

Heber City Corporation
City Council Meeting
04/01/2010
7:00 p.m.

REGULAR MEETING

The Council of Heber City, Wasatch County, Utah, met in **Regular Meeting** on April 1, 2010, in the City Council Chambers in Heber City, Utah.

Present: Mayor David R. Phillips

Council Members
Eric Straddeck
Nile Horner
Robert Patterson
Alan McDonald
Benny Mergist

Also Present: City Manager Mark K. Anderson
City Recorder Paulette Thurber
City Engineer Bart Mumford
City Planner Allen Fawcett
Chief of Police Ed Rhoades
Building Dept. Wes Greenhalgh

Others Present: Michelle Kellogg, Rick Kellogg, Bob McIntyre, Peggy Probst, Pete Probst, Zak Probst, J.D. Probst, Nadim AbuHaidar, A. Humphreys, Wayne McDonald, David Hartman, Kirk Nielsen, John P. Bauer, Ronda Williams, Kristin Brownson, Jonine Hodges, John Emmanuel, Keith Rawlings, Kathryn Berg, Kevin Arnold, and Tracy Emmanuel.

Pledge of Allegiance: Mayor David R. Phillips
Prayer: Councilman Robert Patterson

Minutes: 01/21/2010 Regular Meeting - 02/18/2010 Regular Meeting
02/04/2010 Work Meeting – 02/04/2010 Regular Meeting
03/18/2010 Work Meeting – 02/15/2010 Budget Meeting

Councilman McDonald moved to approve the above listed minutes as written. Councilman Patterson made the second. No Discussion. The voting was unanimous in the affirmative.

OPEN PERIOD FOR PUBLIC COMMENT

No comments were received.

APPOINTMENTS

Zak Probst - Approval of an Eagle Scout Project to build a shed at Animal Control Shelter: Zak said he was going to try and get the materials for this project donated. For any materials not donated, he would hold a

fundraiser to get money to buy materials. He said the shed would be 12' x 12' and would be used for storage for equipment and supplies. He said he had not gone to the Scout Council yet for approval. The City Council was supportive of this project.

Councilman Mergist moved to approve the Eagle Scout project proposed by Zak Probst. Councilman Horner made the second. No discussion. All AYE: Eric Straddeck, Nile Horner, Robert Patterson, Alan McDonald and Benny Mergist.

John Bauer & Kristin Hartman - Federal Aviation Administration – Discussion on the Snow Removal Equipment Building Grant and other Airport Related Topics: Mayor Phillips recognized John Bauer and Kristin Hartman. Anderson introduced Kirt Nielson, UDOT Aeronautics and also David Hartman, Armstrong Consulting, the City's airport consulting firm.

It was explained that a month or so ago, the City Council had on their agenda an item to select the architect/engineer for a Snow Removal Equipment Building at the Airport. Because of budgetary constraints, the Council decided to not move forward with selecting a consultant. However, some expenses had been incurred by Armstrong to do the grant preparation, as well as the plan and survey work. Consequently, there was money owed to Armstrong regardless of whether the City moved forward with the building or not. Anderson said the FAA was okay with the City doing a partial project but the City had to have some kind of deliverable product before the FAA would participate at any level. Kristin Hartman said the FAA had given the City two grants to pay for the Snow Removal Equipment Building. The two grants totaled about \$431,000. The FAA paid 95% of costs of projects and on a \$400,000 project, the City's match would be \$20,000. She indicated the City had not spent any money on either of the two grants, but Armstrong Consultants had done some work. Consequently, the City had incurred some expenses towards the project. She said the FAA would not reimburse the City for those expenses until there was some sort of deliverable project, which in this case would be plans and specifications or the completed building. She continued that if they were to just accept the plans and specification, they needed a guarantee from the City that the building would be built in the near future. Councilman Horner asked how long the City would have to build the building. Kristin Hartman said a maximum of three years. David Hartman indicated that Armstrong had about \$20,000 in expenses right now. Councilman Horner asked if the FAA would pay for the work an engineer/architect would do to get plans. Kristin Hartman said yes.

Councilman Mergist asked if the City entered into an agreement to build in 2012, would the FAA pay. She said it depended on their contract with Armstrong but, also, it was hard to keep a grant open more than a year. However, if they had the plans in place, they could hold on to the plans for three years or so. Councilman McDonald reviewed the City's situation. Kristin Hartman said, from her point of view, the City should either build the building and pay your match or pay Armstrong what they were into it—either way it would be about \$20,000. Councilman McDonald said that because of the situation he had changed his position on the building.

Councilman Straddeck expressed an interest in discussing the road situation. He said he wanted to set the stage for the community. With all the discussion the Council had had with other governmental entities, they were united in knowing what was best for the valley in terms of a road. He said there were a lot more people than this Council that was very invested in how that road got structured because it would impact the community to a very great degree. An overhead was shown of the four proposed roads. K. Hartman gave an overview of the Runway Protection Zone and said it was there for the protection of people on the ground. That was why they had the stance of not putting roads through the Runway Protection Zones. She continued the FAA had purchased an aviation/approach easement. They had tried to purchase the ground, but they were unable to. Again she said they opposed roads in the Roadway Protection Zone (RPZ) and they would not want a road in there--they were aware there were existing buildings and roads--they didn't want any new ones. Councilman Horner asked if the FAA could restrict the building of buildings. She said they did not want new buildings in there either. He asked

if the FAA could restrict building the road. She said she was not the Planning and Zoning Department, but the FAA did control the funds that go towards the airport and they gave funding for those airports that complied with their guidelines. Councilman Horner said the City was restricted but other businesses were not restricted. He did not understand that. Discussion about building heights. John Bauer said the FAA could hold up funds; so if they felt they had made an investment and the Council went against their RPZ, they could hold up funding because those monies were discretionary funds. He emphasized the FAA was against vehicular traffic in that area and those things that contributed to vehicular traffic. Councilman Straddeck stressed the Council/community knew what was best for the community and the road through the RPZ was their choice. Councilman Horner told him the Council had changed their mind on the road during a meeting in which Councilman Straddeck had been out of town and had taken a different position (the green road on the overhead). Councilman Straddeck apologized, and said he was not aware of that.

Staff was instructed to put this item, selecting an architect/engineer for the Snow Removal Building, on the next City Council agenda.

Councilman Mergist asked for a copy of the Grant so he could review it. Councilman McDonald indicated the Council was supportive of the Airport. However, they had budgetary concerns right now to consider. Mayor Phillips said he appreciated what the FAA had done for the Heber City Airport over the years and suggested the Airport was a much better one now than ten years ago. He felt Heber had a good airport.

A handout was given to the Council which outlined the economic impact an airport had on a community.

Review Recommendation from the Airport Advisory Board to Amend the current Reversionary Hangar Lease Agreement – Consider Request from J.R. Miller Enterprises to convert a Non-Reversionary Hangar Lease Agreement to a Reversionary Lease Agreement: Anderson gave some history and said Kathryn Berg, Airport Advisory Board Chairman, was also in the audience if the Council had any questions. Anderson reviewed the request of J.R. Miller Enterprises, and who had gone before the Airport Advisory Board and asked for consideration for a lease extension as they were looking to sell the hangar that Mr. Miller currently owned. As part of that discussion they indicated their willingness to change the nature of their lease from a non-reversionary lease to a reversionary lease. He indicated the Airport Advisory Board had reviewed the request and they wanted some clarity to the lease language in relation to the conditions of the two 5-year extensions.

Councilman McDonald questioned the language and said it was still not definitive to him. He did not think the work “trend” was good language and some of the other language was too open. He wanted Mark Smedley, City Attorney, to look at it. Councilman Horner suggested talking to a real estate agent about leases on other buildings and suggested they would have an idea of the standard and the market. Berg said the Board had discussed the CPI index yearly increase which was a standard. Anderson said the CPI might not be reflective of the supply and demand.

Anderson said the initial request was to have a new lease that could be offered to a purchaser. He continued the Board was not in favor of that but because the City had shown an interest in changing the leases from non-reversionary to reversionary, that would serve the same purpose due to the extensions and clarity in the language that would indicate the hangar become the property of City at the end of the extensions.

Councilman McDonald moved to take this issue to the City Attorney to review the Agreement and wording within it and continue this issue to another meeting. Councilman Patterson made the second. No further

discussion. Voting AYE: Nile Horner, Robert Patterson, Alan McDonald and Benny Mergist. Voting NAY: Eric Straddeck.

ACTION ITEMS

Walgreens #11523 – Local Consent – Off-Premise Beer Retailer’s License: Councilman Horner moved to approve the request from Walgreens for an Off-Premise Beer Retailer’s License. Councilman Straddeck made the second.

Councilman McDonald asked about restrictions. It was stated the employer understood the employees had to go through a training course. Councilman McDonald suggested the City give Walgreens a copy of the Ordinance related to the Off-Premise Beer Retailer’s License and then have them encourage their employees to read it very carefully.

Mayor Phillips called for the vote: Voting AYE: Eric Straddeck, Nile Horner, Robert Patterson, Alan McDonald and Benny Mergist.

Approval-Farm Lease Agreement with Kevin Arnold - 5.8 Acres of Land East of the Heber City Airport: Councilman Straddeck moved to approve the Farm Lease Agreement with Kevin Arnold. Councilman Horner made the second.

Councilman McDonald asked Arnold if he was aware of the horse problems from the past. Arnold said he had gone out there and looked at the area and planned on putting up a fence. Arnold said if there was a problem with one of his horses, the horse would be gone. Arnold offered to take before and after pictures of the area. He said he would leave any fencing when the lease was over but any panels installed by him he would take with him. Arnold asked whose responsibility it was to make sure the watering was sufficient. Councilman Horner said it was the City’s. Councilman Horner said he wanted to make sure the property was left in the same condition as it was initially given. It was suggested the Agreement include the fencing/panel discussion.

Councilman Straddeck amended the motion to include that Arnold would leave any fencing, but would remove any panels. Councilman Horner agreed and said his second to the motion stood. Voting AYE: Eric Straddeck, Nile Horner, Robert Patterson, Alan McDonald and Benny Mergist.

Discuss Waiving of Building Permit Fees for Building Remodel Projects under \$15,000: Councilman McDonald said it was time for the City to help the citizens in this down economy, and provide some leadership. He thought one way to do that was to look at the tax burden placed on them.

Councilman McDonald moved to waive the building permit fee on any remodel that the construction value was \$15,000 or under and be in effect until October 31, 2010. If a remodel application was for over \$15,000, the applicant received \$15,000 credit towards that remodel project. This applied to remodel projects and not new construction and the person doing the remodel still had to come to the City to fill out forms and permit applications.

Councilman McDonald indicated his experience had been that the majority of people that remodel didn’t even buy a permit so the City didn’t realize a lot of revenue from fees anyway. He suggested this would help put people back to work and any product purchased for remodels would generate sales tax. Councilman Mergist made the second to the motion.

Mayor Phillips asked if the Code would need to be amended or if the Council could just authorize a change. Anderson said he needed to look at Title 15 but thought it was something the Council could do. He said he had

misunderstood what Councilman McDonald was proposing and expanded that to include basement finishes and things like that. He said that in talking to the Building Department in most cases, unless there was electrical or plumbing involved, a building permit would not be necessary. Anderson said Greenhalgh had indicated there were only three to five building permits that fell into that category a year. Anderson did not think a remodel would make a significant difference in the value of a home. Councilman Patterson said he did not see much economic stimulus from this. Discussion about the cost of permits. Councilman Mergist felt the concept was good in principle, but did not think \$300 would motivate anyone not to do their remodel. Discussion about the cost of a remodel. Councilman Straddeck said a couple years ago he did a 1,000 square feet remodel and it cost \$16,000. He disagreed with the suggestion that the Council was not providing leadership. He continued the sentiment was great but opposed it because it was not the City's responsibility to provide relief to the residents—the City's responsibility was to provide a service. He also suggested if there was no charge for the permit, the costs were moved to the residents as a whole. He felt if someone wanted to do a remodel, they should be responsible for paying for it. Councilman Mergist suggested this was a mini stimulus package that might or might not work. He said he had reservations that it would generate any stimulus but was not opposed to the idea. Councilman Straddeck questioned if the Council ended up raising property taxes, would it make sense to cut this type of fee. Discussion that this was not a permanent thing but something only in effect for a few months to try to stimulate the economy. Councilman Horner said this might not generate a dime but felt there was no harm in trying. Councilman Mergist disagreed with the thought it was not up to the City to provide relief for the citizens.

Mayor Phillips called for the vote on the motion. Voting AYE: Nile Horner, Alan McDonald and Benny Mergist. Voting NAY: Eric Straddeck and Robert Patterson. Motion passed.

Anderson asked for clarification for staff that the motion was on remodel and not new construction and did not include basement remodels. Mayor Phillips concurred. Councilman McDonald said it did include basement remodels. Discussion held on remodel versus new construction and what constituted each. It was pointed out the Building Department needed to understand the motion because remodeling a room and creating a new room from an old room was different. Councilman Horner said a basement was a remodel because no bearing walls were being changed. Councilman Patterson said if a basement was finished, it would be a remodel—if the basement was unfinished it would be new construction. Councilman McDonald indicated once a house was built and approved, any change would be a remodel. Mayor Phillips asked the Council if that was what they voted on. They said yes.

Mike Thurber asked about inspections on the remodels. It was indicated there would still be inspections, just no fees associated with them. He asked who then would pay for the inspections. Tracy Emmanuel pointed out the cost would be the responsibility of the rest of the citizens.

Discuss Status of Daniel Connector Road Tab (8): Councilman McDonald wanted to identify this as a priority for the Council.

Councilman McDonald read the following motion: I would like to make the motion to the Council that we place the Daniels Connector Road Project from 1300 South to the Daniels Road on the Transportation Capital Facilities Plan, on the City's Master Plan, and so state it on them that is the Daniels Road Connector Project. That we place it as the number one priority project on the Capital Improvements Projects and start seeking funds to build it and find ways to acquire the land. That we start the designing process of this project, get it before the City Council to approve the design, and get it shovel ready ASAP. UDOT needs to be notified in a letter from the City Manager that the City has an urgent need for this road, so they are aware that we are moving forward with this Project. We need to meet with the County to seek Corridor Preservation Funds and matching

funds. I move the motion that we get this road built and place it in the 2010-2011 budget, give staff the direction to start acquiring funds on the Federal, State and local levels, that our impact fees be assigned to this project, that we acquire proposals on how to purchase the property, and start on the designing process of the Daniels Connector road. I so move this motion before the Council.

Anderson indicated that on April 8th a Public Hearing would be held at the Planning Commission level to consider amending the transportation element of the General Plan to reflect the alignment agreed upon by Wasatch County and Heber City last fall.

The motion died for lack of a second.

Councilman Horner said he agreed that this issue needed to move forward as fast as possible and for the Council to do whatever it took to put the monies in place to do that. He said it did need to be something in next year's budget; but, along with that, the Council needed to talk about how to raise the monies. He discussed the fact that the City paid 50% of road impact fees for commercial buildings and suggested the Council should discuss that to see if they wanted to continue that practice. He asked Mumford what it would take to change that policy. Mumford said public hearings would have to be held and after that, if a change was made to the impact fee schedule, there would be a 90-day waiting period before it would become effective.

Anderson said the Planning Commission was holding a Public Hearing to amend the transportation element of the General Plan but explained the Capital Facilities Plan, which regulated the impact fee, was separate and would require a separate public hearing. Councilman McDonald said he wanted to identify the Daniels Connector project as the first phase of the overall bypass. Mumford suggested that Councilman McDonald was clarifying to the staff what the Council wanted in the Capital Facilities Plan. Councilman Horner said in the Capital Facilities Plan he wanted to add consideration to an amendment to impact fees for commercial growth, at least the subsidy the City participated in. Mumford said as part of the Master Plan Process, he would be reviewing the policy and procedures for impact fees and rephrased for clarity that Councilman Horner wanted him to study that issue. Mayor Phillips wanted to know if this should be discussion for a budget meeting since it was not an agenda item. Anderson said he anticipated this would be discussed as part of updating the Capital Facilities Plan. Councilman Horner said he wanted to propose that the City pay 45% on non-residential building up to a 30,000 square foot building. Anything above that, the developer would pay 100%.

Councilman Mergist wanted to know if a developer could skirt the issue by building part of a building one year and adding on or finishing another year. Anderson said language could be inserted into the Plan to prohibit that. Councilman McDonald said he would support what Councilman Horner was suggesting. Councilman Straddeck indicated he also would like to move toward doing that.

Mumford said there were a lot of efforts happening right now to support the Daniels Connector Road. He said it would be incorporated into the Master Plan and there were other efforts out there the City could pursue. The Capital Improvement Program came out of the Master Plan which was adopted via the budget each year; consequently, the Daniels Connector Road needed to be identified as a CIP project. The Council was okay with identifying the Daniels Connector Road as part of a CIP project.

Councilman Horner wanted to move forward with the impact/subsidy issue right now and not wait for the rest of the Capital Facilities Plan studies/updates. Anderson said he would have to talk to Jody Burnett about the change being requested. Because Anderson was to be out of town the early part of next week, the Council asked Mumford to call Burnett to get the specifics on public hearings and time frames in relation to this issue.

Councilman McDonald expressed concern about congestion and said he wanted a stop light on the intersection on Highway 189 where his shop was located. He wanted the Council to go to UDOT to ask for a stop light. Councilman McDonald indicated he wanted a letter to take to the UDOT meeting on April 15.

DISCUSSION/ACTION ITEMS

Discussion – Unruly Gathering Code (Continued from 03/18/2010 Meeting): Councilman McDonald read the following prepared motion: After making an intensive study on this ordinance and talking with people who actually work in the justice system, I have come to the conclusion that the good intentions of this ordinance to control the underage party drinking and drugs does not represent the best interest of the City in the way that it is currently written. It leaves an open door to change or bend the rules when deemed needed or discerned necessary to fit the situation. For instance, the word “Shall” has already been violated and over ruled by our own police department’s discretion. The word “Unruly” cannot be defined within proper guidelines on how to use the ordinance. As a member of the Council, I do not want to be responsible for anyone to have an open end interruption of an ordinance or give discretionary authority to be used on the public. The word “premise” is also not clearly defined, is it referring to a private home or public property or a business or can it be applied to a bus going down the street. Our own City Attorney Mr. Smedley has also agreed that wording needs to be changed and how to implement this ordinance can be an issue. We currently have State Statutes and City Ordinances that are already in place to cover the issues and concerns that this ordinance tried to readdress. I make a motion to repeal the Unruly Gathering Ordinance of Section 9.22.060 of the Heber City Municipal Code. I would recommend that the Council work with the City Attorney and the Chief of Police to find ways to broaden the coverage in our current State Status and City Ordinance. Councilman Mergist made the second.

Anderson said staff had not prepared an ordinance to repeal the Code and that an ordinance was normally before the Council whenever any change was made to the Code. Mayor Phillips agreed the Council could not repeal the Code without an ordinance. He said he would not call for a vote. Councilman McDonald withdrew his motion. Councilman Mergist withdrew the second to the motion.

Staff was asked to prepare an ordinance for next meeting/agenda to repeal the Code in relation to Unruly Gatherings. Voting AYE: Eric Straddeck, Nile Horner, Robert Patterson, Alan McDonald and Benny Mergist.

CITY COUNCIL BOARD ASSIGNMENT REPORTS

No Reports were given.

As there was no further business, the April 1, 2010 Heber City Council Meeting adjourned at 9:05 p.m.

Paulette Thurber City Recorder