

Heber City Corporation
City Council Meeting
Special Meeting – Wasatch Irrigation
January 7, 2010

5:00 p.m.

SPECIAL MEETING

The Council of Heber City, Wasatch County, Utah, met in **Special Meeting** on 01/07/2010, in the City Council Chambers in Heber City, Utah.

Present: Mayor David R. Phillips

Council Members Nile Horner
Robert Patterson
Alan McDonald
Benny Mergist

Excused: Eric Straddeck

Also Present: City Manager Mark K. Anderson
City Recorder Paulette Thurber
City Attorney Mark Smedley
City Engineer Bart Mumford

Others Present: Devin McKrola, Jane Hinkson, David Hutchinson, Larry Hartley, Scott Bassett, and Wayne Hicken.

Mayor Phillips invited open dialogue and wanted to pick up from the last meeting at which meeting they had just gotten into fees when the Council had to leave.

Mayor Phillips said the Council had met three months ago and discussed the letter sent to Heber City from the Irrigation Company on the proposed changes. A letter of response was sent to the Irrigation Company; however, the City did not get a response back. He said the City's concerns were expressed in their letter to the Irrigation Company about the change in class of stock and the fees. He asked if the City's letter had been discussed by the Irrigation Company board/staff. It was indicated it had been discussed. Beyond brief discussion, however, because of the holidays, it had not been discussed since. Mayor Phillips assured those in attendance there was not a move on Heber's part to take over but rather the Council wanted the City stock holders to be treated fairly. Devin McKrola said they had a special meeting to talk about the letter, but they never got to it. He was hopeful this meeting would address issues of concern and address the Articles.

It was indicated the annual meeting of the Irrigation Company was scheduled for the first Saturday in February.

McKrola was asked if he sat on the Board of Wasatch Irrigation. He said no, but he managed the distribution of the water. He said the Irrigation Company had asked him to review the current Articles of Incorporation and give a brief description of the problem in last year's election and why there was a need to revise the Articles. It was explained that McKrola was staff to Wasatch Irrigation. Anderson asked if the Irrigation Company paid the CUP for McKrola's services or was he independent from the CUP when working for the Irrigation Company. McKrola said the Irrigation Company paid the CUP. Councilman Horner asked McKrola if he received any payment from Wasatch Irrigation. McKrola answered no, but the Project received money from Wasatch Irrigation. He said there were several irrigation companies not associated with the Water Efficiency Project that they did work for. It was noted on the time card and the District billed back to WetInc which then billed out to Wasatch Irrigation, Lakecreek Irrigation and other irrigation companies for work not directly associated with Project operations.

McKrola indicated Wasatch Irrigation had been operating on Articles of Incorporation and Bylaws that were put in place in 1946. Since 1946, there had been significant changes in State Code and State Law that had not been addressed by the Company's Bylaws or the Articles of Incorporation. So in about 2003/2004, the Company started the process to amend the Articles of Incorporation. The Board got them to a draft form but they were never completed because they started looking at the WetInc issue and other issues. Last year elections were held when the annual meeting was held. The Company had certain requirements in those Articles for directors in conducting company business. One thing was shares were not to be voted by proxy and a requirement to be a Director was a person must own one (1) full share of stock as an individual. Last year in the meeting three people were voted in as Directors; however, when the secretary validated the election, it was discovered those three could not serve because of the requirements in the Articles. So those elected last year were never validated. If they had been, they could have gone forward with business as usual. So then existing Directors tried to amend the Articles to find a way to allow those individuals that were elected to serve or come up with some other solution. That was what started this process again to find a way for those people Heber City wanted to serve on the Board to be appointed on the Board of Directors. Mayor Phillips asked for clarification on Trusts, Corporations, etc. McKrola said the current Bylaws outline that a natural person owning one share of stock could serve as a Director. He said an officer of a corporation could vote, but they could not have a representative serve on the Board. Mark Smedley asked for discussion on the definition of proxy. Discussion.

McKrola wanted to make clear that the thinking that the current Board Members didn't like those elected was not the case but rather it was the validation rule and not having a share of stock that caused this issue to be looked into.

Smedley asked who the Board of Directors previous to the last election were and if those were considered the valid Board now. McKrola answered yes. Smedley asked about the election prior to 2009 and if those persons were natural persons who owned a share of stock. McKrola said he did not do validations and did not know. Smedley asked Hinkson if she went through a validation in 2007. She said she did not recall. Additional discussion about elections and validation in 2007 and 2009.

Smedley asked who the current directors were now or who were recognized as the directors: Scott Bassett, Wayne Hicken, Claude Hicken, Vaun Shelton, and Dave Hutchinson. These were directors in 2007. It was indicated there were no changes in seats in 2007.

David Hutchinson felt the discussion was getting off the subject. He asked if this was a Hearing? He thought the group should focus on the Bylaw changes. Smedley said it was imperative to determine the legal directors. Hutchinson said the purpose of this meeting was to “arrange a new set of Bylaws to make this all work.” He was concerned about the time element. Smedley said the legal Board of Directors had to be determined first.

Smedley said one of the proposed changes to the Bylaws was to reclassify Heber City’s stock. Hutchinson suggested the important thing was that all stockholders got a fair vote. Mayor Phillips indicated the City Council felt the class of stock should remain the same; however, new language could be changed in the Bylaws regarding the election of directors. He suggested that for the purpose of electing the directors, every stockholder had one (1) vote. He thought it could be that simple. Hutchinson discussed that anyone that had 20% of the stock have one (1) director, 40%, two (2) directors, 60%, three (3) etc. and not being able to vote in other directors. Councilman Horner expressed concern that anyone owning 90% would then control the Board. He thought two (2) should be the maximum allowed. Discussion that it was possible the Councilman who sat on the Board of Directors representing the City did not meet the Bylaw requirements. McKrola suggested that the Bylaws could be changed to allow anyone to sit on the Board of Directors; however, it had been felt in the past that if a person owned shares and had a vested interest, they would have a more overall interest in the Company. McKrola also discussed the possibility of the person representing the City Council on the Board not getting reelected. Then the existing Board of Directors had to choose someone to fill that term. There was discussion that if the Council wanted, that non-elected person could continue to represent the City on the Board.

Anderson said the Council had expressed concern with the allocation of two new charges. He said the City was not opposed to paying its fair share, but wanted to make sure the assessments on all share holders was fair and specifically outlined in the Bylaws. He said the assessment went up \$20,000 and the City absorbed all of it. Hutchinson said the Board tried to equalize the cost to the benefit. Anderson said the existing Bylaws did not support the way the assessment was charged. McKrola said there was State Code that provided for special assessment to all share holders provided it was equitable to the cost associated to the share holder. He said he did not think it equitable enough and suggested it should be 65% of the cost overall should be distributed to a per user basis and 35% to the volume of water cost. Anderson talked about delivery points. ...one delivery point to a subdivision. He said the irrigation company did not have responsibility beyond the delivery point. McKrola said they still had the same area but there were more people in that area now and it cost more to deal with more--encroaching, blue staking, peak time, management were all things that made the costs go up. Councilman Horner said McKrola was doing work that was the responsibility of the City. McKrola disagreed. He said by someone else running the system made the costs even more because he had to deal with coordination--he emphasized his costs go up with two entities running the same system. Additional discussion.

Mayor Phillips questioned if something should be built into the Bylaws about special assessments or if it should be left up to the State Code. McKrola said the proposed Bylaws had some language but he suggested keeping the language fairly general. Mayor Phillips felt the Council could now probably give the Wasatch Irrigation folks some feedback on the proposed Bylaws. It was felt this meeting had been good to clear up issues.

Councilman Horner said the reclassification of the shares was what was giving him the most concern. Councilman McDonald indicated the one issue he had concern with was increase. He felt everyone attending the meeting wanted to make the costs fair and equitable. He suggested the Bylaw changes should be done together. He said he wanted to invest the money to hire a water expert person to put the agreement together. Councilmen Mergist indicated just because he didn't own shares did not mean he did not have an interest.

McKrola said Wasatch Irrigation needed to know how to address the person representing Heber City on the Board of Directors--there had to be a new way to do it. Discussion that the person with one share should have just as much power as the person with many shares. Councilman Horner said the Council should be able to appoint who they wanted to the Board. Bassett said a letter with the Mayor's signature should suffice. Councilman Horner said there had to be a spot for the City to fill. McKrola suggested that Heber's shares remain primary class like they are now but Heber would, in exchange for the right to vote for director, will take an appointed director at 20% of the shares. Additional discussion about how the Bylaw language should read. One suggestion was to limit the number of directors from Heber City Corporation to two. Hutchinson suggested the language should be universal language and not specific to Heber City. Any entity should have the same benefits as Heber City Corporation. He continued it needed to be workable so this group didn't tie the hands of the Board of Directors in 20 years. It was indicated this had to be published and sent to all shareholders before it could be adopted. Hutchinson suggested other large shareholders should look at this before sending out to the general shareholders; however, it all had to happen quickly. Councilman McDonald said they should be involved upfront, not after the fact, so they had fair representation. Mayor Phillips asked if the February meeting of the Board could possibly be continued until all these issues were resolved. Discussion.

Anderson asked if McKrola knew how many shares the City or others had made change applications on—not taking delivery through the system anymore but rather through wells. He asked if there had been any consideration to not having the costs assessed for those shares that had been changed over to wells. Anderson asked for consideration of reducing costs based on shares being changed over to wells and the no cost of delivery just like there were increased costs for additional shares, additional work, etc.

Mayor Phillips discussed the CUP facility briefly. Hartley said there had been a lot of improvements and efficiency was up. He gave an open invitation to anyone to come and see the system in operation.

As the time was 6:30 p.m. the Special Meeting was adjourned and the Council moved into Work Meeting.

Paulette Thurber, City Recorder