

MINUTES OF THE COTTONWOOD HEIGHTS CITY COUNCIL MEETING HELD TUESDAY, OCTOBER 25, 2011, AT 7:00 P.M. IN THE COTTONWOOD HEIGHTS CITY COUNCIL CHAMBERS

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

Excused: Councilman Tee Tyler

Staff Present: City Manager Liane Stillman, City Attorney Shane Topham, Administrative Services Director Linda Dunlavy, Planning Director Brian Berndt, Chief Robby Russo, Public Works Director Mike Allen, Finance Director Steve Fawcett, Assistant Chief Mike Watson, Public Relations Specialist Stephanie Archibald

Also Present: Verl Buxton, Brookelyn Price, Ron Fullmer, Jody Burnett, Dick Fisher, Janet Janke, Mike Shelton, Mike Hanson, Spencer Topham, Dean Smart, Shelly Hanson, Nancy Dahill, Bruce Baird, Doug Shelby, Mark Callister

1.0 WELCOME/PLEDGE/ACKNOWLEDGEMENTS

1.1 Mayor Kelvyn Cullimore opened the meeting at 7:00 p.m. and welcomed those attending.

1.2 Councilman Gordon Thomas led the Pledge of Allegiance.

2.0 CITIZEN COMMENTS

2.1 Brookelyn Prince stated that she lives on Top of the World Drive and stressed the need for more streetlights in the neighborhood. She explained that it is very dark at night and she feels unsafe when she is alone.

Public Works Director Mike Allen explained the process of obtaining additional street lights.

Mayor Cullimore stated that each year the City sets money aside for streetlight improvements. The improvements are based on need and petition.

2.2 Ron Fullmer remarked that the Council has a very difficult decision before them tonight. He commended the Council for being open and considering all sides of this issue

2.3 Verl Buxton stated that Councilman Tyler recently informed him that work should have been underway on the curb in his area, but he has not seen anything being done.

Public Works Director Mike Allen explained to Mr. Buxton earlier that the work in his area may be postponed until the spring.

The Mayor confirmed that could be the case depending on the weather.

Mr. Buxton stated that he has tried to have the repairs made for the past six years and believes that is too long, especially since there are handicapped individuals that live in the area.

Mayor Cullimore promised Mr. Buxton that the work would be prioritized and would be targeted to be completed next year at the latest.

Mr. Allen explained that the City is currently working on other projects and this request arose after the other projects were scheduled. He anticipated an April or May timeframe to address these ADA improvements.

3.0 **REPORTS/PRESENTATIONS/PROCLAMATIONS**

3.1 **Proclamation Recognizing Alternative Fuel Awareness**

- 3.1.1 Mayor Cullimore reported that the City was approached by the State asking that they consider joining in a proclamation declaring November as Alternative Fuel Vehicle Awareness Month. The Council felt it was a worthwhile cause and appropriate to make citizens aware of alternative fuel vehicles. The proclamation was read in its entirety and signed by the Council Members. Mayor Cullimore stated that the proclamation will be published in the next edition of *The Valley Journal*.

Standing Monthly Reports

3.2 **Monthly Financial Report**

- 3.2.1 Finance Director Steve Fawcett presented the financial report for the period ending September 30, 2011. He stated that the City continues to do very well financially and with a few minor exceptions, revenues and expenditures are as expected. July sales tax remittance was down approximately \$50,000 possibly due to late filers. He also noted that a notice was received from the Tax Commission indicating that Salt Lake County petitioned for two properties they believe are generating sales tax in the County rather than the City. Staff believes they are in the city and has filed a protest with the Tax Commission asking that the error be corrected.

Mr. Fawcett stated that all of the needed adjustments have been made to carry over project balances and capital improvements. Unallocated fund balance in the General Fund remains at \$1,377,000 after allocating some of the unused funds from last year to budget needs this year. Staff will be very cautious about keeping the fund balance intact in lieu of other issues the City is faced with.

A copy of the entire report is available on the webpage.

3.3 **United Fire Report**

- 3.3.1 Assistant Chief Mike Watson presented the fire statistics for the month of September. There were 237 medical calls and 75 fire calls for the month. It was reported that July was the busiest month for Station 110 followed by August and September. There were 40 calls from traffic accidents; 38 man down calls; and 35 falls.

Station 110 had 101 advanced life support calls resulting in 53 transfers and 16 basic life support calls resulting in 7 transfers for a total of 60 transfers. Station 116 had 83 advanced life support calls resulting in 39 transfers and four basic life support calls resulting in 2 transfers for a total of 41 transfers.

Chief Watson reviewed the safety message and recommended that people audit the smoke alarms in their homes; make sure fire extinguishers are handy and talk to your kids about how they can prevent fires. He said that children under five are especially curious about fire and need to begin learning about the danger.

The customer service message for Stations 110 and 116 were reviewed.

4.0 **ACTION ITEMS**

4.1 **Consideration of Resolution No. 2011-42 Consenting to an Appointment to the Historic Committee**

4.1.1 Mayor Cullimore stated that the proposed resolution appoints Dean Smart to the Historic Committee with a term ending January 1, 2014.

4.1.2 **MOTION:** Councilman Bracken moved to approve Resolution No. 2011-42 appointing Dean Smart to the Historic Committee. The motion was seconded by Councilman Peterson and passed unanimously on a roll call vote.

4.2 **Consideration of Resolution No. 2011-43 Approving an Interlocal Cooperation Agreement with Salt Lake City for Work on the East Jordan Canal**

4.2.1 Mayor Cullimore explained that the proposed resolution approves the Interlocal Cooperation Agreement with Salt Lake City for work on the East Jordan Canal. The project will pipe the canal in one specific location. For decades area residents have had problems with basements flooding and Salt Lake City has finally agreed to participate and resolve this issue. The agreement allows Salt Lake City to pay Cottonwood Heights its portion in order to proceed with the work. 1495 East will be limited to one lane for several months.

4.2.2 Councilman Thomas said that several neighbors have pumps in their basements as a result of high water table issues and he is pleased that the problem is being rectified.

4.2.3 **MOTION:** Councilman Thomas moved to approve Resolution No. 2011-43 approving an Interlocal Cooperation Agreement with Salt Lake City for work on the East Jordan Canal. The motion was seconded by Councilman Bracken and passed unanimously on a roll call vote.

5.0 **DISCUSSION ITEMS**

5.1 **Consideration of Petition for Disconnection by Cottonwood Estates Development**

5.1.1 Mayor Cullimore stated that the Tavaci property owners have petitioned the City for permission to disconnect into Salt Lake County. The petition was filed after an August 2 meeting where the Council declined to approve the Canyon Resort Residential Zone (CRR). The petitioners were required to give a three-week notice, after which the City was required to hold a public hearing. The public hearing took place on September 20, 2011. Following the public hearing the city has 45 days to make a decision on the petition for disconnection, which will be at the November 1, 2011, meeting. At the public hearing, the Mayor allowed additional comments to be made in writing. Information was received from Chris Hogle, legal counsel for a Tavaci property owner; and Bruce Baird, representing Tavaci property owners. Copies were given to each member of the council for their review and consideration as the process proceeded. The purpose of the agenda item tonight is to discuss the Council's position and concerns about the petition to disconnect the property.

Mayor Cullimore stated that the property is important to the City and crucial to the overall development plan at the mouth of the canyon. The City spent two years working with the property owner to explore the best development options and an unsuccessful effort was made during that period to reach a compromise with the developer. Efforts to reach a middle ground with the developer on the CRR Zone may have been unsuccessful but not fruitless. Many elements were fleshed out during the process that have been included in the new CRD zone. Some residents felt that the property should not receive additional entitlements and the merits of considering additional

entitlements was part of the ongoing two-year discussion. A Citizens Committee was formed and asked to review the original CRR Zone. Their findings acknowledged that some additional consideration may be warranted on this particular property. While it was not expected that the CRR Zone as proposed with so much commercial would be consistent with the General Plan or Master Plan for the area or meets good planning principles, they felt there were elements of a residential development that could be meritorious. After the Council declined to approve the CRR Zone on August 2, 2011, direction was given to staff to work on an alternative zone that would be residential in nature and looked at from all perspectives.

Mayor Cullimore stated that the Canyon Residential Development Zone (CRD), which was recently presented, shows what the Council believes is a viable option for development of Tavaci and represents the City's sincere wish that the property remain part of Cottonwood Heights. The zone accomplishes several goals; it articulates a residential zone that is based on R-1-10 zoning densities, which is similar to other residential zones in neighborhoods east of Wasatch Boulevard; it stays within the parameters supported under public safety considerations and view shed limitations; it enhances the visibility of the development by allowing units to be in a more affordable range; development will also increase the taxable value of the property. He explained that viability is important because the property owners in the development must be able to support the access road that services the property and full development is critical to making sure the private road is properly maintained. The proposed CRD zone demonstrates good faith on the part of the Council to give legitimate consideration to an alternative development plan. The Council considers the proposed zone a genuine alternative that works and will only be made better through the Planning Commission and public comment process.

Mayor Cullimore said that the discussion of Tavaci represents a great loss to the City, and potentially places the city in the position of losing tax base while coping with the detrimental impacts of whatever is approved, and the inability to coordinate a master planned development for the area. He stated that he does not believe it is in the best interest of the city to voluntarily allow disconnection.

Mayor Cullimore noted that the discussion will center on the disconnection petition and whether or not to allow it. He explained that in order to make a sound decision the Council must be aware of the conditions of the disconnection. The burden of proof lies with the petitioner and is based on the following factors: Whether or not the disconnection is viable; whether justice and equity require the disconnection; and whether islands or peninsulas will result from the disconnection process.

The Mayor stated that Councilman Tyler was unable to attend tonight's meeting and asked to have his statement read into the record.

5.1.2 City Manager, Liane Stillman, read Councilman Tyler's comments into the record.

To be read into the record at the 10-25-2011 C.H. City Council meeting....(as I am out of town)
Written by City Council person Tee W. Tyler.

"After seeing the events and record since the "Tavaci" owners disconnect request about a Month and a half ago, I have felt that the statement in the disconnect request, "disconnection from the city is the only equitable remedy which will allow for the viable development of the property" has lost credibility. While the local economic environment has been challenging, I believe it is possible for the "Tavaci" land owner to find a "marketable" residential land use approval from Cottonwood Heights City now.

For the owner to continue to pursue property entitlements that must include "commercial" use or feel the need to disconnect, fails to explore the potential residential uses yet discussed.

Also, now of record, are the numerous letters and emails from the majority of the County Council which generally refer to how they as members of the County Council would not support zoning or property entitlements for the "Tavaci" property different from that adopted by Cottonwood Heights City. Generally they felt that decisions regarding land use should be made locally, by the citizens most affected. (ie: C.H. City)

For these reasons, I feel the requested disconnect of the "Tavaci" property from Cottonwood Heights back to the County is without merit and should not take place. A proper "marketable" residential land use is possible for "Tavaci" here in Cottonwood Heights and the County does not want the decision on the future of this property to be taken from local citizens."

- 5.1.3 Councilman Thomas expressed concern that under the present disconnection proposal the road to the property was not included in the disconnection petition. This causes concern that issues with access are going to fall to working with Cottonwood Heights while the balance of the property would be in the County if the disconnection petition were granted. That issue is concerning because of the confusion it will cause. In addition, Councilman Thomas expressed concern about the lack of a second access which would also have to be in Cottonwood Heights. He said that unless there is a date specified when a second access will be provided, you must assume one will not be provided. Councilman Thomas stated that the road is not part of the disconnection petition, and does not want the maintenance of the road to become the responsibility of the City. He stated that in his work in community preparedness, he wondered how an earthquake in the area would affect the road and how it would be handled by the City if the rest of the property were in the County. He does not believe that the issue of the road can be ignored in considering the petition.
- 5.1.4 Councilman Peterson commended the Mayor and Council for the open process regarding this issue. He stated that he has been cautioned by several constituents and associates about the serious issues facing the Council and he has taken this charge very seriously. He stated that he read the previous minutes, listened to the audio recording of the meeting, read the petition, and would like to see the subject area developed within the parameters of the General Plan.
- 5.1.5 Councilman Bracken stated that in reviewing the petition there were several points he noticed. The petition claims that the subject property is undeveloped and the Supreme Court has typically allowed undeveloped land to move from one jurisdiction to another. There has been tens of millions of dollars worth of improvements made on the subject property and at least one building under construction. As a result, he was troubled by the claim that the property is undeveloped. Councilman Bracken observed that there is one egress from the property which accesses Cottonwood Heights. He believes that from a service providing paradigm, an effective (or operational) island would be created by the disconnection, and regardless of what is built on the property, Cottonwood Heights will be affected directly. For the stated reasons, he stated that he is not inclined to support the disconnect petition as written. Councilman Bracken said that he feels that what currently exists on the property adheres to the concepts of the General Plan and over time, a great deal of effort by multiple jurisdictions has gone into what can and should be built at the location.
- 5.1.6 Mayor Cullimore agreed that the issue of viability, as viewed from a General Plan perspective, needs to be carefully considered. He explained that the CRR zone was not approved in part, because there was a belief that the proposed commercial and high density uses were not appropriately placed. He agreed that the Tavaci property is much better suited for residential development.

Mayor Cullimore noted that the last successful disconnection was in Bluffdale where approximately 4,000 acres disconnected into Herriman and many comparisons have been made between this case and the Bluffdale case. He said that there have been claims that the property owner has been put through a “sausage grinder” with Cottonwood Heights City, which he disputes. With the Bluffdale case, the capital facilities plan had not been passed. With the Bluffdale case there were problems with the capital facilities plan not being passed; and the City Council agreed to adopt zoning changes, changed their mind six years later, and then reversed their decision, which was then overturned by a citizen referendum. The Bluffdale case lasted more than ten years. In this case the property is already entitled and horizontal and vertical improvements have already been made. The timeline clearly shows that the process was advanced on a reasonable basis given the controversial nature of it and much more quickly than the Bluffdale case it is being compared to.

The Mayor stated that the City Council has deliberated reasonably on what was a very aggressive proposed ordinance. No other city has considered such aggressive zone for hillside development or any development east of Wasatch Blvd., so it is not unusual that it would take time to review. He explained that planning staff first has to work with the property owners and discuss the changes; the proposed changes then have to be reviewed by the Planning Commission who will then forward a recommendation to the City Council to make a decision.

Mayor Cullimore gave a brief history of the process explaining that this issue was first reviewed by staff in April 2009 and by the Planning Commission in July 2009. The Planning Commission then made a recommendation to the City Council in August 2009. In mid-August 2009 the City Council became aware of the controversial proposal. For the next year meetings were held with the petitioner in addition to numerous public meetings. An effort was made to establish a modified zone that would get enough votes to pass as the developer was told repeatedly that the CRR zone as passed by the Planning commission would not pass. Approximately one year ago the developer filed for a new zone, which arrested the process to ameliorate the CRR Zone. A few months later, the property owner reversed position and asked to revert back to the CRR Zone. The City acted promptly and scheduled a hearing in late June at which time a proposal was made by the petitioner who recommended a version of the CRR Zone with several changes to it. Many of the modifications proposed by the developer at the June meeting were fleshed out during negotiations over the prior year and many were incorporated into the new CRD Zone. On August 2, 2011, a vote was taken and a decision was made to deny the CRR Zone.

Mayor Cullimore stated that the two-year “sausage grinder” referred to by the petitioner was actually spent as a constructive effort to turn a controversial project into an acceptable gateway project. It was time spent engaging the public and the Council was as open as possible in the process. While the CRR Zone was not approved, the result was to add many good elements to the CRD Zone. Mayor Cullimore believed the petitioner was being disingenuous in representing the City as arbitrary or unfair and believes the City was communicative and diligent with the petitioner and use of the term “sausage grinder”, while unflattering, was a description calculated to support their position.

Mayor Cullimore stated that the City wants to keep Tavaci in Cottonwood Heights and considers it a jewel with much potential. He believes the disconnection will not achieve a better outcome for the developer but will harm the City by imposing the detrimental impacts without the benefits of the tax revenue. He believes that the proposed CRD Zone will offer a viable alternative that should be explored before litigation is considered. The prospect of disconnecting the property, while leaving the access road in Cottonwood Heights, challenges the viability of the petition. He noted that seven of the nine county council members have expressed opposition to the disconnection

petition further casting doubt on any viability of a better outcome with the County than that is being proposed in the CRD zone.

The Mayor remarked that the economic viability of Tavaci as commercial development in light of plans for hotels and other types of development in the gravel pit area and at Canyon Center jeopardizes the economic viability of a commercial plan at Tavaci; whereas a residential plan is a good fit for what might occur with the other properties.

- 5.1.7 Councilman Bracken stated that he has had many conversations with constituents who are concerned and strongly opposed to what is being proposed, and at times has actually found himself defending the process and even aspects of the CRR proposal. He believes that with the improvements made on the property and its potential to enhance the City, appropriate residential development should be pursued.
- 5.1.8 Mayor Cullimore asked that the council members prepared at the next meeting to take a vote on whether to grant the petition to disconnect.

6.0 **CONSENT CALENDAR**

6.1 **Approval of September 20 and September 27, 2011 Minutes**

- 6.1.1 The minutes stood approved.

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

- 7.1 **MOTION:** Councilman Bracken moved to adjourn. The motion was seconded by Councilman Thomas and passed unanimously on a roll call vote. The business meeting adjourned at 8:18 p.m.