facts and truth. To date, Mr Bigler has failed to produce a letter from me or the appellant group as he said he would. At a later date, he also stated the letter was in the packet and that he would e-mail it to me. Again, he failed to follow through on both actions. In the end, most of this is inconsequential, as the last document in the packet, document 74, stated "I have spoken to the other five appellants. We all agree and request a Public Hearing regarding the appeal we filed." Mr Bigler was a recipient of the packet as well as the rest of the council.

With his statement and actions, Mr Bigler has called into question my honor and integrity. I spent thirty years in the military defending the honor of my country and worked diligently earning a reputation of honor and integrity for myself. I find it unacceptable to have them questioned in such a manner by Mr Bigler.

This statement is being made to reflect, in the public record, my dissatisfaction with Mr Bigler's statement and lack of action on his part.

Statement read before City Council
on 8 Oct 13.

Michael J. Duprene

Ron Chandler

Document 74

From: Chuck Crippen <chuck-crippen@comcast.net>
Sent: Friday, May 24, 2013 2:40 PM
To: Richard Harris; Ron Chandler
Subject: Request for Public Hearing Regarding Appeal of CUP for Auto Repair Business

Dear Mayor Harris and Mr. Chandler:

Mr. Chandler, in a follow-up with our discussion earlier today, I have spoken to the other five appellants. We all agree and request a Public Hearing regarding the appeal we filed.

NOTE: My e-mail address and cell phone number are NOT to be released as public information.

Respectfully,
Chuck Crippen
801-866-3145