

MINUTES OF THE COTTONWOOD HEIGHTS CITY COUNCIL MEETING HELD TUESDAY,
DECEMBER 20, 2011, AT 7:00 P.M. IN THE COTTONWOOD HEIGHTS CITY COUNCIL
CHAMBERS

Members Present: Mayor Kelvyn Cullimore, Councilman Gordon Thomas, Councilman Tee Tyler,
Councilman Scott Bracken, Councilman Mike Peterson

Staff Present: City Manager Liane Stillman, City Attorney Shane Topham, Administrative Services
Director Linda Dunlavy, Public Works Director Mike Allen, City Treasurer Dave Muir, Assistant Chief
Mike Watson, Finance Director Steve Fawcett, Police Support Specialist Sheila Jennings, Public Relations
Specialist Stephanie Archibald, Planning Director Brian Berndt

1.0 WELCOME/PLEDGE/ACKNOWLEDGEMENTS

- 1.1 Mayor Cullimore opened the meeting at 7:00 p.m. and welcomed those attending.
- 1.2 Councilman Thomas led the Pledge.

2.0 CITIZEN COMMENTS

- 2.1 Ted Sleight expressed his continued opposition to the location of the Balance House in his neighborhood. Mr. Sleight met with Mayor Cullimore and Councilman Tyler regarding his opposition and asked for a list of agencies to contact regarding violations at the house. Mr. Sleight was concerned about traffic and pedestrians in the area, and wants to work with the City and with the Balance House to resolve issues. He also asked who will be responsible if there is damage to neighboring properties.

Mayor Cullimore agreed to review Mr. Sleight's concerns and questions about the Balance House with city staff.

- 2.2 Heather Lee Benson expressed her concern about Balance House and its negative impact on property value in the area.
- 2.3 Mayor Cullimore explained that the Balance House is a facility for individuals recovering from substance abuse addiction. Federal laws have declared such individuals a protected class and, therefore, the City may not prevent the facility from being located in a residential neighborhood. He expressed empathy about the residents concerns over the potential impact of Balance House on the neighborhood.
- 2.4 Tim Ingwell asked whether the City is required by law to inform its citizens of actions or decisions taken by the City that could affect residents in a negative way.

Mayor Cullimore indicated that, with respect to residential treatment facilities, the City is not required to inform the residents.

Mr. Ingwell asked whether the City has developed a mitigation plan for the business should there be problems between the Balance House and the neighborhood and, if so, whether the plan involves the police department and/or other emergency service providers.

Mayor Cullimore again explained that, under the Federal Fair Housing Act, such treatment facilities are not considered businesses, but residences. Accordingly, the City has not undertaken a mitigation plan.

Mr. Ingwell asked whether the City considered any alternatives to the proposal.

Mayor Cullimore explained that the City does not have the right to consider alternatives, as federal law allows the Balance House to locate its facility in any neighborhood zoned for residential occupation.

Mr. Ingwell asked why the City did not notify the neighborhood about the proposed facility when it received the proposal in December of 2010.

Mayor Cullimore pointed out that the City does not routinely notify residents of a neighborhood when new residents move in. Further, such notification could be considered a prejudicial act by the city and be actionable by the applicants.

Mr. Ingwell asked why the citizens were told there was nothing that could be done about the project and whether or not the increased number of vehicles and traffic in the neighborhood would be considered.

Mayor Cullimore reiterated that the Balance House is, under federal law, a home for disabled persons. As a result, the City has no right to impose additional requirements or mitigations on the home.

Mr. Ingwell asked what the expectations are regarding behavior of facility residents toward neighbors and neighborhood children.

Mayor Cullimore explained that the behavioral standards are the same as those for any other resident of the neighborhood and assured Mr. Ingwell that the City will respond to problems with the facility the same way it would respond to similar problems in any neighborhood.

- 2.5 Robert Hayes noted that federal law requires an entity, such as the City, to make a reasonable accommodation for residential treatment facilities and if the density of the population of the neighborhood and the average household size is taken into consideration, he does not think the addition of fourteen people into a home is a reasonable accommodation.

Mayor Cullimore explained that the definition of “reasonable accommodation” has been established by case law. A recent case in Draper established that 24 occupants was deemed by the court to be a reasonable accommodation.

Mr. Hayes believes that reasonable accommodation should consider existing zoning and feels that the City should have notified the residents sooner, to allow residents an opportunity to influence the placement of the facility.

Mayor Cullimore explained that, although City officials wanted to notify affected residents, such notification could have exposed the City to legal action as it would have potentially been considered a discriminatory act on the part of the city and actionable under the Federal Housing Act.

Mr. Hayes asked why such facilities are not considered businesses and believes placement of this type of facility in a residential area is based on the property being more affordable than commercial real estate.

Mayor Cullimore said that he has spoken with Senators Hatch and Lee regarding the law governing the facilities and expressed similar concerns.

- 2.6 David Campbell expressed his opinion that the project was deliberately kept quiet. He is disgusted, does not want cigarette butts on his lawn, and believes that the residents of such a treatment facility will suffer from relapses. He questioned what type of criminal action will be taken against residents who break the law. He said that he will continue watching the behavior of those at the facility.
- 2.7 Ted Parker, in discussing the proposed buildings at the Cottonwood Corporate area, reviewed the applicable City ordinances restricting building heights to 35 feet (two stories) in the ORD zone. He noted that, although exceptions may be made, they must be made in accordance with the conditional use ordinance. He asked that those ordinances be taken into account with respect to the proposed development. He asked the Council for time for Cottonwood Partners to work with the residents. He asked that the buildings be located and oriented in such a way as to minimize disruption of the residential areas.

Mayor Cullimore explained that because they are working within the existing ordinances, it will not come to the City Council for a decision and noted that the public hearings at the Planning Commission are very important.

- 2.8 Councilman Peterson noted that, although another open house is not scheduled, Jeff Gochnour, who represents the developer, encouraged residents to contact him directly with any concerns.

3.0 **REPORTS/PRESENTATIONS/ PROCLAMATIONS**

3.1 **Recognition of Neal Stowe**

- 3.1.1 Mayor Cullimore noted that the City's posthumous recognition of Neal Stowe will be postponed to a future date when Mrs. Stowe can attend.

3.2 **Administration of Oath of Office to Reserve Police Officer**

- 3.2.1 City Recorder Linda Dunlavy administered the oath of office to Reserve Officer Damien Olsen.

3.3 **Recognition of Gordon Thomas as an Outgoing Councilman**

- 3.3.1 Mayor Cullimore read a proclamation recognizing the service Councilman Thomas has given the City. A plaque of appreciation and parting gifts were presented to Councilman Thomas by the City Council.

Chief Russo presented Councilman Thomas with a Cottonwood Heights Police Department patch.

Councilman Thomas presented flowers to his wife, Bonnie, and thanked her for her support during his tenure on the Council.

Mayor Cullimore said the Councilman Thomas has been a steady force, has given the council guidance and experience and the City is better for his service.

Councilman Bracken echoed the Mayor's remarks and expressed appreciation for Councilman Thomas' common sense.

Councilman Tyler said that as a new member of the Council you look for a role model and Councilman Thomas was his. He is an exceptional listener and has done an exceptional job for his constituents.

Councilman Peterson said that Councilman Thomas has given 100 percent and his commitment has made him a great city councilman.

City Manager Liane Stillman said she has become very good friends over the past seven years. She said that he needs to reflect proudly on his numerous contributions and thanked his family for their support.

Councilman Thomas thanked the Council for the recognition.

3.4 Financial Reporting

1. Government Finance Officers Association Distinguished Budgeting Award

- 3.4.1 David Muir, representing the National Government Finance Officers Association, presented the City with the Distinguished Budget Presentation Award for fiscal year 2012. The award, which was established by the GFOA in 1984, recognizes exemplary budget documentation by governmental units. It is intended to encourage and assist state and local governments to prepare budget documents of the highest quality. The City's budget documents were rated proficient in every category of evaluation. This is the fifth consecutive year Cottonwood Heights has earned the award. It is estimated that fewer than 10 Utah cities have achieved similar recognition for excellence in budgeting.

3.4.2 2. Presentation of Fiscal Year 2011 Financial Report

- 3.4.2 Russ Olsen, Larson & Rosenberger reported that an independent audit of the City's finances was completed and no irregularities were found. He reviewed the audit reports issued by the firm and the standards used to evaluate the City's financial procedures and statements.

Mayor Cullimore noted that the audit reports will be filed with the State Auditor before the end of December and commended staff on a job well done. To have no significant deficiencies or material weaknesses is expected, but to have no reportable findings was a reflection on the excellent work of the financial department and the controls that have been put in place. The clean audit should give citizens confidence in how their finances are being managed

3.5 Standing Monthly Reports

1. Monthly Financial Report

- 3.5.1 Finance Director Steve Fawcett presented the monthly financial report. He began by commenting on the fiscal year end statements. The City's available fund balance ended up at approximately 19%, which is a 6% improvement over fiscal year 2010. That fund balance improvement equated to over \$1,000,000 in surplus from 2011 that can be re-allocated to needs in 2012. That is a notable accomplishment in light of economic conditions and many other cities struggling to balance their budgets – some imposing tax increases.

Revenue projections in the new fiscal year, however, continue to trend downward. Mr. Fawcett noted that every City department was below budget for fiscal year 2011. He applauded the department heads and the City Treasurer, David Muir, for their conservative approach to budgeting

and expenditures. Mr. Fawcett also reported that the City is currently at 100% of sales tax collections compared to last year, and ahead of budget. All of the other revenue sources for the City, such as business licensing and building permits, are on target.

Mr. Fawcett pointed out that the City's capital improvement program will need to be addressed in fiscal year 2012, as there will be some funds available for those projects. Additionally, the City's health insurance rates dropped, providing additional funding to the budget and a rebate to City employees.

Mayor Cullimore explained that the fund balance generated at the end of the fiscal year is a very significant measure of the city's financial health. The City originally budgeted approximately \$400,000 of fund balance expenditures to meet its projected expenses – meaning fund balance was budgeted to diminish by \$400,000. Rather than using those funds, however, the City was able to add approximately \$1.5 million to the available fund balance because revenues exceeded expenditures and as has been pointed out, every department under spent their budget. This results in the over \$1,000,000 in fund balance left over from fiscal year 2011 that can be allocated to needs in the current fiscal year. He cautioned Council members to remain fiscally conservative, however, as expenses continue to rise even though revenues remain flat.

Mr. Fawcett noted that the State requires a fund balance of at least 5% and no more than 18%.

Councilman Peterson expressed his appreciation for the fine job done by City employees in receiving a budgeting award, a clean audit, and a solid fund balance.

2. Unified Fire Report

- 3.5.2 Assistant Chief Watson reviewed the statistics for the month of November. The fire and medical calls are both down from November 2010 statistics. He explained that the decrease in calls may be due to the poor snow conditions, which has reduced traffic to the ski areas. There were 69 fire calls and 184 medical calls.

Chief Watson pointed out that the top call categories were traffic accident, falls and man down calls. There was also an increase in psychiatric calls which you see around the holidays and calls for breathing issues caused by the inversion. Station 116 had 44 advanced life support calls resulting in 24 transports and 3 basic life support calls resulting in two transports; Station 110 had 98 advanced life support calls resulting in 52 transports and 15 basic life support calls resulting in four transports.

Chief Watson reported the radon data for Cottonwood Heights, noting that 11 of the 45 homes tested have dangerous levels of radon. He explained what radon is and what can be done to mitigate the danger it presents. He referred the Council members to www.radon.utah.gov.

3. November Police Report

- 3.5.3 Police Support Specialist Sheila Jennings expressed her appreciation for Councilman Thomas' service to the City. She presented the November statistics, reporting that calls for service are up overall. Ms. Jennings explained the UCR statistics and provided the details for some of the theft calls. She noted that the snow blower thieves had been caught.

Ms. Jennings reviewed crime statistics by city council district.

Ms. Jennings was asked if there was any police data regarding parking violations, disorderly conduct, and noise complaints associated with residential drug and alcohol treatment facilities,

such as Balance House, located within the City. If such data exists, it would be helpful for citizens to know.

4. Monthly Public Works Report

- 3.5.4 Public Works Director, Mike Allen, reported that the City's concrete work has been suspended until spring; the Park Centre Drive lighting project is finished and awaiting final inspection; the East Jordan Canal project is underway; and the storm drain project for 2300 East should be ready for bids in January. Mr. Allen also noted that the changes to the Storm Water Study have been incorporated and are ready to be presented to the Council.

Mayor Cullimore asked whether the street lighting on Top of the World Drive had been inspected.

Mr. Allen reported that he has done so and there are a few areas that need some work. He will bring those issues to the Council for discussion. He did inform the Council that the street light projects on Vera Circle and Greenfield are progressing.

4.0 ACTION ITEMS

4.1 Consideration of Ordinance No. 185 Adopting the Annual Meeting Schedule for 2012

- 4.1.1 Mayor Cullimore stated that the proposed ordinance establishes the Council and Land Use Board meeting schedules for 2012. The Council plans to meet every Tuesday night except the fifth Tuesday.
- 4.1.2 **MOTION:** Councilman Thomas moved to approve Ordinance 185. The motion was seconded by Councilman Tyler and passed unanimously on a roll call vote.
- ##### **4.2 Consideration of Resolution No. 2011-50 Declaring Police K-9 "Maggie" Surplus and Authorizing Sale to Ken Eatchel for Nominal Value**
- 4.2.1 **MOTION:** Councilman Peterson moved to approve Resolution Number 2011-50. The motion was seconded by Councilman Bracken and passed unanimously on a roll call vote.
- ##### **4.3 Consideration of Resolution No. 2011-51 Approving an Interlocal Cooperation Agreement with Holladay City for Fire Services**
- 4.3.1 Mayor Cullimore explained that although the City has had an informal agreement with Holladay City for fire services for several years, this is the first year the agreement has been formalized into an interlocal cooperation agreement. The agreement establishes a fixed amount for a period of three years, which can automatically renew. He commended the City Attorney and City Manager for their work on this agreement.
- 4.3.2 **MOTION:** Councilman Bracken moved to approve Resolution No. 2011-51. The motion was seconded by Councilman Tyler and passed unanimously on a roll call vote.
- ##### **4.4 Consideration of Resolution No. 2011-52 Ratifying Entry into a Contract with Arnell-West, Inc. in the Amount of \$89,375 for the Mountview Park Restroom Project**

4.4.1 Mayor Cullimore explained that the proposed resolution will allow Arnell-West, a local contractor, to build restrooms at Mountview Park. This bid was very close to the City's estimated cost.

4.4.2 **MOTION:** Councilman Bracken moved to approve Resolution No. 2011-52. The motion was seconded by Councilman Peterson and passed unanimously on a roll call vote.

4.5 **Consideration of Resolution No. 2011-53 Approving an Interlocal Cooperation Agreement for Multi-Jurisdictional Mutual Aid for Police Services**

4.5.1 Mayor Cullimore reported that the proposed interlocal agreement is a standard agreement between cities to assist each other in the event of a major incident.

Chief Russo noted that Sandy requested that the agreement be updated and approved.

4.5.2 **MOTION:** Councilman Tyler moved to approve Resolution No. 2011-53. The motion was seconded by Councilman Bracken and passed unanimously on a roll call vote.

4.6 **Consideration of Resolution No. 2011-54 Declaring Property Surplus**

4.6.1 Mayor Cullimore pointed out that the property listed on the surplus schedule is mostly computer equipment which the City no longer needs.

4.6.2 **MOTION:** Councilman Thomas moved to approve Resolution No. 2011-54. The motion was seconded by Councilman Peterson and passed unanimously on a roll call vote.

5.0 **ADJOURN BUSINESS MEETING AND RECONVENE WORK SESSION IN ROOM 250**

5.1 **MOTION:** Councilman Thomas moved to adjourn. The motion was seconded by Councilman Bracken and passed unanimously on a roll call vote. The business meeting adjourned at 9:20 p.m.