

Heber City Corporation
City Council Meeting
October 21, 2010
7:00 p.m.

REGULAR MEETING

The Council of Heber City, Wasatch County, Utah, met in **Regular Meeting** on October 21, 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 Planning Office	Tony Kohler
	Chief of Police	Ed Rhoades

Others Present: Mike Thurber, Delyn Yeates, Josh Yeates, Jared Yeates, Randy Tree, Lawana Rowley, Jacob Hall, Wyatt Rowley, Niki Bradley, Cynthia Bradley, Pam Patrick, Harold Patrick, Russ Watts, Dave Kennamer, Nicole Parke, Sheila Johnston, and Gabe Elderward.

Pledge of Allegiance:	Councilman Robert Patterson
Prayer:	Councilman Nile Horner

Minutes: October 7, 2010, Work Meeting
 October 7, 2010, Regular Meeting

Councilman Patterson moved to approve the minutes of the October 7, 2010, Work and Regular meetings. Councilman McDonald made the second with the following comments: Some of the notes are hard to understand and people needed to look at the recording itself for clarification. Councilman Horner questioned the words “expand the powers of the Council” on page 4 of 6, line 19 of the Work Meeting minutes. Thurber indicated she would have Michelle Kellogg listen to the tape for exact wording and make any changes necessary. Voting AYE: Eric Straddeck, Nile Horner, Robert Patterson, Alan McDonald and Benny Mergist.

OPEN PERIOD FOR PUBLIC COMMENT

No public comments were made.

CONSENT AGENDA

Award of Bid Street Crack Seal (Tab 1): Councilman McDonald asked about the language of not exceeding the amount in the bid. Mumford said the budgeted amount was \$118,000. \$91,000 for contract plus Horrocks Engineer expenses and that even with those, it would still be under \$118,000. Mumford said if the quantities changed, the amount would naturally change.

Councilman Horner asked if the City had used this firm before. Mumford said no, Heber City had not, but this firm had had a 7-year contract with Orem City and said, after checking the references, he was okay with them. Councilman Horner said he was still not comfortable with the way the City was doing their bid process. He said he had no idea who the other bidders were. Mumford pointed out the names of the bidders, the bid amounts and other information was included in the report sent out to the Council with the packets. Councilman Horner said he wanted to be more involved with the bid process and asked if there were any local bidders. Mumford reviewed the bidders and the bid process. Mumford explained that he only tabulated the documents and the Council actually awarded the bids--the Council made the final decision. Mumford indicated in preparation for the all-road seal project next year, this work had to be done and done when it was cool so the roads would be ready for future work next summer. Discussion about when an all road seal was done last. It was indicated 2003.

Utah State Historical Society – Historic Preservation – Social Hall Grant (Tab 2):

Councilman Patterson moved to approve the items on the Consent Agenda. Councilman Straddeck made the second. Voting AYE: Eric Straddeck, Nile Horner, Robert Patterson, Alan McDonald and Benny Mergist.

APPOINTMENTS

Paul Berg – Russ Watts – Request Plat Extension for Ranch Landing Plat C “The Prestige” Senior Living Center and Plat B “Berkshire Commons” Senior Assisted Living Community

(Tab 4): Russ Watts showed a drawing of the projects and said he appreciated meeting with the Council. He indicated his request represented two projects. The Prestige development was in conjunction with Wasatch County and had 23 units. He said Wasatch County would own the building and it would be a rental for seniors and was located in the area of the Ranch Landing Development. Watts said he had not been able to close on the financing and was requesting an extension.

The second request was for the assisted living facility, with 89 units, which would be next door to the Prestige and across from the library. Watts said it would include a cafeteria, salon, fitness center, ice cream parlor, etc. He said it had been challenging getting the financial approval for this, as well. He continued he was working with HUD and it would probably be six months or so before the financing was available.

Councilman McDonald talked about the lease agreement and asked about the bond amount. Watts said the bond for Prestige was \$89,000 and they were ready to post that and had been working with Mumford on that. He said they had not gotten to that point with The Berkshire Commons and did not know the amount yet. Councilman McDonald said the subdivision agreement documents had different wording. Watts did not know why the difference but said Mumford would not allow them to not put in the infrastructure. Tony Kohler said one of the differences on Plat C was it did not front onto a street. It was indicated one was a private enterprise and utilities were already in. However, they still would have to have a bond with the City. Councilman Mergist asked which project had construction priority. Watts said the funding would determine that. Councilman Mergist asked how many jobs this would create. Watts said 30 permanent and 15 part time jobs. Again Watts said private financing had been very difficult.

Councilman Straddeck moved to approve the request for Plat Extensions for Ranch Landing Plat C “The Prestige” Senior Living Center and Plat B “Berkshire Commons” Senior Assisted Living Community. Councilman Patterson made the second. No further discussion. Voting AYE: Eric Straddeck, Nile Horner, Robert Patterson, Alan McDonald and Benny Mergist.

Josh Yeates – Review Letter Requesting Reduction of Water Rights or Posting of a Bond

(Tab 5): DeLynn Yeates indicated the purpose of this visit was in regard to water. He said they were ready to close with funding on Monday and right after that they would do what was necessary to pull building permits. He continued it had come to their attention that prior to the building permits being issued they had to turn over water shares/rights. Yeates said they had plenty of water--they had shares and water rights. The water rights had to be transferred to the City wells. He indicated they had been having discussions with the State and it would possibly be November before that process would take place. He suggested the following: Option 1) the water right request from the City was more than they thought the water use would be based on the research they had done. Consequently, they asked the Council to lower the requirements for the project and they would give the water they had without transferring anything into the wells. Option 2) prior to pulling building permits in a week or two they would escrow an equivalent amount of money to the water right they were short that would warrant to the City the water would be forthcoming. In the event the City would lower its requirements that they be allowed to give water based on the lower level. He said that municipalities are told by the State that in short of data of actual usage then there was a formula to follow; however, if there was actual data available that indicated the usage, that information should be used instead of the formula.

Mayor Phillips asked Mumford if the City had ever lowered the requirement. Mumford said the only instance was when he was first employed by the City there was an issue with Providence Development and the City gave them an option to meter the water and then revise the water share/right based on usage. Since that time the City had gone with the standard since that incident was what prompted him to redo the standard. Councilman McDonald asked if Mumford had reviewed their analysis and did he agree with it. Mumford said yes he had reviewed it but did not agree with it. Yeates discussed the process with the State. Councilman Horner asked if this requirement was for the whole project or just one phase and if they had enough water for the entire project. Yeates said the person they would be working with on the front of the property had water, too. Yeates talked about the creek that ran through the property in which they had water rights and ground water rights that could be transferred into the City wells. Anderson said the Yeates had made a Change Order Application but the State Engineer had not valued what that water right was for diversion to the City wells yet and since that had not been determined, it could not be determined if they had enough water or not for the development. Anderson said, from staff perspective, if they gave the City the shares they already had with Wasatch Irrigation or other shares, and placed a cash escrow for the difference, once the City got the determination from the State Engineer, a final determination could be made as to what escrow monies had to be used to purchase the balance of the required water. He said the escrow would help them keep moving forward. Mayor Phillips asked if the City interest would be met with an escrow. Anderson thought so.

Councilman Straddeck asked for explanation on the escrow. Yeates said they would put into escrow cash that the City could use to purchase water if what they had to turn over was inadequate. Councilman Horner said he would be in favor of getting an escrow but he also would like to get a closer estimate of what the actual water usage would be. Josh Yeates talked about the study they did that was prepared based on home usage and apartment usage. He said they had gathered actual data from the Brooklane Apartments, Timberline, and Wingpointe. Councilman Straddeck said he had no problem moving forward as long as the City's interest was protected and the residents did not have to cover a shortfall. Josh Yeates said they would really like to have their water requirement reduced. It was indicated Mumford would be updating the Master Plan in the future and would be possibly making some different numbers. Councilman Horner did not feel the City should receive more water than needed. He felt the City was covered by the bond. If the requirement went down, he would like to see this developer get some water rights back. Councilman Straddeck said his concern was that others would want to be reevaluated and questioned if that happened, how far back would the City go? He continued it seemed to him the City had a guideline and anyone who made application needed to follow that until the guidelines were changed. Mumford said it looked like the water requirement might go down but not as much as the Yeates were wanting. Councilman Horner said he had said for a long time the City was assessing more water than it should be. He thought it would be fair to have the Yeates take advantage of any new policy. Josh Yeates said they were actually appealing before the decision for water rights was made and anyone coming in down the road after the fact it would be difficult

for them to get a credit or shares back. Councilman Horner suggested that if the City's requirements changed before this developer took occupancy, the City go by the requirements at time of occupancy.

Councilman McDonald moved the Yeates bond for the shortage to cover the City's interest and then have the Council reevaluate based on the Master Plan when they occupied. Councilman Horner made the second. No further discussion. Voting AYE: Eric Straddeck, Nile Horner, Alan McDonald and Benny Mergist. Voting NAY: Robert Patterson

At this time a five-minute break was taken.

When the meeting reconvened, Mayor Phillips recognized the Boy Scouts attending the meeting.

ACTION ITEMS

Ordinance 2010-08 – An Ordinance Amending 18.68.120 of the Heber City Code – Heights of Fences and Walls (Continued from previous meeting) (Tab 6): Kohler said at last meeting this was continued for three reasons. The Council wanted to 1) define a fence when it was measured on a retaining wall; 2) grandfathered fences that were built prior to this adoption unless a safety issue existed (visibility on corners and driveways); and 3) Planning Commission recommended a 5' setback. Kohler said Councilman McDonald brought up the fact that the Code did not define a fence. He pointed out that tonight there were some concerned citizens in attendance that thought 6' fences would be allowed in front yards. However, he said the ordinance as proposed did not allow 6' fences in front yards based on proposed changes. However, he said the ordinance as proposed did not allow 6' fences in front yards. An overhead drawing was shown of the proposed changes.

Councilman Mergist said he had met with citizens and he was in favor of 6' fences as outlined. Discussion about placement of the 6' fence based on the safety triangles. Chief Rhoades said his concern with the proposed changed was if a fence was measured from the top of a retaining wall and that retaining wall went to the property line and there was a three foot fence on top of that it was then no longer a 3' fence but rather a 5' fence or a 6' fence. Councilman Mergist said what they were trying to address was in the instance of one back yard property being elevated above another property. Kohler felt Chief Rhoades had a valid point and the visibility triangle would not work as it was supposed to. Additional discussion about measurements. Kohler recommended including language in the proposed ordinance that the fence on the visibility triangle be measured from the road base. However, he thought that would be enough of a change to validate this ordinance coming back before the Council at another meeting and also include Councilman McDonald's recommendation that a definition of a fence be included, as well.

Sheila Johnston said the front yard of a corner lot was good the way Kohler had outlined. She wanted a visibility fence definition to also be included. She had concerns with hedges being higher than they should be in the visibility area. Councilman Mergist said his main concern was the visibility triangle and driveways and said once the purpose was explained to people, they were okay with them. Mike Thurber said what was being proposed was not what was sent to the City Council from the Planning Commission. At the Planning Commission meeting there were concerns expressed from citizens on the 6' fence abutting the sidewalk. They felt that would not give the kids an escape lane if needed to get away from whatever. Consequently the Planning Commission recommended 5' from the sidewalk. Johnston agreed and added that citizens did not want to see the fence to the sidewalk as it did not give a feeling of open and nice neighborhoods. She suggested the Council study this more. She said people would rather have the fence back from the sidewalk. Councilman Patterson agreed and said the esthetics was missing. Councilman Horner said he did not want to dictate to the citizens.

Councilman Mergist moved to continue Ordinance 2010-08 for more discussion and including the suggestions from this evening's discussion and possibly hold another public hearing. Councilman Patterson made the second. Anderson wanted to make sure Kohler understood the recommendations. Kohler said the definitions and the visibility triangle height issues were what he had to include. Councilman Mergist said there had been discussion about having consistent materials within subdivisions. Discussion about the many different fences within existing subdivisions and future subdivisions being consistent with fencing. Kohler asked if the Council wanted another Public Hearing. Councilman Horner felt there was not a need for another Public Hearing. Mayor Phillips called for the vote. Voting AYE: Eric Straddeck, Nile Horner, Robert Patterson, Alan McDonald and Benny Mergist.

Councilman McDonald suggested this ordinance be printed in the paper prior to the next meeting so people could have time to look at it.

Ordinance 2010-12 – An Ordinance Amending subdivision 18.103.080(13) of the Heber City Code – Political or Campaign Signs (Tab 7): Kohler talked about the lawsuit in Mapleton City and said he and Anderson thought this should be brought before the Council for consideration. Consequently, it was suggested the time restriction be pulled out of the Code. It was indicated the Planning Commission did not really want to pull the time frame out. Staff did not either but wanted to avoid a lawsuit. Councilman Mergist did not understand how the City was infringing on free speech if the election was over. He thought taking the word “political” out of the language would make a difference. Councilman Mergist suggested leaving the Code the way it was and take the chance of a lawsuit.

Councilman Patterson moved to leave the Code as adopted and not adopt proposed Ordinance 2010-12. Councilman Mergist made the second.

Councilman McDonald complained about the signs all over town that were out of compliance. Kohler said he would take care of them. Councilman Horner agreed signs needed to come down ASAP and said he was in favor of changing the Code—we need to allow freedom of speech, he said. He agreed that there was a difference in campaign and political signs. Kohler suggested talking to Mapleton to see what their final ordinance was. Councilman Mergist again said there was a difference in political and campaigns signs.

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

Ordinance 2010-11 – An Ordinance Adopting Chapter 9.24 of the Heber City Municipal Code – Synthetic Marijuana and Intoxicating Substances (Tab 11): Chief Rhoades discussed the State Code and Ogden City’s Ordinance and said that this proposed ordinance was based on those two documents. Councilman McDonald said he was pleased that the Police Department had worked with the County on this issue. Councilman Mergist said that he talked to two different convenience store owners earlier in the day and was told they were under extreme pressure to sell this product. He said everyone needed to stop referring to this as synthetic marijuana because it was not. Chief Rhoades agreed and said it was similar to the old LSD. Councilman Mergist asked if this was being produced on a private level like meth. Sgt. Bradley did not know. Chief Rhoades indicated there were individuals selling out of their homes in Wasatch County.

Councilman Straddeck moved to approve Ordinance 2010-11- An ordinance adopting Chapter 9.24 of the Heber City Municipal Code – Synthetic Marijuana and Intoxicating Substances. Councilman Mergist made the second. No further discussion. Voting AYE: Eric Straddeck, Nile Horner, Robert Patterson, Alan McDonald and Benny Mergist.

Ordinance 2010-13 – An Ordinance Amending Section 18.83.050 of the Heber City Municipal Code – Yard Regulations – Neighborhood Infill Overlay District (Tab 12): Kohler said about five years ago the Cottage Home Ordinance was amended to Neighborhood Infill Lots. He said this proposed ordinance was an attempt to clarify and make it more easy to understand. He said the big change was that currently there was a 20’ setback from house to garage. This change would allow, on the side without the garage, to be a 12’ setback. He said that was the only change except for clarification language. Mayor Phillips asked if this was more restrictive. Kohler said it was more allowable. He drew a picture on the whiteboard showing the change.

Councilman Patterson moved to approve Ordinance 2010-13 - An Ordinance Amending Section 18.83.050 of the Heber City Municipal Code – Yard Regulations – Neighborhood Infill Overlay District. Councilman McDonald made the second. No further discussion. Voting AYE: Eric Straddeck, Nile Horner, Robert Patterson, Alan McDonald and Benny Mergist.

Resolution 2010-08 – A Resolution approving the form of the Equipment Lease Agreement with Zions First National Bank (Tab 3): Councilman Straddeck moved to approve Resolution 2010-08 – A Resolution approving the form of the Equipment Lease Agreement with Zions First National Bank. Councilman Mergist made the second. No discussion. Voting AYE: Eric Straddeck, Nile Horner, Robert Patterson, Alan McDonald and Benny Mergist.

Resolution 2010-09 – A Resolution Amending the Council’s Board or Committee Compensation Policy of Heber City: Councilman Straddeck said this time of year his thought went to employee bonuses. So he thought why not distribute this for employee bonuses at the end of the year. That way it was built in and the Council didn’t have to scramble for money for bonuses. However, he thought the proposed ordinance needed to be reworded based on what was approved on the original Resolution. Councilman McDonald wanted to take it one step further and open it to a charity fund such as the Veteran’s fund, Boy Scouts, etc., but still be controlled by the Council—this put money back into the community whether it be charity or to the community. Councilman Patterson said he liked the Resolution better as written for bonuses for employees at Christmas time. Councilman Straddeck agreed. Councilman McDonald said again he did not want to limit it to one area. Councilman Straddeck said his big thing was so at the end of the year the Council did not have to struggle to find a bonus for the employees. Councilman Mergist and Councilman Patterson supported that. Anderson indicated the language was fine but he recommended including an effective date. It was decided to put in November 1 as an effective date.

Councilman Straddeck moved to approve Resolution 2010-09 – A Resolution Amending the Council’s Board or Committee Compensation Policy of Heber City with the suggested date language added effective November 1. Councilman Patterson made the second. No further discussion. Voting AYE: Eric Straddeck, Robert Patterson and Benny Mergist. Voting NAY: Nile Horner and Alan McDonald.

DISCUSSION/ACTION ITEMS

Discuss Continuation of the Waiving of Building Permits for Home Remodels (Tab 13): Anderson explained that staff wanted to report back on this program and asked if the Council wanted to continue this. Councilman McDonald said it had expired and that the intent was just for the specified period of time.

As there was no further business, the 10/21/2010 Heber City Council meeting adjourned at 9:40 p.m.

Paulette Thurber, City Recorder