

AMERICAN FORK CITY COUNCIL
NOVEMBER 1, 2022
WORK SESSION MINUTES

Members Present:

Bradley J. Frost	Mayor
Kevin Barnes	Council Member
Staci Carroll	Council Member
Ryan Hunter	Council Member
Rob Shelton	Council Member

Members Absent:

Clark Taylor	Council Member
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Staff Present:

David Bunker	City Administrator
Camden Bird	Assistant City Administrator
Stephanie Finau	Deputy Recorder
Cherylyn Egner	Legal Counsel
George Schade	IT Director
Patrick O'Brian	Development Services Director

Also present: Neil Schwendiman (North Pointe Solid Waste), Dan Van Woerkon (Attorney for Reed Bromley), and Reed Bromley (Egg Farm EDA)

American Fork City Council met in a work session on Tuesday, November 1, 2022, in the City Administration Conference Room, located at 51 East Main Street, commencing at 4:05 p.m.

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.

Mayor Frost opened up the work session and excused Council Member Taylor's absent, due to being out of town. He commented that all information that was given for this work session will be posted on the city website.

1. Presentation by North Pointe Solid Waste Special Service District.

Council Member Shelton introduced Neil Schwendiman from North Pointe Solid Waste, who presented information on North Pointe Solid Waste District including possible rate increases.

Neil Schwendiman, the District Manager for North Pointe Solid Waste Services, gave a history on the company. He related the types of services and operations that they offer such as municipal solid waste, construction and demolition waste, green waste, clean concrete, household

hazardous waste, and recycling of tires/metals/electronics. Mr. Schwendiman showed statistics between neighboring cities for curbside waste and noted American Fork was 12% of the total. He also reported the volume in 2021 that North Pointe took in from American Fork.

Mr. Schwendiman reported the residential curbside fee history on what they charge the surrounding cities. In 2010, they charged \$29/ton, it went up to \$32/ton and then dropped down to \$30.50/ton. This year it is up to \$31.50/ton and looking to increase fees up to \$34/ton with a public hearing coming up on November 14. Mr. Schwendiman stated that the MSW and transportation is going up \$2.43 and North Pointe put it at \$2.50.

Mr. Schwendiman stated they put together a Master Plan that was completed in 2022. He went over infrastructure that needed repairs and costs for those. He mentioned the plan to renovate the current site was the most cost-effective plan. He went over what was expected for the future, included an estimated cost \$7 to \$9 million dollars for expansion, a process for estimating future funding source, process of evaluation time for expansion improvement, and Baybiew landfill's capacity. A discussion ensued about a new transfer station in different locations and available land use.

Mr. Schwendiman expressed appreciation to the city council, Council Member Shelton, and staff for their time.

2. Discussion on the Egg Farm Economic Development Area.

Reed Bromley addressed the council and staff on the EDA portion of the Egg Farm. He mentioned that he sent emails to the council that entailed the summary of his thoughts and supporting documents behind the development of the land that he had with the city as well as the first amendment that took place in 2007 and the second amendment in 2013. He mentioned Mayor Frost, Council Member Shelton and Council Member Taylor were on the council at the time of the second amendment. He added that there was a whole decade of history before that. He expressed that he felt there were different views on how he viewed the agreement and how the city viewed it. Mr. Bromley reported on the history of the Egg Farm and RDA/EDA.

Mayor Frost asked Mr. Bromley to explain the differences between an RDA and EDA. Mr. Bromley replied that an RDA (Rural Development Area) gives the entity power of domain and works well with retail uses. An EDA (Economic Development Area) functions more with job creation.

Mr. Bromley continued with the discussion of the area changing from an RDA to EDA and how he worked with then City Planner Rod Despain. He had asked to be placed on an agenda but claimed he was not able to get on an agenda unless he renegotiated the interest received. He felt that it was all he could get until a couple years ago when he saw a line item in increment schedule where it stated, "*Excess Funds for Agency Use*". He did not feel it was fair for the developers to get paid back at 2.5% interest and felt that was not fair in the spirit of the deal. He expressed that he did go into an agreement with the 2.5% interest but now he does not feel that's right based upon the position he was put in. He explained he sent an email to the council why he is requesting that the interest from the time of the second amendment stay at 2.5% to the present, but that retroactively in 2013 it should have stayed at 5% interest.

Mr. Bromley went on to discuss in detail his version of the EDA, the first agreement, and what transpired with the second amendment.

Council Member Shelton clarified that at that time of the second amendment there was a disagreement on how to interpret the agreements that were signed. They wanted to add clarifying language to what was fair, which was hard to do.

Mr. Bromley responded that it wasn't about what was fair it was about how it was going to be managed. He mentioned debating things about a trigger date, which was when you take the money. He stated that there were two agreements between the agency and the taxing entity and then the agreement to develop land which was between him and the city. He felt it was more about interpreting things not about fairness.

Council Member Shelton stated that it needed to be better defined what the agreement said or the interpretation thereof. He added that after hours of meeting and debating, they came with the clarifying language and that was the amendment #2 to resolve all that back stuff. He also mentioned that back when they were ready to vote for the 2nd amendment, he had asked Mr. Bromley if everything was good on his end to move forward because he didn't want to see it come back up again down the road. At the time, Council Member Shelton wanted to make sure they addressed everything and get everything taken care of.

Mr. Bromley responded that the project has been the most positive RDA/EDA that the city has ever had. Council Member Shelton also wanted to know that if they go back how much is it, what is that number and how it affects the budget; he would want absoluteness to this issue.

Mayor Frost commented that he had asked staff to see where we are currently with the EDA project. Mr. Bromley related that the EDA was created specifically to build out the project area and to pay for its obligations. The project is nearly built out and the areas that aren't are already serviced by infrastructures.

Mr. Bunker stated that the projects that were identified in the original scopes are not done. There is a lot of development there, but not all the original capital projects identified have been completed. To which Mr. Bromley agreed. Mr. Bromley stated the agreement spelled out how much would come out of the EDA, MAG, and UDOT. He added that what he's asking for should not impact the projects and developments coming to that area.

Mr. Bunker replied that you have to keep in mind when those projects happened versus when they were scoped to happen. Infrastructure had to happen up front, or the intent of the EDA could not be met, which required the front-end dollars had to go to infrastructure. That left no funds available for the remaining capital projects. The difficulty is that the costs are not the same as they were back then. Staff has looked at the projects that still need to be completed and those costs will be higher than the original estimate. He stated there were no "excess funds" as Mr. Bromley mentioned. He went on to explain that there is a cap on the EDA, and we will only get a certain amount of money from it. If costs are higher and there is a shortfall the question was where those dollars come from.

Mr. Bromley asked what the seniority of the purpose of the EDA was and who made the investment when there was nothing to create it and if there was something done, now we can pay for those projects. He felt the city will be able to find something to spend on everything down to the penny. Mr. Bunker disagreed with that assertion, to which Mr. Bromley retracted and restated that in general it can happen.

Council Member Shelton commented that he felt the partnership agreement was vague which is why they did the amendment to wrap things up. The end goal was to have that area developed faster than it would have naturally. He further stated that the council at that time put in a lot of time and effort in this.

Mayor Frost deferred to Mr. Bunker if he wanted to review some numbers. He stated they will be very transparent on current infrastructure needs and anticipations of what is left and how we may use that.

Council Member Carroll asked Mr. Bromley if he is specifically asking for a 5% interest from the time of the first creation in 2000 to 2009 and then 2.5% after that. Mr. Bromley stated from 2013, or whatever the date was on the second amendment. Council Member Carroll stated that it was hard to understand how a project that was just getting off the ground and problems meeting those strategies and how it would have generated a greater amount of dollars during those few years then the rest of the time. Mr. Bromley explained that the infrastructure amount had been spent and accruing interest at the beginning. It wasn't until the available tax increment or the creation of the new buildings to offset that and started paying down the original infrastructure cost.

Council Member Carroll asked if the interest is only off the money Mr. Bromley spent. Mr. Bromley stated that the agreement was the reimbursed items were not to exceed a specific amount plus 5% of what the balance was. Mr. Bromley continued to discuss the history regarding the amendment with the council then and how it affected him with the EDA. He explained he was receiving funds based on the forecast for what was eligible to pay back rather than based on the 75% of available tax increment.

Council Member Carroll commented that it was hard to have a council 20-years later revoke something another council has done. Even with research, they will never truly understand why they made the decisions they made. She felt like neither Mr. Bromley, nor the city was getting what they should be getting, so they came up with the agreement in 2013.

Council Member Hunter asked what happened to the excess funding. He commented that when they go into a CRA, they don't know the cost of what it going to be. He didn't totally agree that they should say there will be an increase in construction costs 20 years down the road. Mayor Frost gave a hypothetical example of the CRA that costs do go up and asked if they go back to the district and ask for an amendment because of unforeseen things.

Council Member Hunter agreed with Mayor and commented that one of the reasons would be increased construction costs, where we wouldn't normally not do that. Mr. Bunker responded that the reason they were not able to do the improvements earlier on was because there was no money to complete the capital projects.

Discussion amongst the council consisted of the construction costs of then and now, the amended agreement and what their individual thoughts and feelings were on this situation. When contracts are entered into with vague language or things change, then amended agreements are made. Council Member Shelton re-stated when the second amendment was approved, he did ask Mr. Bromley if 2.5% was the right number so they could be clear.

Mr. Bunker stated to Mr. Bromley that his basis for coming back was about a report that Lewis Young Burningham did that talked about excess agency revenues. Mr. Bunker related that it could mean multitude of different things; it can be the revenues that pay for the infrastructure projects that are listed in the original scope of the EDA. When it says excess, Mr. Bunker wanted Mr. Bromley to understand, that it is not dollars generating beyond the cap or beyond the capital improvement schedule requires. He commented that the city is not making up projects to do because there is extra money. He stated he is having a hard time finding the excess funds that Mr. Bromley is referring to, but he saw a shortfall of funds to complete the EDA projects.

Mr. Bromley responded that he would be open to having a conversation with Lewis Young Burningham. He felt that when Lewis Young Burningham became involved in the project, things were clear to follow with the spreadsheets. He stated that when they get to the point where the developer doesn't get paid anymore, that money goes to excess funds for agency use. Mr. Bunker reiterated that there was no money to do the projects; the 25% held for improvements was not enough to do the capital projects. Mr. Bunker stated that the term "excess agency funds" were not really excess.

Mr. Bromley stated that all he wanted from the beginning was for it to be fair, and if 2.5% is what is fair then he'll take it and that's all it is. But when he started seeing all the things that could've been paid back, he's faced with a dilemma that he agreed to this. He thought it was ambiguous if 2.5% was retroactive.

Council Member Shelton responded that in the amendment, they had replaced a whole Section 1.18, it read that in "2002 to 2027 it was to be 2.5%." It was very clear in the amendment. The issue is that Mr. Bromley feels like he was pressured or that all he could get was 2.5% and not the 5%, and now he's coming back to ask for the 5%. He stated that previously the council and Mr. Bromley had come to an agreement that was fair and clear. Mr. Bromley stated if they determined that it was fair, then he would accept that.

Mayor Frost stated that they will send out an email, including Mr. Bromley, with the information on the capital improvements in that area and the numbers that go along with that. He commented that he will talk to the council individually. He felt there was enough information that the council had been given and with that see if the council wants to bring it back and think of redrafting another agreement.

3. Adjourn.

Meeting adjourned at 5:28 p.m.



Stephanie Finau
Deputy Recorder