

Heber City Corporation
City Council Meeting

10/30/2008
7:00 p.m.

SPECIAL MEETING

The Council of Heber City, Wasatch County, Utah, met in **Special Meeting** on October 30, 2008, in the City Council Chambers in Heber City, Utah.

Present: Mayor David R. Phillips
Council Members Jeffery Bradshaw
Elizabeth Hokanson
Eric Straddeck
Nile Horner
Robert Patterson
Also Present: City Manager Mark K. Anderson
City Recorder Paulette Thurber
City Engineer Bart Mumford
Planning Department Jason Boal

Others Present: Joe Spencer, Mike Thurber, Chris Goode, Wade Williams, Scott Verhaaren, Tony Furness, Blake Allen, Lee Bellows, Wes Greenhalgh, Shelton Taylor, Christina Coronado, Mark Smedley, Jared Robinson, Wade Sperry, McKay Sperry, Karin Jentsch, and Melanie Clark.

Pledge of Allegiance: Councilmember Eric Straddeck
Prayer: Councilmember Nile Horner

Minute: August 21, 2008, Regular Meeting
September 18, 2008, Work Meeting
September 18, 2008, Regular Meeting

Councilmember Patterson moved to approve the Regular Meeting Minutes for the City Council Meeting of August 21, 2008, and September 18, 2008, and the Work Meeting Minutes of September 18, 2008. Councilmember Bradshaw made the second. Voting AYE: Councilmembers Bradshaw, Hokanson, Straddeck, Horner and Patterson.

OPEN PERIOD FOR PUBLIC COMMENT

Lee Bellows - 1365 South Industrial Parkway. Bellows talked about his home and the location of the new road being built which was right next to his bedroom window. He said he did not think the setback was proper from his bedroom window. He indicated he was told he should

have brought up this issue before but he said he had not been notified the road was going to be built. He suggested a sound wall be built between his home and the road. He felt he should be given some consideration because their lifestyle would be altered by that new road and the traffic.

CONSENT

Horner's Corner – Request for Off-Premise Beer License – 1520 South Highway 40 (Tab 1): Councilmember Hokanson moved to approve the Consent Agenda. Councilmember Bradshaw made the second. Councilmember Horner recused himself from the vote. No discussion. Voting AYE: Councilmembers: Bradshaw, Hokanson, Straddeck and Patterson.

PUBLIC HEARING

Consideration of Ordinance 2008-26 – An Ordinance Annexing property known as the Monroe Annexation located at approximately 1300 South and HWY 189 on the East and West side of Industrial Parkway, Heber City, Wasatch County, State of Utah (Tab 3): The City Recorder read the Notice of Public Hearing. Jason Boal pointed out the property on an overhead map.

Mayor Phillips opened the Public Hearing. He read an e-mail from Karin Jentzsch. Mayor Phillips asked Boal to address the concerns expressed by Mrs. Jentzsch. Boal said the majority of the property in the annexation boundary was already developed industrial, but there was a small portion, not already developed, that the Boyer Company would develop, if annexed. He said Boyer was looking at a hotel and a bank/credit union type of business for the area. Boal discussed 1300 South which was currently under construction. He explained that through this annexation, the City would obtain road right-of-way for the proposed bypass road. It was indicated the Planning Commission was in favor of this annexation. He said, too, that for the businesses in the area right now, the City would immediately start collecting sales tax. He invited Mrs. Jentzsch to come in and he would show her the plans for the area.

Anderson said the area proposed for annexation was the area shown on the overhead. He said there would be a proposal for storage sheds coming forward for the property west of the Broadhead property.

Mrs. Jentzsch indicated she was concerned about the Ivory Homes located in the area of this annexation—the model home, her home and the Rowley home. She questioned what she would be looking at after all this was developed. She said she wouldn't mind it if there was something beautiful to look at. Jentzsch said she did not have concerns with the motel and bank area but rather the property right behind her home. She said she had lived here 20 something years and wanted this community to continue to be beautiful and stay rural. She did not want to see industrial buildings and suggested the City buy her out and possibly the model home and the Rowley home. She thanked the Council for hearing her concerns.

Mayor Phillips asked for additional comments from the public. None were received. Mayor Phillips closed the public comment portion of the Hearing.

Councilmember Straddeck asked with the existing businesses and types of businesses there already, why the Council was entertaining a Mixed Use Zone instead of just Industrial use. Anderson said that looking long term, the highest and best use of the property would no longer be Industrial but would most likely have more retail and commercial type businesses. He said some property uses would change and staff would like to have this property zoned MURCZ now. Anderson said there was no requirement to change what was there now, but if the Boyer project was successful, the value of the land would exceed the value of the current businesses. Councilmember Straddeck questioned if the City would be better served by leaving the area Industrial and in the future change, if necessary. Boal said most of the businesses in the area would be permitted in the Mixed Use Zone already. Councilmember Straddeck expressed concern about doing residential right now and did not think that would mix with the current businesses. Boal explained that for Residential development, several properties would have to be pooled because of the amount of acreage that would be needed to do it. Boal said most of the uses now were more compatible with Commercial than Industrial. Councilmember Straddeck said he was not as much concerned about Commercial-Industrial as he was Residential. Boal said an annexation had to be consistent with the General Plan and it was Mixed Use on the General Plan Map now.

Councilmember Hokanson talked about the MURCZ Zone and the requirement differences between the Commercial and Residential uses. Boal talked about the Master Plan of each area.

Councilmember Straddeck asked Wade Williams if there was no zone yet outlined for this area, what zone would he suggest. Williams said he thought the Mixed Use was the right zone since there were already mixed uses in that area. He thought the current uses of the land would change in the future as had been suggested. Williams talked about the design criteria of the Mixed Use Zone and felt it was what would make the entrance into the City on that side look best. Williams said they had no interest in doing residential there and that they had someone approach them who wanted to build a hotel.

Williams talked about the access the City was requesting. He also had some issues with the deceleration and acceleration lanes the Engineering Department was requesting. He said they would install those if the traffic study required it. He pointed out an access point on the overhead and said they were amenable to sharing access to a curb cut if the surrounding properties were willing to share access to other roads.

Councilmember Straddeck said the Annexation Agreement called for curb and gutter along 189. Why not sidewalk? Mumford said the Boyer Company was putting curb, gutter and sidewalk along their property and as other properties developed, they would have to do that.

Councilmember Horner said his main concern and question was why the Council didn't know the whole area for the road was not in the City limits when they were given authorization to put the road in. He said the planners and Mark Anderson should have told the Council that the area was not yet in the City. Councilmember Horner said the County Council did not know about the road, either. He continued that everyone knew one of the created needs based on the Boyer development was a connector road between 189 and Daniels. He discussed that a month ago a study was paid for through MAG on how to best align the road and the study was not complete

yet. He felt the City needed to at least wait for that study to be complete to see where that line was going to come in. He said this development was impacting Daniels Road and the Council needed to put the cost of that impact on whoever it rightfully belonged to.

Mayor Phillips wanted some answers on setbacks in relation to the Bellows home before it was said the road was illegal. Williams said he went to Wasatch County to discuss the road prior to building it. He was told the Bellow's house fronted on Industrial Road so the back yard was on the east side of the property and the side yard faced the road. Consequently, the setback was acceptable per County rules. Boal said the ordinance did not dictate homes from roads but rather homes from property lines. Boal commented on other areas in the City that had legal non-conforming uses.

Anderson said he had conversations with David Church and cities place roadways through properties all the time where they were not originally anticipated. Church indicated that cities had the right to put in roadways which might in the end create non-conforming setbacks.

Councilmember Horner said his biggest point was the Council didn't know exactly where the road was coming through to connect to Daniels Road and now Boyer was trying to annex and get the road accepted and it was unknown if that was where the road needed to be. He said he wanted Boyer to participate, based on impact, in the cost of the Daniel Road connection.

Councilmember Bradshaw said at the last RPO Meeting it was agreed by all that this was the alignment. He indicated a preliminary report had been given at that RPO Meeting. He continued it was the other side of the road that was in question. It was indicated Councilmember Hokanson and Councilmember Bradshaw attended that meeting, as well as a representative from the County. Anderson explained UDOT wanted/required certain separation between accesses and because of the airport, there was little flexibility as to where that road could go.

Mumford asked about zoning and questioned if storage units were allowed in the Mixed Use Zone. It was indicated the area proposed to be used for storage units was zoned Industrial.

Mumford said the Annexation Agreement did not stipulate a study was needed to determine deceleration and acceleration lanes; it documented that they were required. Williams said he had some concern with that language. Mumford wanted the language clear in the Agreement so there were no questions later. Mumford suggested Williams had concerns with restricted access roads. Mumford pointed out the Agreement, as currently written, dictated the properties had to work together, cross agreements or such, to allow crossing and access to roads. Mayor Phillips suggested that regardless of what was decided about acceleration and deceleration lanes, it was important to make this commercial development user friendly. Bellows asked if there would be access from the back of his property. Williams said no. Additional discussion about access lanes. Williams said they wanted to see, as the rest of the property developed, shared access points over to Highway 189 and also Industrial Parkway so that property didn't funnel in and out of one access. He said they wanted language in the Agreement that the cross access they would give be conditioned upon getting cross access from the other parties. Anderson indicated language could be drafted into the Annexation Agreement that the 300 West access would have to be provided to

other property owners provided the other property owners were willing to enter into cross easement agreements.

Councilmember Straddeck did not think acceleration and deceleration lanes were needed right now. However, since the road was being built now, the City needed the right-of-way for them for future use. Anderson said that was provided for in the Agreement. It was suggested additional language be put in the Agreement that the owner of the property needed to build acceleration and deceleration lanes when traffic demanded. Mumford said the City was installing acceleration and deceleration lanes on 1200 South right now even though they were not needed immediately. He suggested as the City grew and there was more traffic, they would be needed. Mumford pointed out it would be easier to put the lanes in now instead of requiring someone else to put them in later. He asked the Council to at least require the deceleration lane to be installed and have the acceleration lane installed later. He suggested the deceleration lane was more important than the acceleration lane.

Councilmember Patterson said he also didn't know that part of the roadway was in the County. Williams explained the reason they did not have this property included in the Crook Annexation was because it was a piece of property included in the proposed Broadhead Annexation petition. He said that petition failed because the developer did not move forward.

Councilmember Bradshaw moved to adopt Ordinance 2008-26, an Ordinance Annexing property known as the Monroe Annexation located at approximately 1300 South and HWY 189 on the East and West side of Industrial Parkway, Heber City, Wasatch County, State of Utah, and amend the Annexation Agreement to require the deceleration lane to be built that the City Engineer recommended, that Boyer be required to provide access to the adjacent property owners provided the adjacent property owners were willing to enter into a cross easement agreement that allowed Boyer to access their properties, and Boyer pay for one half the cost of a sound barrier fence along the Bellows' property. Councilmember Hokanson made the second.

Mayor Phillips asked for questions and/or discussion on the motion. Additional discussion about the Lee Bellows' home. Anderson said Boyer had agreed to put a masonry wall along the northern border of their property from 300 West to the duplexes on about 140 West off of 1000 South and on the northern narrow strip of land that would eventually be given to City after a year. Additional discussion about deceleration and acceleration lanes. Anderson pointed out these areas on the overhead. Discussion about what happened in the future if the acceleration and deceleration lanes were not put in. Mumford said if the decision was tied into a study right now, it would not show that they were needed. However, it would be needed at some point in the future. His question to the Council was, "Do we do it now when it is easy or leave it to later for someone else?" Discussion. Mayor Phillips asked for a vote on the motion. Voting AYE: Councilmembers Bradshaw, Hokanson and Patterson. Voting NAY: Councilmembers Straddeck and Horner.

APPOINTMENTS

Eric Woodland – Appeal of Forfeiture of Bond (Tab 4): Councilmember Straddeck asked what could be done to get closer to the original intent and still be reasonable. He proposed the

appeal process be left wide open and then the Council could reduce the bond forfeiture amount, reject the request, or whatever the Council felt was prudent for each case. He suggested language be put into Code that if the Council found that there was no intent to move in, the Ordinance allow for \$500 refund. That way the Council would not have to hear these on a case-by-case basis. He suggested if there was still a consequence, then the Ordinance still had teeth to it and for those violators who were willful, they wouldn't get their money back. If the Council felt there was willful intent, then the forfeiture would stand.

Councilmember Hokanson felt that making sure the ordinance was administered correctly was the only thing the Council should look at.

Mayor Phillips suggested if there was anything at all moved into the house, the inspector should not do an inspection. There was additional discussion about the appeal process. Woodland said there were a lot of different things in the home, such as building tools, wood, etc., and asked what determined personal property.

Councilmember Hokanson felt this was an issue between Woodland and his contractor. She said Woodland's contractor was responsible because he signed the Agreement and should have let the property owner know about the process. Discussion. Greenhalgh said with regard to this particular issue, it was the contractor that a refund would be sent to, not the home owner, as the contractor had signed the Agreement.

Councilmember Straddeck moved to deny the Appeal for Forfeiture from Eric Woodland. Councilmember Hokanson made the second. Councilmember Patterson wanted to know if the contractor asked Woodland to come to the Council. Woodland said he read on the inspection sheet that there was a forfeiture of the bond and that he didn't even know there was a bond. No further discussion.

Voting AYE: Councilmembers Straddeck, Bradshaw and Hokanson. Voting NAY: Councilmembers Patterson and Horner.

Councilmember Hokanson wanted to discuss having a re-inspection fee and also that there would be no inspection if property was in the home. Greenhalgh said he was interested in discussing that further in a Work Meeting at some time. Smedley cautioned the Council about fees and explained that fees were not to be punitive.

Wade Williams – Waive the Requirement of the 15.08.035 for the Valley Station Development specifically to allow Wal-Mart and Boyer Heber City, L.C. to be issued building permits once fire protection systems are operable (Tab 5):

Councilmember Straddeck pointed out the Ordinance read "if determined in the best interest of the City." So, he asked, other than the letter from Williams, why was it in the best interest of the City to issue permits other than the Boyer Company was requesting it. Anderson said that from staff perspective it was advantageous once commercial properties were approved to allow permits so they could get built sooner, opened sooner, and revenue generated sooner. He said there was no likelihood of occupancy like in a Residential Use.

Councilmember Straddeck wanted to know about the residential component and how the City would be impacted there? Mumford said this request only applied to the commercial component of the subdivision and not the residential. Councilmember Straddeck asked if there were any concerns from staff if the Council allowed this request. Anderson said he did not think so because everything would be complete before occupancy.

Councilmember Bradshaw moved to waive the Requirement of the 15.08.035 for the Valley Station Development specifically to allow Wal-Mart and Boyer Heber City, L.C. to be issued building permits once fire protection systems were operable. Councilmember Patterson made the second. No further discussion. Voting AYE: Councilmembers Bradshaw, Hokanson, Straddeck, Horner and Patterson.

Approval of Wal-Mart Vacant Building Maintenance Agreement (Tab 6): Mayor Phillips asked if there was anything more the Council needed to know other than the information that was provided in the packet. It was pointed out the City's legal counsel was in attendance, as well as representatives of Ballard, Spahr, and Ingersol who represented Wal Mart. Anderson said both parties were O.K. with the Agreement.

Councilmember Straddeck asked about the memo from Mark Anderson which stated it was unlikely the building would become vacant for two years. He did not recall anything about two years in the Agreement. Anderson said in the Ordinance it outlined that the Council could do certain things if the building was vacant for two years. He pointed out, however, that counsel from Wal Mart did not think that part of the Ordinance was constitutional. Smedley discussed B6 of 18.42.110, the demolishing of the building as listed in our Ordinance, and said that was the part of the Ordinance that Wal Mart counsel felt strongly was unconstitutional. Smedley said as he talked to other cities, he found there were only two municipalities, including Heber, which had that language in their law. He said Wal Mart representatives would not sign the Agreement with that provision in it. He indicated, though, the 2-year issue was in the Ordinance, not the Agreement. Smedley referred to and discussed page two of the Dark Store Agreement.

Councilmember Hokanson moved to approve the Wal-Mart Vacant Building Maintenance Agreement. Councilmember Patterson made the second. No further discussion. Voting AYE: Councilmembers Bradshaw, Hokanson, Straddeck, Horner and Patterson.

Joe Spencer – Discussion on bonding and request to not enforce or pull the construction bond on the Noble Vista Subdivision (Tab 7): Spencer indicated he was not able to attend the last Work Meeting when this issue was discussed. He felt there were other things the Council needed to understand before they made a final decision on this issue.

Spencer said when he was before the Council before, there seemed to be a lot of warmth and compassion and willingness to help Goode get into his home. However, at the meeting held in his absence, it appeared there had been a 180 degree change and the concern was for the City rather than Goode. He talked about Pleasant Grove City's code in which they have the capacity in a subdivision to allow up to 20% of the subdivision to have occupancy permits. He questioned if it was fair to require 100% of the subdivision to be complete before the first occupancy permit was allowed. Spencer referred to a memo written by our legal counsel that had been given to

members of the Council last meeting. Spencer read from that memo and then discussed the fact that Smedley had cautioned the Council to be very careful in working on a hardship case and to make sure someone would not be able to come back on the City and question why one case was allowed and another one was denied.

Councilmember Straddeck asked if there was anything the Council did last meeting that would prevent Goode from moving in. Mayor Phillips said he felt the Council had been as good to Goode as they could be and did not think the Council had changed their position. He said the Council chose to not change the Ordinance on a one-time basis. He said the Council made the decision that it would be in the best interest of the City to go after the bonding company for as much as they could. Councilmember Horner said the Council was working hard to get Goode in his house but that had nothing to do with pulling the bond.

Spencer said the number one reason he was here was to help Goode and the bond issue was secondary. Spencer said pulling the bond would not finish the subdivision—it would not install electricity or gas—so, pulling the bond still left an unfinished subdivision. He said if the Council was trying to create a subdivision that was finished, that would not happen by pulling the bond. He continued that if he could help Goode get in his home, he would feel he had done something honorable because he, personally, was losing his shorts on this deal.

Spencer discussed the meeting he had with Mumford, Smedley, and the bonding company and said he thought it was understood from that meeting that a partial bond would be pulled. Spencer discussed the amount of money the bonding company wanted from him (\$700,000). He also discussed the fact there was a 25% buffer excess attached to the bond. He indicated there was only approximately \$250,000 worth of work left. He said there were ways the City could create a huge expense that was not necessary. Spencer talked about the potential new owners and how they were going to get a very good deal on the property. Discussion about “unjust enrichment” because of the way this all played out with the FDIC taking over the security company.

It was indicated Goode had will-serve letters from the power company and the gas company. Mayor Phillips indicated to Spencer that last meeting there was a representative from Horrocks Engineers who pointed out several other issues that needed taken care of before the subdivision could be complete which included issues that were holding up other developments. Spencer said he did not have any problems with doing what he had to in order to help the surrounding developments get completion.

Unjust enrichment was discussed again. Spencer said he wanted a new buyer to have to pay for what they would normally have to pay for and not have that be the responsibility of the bonding company. Mumford said he had tried to avoid pulling any bonds. Discussion about other developments that had been foreclosed on.

Councilmember Straddeck reviewed that Mark Smedley felt there was a risk when pulling a partial bond because the City then runs the risk of not being able to bond for any improvements a new owner would install. However, Smedley said the City could tell the new owners no building permits would be issued until the subdivision was completely finished. Mumford suggested the potential existed that once there was a new owner, there would be no bond.

Mumford indicated the bonding company was waiting for an answer from the City on pulling the bond. If the bond was called, the City would enter into an agreement with the bonding company on what the City wanted done. Once those were completed, the bonding company would be off the hook. Spencer said it would take approximately \$300,000 (closer to \$250,000) to finish the subdivision. It was suggested by an audience member to not forget the warranty period and that there was no way to know what might happen during that warranty period or what costs might be incurred during that time.

Mumford said he thought there was a way to work this out in regard to the retention pond. He said Spencer had given his permission and would allow the pond to be accepted and Allen had finished up the remaining things on the pond so it could be broken off and could be accepted and also accept Allen's subdivision.

Chris Goode said in Spencer's behalf, Joe had worked hard to get him in his home. He said it didn't seem right to pull this bond but not the bond for Aspen Pointe. He referred to previous discussion about changing the Code and providing an exception which would allow him to move into his home. He knew that would create some liability to the City. He reviewed the discussion about a partial pulling of the bond. He then referred to the home that existed in the Allen Subdivision, that those people had never been asked to leave but rather had been allowed to stay in a subdivision that had not been accepted. Goode compared his situation with that similar situation in the Allen Subdivision. Mayor Phillips asked Goode what he would suggest to finalize this issue. Goode said either change the Code or give a partial acceptance of the subdivision.

Anderson read from Mumford's staff report those things listed that the City still required which the bond would be pulled for. Mumford explained again those were only what the City needed but other utilities had to be finished before the subdivision could be accepted.

Mayor Phillips asked if the Council wanted to continue with pulling the bond or did they want a different option based on the discussion tonight. Councilmember Horner said he was O.K. with pulling a partial bond but not fine with not finishing the pavement on Mill Road. Smedley discussed the limits of those things within the subdivision and those things outside the subdivision. He said the new owners of the subdivision would be subject to a subdivision agreement which would protect the City and buffer some of the risk of pulling the bond in the first place. The Council discussed a possible narrow change to the Code to allow Goode to move in. Anderson said it could be done if the Council decided that was what they wanted.

Discussion about amending the Code to allow occupancy on a residential lot very narrow and specific to this case. Anderson said if that was the direction the Council wanted to go, it could be done without a public hearing since this was regulated in Title 15.

Councilmember Hokanson suggested that, from the discussion, that Mumford and Smedley would get together to put on paper the items they felt needed to be done in the bond and amend the subdivision agreement to buffer against risk to the City. Mumford said the list was already created. Councilmember Straddeck wanted the list to be sufficient to the needs of the City and

not just the bare minimum. The Council wanted the completion of Mill Road overlay and widening to the canal added to the list.

Councilmember Straddeck moved that the City pull the bond, add to the list of items to be completed already complied by Mumford the completion of Mill Road based on what was in the original agreement. The City Attorney, Mark Smedley, would amend the Subdivision Agreement to include that the new owner agreed to take on the additional improvements that were needed. Also that the new owner would be liable for the work that had already been completed plus the work done under the bond. Spencer would enter into an agreement with the City that he would stand out of the way and allow the acceptance of the retention pond. Councilmember Horner made the second.

Mumford forewarned the Council that there may be controversy about the sidewalk not being continuous.

Voting AYE: Councilmembers Bradshaw, Hokanson, Straddeck, Horner and Patterson.

ACTION ITEMS

Awarding of Bid for the Hospital Well Reconstruction Project (Tab 8): Anderson referred to the information given to the Council prior to the meeting and explained the apparent low bidder had failed to include about \$37,000 worth of electrical work that would be required by Heber Light and Power. Because of that, the recommendation was to award the bid to the second highest bidder, KW Robinson.

There was discussion about the costs listed on the spreadsheet provided, that the total bid from KW Robinson was \$604,755.34 and the approximate cost of the project was \$693,000. Mumford said the shortfall was based partly on engineering services (\$36,000 to date) and construction and inspection services (estimated at \$52,000) and would be made up 100% from impact fees; however, an amendment to the budget would be necessary as only \$600,000 had been budgeted.

Councilmember Hokanson moved to award the bid for the Hospital Well Reconstruction Project to KW Robinson and to amend the budget as explained by Mumford. Councilmember Bradshaw made the second. Voting AYE: Councilmembers Bradshaw, Hokanson, Straddeck, Horner and Patterson.

CITY COUNCIL BOARD ASSIGNMENTS REPORTS

Wasatch City/County Health Department – 4th Tuesday
Heber Light and Power – 4th Wednesday
Heber City Planning Commission – 4th Thursday
Historic Preservation – As Needed

No reports were given.

As there was no further business for the City Council Special Meeting held on October 30, 2008, the meeting adjourned.

Paulette Thurber, City Recorder

Approved 11/20/2008