

AMERICAN FORK CITY COUNCIL
WORK SESSION MINUTES
JANUARY 23, 2014

WORK SESSION

The purpose of City Work Sessions is to prepare the City Council for upcoming agenda items on future City Council Meetings. The Work Session is not an action item meeting. No one attending the meeting should rely on any discussion or any perceived consensus as action or authorization. These come only from the City Council Meeting.

The American Fork City Council met in a work session on Thursday, January 23, 2014, at the American Fork Fire/Rescue Station, located at 96 North Center, commencing at 3:30 p.m. Those present included Mayor James H. Hadfield, Councilman Carlton Bowen, Councilman Brad Frost, Councilman Robert Shelton, and Councilman Jeff Shorter. Councilman Clark Taylor was excused.

Staff present: Administrative Services Director/City Treasurer Melanie Marsh
Associate Planner Wendelin Knobloch
City Administrator Craig Whitehead
City Engineer Andy Spencer
Deputy Recorder Terilyn Lurker
Development Review Engineer Nestor Gallo
Finance Officer Cathy Jensen
Fire Chief Kriss Garcia
Legal Counsel Melissa Mellor
Police Chief Lance Call
Public Works Director Dale Goodman
Senior Planner Adam Olsen
Sewer/Storm Drain Supervisor Aaron Brems

Also present: Darrell Child, Kelly Weight-Allred, Tony Stauffer, and Justin Stratton

Mayor Hadfield welcomed everyone present.

COUNCIL TRAINING – Olympus Insurance

Darrell Child was present to talk about Insurance and Public Officials. Mr. Child stated that Olympus Insurance has prepared a presentation that briefly outlines some of the major issues that City Councils have come across in the past in what they call public officials error and omissions risk. Mr. Child stated he wanted to go over how this applies to City Councils and Administrative Staff, what the insurance policies cover and do not cover, and the major areas where E&O Claims can arise and ways to avoid them.

Mr. Child stated this coverage became widely available in the 1980's. Before then, most people did not think of filing claims against the government. There was a societal belief that elected officials were acting on the best interest of the public; people have become

more focused on self-interest and group interest. This coverage has become an essential component of risk planning for the City.

Mr. Child explained that the policy covers “wrongful acts” of the elected officials or administrative staff and is defined in the policies. It includes any type of allegation of wrong-doing on the part of the elected official. The policies do not cover a breach of contract or contractual dispute.

Mr. Child stated that when a claim arises, it generally is in an area where an error or oversight occurred, which results in damages to other parties. He wanted to go over the most common causes of claims. Mr. Child indicated there were very little claims that occur in this area. However, when they do see a claim it typically goes well into six figures in legal costs to defend and seven figures to pay. Above and beyond the direct costs, errors and omission claims are emotionally draining on the community and elected officials. Mr. Child stated the largest error and omissions claim was settled in Tooele City for \$22.5 million. That litigation consumed the City for ten years.

The common areas of claims are failure to follow a prescribed duty, conflicts of interest, over-reaching organizational authority, over-reaching individual authority, and violation of protected rights. The failure to follow a prescribed duty is not following your own procedure; this creates a legal liability. Conflicts of interest is where a person has a personal issue at stake and does not disclose that outside interest prior to decisions being made. We must be very clear on disclosing a potential conflict of interest; if we do not fully disclose or recuse ourselves, we may bring legal liability against the community. One example was a community in Utah that voted against a zone change for a development and the decision was challenged because the mayor and council member were working on a competing development. The town was sued and the jury found in favor of the development; the developer was awarded potential, unrealized profits. Over reaching organizational authority arises when elected officials make promises to lure economic development when it is not in their authority; we can only make promises within the normal structure of our organizational authority. Problems also occur when elected officials override the powers of the professional management. With the violation of protected rights, elected officials may set local ordinances that could be in conflict with protected rights of individuals or federal mandates. One example is the Kirby Vacuum Lawsuit in which many cities in Utah were sued over the protected right of free speech. In Hancock et al vs. Duchesne County, Duchesne County decided that the Fair Housing Act did not apply to them; Hancock et al won and they were awarded all potential, unrealized profits. The common denominator was that potential, unrealized profits were awarded. They also need to be sensitive and aware of protected information and how we manage information. This could create huge legal liabilities if not handled properly.

Mr. Child said there was an area he was becoming increasingly concerned with for elected officials and communities concerning civility. More and more, we find that people attend meetings and not behave themselves. As a city, we set the foundations through the way we communicate with each other, acknowledge each other, and how we

handle ourselves in our public discourse. If we have incivility, we will find that it costs lost work time, productivity, and lower morale. It can become a spiral as perceptions can lead to uncivil behavior. As a city, we can be the ones to raise the level and to keep the level within our discourse.

Councilman Shelton asked if the E&O coverage covers the requirement to be bonded. Mr. Child stated it was a separate issue; there are certain areas where the amount of bond is set according to state code.

Mayor Hadfield stated that the City, specifically Richard Colborn, works closely with Mr. Child to make sure they are properly covered. Mayor Hadfield thanked Mr. Child for his presentation.

DISCUSSION ON WASTEWATER AND STORM WATER NEEDS - Staff

Dale Goodman stated that storm water management has become very important in the last few years due to the regulations the EPA has passed down to states and cities. In the 1970's, the Clean Water Act was passed and any water introduced back into waterways had to be managed and kept clean. With more and more impervious areas in the county, we have to manage the runoff water. There are ways to handle the storm water such as curb and gutter and sumps, but the City's system is not complete; there are not sidewalks or sumps in all locations. Because of the incomplete nature of the system, it can be overloaded with sediment which can be washed into a sump and make the sump inoperable.

In October of 2013, we had a storm water audit performed by the Department of Water Quality. Prior to that, a lot of preparation and work was done by employees to prepare necessary documentation for the audit. The DWQ went through facilities and documents. The City found that there were a lot of things right, but there were some glaring problems. One of the big problems pointed out was that the City lacked the street sweeping program, which was a component of the storm water program. Sweepers are important, but do not last long; the longer they are used the less effective they are. The city has one sweeper about 17 years old and one that is 10 years old. We have no program because we do not have reliable equipment.

Mr. Goodman stated that another issue was that the City was understaffed in being able to manage the regulations in place right now and with what will be coming in the next few years. The DWQ was shocked American Fork could produce the documentation needed with our limited staff, which had to be done by putting the Development Engineer to work on this audit while his other duties suffered. The DWQ recommendation, or mandate, was that the City should have a full-time compliance coordinator. They were basically saying the City needed to have this position in order to comply because the city would have to produce a certain amount of work and recommended a full-time staff position to make sure the City was in compliance. If the City did not comply, we were in trouble; it was totally on the city to make sure we were in compliance. The DWQ had a schedule of fines that could apply if the City did not comply with their regulations. Mr. Goodman stated they were able to get through this audit with the current

personnel, but the DWQ stated the number of regulations was growing and the City would need additional help. They further noted that the city had one field person who managed the entire storm water system and his time was taken up with inspections and reporting. The City has been able to streamline the operation, but that employee was still overwhelmed with the amount of work needing to be done. Mr. Goodman commented that the care of the system and monitoring of the system are not happening as they should. They are short a person in the field and the DWQ stated they would also need administrative support for all the new regulations.

Mr. Goodman stated that they were happy with the overall result of the audit.

Councilman Bowen asked if the additional staff recommended was in anticipation of future regulations. Mr. Goodman answered that it was for future regulations but also that they needed additional help now.

Councilman Frost asked if they knew when the Department of Water Quality would be coming back. Mr. Goodman explained that the DWQ had 30 days after the audit to supply the city with their report. The City then had 30 days to present them a plan for compliance. Mr. Goodman stated that they do not know when the DWQ will be back. They are looking at what they need to do to comply and how that will affect them internally. Nestor Gallo was recognized as an expert in the field and it was the intent to put him in the position of the compliance coordinator but they are trying to figure out what problems that will then cause because he is currently the Development Engineer.

Councilman Frost stated that it appeared they would be having budget discussions concerning this.

Andy Spencer stated that with the transition of the Pressurized Irrigation system, the City was receiving calls about the ditches. People want to fill the ditches in or the ditches are in disrepair. However, the ditches are also the storm drains and they can not be filled in until the storm water system is completed. In the past, when the city was agriculturally based, storm water was not a problem. However, homes are now replacing fields and that creates a problem. They have identified what they need to do to address the problems in the city. The capital needs over the next 10 years was \$13 million and that needed to be addressed.

Mr. Spencer stated that there were problems on 300 North and other areas where there are not a lot of storm drains so the water ends up on 300 North during major storms. There was a major problem on 700 North when during major storms they have to park a vehicle over a manhole lid or the water will push the lid up and water will go into a driveway.

Councilman Shelton noted that some of the problems were identified as part of the reconstruction project on the bond that did not pass. Now they had to figure out how to pay for those projects.

Mr. Whitehead stated that this was brought before them so that they can see what the needs are. On February 6, they will have the first draft from the consultants on rates and expenditures for storm water.

DISCUSSION OF THE DECLARING REAL PROPERTY AT 950 EAST 300 NORTH CONSISTING OF 0.081 ACRES TO BE SURPLUS AND TO BE DISPOSED OF – Staff

Mayor Hadfield stated that the City acquired this property when Ray Lameroux developed Sunset Acres and deeded the property to American Fork City. It was a derelict parcel and the city has an ordinance against derelict parcels, so the parcel was deeded to the City. The adjacent home was now going to be demolished and the owners would like to acquire the property so they can face the home east, allowing them to so they have access to sewer and water as well as to 950 East for his drive approach. Mayor Hadfield stated they have had derelict parcels in the past that have been deeded back to adjacent owners.

Mr. Spencer stated that the key points were that the city did not expend any funds to acquire this parcel. The proposal before them was to declare it surplus and allow it to be combined into the lot to the west. The applicant would be required to come forward with a one-lot subdivision, where they would make certain commitments with driveway location. This would also take care of a derelict property.

Mayor Hadfield stated that in the past it has been a problem area with maintaining. The City receives no taxes but when the adjacent owner obtains that it would then bring in a few dollars.

Mr. Spencer noted that they did receive a letter from the Benches indicated that they had no interest in this as long as the action does take place. He noted that there were only two properties that could receive it and not be in violation of City requirements. Staff believes this was a good idea.

Councilman Bowen asked that the fair market value of the parcel was. Mr. Spencer stated that in the past, they have found very little value because it was too small for anything to be built on it and there were only two possible purchasers of the property.

Councilman Bowen asked if that was how an appraiser would determine fair market value. He understood that it was derelict, but he did not understand why the city gave it away for free. He has known of government organizations have given the people a deal but they did not give it to them for free. Councilman Bowen commented that the land did have some value. The City could make that into a park strip or widen the road to make a turning lane. He wanted to point out that the land had value and he was concerned about giving it away for free.

Councilman Shelton thought that the information provided made reference to an appraisal. Mr. Spencer explained that they could pay for an appraisal, but questioned whether it was worth it. They based this on previous action that was comparable. Councilman Shelton commented that an appraiser will also look at what that property can

be used for, and no private party can use that parcel for anything. Mayor Hadfield pointed out that it has been a detriment to the city; there was some trade off and the city would benefit from property taxes.

Mr. Stratton stated that he was purchasing the home adjacent to this property and his plan was to build his home for his family. He was a real estate broker and worked for a title company. If someone came to him and asked what it was worth, he would reiterate that it was not worth much of anything because nothing could be done with it. Mr. Stratton stated that he will have costs associated with obtaining the property because he will have to have a final plat approved. He noted that there were benefits to him, but there were also mutual benefits. He felt he could garner enough support from the neighbors if that would help.

Councilman Frost thought it would be nice to clean it up and err in the side of the resident. He noted that Mr. Stratton would have to file with the Beautification committee.

Councilman Bowen appreciated what has been said, but he felt they should be fair to both parties and there should be fair compensation. He thought that moving forward they should never give real property away for free.

Mr. Stratton stated that if he did not obtain that parcel he could build right now as the lot was viable and avoid other expenses such as surveyor fees. If the city changed their mind later, he would not be interested once his home construction begins; there would be no value to him at that point.

DISCUSSION OF STREET LIGHT PURCHASE PROPOSAL - Staff

Mayor Hadfield commented that 18 months ago, a council member proposed a way to save money by purchasing the street lights from Rocky Mountain power. He noted that there was a monthly fee to maintain and power up the street lights totaling approximately \$400,000 a year. Some of those lights are on different schedules, some are owned by the City, and there were different types of lights. Mayor Hadfield stated that they have proven to us that if we purchase those lights and contract with an outside company to maintain those lights, there would be a sizable savings.

Mr. Whitehead stated that last May they met as a City Council, Rocky Mountain Power and Black & McDonald representatives concerning purchasing the street lights. After that he reconciled how many fixtures there were, what the City was being charged, etc. The main decision to make was how to pay for it. It was decided to pay for it out of unreserved funds, which they felt like that had enough fund balance to cover this.

Ms. Jensen noted it was about \$248,000 per year for the street lights.

Mr. Whitehead stated that the benefits of city-owned light were reduced cost of service, design of own city standards, deciding our own level of service and a greater overall

control of the system. The main benefit was the reduced cost of service; the projected costs drop drastically.

Mr. Whitehead commented that Rocky Mountain recently notified him that there were some changes and several thousand feet of underground wire were added to the purchase, taking the price from \$350,000 to \$372,000.

Mr. Whitehead stated that the estimated annual cost was \$260,064. The projected cost was \$79,852 plus the maintenance contract price of \$51,332. The net savings would be \$128,000 annually. He felt it was a good financial decision but they needed to come up with the funds for the purchase.

Councilman Bowen asked if maintenance was a fixed cost. Kelly Weight-Allred stated that it was based on a flat rate per fixture per month based on the type of fixture. The maintenance contract was for five years, so the cost would not change for that length of time. Mr. Whitehead pointed out that the benefits of a Black & McDonald contract was that they have already been maintaining the lights.

Mr. Whitehead stated that they recommend a small maintenance fee, which would translate into a rate of 63 cents a month to cover the costs for residences and a double rate for commercial. That fee would support the ongoing maintenance. Councilman Shorter asked why they could not use the money saved to pay for the maintenance and Mr. Whitehead answered that was another option.

Mayor Hadfield stated that Dale Gunther wanted to be here because the Downtown American Fork study had a decorative lighting plan along Main Street to make it aesthetically pleasing. Mr. Gunther had looked at those savings being diverted to be used as part of the street scape on Main Street. Mr. Whitehead commented that there were 26 poles/fixtures at a cost of around \$3,000 so they were looking at \$80,000 to \$100,000 to beautify that. Mayor Hadfield stated they need to get with the UDOT on the Main Street plan and when the work was done the lighting fixtures could be replaced.

Councilman Shorter asked if new development would have to meet our lighting standard. Mayor Hadfield stated that was correct and the Planning Commission would come up with requirements.

Mr. Spencer stated that from their rate structure, the standard light month cost was about \$12 a light but decorative was triple the cost. The power or fixture won't cost more, but the maintenance would increase. Mayor Hadfield stated new subdivisions have fixtures that can be maintained easily and looks good over years.

Councilman Shelton stated that he would not be in favor of a maintenance fee, even though it was a small amount. He noted that they would be adding additional fees onto the utility bills such as transportation and storm water and water rates, and that will add up. They needed to look at the whole bill and when they take into account all the fees.

Mr. Whitehead stated that they will be discussion sewer and storm water rates at the next work session.

Councilman Shelton noted that they already had \$100,000 budgeted for downtown that they have not been able to add to and he suggested that they take that money for the purchase of the lights. When they get the payback they should then regularly put it additional funds for that project. Mr. Whitehead thought that the \$100,000 could go toward the lights. Councilman Shelton wanted to make sure that additional funds were regularly earmarked for downtown.

Mr. Spencer noted that staff was working with UDOT on a combined study to take the Main Street Vision to the next step. They had a verbal commitment from the previous region director to go 50/50 on the next plan and so they need to save money for that expense.

Councilman Frost would like to continue to ear mark the \$100,000.

Councilman Bowen stated that Ms. Jensen had made a comment earlier about the costs for the project and he asked if she had anything else to add. Ms. Jensen stated that in the streets department budget there was \$248,000 for lights and that an additional amount came out of the parks budget. Mr. Whitehead stated that he was as exact as possible with the information provided on the current costs and the projected costs.

Councilman Bowen asked if they would replace all the lights throughout the city. It was clarified that they would only be maintaining the street lights, with the possibility of changing the lights on Main Street. Councilman Bowen clarified that they were purchasing the existing lights from Rocky Mountain Power, not necessarily replacing them, and would pay be for the original cost in the course of two to three years. He stated that he understood that they would then take those savings and put it into a project like the Downtown Main Street plan.

Councilman Bowen commented that he understands Mr. Whitehead has put a lot of work into this, but he was concerned with the timing with regards to the other needs of the city. He also knew the state was coming in to do work on State Street and he was wondering if they could accommodate future improvements without spending money now, although that would limit the savings.

Councilman Shelton stated they could buy the system but not replace the lights yet. The study mentioned by Mr. Spencer would identify specifically would be done. Mr. Spencer explained that with the project, if the city wanted fancy lighting it would be considered a betterment and the City would have to pay for that additional cost.

Councilman Bowen commented that they would be assuming liability and he understood the estimates were as accurate as possible. However, he did not see this as justifying itself.

Councilman Shelton asked the representatives of Black & McDonald when they last had a rate increase. Ms. Weight-Allred stated the rate increase was about six years ago.

Councilman Frost stated that as a businessman, he would find the money to do it. He did not think the offer would be the same in six months. Mr. Whitehead stated it could increase. Tony Stauffer noted that the Perry City system had a huge increase in price. Councilman Shelton commented that the longer they wait, the price may go up.

Councilman Bowen stated that with the age of the lights, would they have to upgrade it anyway? Mayor Hadfield noted that Rocky Mountain Power has kept up the maintenance because of their liability. It was their pole but the city would own the light.

ADJOURNMENT

The work session adjourned at 5:05 p.m.

A handwritten signature in cursive script that reads "Terilyn Lurker".

Terilyn Lurker
Deputy Recorder