

Heber City Corporation
City Council Meeting
01/06/2011

7:00 p.m.

REGULAR MEETING

The Council of Heber City, Wasatch County, Utah, met in **Regular Meeting** on January 6, 2011, in the City Council Chambers in Heber City, Utah.

Present: Mayor David R. Phillips
Council Members Eric Straddeck
Nile Horner
Robert Patterson
Alan McDonald

Excused: Benny Mergist

Also Present: City Manager Mark K. Anderson
City Recorder Paulette Thurber
City Engineer Bart Mumford
City Planners Allen Fawcett/Tony Kohler
City Attorney Mark Smedley
Coat of Arms Officer Mike Richardson

Others Present: Ed Rhoades, Kathy Rhoades, Kirby Goode, Scott Wright, Martin VanRoosendaal, Michael Thurber, John D. Emmanuel, Steve Gibson, Chris Pedersen, Jackie Pohl, John Pohl, Wayne Matlock, Scott Couey, Paul Archer, John Moody, Craig Lacey and others whose names were not legible.

Pledge of Allegiance: Councilman Eric Straddeck
Prayer: Mayor David Phillips

Mayor Phillips excused Councilman Mergist due to illness.

MINUTES: Councilman Patterson moved to approve the Work Meeting minutes of 12/16/2010. Councilman McDonald made the second. Councilman Straddeck abstained as he did not attend

that meeting. Councilman Horner had not had time to read them. Mayor Phillips suggested they be placed on the next meeting agenda for approval.

OPEN PERIOD FOR PUBLIC COMMENT

No public comments were received.

APPOINTMENTS

Scott Wright – HVSSD – Presentation on Plant Expansion: Scott Wright, Superintendent for the Heber Valley Special Service District (HVSSD), indicated that Mayor Phillips felt it a good idea to update the City Council about the plans for the Plant. Wright said he had already met with Midway City and would be meeting with the County Council next week.

Wright made a PowerPoint presentation (Attached to these minutes). Wright said that Wasatch County had created the HVSSD in 1976. Wright explained the reasoning behind the need of the facility. He said the Plant went online in 1981 and in 2000 the Plant was reaching the capacity of the original design. In 2001 impact fees were used to build an additional treatment lagoon and that one of the reasons to expand was the 2002 Olympics. He said with that upgrade they were able to up their flow and that at that time storage was not increased. At that time a 20-year upgrade plan was put into place.

Wright said that 75% of the funding for the original Plant was from an EPA grant and 85% grant to buy farm land.

A slide was shown of the flow comparisons from 1978, 2000 and 2010 flow, as well as peak maximum, BOD, SS, Nitrogen and Phosphorous, winter storage and land requirement. Wright said that in 2000 additional acreage was purchased as well as additional farm ground.

Wright discussed solutions and alternatives for expansion. After looking at alternatives the recommended solution was: Subsurface Disposal; Treat to Type 1 effluent quality for future reuse; and construct new 2 MGD treatment facility. Wright reviewed what was involved with those upgrades and particularly the STM-Aerotor. (See attached PowerPoint slides)

Wright said he was excited about this project and if things went right this would last another 20 or 30 years without a lot of expense. He said the District had been collecting impact fees for several years and had the money in the bank to do the project. Councilman McDonald asked if user fees would stay the same. Wright said this would add some operational and maintenance costs and they also might also have to hire another man. Consequently, the fees might go up a little. He said that would be looked at later.

Steve Gibson-Muirfiled Home Owner – Flooding Issues and Concerns (Tab 1): Gibson expressed appreciation for his and his neighbors' audience with the Council. He expressed concern with the flood that occurred on the 19th of December. He suggested the storm on that day was a 100-year storm. He said he did not know that for a fact, but suggested it might have been since it was not often that Heber got 36 hours of rain. Wright said that he had never seen so much water come into the HVSSD facility before as on that weekend. He said they had 8,000,000 gallons of water come into the facility that weekend. Mayor Phillips asked what he contributed that to. Wright was it was probably coming in through manholes. Gibson showed some slides of the snow and water storm.

Gibson said he did not think a neighborhood should manage the sewer pump station (a public facility type situation) and wanted to turn that over to the HVSSD or someone else. Anderson explained the City managed collection and the HVSSD handled treatment. Gibson said Wright needed to expand his horizons. (laughter)

Gibson reviewed the slides he had brought. Gibson said four or five homes had water in their basement during that flooding, including his, and that was about the third time since he had lived in his home--he thought that was too often. He indicated the developer originally put one sump in one home at the request of the homeowner. Gibson then requested one in his home. Since that time, several people had requested a sump and the developer put those in.

Gibson said there was a lot of water under frozen ground and new snow received since the flood. He said also the night of the flooding the storm water retention pond was not filling but there was flooding on the streets at the same time. He indicated there was only one culvert in place at this time. Mumford said they were looking at installing a 48" parallel culvert.

Gibson spoke on behalf of everyone attending about the "speed bump" created because of the flooding and said it helped the speed situation. (laughter) Gibson said he had created a written chronological history of the events that took place the night of the flooding. He said he got home about 8:00 p.m. and there were two pumps going at the time. He told Mumford then that the road needed to be dug out to help with the water diversion. After that discussion, it was 1 ½ or 2 hours before a back hoe arrived. He said that Chris Pedersen and John Emmanuel finally brought a back hoe and tore the road out to help with drainage. Gibson said during this process Pedersen had been on the phone with his boss a number of times and it had been indicated he (Tozier) did not want to send any more water downstream for fear of doing damage down there. Gibson questioned if it was better to have the water in their basements or downstream where it was meant to go.

Gibson suggested there was bad engineering and wanted to see the City do something about this rather than just empathize and say "you bought in swamp lands". He suggested a rolling 3' or 4'

berm back there and/or a pond. He also wanted to ask if the City had help with funds to pay for damages and if the homeowners should be submitting claims to the City's insurance company. Gibson suggested again there were some engineering short sights.

Councilman McDonald asked Mumford why the flooding occurred. An over head was shown of the area. Mumford said Gibson had explained why all the water--large amount of snow and rain. It was indicated the 42" pipe was in place before the property was annexed into the City. Mumford said in his time here, there had not been that kind of storm. He said he was proposing to put in a parallel 48" pipe because when they dug across the road, the cut was sufficient to take the additional water. Consequently he felt if there was a parallel pipe, it would be sufficient for another storm like this. Councilman McDonald asked if it was the City's responsibility to eliminate flood water or the developers when there was a flood. Mumford talked about surface water and ground water. There was a relationship there and when there was surface water, it would raise the ground water table. When homes had basements that were close to the ground water, there would be issues associated with surface water.

Mumford said when they assessed the problem they did two things. They contacted the irrigation company who had diversion structures that they opened. He said they wanted to get as much pressure off the natural Spring Creek Channel as possible. The irrigation company diverted into the Spring Creek Canal and the City cut across the road to give a bigger area for the water to come through. Gibson said the mitigation pond was overflowing the whole time. Gibson discussed the number of phone calls he made about the water rising faster than it was being diverted.

Discussion about flood insurance – the cost – getting the area on the flood plain map – Councilman Horner asked when the flooding started in the home. Gibson said the flooding in his home started at 3:00 a.m. Others in the audience said 9:00 p.m. Gibson said if the Public Works employees had dug that road out at his satisfaction initially, the flooding would not have happened. He said the Public Works crew came and looked at it, left and then came back about 1 ½ hours later. He said they had left a couple 4" pumps but they were not sufficient to handle the water. Councilman Horner asked if they were confident that the Public Works Director did not want any more water to go down the channel and would not let the workers dig the road out. Gibson said he appreciated Pedersen and Emmanuel and their diligence. He said Pedersen kept calling his boss (Steve Tozier) to get direction. Councilman Horner asked Mumford if Tozier was on site or not. Mumford said, yes.

Mumford said his time-line was somewhat different than Gibson's. He said the on-call guys got the calls, went out there trying to access the information and relayed the information to Mumford. About 8:30 p.m. they went out to evaluate the situation. He said the Public Works crew just threw the pumps in before they had knowledge of the real issue. After evaluation, the

irrigation company was called and they came out and diverted some of the water. Then they had Emmanuel come out with the backhoe to cut the road. Pederson said there was so much residual water it took some time to see any results at the houses.

Councilman McDonald wanted to look at this problem and evaluate to see if there was some engineering that could be done to eliminate future problems and also to see if there were funds available to help with the current problems. Mayor Phillips asked Mumford if this was the first time he had heard anything about a rolling berm. Mumford said yes, but it was an interesting idea. He said, however, in the area of the wetlands it would be next to impossible to put a berm. He wondered, though, about putting one next to the property lines. Mayor Phillips indicated to the home owners in attendance that the best solution would be determined and action taken.

Gibson wondered about City money or insurance money to help. Mayor Phillips said they would look into it. Anderson indicated the County was anxious to get the road open again but suggested that within the next few months a proposal would be brought to the Council for a second culvert. He said one of the reasons for the reluctance to open the road up quickly was the impact to downstream. He understood the water went over Midway Lane when it was released so there was reasoning behind releasing the water slowly.

Resolution 2011-01 – A Resolution to Invoke Coordination Process with Heber City

Council (Tab 2): It was indicated City Attorney Mark Smedley had worked with Councilman McDonald on this Resolution. Smedley confirmed that. He said that Daniel Mayor Mike Duggin spearheaded this for his community and had also talked with Midway City. Councilman McDonald then gave a draft of their work to Smedley and Smedley looked through laws, etc., to come up with this final product for Heber City. He indicated that if this Resolution was adopted, there needed to be a letter sent to some entities with explanations and the history. Smedley suggested this would give opportunity to open up discussions and dialogue with other entities.

Councilman Straddeck felt the language in the Resolution was too narrow and thought there was a need to assure the Council had a voice in any land use issue and not just drinking or agriculture irrigation water. Smedley said the Council could go two ways...either adopt this as presented or expand it to include all land use issues. Councilman McDonald thought the Resolution should be narrow and the Council should only address one issue at a time via resolution. Anderson questioned if this really would strengthen the City's position. Smedley thought it was a proper step. There was discussion that the document Federal Land Management and Policy Act, in which the issue was addressed, was more inclusive.

Councilman McDonald moved to adopt Resolution 2011-01, A Resolution to Invoke Coordination Process with Heber City Council. Councilman Horner made the second. No further

discussion. Voting AYE: Eric Straddeck, Nile Horner, Robert Patterson, and Alan McDonald. Councilman Mergist was absent.

The Council discussed whether there was a need to go into Closed Session. Councilman Horner moved to go into Executive Session. Councilman Patterson made the second. The Council went into Closed Session at 8:45 p.m. Those going into Closed Session: Mayor David Phillips; Councilmen Straddeck, Horner, Patterson, and McDonald; City Manager Mark Anderson; City Recorder Paulette Thurber; and City Attorney Mark Smedley. (Initially Craig Lacey and Chief Rhoades went into Closed Session and then it was determined the Council wanted discussion without them and they were invited to step outside the room.)

The Council returned to Open Session at 9:25 p.m.

Mayor Phillips asked Chief Rhoades to discuss with the Council his view points on the allegations of Pride Security. Chief Rhoades said he appreciated the opportunity to speak and review with the Council his thoughts and the facts. He indicated that what Rose did not tell the Council was that our (Heber City) officers did not solicit the Railroad or in fact anyone—"we don't do that." He said in 2002 a governmental entity asked us (Heber City Police Department) through Perry Rope to do security when Rose was still employed with Heber City. He indicated this was a government agency serving another government agency. The Chief said this kind of issue was more like an Interlocal Agreement versus a contract. He asked what the difference was in replacing asphalt at a crossing at the City's cost rather than the Railroads. Did the City not put manpower and materials towards that and is that misuse of public funds? He asked what the difference was in the City employees riding the train to show appreciation from the Railroad for the City doing something for the Railroad. He asked if there wasn't liability issue there. Chief Rhoades said that when Lacey called him last year he had no idea what Lacey wanted. Lacey told Chief Rhoades they wanted security by the police because they wanted a police presence—"he did not want security—he wanted a police presence." The Chief said there was no breaking of the law. He said he called DOPL prior to taking on the assignment after Lacey first talked to him and was told police officers were exempt from business licensing. Chief Rhoades suggested if there was any wrong doing, it was in not getting a contract. However, he said there was no policy it was just something they had done in the past. Chief talked about a committee that served this community called LEAC (Law Enforcement Agencies of County). It consisted of the Highway Patrol, State Parks, Forest Service, Wasatch County, and Heber City. He indicated that John Rodgers initiated that instead of one agency charging \$25 dollars for an officer and another \$30, and \$30 from one agency for a car and \$50 from another all agencies would charge the same for the security venues that they served. That was voted on by that Board and accepted. They decided the hours by an officer would be \$50 and \$50 to \$100 for a car. Since 2002, because the Railroad was a governmental agency, the City did not charge for the car. Again he stated the City used their air compressor, as an example, and they used our back hoe. It was an

Interlocal Agreement. He said that over the years the officers had used their cars and their computers because that was part of the equipment that came with an officer. He continued if they wanted a police presence, they got the gun, flashlight, baton, tazor, uniform, and car and that in the ten years the Department had done this the price has not been raised. Chief Rhoades indicated the City had the same type of agreement with Park City. They would use the City's officers for the film festival and the County used them for the parades. He said that brought up another issue. It was not the City's parade/fair—it was the County's but Heber City did the security and did that pose a liability? He continued that Cowboy Poetry didn't pay anything for cars and officers. He said that when you see Highway Patrol at the front and end of a construction project, they were privately contracted by the contractor--they were not paid by the State but rather to the officer direct by the contractor. He talked about the RAGNAR event that came through this city every year. He said it started in Logan and was the largest running event in the United States. This last year they had over 1,000 teams with 12 runners per team. As they run this race, there were checkpoints they have to go through. Heber City was one of those checkpoints. So we had 12,000 runners plus all their support staff and spectators coming through our City. He asked if the City paid for that. No but RAGNAR paid for the cars and the officer's hours and there were usually five or six officers working that event. He said that for Energy Solutions Arena more than half of their security was Salt Lake City Police officers off duty being paid by Energy Solutions Arena. He said this was happening across the State. He said right now two or three cities were being targeted. Provo and Orem because that was where Centurian was located and Heber City because that was where Pride was located.

Chief Rhoades also said Rose had indicated the Utah Chiefs' Association and the Utah Sheriffs' Association were on board with pushing forth a legislative change. The Chief said that was far from the truth but rather the Chiefs' Association said they would look at a model policy, but would not work towards legislative change.

Chief Rhoades suggested if the City didn't decide on this before January 20 when the Film Festival started and not help the Park City Agency with that, Heber would sever ties with that agency. He suggested the City could not afford to cut those relationships. Chief Rhoades said that Lacey said to him that the Railroad could not survive without the relationship they had with the City and he hoped the Council realized that. "Be aware, the type of thing we are doing here is not illegal" he said.

Anderson said Rose had also accused him (Anderson) of some things. He indicated that on June 2, 2009, Rose and Sandoval met with him and their concern was the fact that Heber City had expressed disappointment about not being selected to provide security in 2009. He said there was no discussion that he recalled about licensure, liability, or insurance at that time. So when Chief Rhoades told him that the Railroad had approached the Police Department to have a police presence at Thomas the Train event he had asked if the Police Department had solicited the

Railroad. The Chief said no, they did not. As a result, Anderson felt if that was Lacey's decision, he was fine with it. Anderson continued that in the future, if the City Council was willing to entertain this, a contract with the City needed to be put into place so there would be no questions as to insurance, liability, etc., to cover the cost of manpower and equipment. He asked: "Is this a practice that other agencies do? Yes. Is there something that we could have done better? Yes. Is there any criminal intent? No, I don't believe so. Were there some laws that may have been violated? Yes." Councilman Horner asked what ones. It was indicated police officers were exempt from State licensing as a security company but maybe they should have a business license and liability insurance. Mayor Phillips indicated that was the point he had asked Rose to clarify because there were two issues—officers in uniform working off duty and officers out of uniform working off duty. Those issues had to be kept separate.

Councilman Straddeck suggested it did not do any good to conjecture about what laws were broken. He wanted someone qualified to do so to do that.

Anderson said the concern expressed to him a year and half ago was about solicitation. Anderson said after the last meeting in which Pride Security expressed their concerns, he had instructed Chief Rhoades to not do this anymore until an agreement/policy could be put in place. Chief Rhoades said if a police officer did take on extra work, the pay they got offset the fact that their wages were historically low. If future contracts were through the City, it would be hard to fill any shifts because the wages the City paid was considerably lower than what a private contractor would pay. Mayor Phillips said as this was studied it would be determined if the pay would pass through the City or not—that was discussion for a future meeting.

Mayor Board Appointments: Mayor Phillips indicated his desire was to appoint Jeff Mabbutt to the Airport Advisory Board and Mike Thurber to the Planning Commission and seek another person for the alternate position that Thurber now held. The Council was amenable to that. Councilman McDonald thought the recommendations of Mayor Phillips were good.

Councilman Straddeck moved to approve the recommendation of Mayor Phillips to appoint Jeff Mabbutt to the Airport Advisory Board and Mike Thurber to the Planning Commission. Councilman Patterson made the second. Voting AYE: Eric Straddeck, Nile Horner, Robert Patterson, and Alan McDonald. Councilman Mergist was absent.

Mayor Phillips said he had a note in the paper about vacancies on the Board of Adjustment and was hoping for some response. If the Council had anyone in mind that they knew would be willing to serve, he wanted discussion on it.

Mayor City Council Board Assignments: Mayor Phillips presented an Excel worksheet which outlined a rotation schedule for Council representation on the Heber Light and Power Board and

the Heber Valley Special Service District Board which were the boards that paid a wage for being a part of them. He suggested that for now the other board positions (non-paying boards) stay staffed the same as last year until that could be addressed at a later time. Mayor Phillips asked if the Council felt okay with taking the board's pay and dividing it between all the Council members. Anderson said that change would have to be made by ordinance. Councilman Straddeck wanted it on record that he was 100% against changing the process again and wanted it left as now implemented.

Councilman Horner moved to approve the board rotation for the Heber Light and Power Board and the Heber Valley Special Service District Board as Mayor Phillips had outlined on the Excel spreadsheet and bring forward an ordinance/resolution to change the payment rules back to give payment equally to the Council members. Councilman McDonald made the second. Voting AYE: Nile Horner, Robert Patterson and Alan McDonald. Voting NAY: Eric Straddeck. Councilman Mergist was absent.

As there was no further business, the 01/06/2011 City Council meeting adjourned at 10:37 p.m.

Paulette Thurber, City Recorder