

## November 6, 2013 Payson City Council Minutes

Minutes of the Payson City Council Meeting held at the Payson City Center, 439 West Utah Avenue, Payson, Utah on Wednesday, November 6, 2013 at 6:00 p.m.

ROLL CALL: Mayor Rick Moore; Councilmembers: JoLynn Ford, Kim Hancock, Mike Hardy, and Scott Phillips (entered the meeting at 6:10 p.m.); City Manager Dave Tuckett, City Attorney Mark Sorenson, and City Recorder Jeanette Wineteer. Councilmember Skinner excused.

Mayor Rick Moore presiding.

### PRAYER & PLEDGE OF ALLEGIANCE

Prayer offered by Kaden Mecham and Pledge of Allegiance led by Taylor Baldwin, both scouts in attendance.

### CONSENT AGENDA

MOTION by Councilmember Ford to approve the Consent Agenda consisting of Approval of the October 16 City Council and Redevelopment Agency Minutes, and the Agreement between Enerlyte and Payson City Regarding the City Utility Bills. Motion seconded by Councilmember Hardy. Motion carries.

### PUBLIC FORUM

Carolyn Bowman from the Chamber of Commerce reported on the Chamber Great Pumpkin Hunt and the Trunk or Treat that the businesses and Chamber just held. She said that it was a great success with quite a few participants. She said there was great feedback from the businesses and they would like to do it again next year.

Norene Jensen said that there were about 125 people that attended the UPEA and Chamber of Commerce Meet Your Candidate Night. It was very informative and she thanked all that participated.

### COUNCIL AND STAFF REPORTS

Councilmember Ford echoed what Mrs. Jensen said about the meet your candidate night and felt the election and campaign went well with everyone being very congenial and wanting to serve our community. She also thanked the Recorder for the work that went into the elections.

Councilmember Hancock agreed and was impressed with how smoothly the elections run.

Councilmember Phillips said that road paving is now coming to an end and asked Public Works to complete patching before they quit making asphalt.

Mayor Moore also appreciated everyone's help with the elections and agreed it went well. He would still like to see more come out and participate in voting. He congratulated Councilmember Hardy and Phillips for winning the election.

They, in-turn also congratulated Mayor Moore.

### CHAMBER OF COMMERCE – BUSINESS OF THE MONTH

Elaine Williams from the Chamber of Commerce Board presented the Business of the Month to "Sam's Club" and said that even though they are located in Provo, they do a lot for our community. She presented a plaque to Jordan Peery from Sam's Club.

Mr. Peery said he runs the marketing department at the Provo Sam's Club and has been involved with and appreciates working with Payson City and the Chamber of Commerce.

### SCOUT ATTENDANCE CERTIFICATES

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Councilmember Phillips presented attendance certificates to scouts in attendance: Hayden Hansen, Ryan Ellsworth, Taylor Baldwin, Korbyn Crabb, Kaden Mecham, Andrew Bean, Dylan Minor, Braedon Sharp, Angel Charley, and John Wayne.

### PUBLIC HEARING – REDBRIDGE ANNEXATION

MOTION by Councilmember Hancock to open the public hearing to receive public input regarding the Redbridge Annexation. Motion seconded by Councilmember Hardy. Motion carries.

Public hearing opened at 6:25 p.m.

Planner Spencer presented the following staff report:

The proposed Red Bridge Annexation is located west of the municipal boundaries generally between 1700 West (4600 West, Utah County coordinate system) and 7000 West (Utah County coordinate system) and between Utah Avenue (10400 South, Utah County coordinate system) and approximately 1130 West (11000 South, Utah County coordinate system). The annexation area is west of Interstate 15 and the Union Pacific rail line in an area often referred to as West Mountain. The majority of the annexation area is utilized for agriculture and other farming activities; however, there are non-agricultural uses included in the annexation, such as the Payson City landfill. The annexation includes forty-nine (49) parcels and contains approximately twelve hundred (1200) acres of property.

Although a desire to annex property in this area of West Mountain has been expressed by several landowners over the years, an annexation petition that satisfied the minimum requirements of State statute or City ordinance was not submitted until September 2012. To define the future boundaries of Payson and develop planning strategies to assist in managing the growth expected in south Utah County over the next twenty (20) years, staff initiated the annexation process and the petition was accepted for further review by the City Council and subsequently certified by the Payson City Recorder.

Since the time the annexation petition was accepted for further review, several actions have been taken to advance the annexation process. Staff has conducted neighborhood meetings to discuss the annexation process and to learn of current and future plans of property owners in the annexation area. Several meetings were necessary to address proposed zoning, municipal services, and other land use considerations such as water rights, property taxes, and animal rights. During this time, staff also processed several ordinance amendments to address the potential needs of rural development, including regulations for animals, hunting provisions, and a new zoning district to address municipal landfills and the extraction of earth materials.

Another issue that has affected the progress of the Red Bridge Annexation is a petition filed with Utah County requesting the incorporation of West Mountain City. At one time, the parcels included in the proposed annexation were included in the incorporation request. However, Utah County determined the Red Bridge Annexation was filed with the Utah County Clerk before a complete application was submitted for the incorporation petition. Therefore, the incorporation boundaries were amended to exclude the parcels included in the proposed annexation.

Since the filing of the annexation petition, staff has received inquiries to include additional parcels in the proposed annexation. Likewise, staff has received requests to remove parcels from the proposed annexation. Because the incorporation request includes all parcels outside the boundaries of the proposed annexation, the petition cannot be amended to include any additional parcels. Requests to remove parcels from the proposed annexation will need to be reviewed by City staff and the Utah County Clerk to ensure consistency with the minimum petition requirements of State statute and City ordinance.

Typically, annexation petitions are submitted by property owners seeking to have property included within the municipal boundaries for development purposes. In this instance, Payson City is a petitioner and the annexation is

being processed partially to ensure the City maintains jurisdiction over several key municipal facilities, including the sanitary landfill. However, it is critical to note that annexation does not result in any type of development entitlement and all development in the area proposed for annexation will be subject to all regulations of the adopted development ordinances.

### **Analysis**

Annexation is a complex and extremely important issue for any municipality. Extension of the municipal boundaries should only be completed when it can be clearly shown that including the property in the City will be a benefit to the community. These benefits are measured in many ways including fiscal considerations, ensuring consistency of land use goals and realization of the General Plan, and many other factors.

Recognizing that a majority of the annexation area will continue to be used for agricultural purposes for some time following annexation, it is unnecessary to complete a comprehensive review of the property for development potential at this time. However, additional studies and entitlement review will need to be conducted prior to any future development within the annexation area. It should be noted that no requirements of annexation or development entitlement are being waived, but rather suspended until the future development pattern of the property has been identified. For the purposes of this petition, staff has determined that it would be appropriate for the Planning Commission to formulate a recommendation based on a review of any qualified protests, existing land uses, and determination of the appropriate zoning designation with all other annexation requirements addressed prior to development approval for any portion of the property in the proposed annexation.

### *Qualified Protests*

Utah Code Annotated (UCA) provides a thirty (30) day protest period for affected entities as defined in UCA §10-2-407. The protest period has concluded and the City Recorder has verified that no qualified protests were filed. For informational purposes, if a qualified protest were submitted, the applicant would have been required to complete additional fiscal analyses to determine if the annexation would result in a fiscal hardship on any qualifying entity (generally Utah County, adjoining cities, and special districts).

It should be noted that the owner of Utah County parcel #53-156-0001 has requested his property be excluded from the annexation. This parcel is located along the northern boundary of the annexation and removal of the parcel would not affect other parcels in the annexation and the annexation petition will still satisfy the minimum requirements of State statute. Removal of the parcel must be approved by Utah County and will need to be included in the West Mountain incorporation request to avoid creating an island of unincorporated land.

### *Zoning Designation*

In accordance with Section 19.12.2 of Title 19, Zoning Ordinance, all annexation petitions should be consistent with the Payson City General Plan. As currently adopted, the Payson City General Plan indicates several land use designations within the annexation boundaries. The majority of the parcels have a low density residential (.2 – 1 dwelling units per acre) designation. The parcels along 1700 West near the Payson Business Park are anticipated to be an expansion of the business park with some parcels included in a Transit Oriented Development (TOD) Zone to support a future transit center for the Utah Transit Authority. The area surrounding the transit center will likely include mixed use development consisting of both commercial and residential uses. The General Plan also indicates an industrial designation for the area where the municipal landfill is located.

A specific or area master plan has not been prepared for the area included in the proposed annexation. Therefore, staff is proposing an A-5-H, Annexation Holding Zone designation for all of the annexation area, except for the parcels owned by Payson City which are proposed to be zoned PRZ, Planned Reclamation Zone. The A-5-H Zone would provide flexibility for the landowners in the annexation area to utilize their property, whether for agricultural purposes or development purposes in accordance with the provisions of the zone. Preparation of the required land use and infrastructure analyses would be required before additional development occurred on the property.

*Annexation Agreement*

Typically, annexation petitions in Payson City are accompanied by an annexation agreement which clarifies the responsibilities of the annexation sponsor(s) and the City in relation to the proposed annexation. Due to the size of the annexation and lack of specific development proposals, it is proposed that the annexation be processed without an accompanying annexation agreement. However, many of the development requirements often included in an annexation agreement are codified in the development ordinances of the City. Therefore, the requirements are not being eliminated and future applicants will need to satisfy the regulations at the appropriate time. However, it is important to inform the property owners that additional studies, installation of infrastructure, development approval, provision of adequate water, and other costs associated with future development will be the responsibility of the property owner.

Placing the complex details of annexation aside, the decision of the City Council is rather simple: will the proposed annexation benefit Payson City? Because annexation is such an important issue, the City Council may require additional information to make a well-informed decision. Because annexation is a purely legislative act, the requests for information need not be included in the development ordinances of the City. At the annexation stage, the members of the Planning Commission and City Council may request information about any reasonable issue and include conditions to address any reasonable concern.

**Recommendation**

The City Council will need to complete a review of the proposed Red Bridge Annexation and determine if enough information has been provided to make a well-informed decision. Although the Planning Commission was not required to hold a public hearing, the City Council must conduct a public hearing before a final decision is made regarding the proposed annexation. The public hearing has been properly noticed and courtesy notices have been mailed to the appropriate property owners.

On September 11, 2013, the Planning Commission recommended approval of the Red Bridge Annexation with the A-5-H, Annexation Holding Zone and to delay the preparation of an annexation agreement until the time of development finding the annexation will allow Payson City to protect the landfill and provide services to the city's growth areas.

Following the public hearing and deliberation, if the City Council chooses to approve the proposed annexation, the Council will need to designate the appropriate zoning district for the property and place any appropriate conditions to the approval. The City Council should include findings that indicate reasonable conclusions for the decision.

As a final note, staff has received a few requests for the Planning Commission and City Council to delay action on the proposed annexation until the feasibility study is completed for the proposed West Mountain incorporation. Some owners would like to review the feasibility study for the incorporation before a final decision is made on the proposed annexation. However, there are several property owners in the annexation that want to be part of the community regardless of the outcome of the incorporation.

Annexations are legislative matters and the City Council is not obligated to approve any petition for annexation, regardless of location, even if the property owners are prepared to comply with all provisions required for annexation. At any time during the annexation process, the City Council may deny the proposed annexation following written notice to the applicant. If the City Council takes action to deny a petition for annexation, there will be no appeal process. If a petition for annexation is denied by the City Council, the proponent of the annexation will be required to submit a new application and pay all associated fees in order to have the petition reviewed again by the Planning Commission, City Council and staff.

Councilmember Hancock reiterated that the A-5-H zone is a "holding" zone

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Councilmember Hardy wondered about services that Payson would have to provide to the annexation. Planner Spencer explained that we would have to maintain roadways and provide garbage collection; however since we don't have other utilities out there they would still be able to use the service providers that they are using.

Hoby Metz lives in West Mountain and is speaking on behalf of other property owners: Doyle and Penny Nielsen, and Kevin and Wendy Jensen. He said that in the past they have not wanted to be included in any annexation, however we have all participated in services and things that Payson provides. It wasn't until the incorporation of West Mountain City came about, that we decided we want to be part of Payson not in that city. He said that their properties are not part of the Redbridge annexation but requested that the City Council keep this annexation pending and consider including their properties and some of these other people that are not included at this time.

Mark Belk lives on the south side of 10400 and is also not part of the annexation, happily. He has two concerns if there are people in the annexation and they want to be part of it, they should be. However there are neighbors in his neighborhood that don't want to be included in the annexation, and are. They are concerned that the landfill would become less of a good neighbor, and they are concerned with water contamination. He likes the City's A-5-H zoning, but that can all change depending on a city council motion. He is concerned because the plan is not done yet of what could happen in their area.

Tamera Stanton is a resident of unincorporated West Mountain. She is a landowner west of the business park, and have owned the property for quite a while and wanted to develop it. They see the annexation as an impediment to their development and would rather not be part of the annexation.

Jared Dehart owns ground next to the landfill and has been a resident of West Mountain for over 20 years, so he has dealt with the landfill since he was a kid. There have been good and bad things. He is concerned about what the plan is for the landfill and where it is going. He wonders what the plan is for the gravel pit and if there will be continued use of it. He wondered about the State Regulations and how those items are controlled. He also said that water run-off from the landfill is another concern, and cited the past experience with run-off during the large storms. He also felt that no one was policing the landfill and what is being dumped into it.

Tim Ewell lives in the Ranches and grew up on 5600 West, and he has been in West Mountain for 30 years. He also has concerns about the landfill and water contamination. He would like to know if there will be guarantees. He is concerned that he won't have a say in what goes on around him. He just wants to be heard and protect his property and family.

Brady Durrant lives north of the landfill. He doesn't fully understand why the city wants the annexation, and wondered if it was to increase the size of the landfill. He is also worried about water contamination.

Jennifer Nelson from SESD wanted to note that SESD has approximately 2 dozen annexations that have not been addressed yet. They would like to have an agreement in this area so it does not become another unaddressed annexation.

Tyler Loverage is building a home north of the landfill and wondered why the landfill will be in PRZ zone, and wondered why and what that is.

Receiving no further input MOTION by Councilmember Hancock to close the public hearing. Motion seconded by Councilmember Hardy. Motion carries.

Public hearing closed at 7:05 p.m.

Councilmember Hancock would like to go over the process and see if we can approve the annexation and still accommodate the people that want to be included or not included.

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Planner Spencer explained that State Code requires certain things and annexations have to meet all of those. Properties cannot be included without starting the process over because they were not included in the protest period. If there wasn't an impending incorporation request surrounding this annexation we could exclude some properties but if we exclude them, that pending incorporation would have to be altered also.

Councilmember Hancock explained to everyone that there was a request for annexation from property owners, Payson City did not start this annexation, it wasn't our idea to go take in this land.

Councilmember Phillips wondered about any requirements and plans of enlarging our landfill.

Attorney Mark Sorenson said that the rules that govern the landfill are and will be there whether it is inside or outside of the annexation. Landfills and gravel pits are governed by State and Federal requirements not Payson City laws. These are monitored by entities higher than Payson. He would have to research what we would have to do to change or increase the size of the landfill unless the existing permit allows for a new cell.

Councilmember Phillips said he understands the Metz's request to be part of Payson instead of another city in that area. And with the annexation questions with SESD, he would rather see the annexation remain pending.

Planner Spencer said there have been some great questions asked tonight, and staff can work on find out this information. We can keep the annexation pending until these questions are answered.

Councilmember Hancock wondered if we were to make the decision to hold-off and keep it pending, would there be anything that could legally be construed as we are trying to discourage the West Mountain incorporation.

Manager Tuckett said no because the West Mountain feasibility study did not include our Redbridge Annexation because it was pending.

Planner Spencer said that the second public hearing for West Mountain will be the 17<sup>th</sup> of December, and then they have a year to get the question on a ballot and the people can vote whether they want to be incorporated. These residents will also have the opportunity to voice their opinion at the public hearings.

Councilmember Hardy wondered if there was a time frame we would have to worry about.

Planner Spencer stated that staff needs direction of what you want answered before they bring it back to the Council. It would take time to address all the questions that were asked tonight.

Councilmember Ford would like to meet with those that live around the landfill to see if we can answer their questions.

Councilmember Hancock agreed but one way or another it is still our responsibility to meet the regulations of the State and Federal government.

MOTION by Councilmember Phillips to keep the Redbridge Annexation pending and address it again at the February 5<sup>th</sup> City Council meeting, once we have the answers to the questions asked. Motion seconded by Councilmember Ford. Voting aye: Councilmembers: Ford, Hardy, and Phillips. Voting Nay: Councilmember Hancock. Motion carries.

### RESOLUTION - NAMING A PARK LOCATED AT APPROXIMATELY: 1600 SOUTH 930 WEST PAYSON, UTAH

Attorney Sorenson explained that the Maples Homeowners Association came to the last council meeting and requested that the city park located at approximately 1600 South 930 West be named by the city.

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The name they requested was Temple View Park. Pursuant to section 10-8-32 Utah Code Annotated, the city may name "streets, courts, parks, thoroughfares and other public places and change the names thereof."

MOTION by Councilmember Ford to approve Resolution #11-06-13, A Resolution of Payson City Approving and Authorizing the Name of "Temple View Park" be used for the City Park Located at approximately 1600 South 930 West. Motion seconded by Councilmember Hancock. Motion carries.

### IMPROVEMENT REQUIREMENTS - OLSON'S GARDEN SHOPPE

Manager Tuckett explained that Olson's Garden Shoppe has applied to build an additional greenhouse on the site located at 1190 West 400 North. The ordinance requires that all site improvements (i.e. curb, gutter, sidewalk, off street parking) be installed for any commercial addition prior to the issuance of a building permit. Mr. Olson indicated at the last city council meeting that Payson City should have required Raymond Montague to put in the site improvements when he sold it to Olson's and that he should not have to install them at this time.

A look at the timeline of events shows that Mr. Montague sold the property to Olson's Garden Shoppe on October 13, 1994. At this time the property was still in the unincorporated area of Utah County. Buildings were built on the property prior to their being an annexation petition. There was a business license application to Utah County for Olson's Garden Shoppe dated July 16, 1993.

There was an annexation petition with Payson City in March, 1995. The staff report regarding the annexation indicates that Olson's wanted to operate their business in the county, but under the county regulations they were limited in what they could sell. Therefore, they petitioned to annex into Payson City. Mr. Olson stated in the Planning Commission meeting that he needed to get this annexation moving quickly because he will be losing profit and the season of planting is coming on fast. Attached is the staff report to the City Council. The property was annexed on May 18, 1995. At the time of annexation, there was no reason for Payson City to believe that the property was not properly subdivided. It was an existing business that wanted to annex into Payson City.

At the time of annexation, there were two parcels of property, one owned by Mr. Wright and one owned by Mr. Montague. The City was not aware of any splitting of Mr. Montague's property. In 1996 there was a building permit application submitted to Payson City to add on to the existing structures. At that time, there were no requirements to install site improvements that I could find for additions to existing structures. In 1998 Olson's purchased additional property from Raymond Montague. There was no subdivision application in 1998 nor when the property was annexed.

Since that time, Mr. Allen Wilson purchased the remaining Montague property and he came in to develop his property. In 2000 Mr. Wilson submitted a concept plan to improve his parcel and at that time Payson City discovered that the property had been illegally subdivided and Mr. Wilson was informed that he needed to correct the improper subdivision and install the site improvements for the entire subdivision.

The only other permit that was issued by Payson City was in 2011. At that time there was an ordinance in place to require the installation of all site improvements for commercial facilities that are adding additional structures. Payson City did not place the site improvement requirements on Olson's. I do not know why. It slipped through the cracks.

The current building permit application is dated September 18, 2013. Mr. Olson was informed that he needed to comply with the city ordinance regarding site improvements. My understanding is that he would like the site improvement requirements waived.

The current ordinance requires any commercial business that adds on or builds additional structures to meet the site improvement requirements. Several of the businesses in that location have had to install the required improvements.

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If the City Council is not in favor of enforcing the infrastructure requirements I would suggest the ordinance be changed. There may be unintended consequences.

Brad Olson owner of Olson's Garden Shop agrees that everything mentioned is true, other than Mr. Wilson did purchase property from Montague's. He doesn't know what needs to be done, but he needs to build a greenhouse but cannot afford to do curb and gutter all the way around his property. He suggested putting it in just in front of his store.

Councilmember Phillips wondered what he would do for parking,

Mr. Olson said that they are now parking on the street and figured they would just keep doing that. He noted that there is no storm drain system but he is paying a storm drain fee, so he wondered if the city was going to put in a system if he puts in curb and gutter.

Manager Tuckett explained that Mr. Montague sold subdivided property before it was located in the city limits. Mr. Wilson didn't have to put in curb and gutter because he didn't develop the property he owned.

Councilmember Phillips said that the plan is to put curb and gutter in everywhere because it helps keep the roads from disintegrating. Curb and gutter is supposed to be put in by the property owners. He again said he is worried about the parking for Olson's.

Mr. Olson suggested that he put curb and gutter in the front of his store and then maybe a time line for the rest when business gets better. He cannot afford to do the whole thing.

Mayor wondered if the city had any responsibility in it at all.

Attorney Sorenson explained that each property owner has the responsibility to put in curb and gutter themselves. Even if we created a special assessment district to put it in throughout the whole city, the cost would be assessed to the property owner for in front of their property.

Manager Tuckett said that AWD was built on the Wilson property in 1999 or 2000 and they have curb and gutter and sidewalk because the property was developed.

Councilmember Hancock said we have spent a lot of time talking about economic development and he would like to see what we could do to encourage business and help them out. Councilmember Phillips said we could help by putting in the tie-ins after he installs the curb and gutter, and he felt it could be done in the spring as long as a bond is in place.

Mr. Olson said that the only way he can have parking is the way it is. With hind-sight, he would have set the buildings back and built a parking lot. ‘

Planner Spencer said that the requirement would be for curb and gutter along both streets.

Public Works Director Travis Jockmunsen said that anything we are requiring him is exactly what we would or require for any other business. They all need to take care of their own storm drain water.

Manager Tuckett commented that if someone feels their storm drain fee is calculated wrong, then they could sit down with the City Manager to look at the impervious surface and then to the Council to go over it and it might be reduced.

Councilmember Ford suggested the requirement of curb and gutter and the city tying in the road and Councilmember Phillips suggested a sump to take care of the storm water.

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Councilmember Hardy disclosed a conflict of interest in this situation due to the fact that Zions Bank, for which he works, has dealt with Mr. Olson in the past.

Discussion was held regarding parking, time frame, and storm drain requirements.

MOTION by Councilmember Phillips that the city participate in the road tie ins as long Olson's put in curb and gutter, and staff work with Mr. Olson on the remaining regulations. Motion seconded by Councilmember Hancock. Voting aye: Councilmembers: Ford, Hancock, and Phillips. Councilmember Hardy abstained. Motion carries.

### SET DATE FOR SPECIAL MEETING TO CANVASS ELECTION

Recorder Wineteer explained that UCA 20A-4-301(2)b The board of municipal canvassers (legislative body) shall meet to canvass the returns at the usual place of meeting of the municipal legislative body.

(ii) no sooner than seven days after the election and no later than 14 days after the election.

It would have to be a special meeting, but would only take a few minutes.

Consensus of the Council was to hold the 2013 Election Canvass on Wednesday, November 13<sup>th</sup> at 6 p.m.

### ADJOURN TO CLOSED SESSION – Land Acquisition or Sale

MOTION by Councilmember Ford to adjourn to closed session to discuss land acquisition or sale. Motion seconded by Councilmember Hardy. Motion carries.

Council adjourned to Closed Session at 8:14 p.m.

### RECONVENE

Council reconvened at 8:35 p.m.

### ADJOURNMENT

MOTION by Councilmember Hardy to adjourn. Motion seconded by Councilmember Hancock. Motion carries. 8:27 p.m.