

Heber City Corporation
City Council Meeting
05/20/2010

7:00 p.m.

REGULAR MEETING

The Council of Heber City, Wasatch County, Utah, met in **Regular Meeting** on May 20, 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 Planners	Allen Fawcett & Tony Kohler/Jason Boal
	Chief of Police	Ed Rhoades
	City Attorney	Mark Smedley

Others Present: Paul Berg, Chay Eysser, Greg Smith, Lane Lythgoe, John Kenworthy, Lora Lee Boal, Jim MacDonald, Dave Kennamer, Keith Rawlings, Kipp Banageter, Linda English, Karen Curtis, Amy Firth, Hunter Duff, Sam Sanchez, Samantha Sanchez, Martin Van Roosendaal, Mark Miller, Kendall Crittenden, Annie McMullen, Mike Johnston, George Bennett, Wayne Thacker, Glinda Straddeck, Steve Farrell, Jay Price, Mike Kohler, Peter Hoodes, and Mike Thurber.

Pledge of Allegiance: Councilman Eric Straddeck

Prayer: Councilman Benny Mergist

Minutes:	03/04/2010 Regular	03/04/2010 Budget
	04/17/2010 Budget	05/01/2010 Budget
	05/06/2010 Work	05/06/2010 Regular

Councilman McDonald moved to approve the minutes as listed. Councilman Straddeck made the second. Voting AYE: Eric Straddeck, Nile Horner, Robert Patterson, Alan McDonald and Benny Mergist.

OPEN PERIOD FOR PUBLIC COMMENT

Anderson said Jason Boal had accepted employment with a County in Idaho. He expressed appreciation to Jason for the work he had done for the City. The Council also expressed their thanks.

Brad Mackay – Ivory Homes – Request for modification to the Phasing Boundaries of Mill Road Estates Phase III (Tab 1): Tony Kohler said Mackay had another commitment tonight and had asked him (Tony) to explain the issue to the Council. An overhead was shown of the requested phasing boundaries. Kohler indicated there was no change in lot sizes just that 13 lots would be moved from Phase 3 to Phase 4. He said the Wasatch County Housing Authority requirements had been met for the entire subdivision.

Councilman Straddeck moved to approve the request for modification to the phasing boundaries of Mill Road Estates Phase III. Councilman Patterson made the second. No further discussion. Voting AYE: Eric Straddeck, Nile Horner, Robert Patterson, Alan McDonald and Benny Mergist.

Mark Miller – Discussion on Required Improvements associated with Miller Subdivision located at 300 South 100 West (Tab 2): Miller summarized his request by saying he purchased the .42 acre lot in 2001. He subdivided the lot and was building his dream house next to the existing house. He was pleased to say he passed all the codes and had the work fully signed off by Greenhalgh yesterday and the final inspection was complete. However, during all that happening, some of the adopted standards had changed; for instance, 4' sidewalk to 5' sidewalk. He said he had bonded for \$7,200 with the agreement that when curb and gutter was put in place that would be his expense as well. He had agreed to that. What had happened since then was the \$7,200 bond was insufficient and the cost now was \$38,000--a huge difference. He said the off-street parking at Davidson next door had been added on since Fields did his commercial lots. Miller said the City paid for the asphalt on the off-street parking area in front of Davidson's. Discussion about the off-street parking which had evolved since the initial plans. Miller talked about setbacks. It was indicated a fire hydrant, as well as a water meter, would have to be moved to accommodate his sidewalk. Discussion about bulb outs which were intended to slow down traffic. Miller talked about the options of having a bulb out and leaving the fire hydrant in its current location or moving the hydrant and not having a bulb out. Mayor Phillips asked if the sidewalk would be in the same place now as it would have been prior to the other homes on the lot making improvements. Miller said it was hard to say. Discussion in relation to sidewalks and the drawings provided. Mayor Phillips asked if the bulb out was required. Mumford said no. Councilman Horner asked if it was the City's responsibility to move the fire hydrant or Miller's. It was indicated a year or so ago the Council had agreed to move the hydrant. Discussion about piping the storm drain water. Mumford discussed the pro's and con's of a bulb out and said that from a maintenance perspective, it made maintenance more difficult for the Public Works Department, on the engineering side, there needed to be two storm drain grates; however, the positive was on the planning side because it did slow down traffic, protect the pedestrian and the esthetics were positive. He indicated there were both instances within the City. He indicated he had talked with Steve Tozier about the issue and Tozier had the same comments and that the Council do whatever they preferred. Mayor Phillips asked Mumford if the deed restriction was because there were no sidewalks to connect to. Mumford said yes. Mayor Phillips said he

understood continuing the sidewalk on the West but asked the rationale for continuing the sidewalk around the corner and running south if it did not tie in. Mumford said that decision was based on a policy the Council had from previous years. Discussion about curb and gutter requirement and tying into what was currently in place. Anderson said the City's obligation was to the storm drain and installation of the storm drain improvements, either a sump or piping across the street to the irrigation ditch. Mumford said the City offered to move the water meter, the fire hydrant, install the storm drain improvements and some of the asphalt. Anderson said the standard now required more asphalt coverage. The question was if the City should pay more towards the asphalt improvement. Anderson said in summary Miller was asking for more help on road widening, sidewalk, and to defer the improvements on 100 West for a period of time, (until the other sidewalk and curb and gutter was installed on 100 West by the dentist office).

Councilman McDonald said he would be willing to help with the sidewalk and hold the sidewalk on 100 West but have a deed restriction or bond in place. Anderson said that was already in place and that was the reason Miller was before the Council now. Councilman Horner agreed with Councilman McDonald but said he did not want to see a bulb out. He said he thought the City should help with the cost of the additional asphalt because of the benefit to Main Street Park. Mumford said a bulb out would not interfere because of the way the block was laid out. Discussion about sidewalk placement. Mumford said the sidewalk had to be ADA compliant. He continued that in old town the City had 82' right-of-ways. Anderson said Miller's house was not set back per the current standards. Miller said the house did not have a foundation either, but when he purchased it, he had a foundation poured. He continued that if he had known this would be happening, he would have moved the house back 10 feet. Miller thought a bulb out would make a huge difference and said he was only asking for about 10' to give a little cushion.

Councilman McDonald moved to have Miller finish 300 South, install the bulb out if he wanted, City participate in the additional asphalt and get a security bond or deed restriction for 100 West. Councilman Horner made the second. Mayor Phillips asked for discussion. Councilman Horner questioned the feasibility of moving the entire sidewalk out. Mumford indicated the City was working towards expanding the parking for the park and that suggestion would eliminate angled parking. He said, too, that would enhance Miller's yard in the public right-of-way. Mayor Phillips asked for any additional discussion. Councilman McDonald wanted to make sure there was a bond or some security for the improvement on 100 West. Anderson said that was already in place. Anderson did state, however, that he did not hear anything in the motion about sidewalk and wondered if that was intentional or unintentional. Additional discussion about sidewalk. Mumford said the sidewalk was not part of the deed restriction so the City would have to add that to the deed restriction.

Miller said that brought him to his next issue. He said he had applied for another loan to finish the project and was locked in to a certain rate which would expire in about seven days. Miller asked for the Certificate of Occupancy (CO) so he could get the additional loan he had applied for. Anderson said a CO was typically not given until the subdivision improvements had been installed. Councilman Horner felt there surely should be a way to work this out. Mayor Phillips asked if the Council was willing to do that. It appeared they were. Mumford said he had a bond from the original estimated repair cost and it was not enough to cover the current required improvement. He said the City had to either go with the current bond and rely on Miller to

complete the improvements or ask for an additional bond. He said he would have to bond for sidewalk and curb and gutter. Mumford explained to Miller the process of getting the bond released. Miller said he was happy to sign something to put more into a bond. The Council told Mumford and Miller to work together. Mumford clarified the motion: Go with what was on the plans, go with a smaller bulb out and obtain additional security to ensure the improvement go in. Mumford said he would make sure the City was protected. Councilman Straddeck said the very least Mumford should do was increase the bond up to the amount that would cover the work in case it didn't get done.

Mayor asked for a vote on the motion. Voting AYE: Eric Straddeck, Nile Horner, Robert Patterson, Alan McDonald and Benny Mergist.

Jim MacDonald – Comments on the proposed Western Bypass Alignment and Vision for the Development of property he owns that is affected by the Proposed Alignment (Tab 3):

MacDonald indicated he was a resident of Heber from 1992-1995 and he had purchased a 10.5 parcel in the North Fields. He discussed the fact that the current bypass was planned through his property. He indicated through the northeast to southwest access runs the Spring Creek trout feed and on the same access through the south of his property runs the Spring Creek canal. He said the bypass would split those two water courses and split his property in half. In 1994 he received from the Corp of Engineers a permit to build a residence on that property. Within a span of two weeks, Bob Mathis and Dan Mathews took his zoning compliance certificate which meant he could not build. He got married in 1994 and subsequently moved out of Heber in 1995.

MacDonald said what he wanted to do was annex that property into the City limits making that a commercial property, put in a boutique fly fishing lodge as well as do mitigation on Spring Creek to protect and improve the survival rate of the trout and the same thing on the South of his property with the other canal. He said his original plan with the Corp of Engineers involved a deed restriction of 3 ½ acres along Spring Creek and plant 500 wetlands species trees as well as 200 additional shrubs and bushes. He suggested his plan would complement the planned City park in the area. He talked about the discussion from other meetings about a high density residential development and a Hampton Inn in the area and suggested it would not be an enhancement to the area by putting in the bypass. He talked to the Division of Natural Resources who told him the State recently passed a law restricting public access to private creeks, etc. He said he would provide access to the general public to his property. Additional he discussed the commercial part of his plan, easements, etc., and said that Pete Hoodes, who built boats and fly rods, would like to use some of the property for his enterprise.

MacDonald discussed some of the history of the bypass and the different proposed locations over the years. He suggested some changes to the bypass route and referred to his pamphlet.

MacDonald suggested Heber City had always gotten the short end of the stick when dealing with Wasatch County. Mayor Phillips said the bypass was a work in progress. He explained the process of annexation and said the Council would take a hard look at any annexation request. MacDonald indicated he had talked with Eldin Carlile and he was okay with putting a pond on the one side of the property and working with Sweena about a pond on the other side.

Anderson said if the City Council wanted to consider an annexation, the Annexation Boundary Map would first have to be changed. Also, to be consistent with other annexations, MacDonald would have to donate land towards the bypass road.

Review/Approve – Recommendation from the Planning Commission – Amendment to the Transportation Element to the General Plan (Tab 4): Boal said the City Council last fall met with Wasatch County officials and discussed the northern portion of the bypass and come to an agreement with the County for an alignment. He explained that alignment was different than the General Plan and what had been approved six months earlier. Consequently, in order for the Transportation Element of the General Plan to be amended, a public hearing had to be held. Mayor Phillips asked, after the Council had made a decision, why would the Planning Commission make a different recommendation. Boal said the Planning Commission had concerns about the alignment with a bypass on Midway Lane. Councilman McDonald talked about his preference as far as the south connector. Councilman Straddeck said frankly the line was just that, a line on a piece of paper. Mayor Phillips indicated a flyover was proposed on Highway 113. Councilman Horner said there had been extensive studies done on this and there would be a flyover. He said studies showed that to be a lot cheaper alternative and suggested on that end, the officials needed to stay with what had been agreed upon. He suggested there were particular reasons for what was agreed on and did not think any changes should be considered. In fact, he said he could say the same thing for both ends.

Mayor Phillips asked the Council if they wanted to adopt an amended Transportation Plan so the routes were consistent with what was agreed upon. They indicated yes as far as the northern property was concerned. However, Councilman McDonald wanted to change the Southern proposal. Councilman Mergist wanted to stay with what the Council went to UDOT with. Mayor Phillips said he felt the most important element was to stay consistent on north end and on the Daniel Connector. Councilman Horner said there was a definite need to put the Daniel Connector road in Master Plan. Boal indicated it was in the Master Plan. Discussion about when and what routes had been adopted.

Councilman Straddeck moved to amend the General Plan to agree with the alignment agreed upon by the City Council and the County Council on both the north and south ends with phase 1 on Daniel Road Connector coming in at a 90 degree angle. Councilman Mergist made the second. Voting AYE: Eric Straddeck, Nile Horner, Robert Patterson, Alan McDonald and Benny Mergist.

Review Recommendation from the Airport Advisory Board – Select Architect/Engineer for Design of Snow Removal Equipment Building – Heber City Airport/Russ McDonald Field (Continued from 4/15/2010 and 05/06/2010 Meetings) (Tab 5): Councilman McDonald suggested that the work be divided between George Bennett Architecture and Summit Engineering. Councilman Straddeck reviewed there were two applicants with one being qualified to do only one aspect of the project and the other could do both. Councilman Straddeck said it bothered him that Summit Engineering even applied. However, with no one else submitting to do it, he agreed with the suggestion of Councilman McDonald that Summit Engineering do the engineering aspect of the job and Bennett doing the design work.

Mike Johnston said Councilman Straddeck was implying a conflict of interest. He indicated Brian Balls was not at the meetings and this was not a conflict for Summit--if the Council felt like that, Summit would recuse from doing any City service. He thought that decision was poor and did not serve the City or FAA very well. He said if the Council was going to ignore the interviewing process and the Airport Board recommendation, than that was the Council's choice. However, Summit was able and capable of doing the job and had professional, qualified staff to do all aspects of the project. Johnston continued that they had put a lot of work into their presentation for the Airport Advisory Board; however, not one City Councilmember attended the interview.

Anderson said the way the FAA worked was they did qualification-based selections. Once the selection was made, then the pricing was determined. Councilman Horner suggested the City needed to put everything out to bid.

George Bennett said he had been working with all engineering firms in town for years. He indicated he had a concern with the lack of detail that was requested. Consequently, he had made contact with Armstrong about the detail wanted and the proposal he made was based on what was specifically requested. He said he was not privy to any discussions from the Airport Board but was very glad to know they had recommended local firms to do the work.

Councilman Horner said he had a problem with the Board awarding to someone who put more into their RFQ than what was required and that was why it looked like a conflict to him. Bennett said he had questions as to what was really wanted for the interview so had contacted Armstrong direct. He said he put into his presentation what had been requested. Bennett discussed how he contracted out for those aspects of the project that his firm could not do and then coordinated the entire project.

Neither Johnston nor Bennett felt that working on the project together would work. Bennett asked, "Who would you be hiring?" Johnston agreed. Councilman Horner also agreed and said he wanted to redefine the scope of work, open it up again, and be clear in the requirements so everyone knew what was expected. Bennett said other than price the City had everything needed and did not think starting over would benefit or gain anything. Anderson indicated that David Hartmann had e-mailed him earlier in the day a document that outlined the FAA procedure for selecting consultants. He will get that to the Council. Councilman Horner said, "Hopefully, we are still running the show and not the FAA." Anderson said that by accepting the grant, the City agreed to the FAA terms and processes. Councilmen McDonald and Horner felt it was important to consider the cost before the consultant was chosen. Anderson suggested if the most qualified person was selected and a fair price paid, the best product is had in the end.

Mumford said that throughout his career he had seen that this was a common misconception of treating professional consultant services like contractor bids and interchanging the terms—that is a misnomer. When dealing with professional design throughout the industry it was qualification based—that is industry wide. They don't request cost proposals with the consultant selection. He understood that with the economy as it was, everyone wanted to go to the money process first; however, it didn't work that way. So go with first person selected; then if you can't come to terms with a reasonable fee, then go to the next person--that was how the industry did it.

Councilman Horner disagreed. Anderson said Armstrong drew up the proposal on a qualification-based selection process.

Mayor Phillips said he had a problem with Councilman Horner's comments about feeling there was an unfair playing field because a firm presented something more than was asked for—above and beyond. Councilman Horner apologized to Johnston for saying it was a conflict of interest. However, he did have a problem with the Board for giving a recommendation based on the differences in presentations. He said he did not know when the interviews were taking place or he would have attended.

Johnston explained that when a person/firm went into an interview, they usually go in to make the best presentation possible so they could get the job. Councilman Horner said because Summit went above and beyond, and the Board considered that when making a recommendation, to him that presented a red flag. Anderson said his recollection of the choice was based on site plans, estimated costs and time frames in which the project could be completed. He said Summit's time frame was about half of what the other two bidders could do. Mayor Phillips suggested the City needed to look at the bid process across the board and that the Council needed to have a comfort level with the process.

Anderson suggested, since the Council wanted to be part of the process, the City get a copy of the FAA policy on selection and then set up an interview with the two firms wanting the job. Bennett said he would be fine with whatever the Council decided. However, one of the reasons there were no hard numbers in a bid was because the project was not scoped. Johnston agreed. Bennett said if the Council wanted a percentage, that was easy. However, the complication with that was different numbers for different quality of product. The less the quality, the more money made by the contractor based on percentage if the contractor had bid a high number and ended up using an inferior product to what he initially bid. Johnston agreed with this as well.

Councilman McDonald moved to have Bennett and Johnston make a presentation to the Council. Robert Patterson said both companies did a good job. He suggested that every time Johnston had presented anything, he had always gone above and beyond. It was a breach of character to accuse him of being on an unfair playing field as they always put forth a first class job. He did not think there was a conflict of interest.

Councilman McDonald withdrew his motion. Councilman Horner said he was not ready to decide tonight. Councilman Straddeck said he did not realize the undesirability of splitting the team. He also wanted to see both presentations.

Councilman Horner moved to set aside time and meet with each firm individually, iron this out and move forward. Councilman McDonald made the second. No further discussion. Voting AYE: Eric Straddeck, Nile Horner, and Alan McDonald. Voting NAY: Robert Patterson and Benny Mergist. Motion passed.

The interview time was scheduled for Thursday, May 27, at 5:00 p.m. for Bennett and 5:30 p.m. for Summit.

Approve – Farm Lease Agreement between Heber City Corporation and Justin Freeman – 3.28 acres of land located at approximately 2500 South Southfield Road (Tab 8):

Councilman McDonald moved to approve the Farm Lease Agreement between Heber City Corporation and Justin Freeman for 3.28 acres of land located at approximately 2500 South Southfield Road. Councilman Mergist made the second. No discussion. Voting AYE: Eric Straddeck, Nile Horner, Robert Patterson, Alan McDonald and Benny Mergist.

Approval – Wasatch County Council of Governments (COG) Memorandum Agreement

(Tab 6): Mike Kohler wanted to make sure everyone had seen the proposal. He said the County Council had Mountainland Association of Governments and their attorney go over the Agreement. Councilman McDonald questioned the final decision process. Kohler said, according to their understanding, any final decisions were made by the County Council.

Councilman McDonald indicated he wanted the voting members to be more equal and said the law did not specify the voting, just the makeup. Kohler said they (County Council) were going to hold to the seven-man County Council membership and the way the proposal was presented. However, he did not think there was going to be any problems. The \$10 Transportation fee was for the bypass and if the COG received proposals for something else, they (County Council) would just cancel the \$10 fee.

County Councilman Kendall Crittenden said this was passed in 2008 but for some reason it never got signed. So because the City was pushing for reimbursement for monies spent towards the bypass, it was time to bring this back up and get it finalized.

Councilman McDonald moved to approve the Wasatch County Council of Governments (COG) Memorandum Agreement. Councilman Patterson made the second. Councilman Horner asked about participation from UDOT. County Councilman Kohler said there was nothing on the UDOT jobs list to use the funds for. Voting AYE: Eric Straddeck, Nile Horner, Robert Patterson, Alan McDonald and Benny Mergist.

Review Feedback from Legal Counsel regarding the Update of the Transportation Capital Facilities Plan and Subsidy of Commercial Impact Fees (Tab 7):

Councilman McDonald said of the list created there were 47 commercial buildings built since the cap was put in place. The fee for four of those businesses went over \$15,000 so for over 90% of the buildings built in the City, the fee was under \$15,000. He suggested the intent was to subsidize a little bit but not give a free ride. He recommended keeping the current 45% subsidy and put a cap on it of \$15,000. Councilman Mergist wanted to eliminate all subsidies. Councilman Patterson agreed. Councilman Horner wanted to stay at 45% and cap it at \$15,000.

Councilman Mergist wanted to eliminate subsidy and let the developers pay the impact they created. He said it did not make sense to him that the Council was looking at raising fees and then turn around and pay a subsidy. Councilman Horner said it was initially thought to be advantageous to the City by trying to bring business into the City and create jobs for the citizens. Councilman Horner said it costs cities for residential growth. Anderson agreed municipalities did not charge what it costs for services.

Councilman Horner moved to impose a 45% subsidy and cap it at \$15,000. Councilman McDonald made the second. No further discussion. Voting AYE: Nile Horner and Alan McDonald. Voting NAY: Eric Straddeck, Robert Patterson, and Benny Mergist. Motion failed.

Councilman McDonald moved to give no subsidy for non-residential street impact fees. Councilman Patterson made the second. Councilman Horner suggested the whole problem with that was exactly what Jody Burnett had said and it would look like the Council was targeting Walmart. He said that chances were that Walmart would submit their building permit before the 90 days anyway and the City would have to subsidize Walmart. However, if the Council chose that route, they closed the door and made it a hardship for anyone to complete with them. Councilman Mergist suggested if the City gave up 45% of impact fee because of a subsidy, it was never made back.

Mike Thurber asked if the Council was really serious about wanting businesses to locate in Heber.

Councilman Straddeck asked Mark Smedley, City Attorney, if the Council was to say instead of a percentage that the City would pay 100% of impact fees up to a certain number, would that be the same thing as saying 45% up to \$15,000 as a cap. He personally saw that as two different scenarios. Anderson and part of the Council thought it was the same thing. Discussion. Smedley said it appeared less discriminatory saying 100% up to an amount than the other way around. Councilman Straddeck said he did not vote for the original motion because he felt that put the City at too much risk. Anderson indicated the way the City was paying for the subsidized impact fee was by moving it from one restricted purpose to another. Smedley indicated Burnett had said if a municipality was going to treat a business that was retail based on size, then that was discriminatory. If there was a cap, then the City was promoting one business and making it harder for another business in the same class.

At this time Mayor Phillips called for the vote on the motion. Voting AYE: Nile Horner, Robert Patterson, and Alan McDonald. Voting NAY: Eric Straddeck and Benny Mergist. It was indicated a public hearing would have to be held.

At 10:12 p.m., Councilman Horner moved to go into Closed Session to discuss personnel (professional character of an individual). Councilman McDonald made the second. Voting AYE: Eric Straddeck, Nile Horner, Alan McDonald and Benny Mergist. Voting NAY: Robert Patterson.

At 10:30 p.m. Councilman Horner moved to return to Open Session and stated that the few minutes of discussion held in the "Closed Session" was actually public discussion. Councilman Patterson made the second. Voting AYE: Eric Straddeck, Nile Horner, Robert Patterson, Alan McDonald and Benny Mergist.

Following was the brief discussion held during what was originally felt to be a Closed Session item:

Smedley discussed the issue presented to him based on a meeting of the Council on May 1, 2010. The question to him was: "What should the City be mindful off with regard to the termination

process and what, if any, are the vulnerable areas or risks of liability to the City?” These questions were based on the possibility of consolidating two departments and eliminating one department head position because of budgetary constraints. Councilman Horner asked if there was a difference in reduction in force and termination. Smedley said a reduction could be done but it was still a termination. Councilman Horner suggested the Council was doing a reduction in force because of budgetary restraints. Smedley said if a company consolidated departments and one department head went away and that department head was a classified employee, a termination could be done for reasons as listed in the personnel policy. Councilman Horner asked if reduction of force was a legal termination. Smedley talked about the causes of termination and said yes, reduction in force was legal termination. However, based on the transcription and listening to the tape, he was in attendance to give counsel on termination but not necessarily by reduction in force. Councilman Horner stressed this would be a termination due to reduction in force because there was a proposal to consolidate two departments which could eliminate one position (person).

Councilman Straddeck questioned if this was discussion for Closed Session. He wondered if the Council was actually going to talk about a person’s professional character or performance and if not, this was not discussion for Closed Session. Smedley agreed. Councilman Horner said this discussion was about Steve Tozier’s position, eliminating a department head position and combining departments. Councilman Straddeck did not want to continue this discussion in Closed Session. Councilman Horner said there was no way to know where the discussion might lead. Councilman Straddeck said that was no reason for closed discussion. Councilman Horner felt that possible litigation might be a cause to continue in Closed Session. Smedley suggested the Council go out of Closed Session and discuss the procedure and if the discussion turned to professional character or performance, the Council could then go back into Closed Session. The Council agreed and indicated the few minutes of discussion under what was motioned as Closed Session was actually open meeting discussion.

Smedley talked about the City termination policy and that personnel decisions were under the direction of the City Manager. Councilman Horner wanted to understand the policy and asked if the Council could give Anderson direction as to who they wanted to eliminate because of budget restraints and because of the dollars the Council had to work with. Smedley said the Council could specify, but Anderson made the final decision based on policy. It was brought out that Anderson did work under the direction of the Council. Councilman Horner said that was great—Anderson could hire who the Council wanted hired and fire who the Council wanted fired. Councilman Straddeck said the bigger issue to him was if the Council was looking at a particular position and it was a department head position what were the impacts and what could the Council do in terms of eliminating a classified employee. Smedley referred to his memo and said the Council could eliminate a position, but could not discriminate against a person in a protected class, age, gender, religion, etc. Smedley cautioned the Council to not give the appearance of being arbitrary or capricious—the Council should be as impartial as possible. He continued if there was an appeal, when there was a consolidation and when there were two good employees and nothing for cause and one was let go and one stayed, the likelihood of a law suit was good. He told the Council the tapes and minutes would be reviewed.

Councilman McDonald asked about performance problems and/or probations, which were documented in the file. Smedley said if the Council needed to show distinguishing factors when making a choice, the only reason that would come up was with an appeal coming forward. Mayor Phillips suggested if someone was on probation three years ago and it had been cleared, there should be no reference made to it or consideration given to it. Smedley agreed and cautioned consistency with what was recorded. He also talked about consistency with what was on a recording and a testimony. Smedley talked about the monetary damages of an appeal. Anderson said he was in an awkward spot. He felt both folks were needed, that the work was there, and the departments were run well. He preferred a process that was objective. He would prefer each person had the opportunity to articulate their qualifications for the position.

Mayor Phillips asked if Anderson would follow the direction of the Council. Anderson said he was willing to follow the will of the Council but would also express his feelings. Councilman Straddeck wanted it a matter of record that it sounded like, or the way the words were worded, that there was a consensus of the Council that the combining of the departments was the way to go. He said he had not weighed in on that was not ready to make that decision. Anderson said the scope of responsibility of the two departments was too large and that was why the departments were separated in the first place and said he felt it was a good separation. Anderson said there was no comparison in the scope of work between the departments.

Councilman Patterson said he did not attend the May 1st meeting and was floored after reading the minutes. He wanted to know from the three Councilmen what the rationale was to put the departments together and getting rid of a department head. It did not make sense to him because there was plenty of work to do and don't try and tell him it was a matter of budget. He said he wanted to know the real reasons. He said as far as he could see, this move was orchestrated and he wanted to know the real reason. Councilman Horner said he was trying to find a way to not raise taxes and felt the City could provide the same type of service by combining the departments. He said it was strictly a budget issue. Councilman McDonald said to save money it was time to consolidate. He talked about the Engineering Department and Public Works Departments being combined. Anderson explained what caused the separation of the Engineering and Public Works Departments was the finding from the Operational Study done by the University of Utah.

Councilman Mergist said he wanted some time to reconsider his position on the entire subject of combining departments. He wanted more time to look into the personality of individuals, wanted more time to look into the impact to the City and wanted more time to reflect upon his own feelings and why he was considering approaching the avenue they talked about on May 1. He said he had not rushed into his decision, but said he may have had some bias pushing him in that direction and he wanted to be confident the bias pushed him into a decision and did not want to put legal issues upon the City.

Mayor Phillips said that on Saturday when this was talked about, he made the statement the Council had not heard from Councilman Patterson and they should have his opinion. However, after he thought about it, it was apparent there were three votes so he wanted to make sure what they wanted to do was legal. Consequently, Smedley was asked for an opinion. After that it was determined that the City Manager made the decision on personnel. Councilman Mergist said that

he had commented earlier in the year that he wanted to sit down with Anderson and talk to him about employees. He continued he wanted to do that before he made his final decision and wanted it to be a private discussion between Anderson and himself. He said he would do that next week and would move forward from there. He said he would lay all his cards out on the table about what he knew and he would be truthful with Anderson and also wanted to look at some records. Councilman Mergist said he wanted to reconsider and had thought about this over and over for the last few days. He said he knew this was a complete 180 turn from May 1 but he had some time to think about it and felt he should reconsider his decision. Anderson said he wanted to meet with Councilman Mergist before Thursday and the next budget meeting.

At 11:00 p.m., the May 20, 2010 regularly scheduled meeting of the Heber City Council adjourned.

Paulette Thurber, City Recorder