

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

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

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

Also Present: Jody Burnett, Mark Callister, Spencer Topham, Bruce Baird, Clair Geddes, Nancy Dahill, Verl Buxton, Cathy McKittrick, Chris Hogle, Don Antczak, Karen Wickstrom, Mark Macklis, Roger Kehr, Chris Mataeus, Joseph Demma, Mike Hanson, Will McCarvill, Janet Janke, Bob Jacobs, Asia Pham, Claire Montgomerie, Dennis Iverson, Nancy Hardy

1.0 WELCOME/PLEDGE/ACKNOWLEDGEMENTS

1.1 Mayor Kelvyn Cullimore opened the meeting at 7:05 p.m. and welcomed those attending.

1.2 Councilman Tyler led the Pledge of Allegiance.

1.3 Councilman Bracken introduced Youth City Council Member Hunter Derrick. Mr. Derrick currently serves on the Service Committee.

2.0 CITIZEN COMMENTS

2.1 Verl Buxton commented that the sidewalks in his area are in poor shape and had previously requested on several occasions that they be repaired and improved. He explained that they are high back curbs and some of the concrete has sunk and was promised in 2009 that the repairs would be made the following year, which did not happen. He believes the improvements are very important and said that work needs to be done on eight to ten corners in the vicinity of 7200 South and 3300 East.

Public Works Director Mike Allen noted that he is aware of the situation and explained that on average the City funds approximately \$50,000 for this type of improvement each year. Staff will inspect the area.

Mayor Cullimore stated that staff moves methodically through the City each year to make sidewalk and trip hazard mitigation improvements and sometimes it is a matter of prioritizing the areas that need the most attention.

3.0 PUBLIC HEARING

3.1 **Public Hearing to Receive Input on a Request for Disconnection from Cottonwood Heights by Petitioners who Own Property Located at Approximately 3931 East Big Cottonwood Canyon Road ("Tavaci").**

3.1.1 **MOTION:** Councilman Bracken moved to open the public hearing to receive input on a request for disconnection from Cottonwood Heights by petitioners who own property at approximately 3931 East Big Cottonwood Canyon Road. The motion was seconded by Councilman Thomas and passed unanimously on a roll call vote.

- 3.1.2 Mayor Cullimore explained that the purpose of the public hearing part of the requirement for disconnection of property from the city. State law allows a property owner to seek disconnection from the city in certain circumstances. The statute requires the filing of the petition for disconnection; appropriate noticing; and the scheduling of a public hearing by the city. The public hearing will now be held after which time the city has 45 days to make a decision on the disconnection petition before them. Mayor Cullimore noted that the development of the Tavaci project is not the topic of the discussion, and the discussion should focus on the petition to disconnect and how it may impact the city.

Mayor Cullimore stated that an item on the County Council Agenda regarding a formal resolution to support the city on the disconnection petition. A letter was signed by five members of the County Council supporting the city. A vote was taken on the proposal by the Council and the final vote was 5-4 not to support a formal resolution of the Council. The County Council instead gave direction that individual council members would be allowed to express their positions as they relate to the disconnection of the Tavaci property into the County. The letter was read and made part of the record. The Mayor reported that emails were also received from two other County Council Members who did not sign the above-referenced letter, but offered their own views. Councilman Wilde was not in favor of the disconnection petition and considered it an issue to be resolved by Cottonwood Heights and the developer. His preference was to leave Salt Lake County entirely out of the discussion. If the disconnection were to occur, he is predisposed to oppose any development of the Tavaci property that would conflict with the desires of Cottonwood Heights City officials as those desires have been made known through public hearings. Councilman DeBry also submitted written comments and emphasized his belief in local control of zoning issues. If Cottonwood Heights' elected officials believe a rezone of the Tavaci development to be inappropriate, he would not favor rezoning the property even if the developer successfully disconnected from the City. The City also received a written statement from Save Our Canyons opposing the proposed disconnection that was made part of the record.

- 3.1.3 Bruce Baird, legal counsel for the petitioner, discussed the process, standards, and substance. He stated that he believes that the requirements pertaining to Statute 501 have been met. He addressed Statute 502 and saw no reason to doubt the viability of the disconnection property. With regard to standards 3(c)(i) and (ii), the questions are whether the disconnection would leave the City with an area that would make it financially unfeasible and uneconomic to operate. He doubted that a serious argument could be made that the disconnection will financially wound the City given the tax revenues that are generated currently from the property versus the public spending generated by the project. He remarked that there will be no impact on the community under the viability standards. Mr. Baird next referenced 3(c)(iii) and stated that there is no doubt that the subject property is not an island as defined because it is attached physically to properties that are already part of the unincorporated county. He considered the real issue to be justice and equity, which is their burden to prove. If they fail to meet the burden to the City, the District Court will make the determination. Mr. Baird referenced a recent case on the meaning of "justice and equity" involving a disconnection that occurred in Bluffdale City. In that case Judge Quinn found the following three factors to support his decision: (1) Undeveloped land has historically been found to be appropriate for disconnection; (2) Bluffdale's zoning and planning process, as applied to South Farm, reflect unreasonable delay and arbitrarily changing standards; and (3) Bluffdale's current political environment precludes an orderly development process. Mr. Baird contended that all three of those factors exist in this case.

Mr. Baird discussed each of the three factors: first, he believes the land is essentially undeveloped in the terms met by Judge Quinn and the Supreme Court; second, he believes the arbitrary changing of standards has been established in the petition by the length of time it took the City to consider the CRR Zone, and in addition, the ad hoc citizens committee that was formed did nothing but stall and delay for several years. Other delays were described which culminated in the developer demanding a hearing. Mr. Baird discussed the SLEDs ordinance that metastasized into something that is internally inconsistent and violates numerous provisions of both the state and federal constitutions. The political environment was described which shows that the Council is being driven and controlled by the “anti-growth movement”.

Mr. Baird said he was not aware of who provoked the County Council into writing the letter Mayor Cullimore read into the record, but believes it contains numerous factual errors. Mr. Baird next claimed that the City has been engaged over the course of several years in illegitimate planning processes, which is the reason they are disconnecting. He stated that justice and equity require disconnection if and when the process is arbitrary, unreasonable, delayed, and precludes an orderly development. He stated that if the request is denied they will file suit and suggested that the several hundred thousand dollars the City will spend on legal fees would be better spent to benefit the citizens of Cottonwood Heights.

- 3.1.4 Mayor Cullimore asked Mr. Baird to explain how the road fits into the disconnection petition since geographically it is not within the boundaries.

Mr. Baird stated that part of it is within the boundaries and part is not. It does not affect the petition whatsoever because they meet all of the statutory qualifications. They are disconnecting the portion of the road that is in the development. The possibility of disconnecting everything to the northeast of the road was also determined to be a possibility but was not specifically requested in the petition.

- 3.1.5 Chris Hogle, attorney for Roger Kehr, spoke on behalf of Mr. Kehr, a property owner. Mr. Hogle also submitted a letter to the Council, which was made part of the record. He stated that Mr. Kehr opposes the disconnect petition and the development plan that it espouses. The lynch pin of the disconnect petition is the speculation that Salt Lake County will welcome the petitioner’s development plan and adopt it when all indications are to the contrary. The County established the current zoning on the property and those standards have not changed since the property became part of the City. The county established the plan and a majority of the county council members have gone on record denouncing the disconnect petition. Mr. Kehr wants to build a home on his property in accordance with the development plan in effect.

Mr. Hogle stated that the petition tries to portray a dysfunctional rezone process, but fails to do so. The petition’s version of events as set forth, lacks credibility and makes no sense. According to the petition, the City never wanted to rezone the area and it embarked on a two-year charade to delay and stall the petitioner. In addition, a person would have to believe that the developer was unsophisticated and oblivious, neither of which is true. The City initiated a process recommended by the Planning Commission, but which was disfavored by members of the City Council. That disfavor was expressed to the developer along with the reasons. A process was then undertaken to try to improve the proposal. Mr. Hogle stated that if the City really wanted to defeat the proposal it did not need to embark on the two-year charade alleged in the petition since it was the City’s own plan and could have been shelved. If the process was taking too long for the petitioner, he could have evoked a readily available mechanism in the form of a rezone application and would have taken much less time to complete than the disconnection petition. He said the petitioner chose not to do that and is in no position to claim that the City’s rezone process is dysfunctional because they did not evoke that administrative remedy.

Mr. Hogle said that no inequity or injustice was demonstrated in the petition, but there is inequity and injustice on the Petitioner's part. He noted that Mr. Kehr owns a lot in the Tavaci development and he has concerns about how the development has been neglected. Mr. Kehr in turn made his own request through his own claim to get the development properly maintained. The developer has instead stonewalled and has refused to meet with Mr. Kehr and his counsel stating that their claim was not specific enough. He explained that the CC&Rs specify that it is only necessary to articulate the nature of the claim, which was done. In addition, the developer forced through a resolution to have the homeowners' association support the disconnect petition, however, the only member present at the meeting who is authorized to vote was Mr. Kehr who voted no. Mr. Hogle stressed that as it stands, the homeowners' association does not support the disconnect petition.

- 3.1.6 Claire Geddes addressed the process that Mr. Baird claimed was so onerous and unfair to them and reminded Mr. Baird that the process began as a backdoor route by one councilman who went around the City Manager. The developer did not follow the process and got caught which rightfully outraged the public. Ms. Geddes observed that Mr. Baird was offended that citizens get to give comment. Ms. Geddes said it was ridiculous for him to claim that he was treated unfairly and instead thought it was the citizens who have been mistreated. There was public outrage and large crowds have expressed the opposition at public meetings and have made it clear that they want some control over how the City grows. Ms. Geddes stated that the development has only one access that is on a canyon road yet the developer claims it will have no impact on the residents which she considered to be pure fantasy. The development will disadvantage the City when they have to maintain the roads and assume the liability. Ms. Geddes encouraged the Council to deny the petition. She also commented that she considered the money spent on legal counsel was the best spent since it will protect something the City will never get back if the development goes through.
- 3.1.7 Abey Beragoshi stated that last time he addressed the City Council he was a lot owner. Since that time, Mr. Kehr purchased the lot from him. He believes Mr. Diehl's main mistake was being greedy. Mr. Baird threatens lawsuits yet the developer is forcing themselves on other residents in the area. Mr. Beragoshi stated that he stands to lose an additional \$200,000 if the deal goes through because he still has a deal with Mr. Kehr to build a house. He stated that the Council has done a very good job and it would be a nightmare to have an emergency there when the canyon is closed and traffic is backed up. He urged the Council to deny the request and offered to donate to the legal costs because he believes it what the City is doing.
- 3.1.8 Will McCarvill said he does not want this development set a precedent for "zone shopping". There are other properties in the area that could potentially follow this same precedent, which would hurt the City. He pointed out that it is the city that will be most affected by the fate of this property and justice and equity require that the City control it and also dictate that developers who do not have the well-being of the community at heart should not be rewarded. There are recent examples of developers who have complied with the City plan and developed successfully.
- 3.1.9 Dennis Iverson, is familiar with the subject property and has observed how over time the county didn't seem to answer the questions and concerns of the residents. When the time came, he was very supportive of the City incorporating so that the citizens could be properly represented. Mr. Iverson has watched the property change along with ownership. He observed the approval of the private road orchestrated by Randy Horiuchi and Terry Diehl, which he found shocking and which led to very little trust. He explained that he has not commented in the past because he felt the city had given proper consideration to the matter. Mr. Iverson feels that the idea of the disconnect is wrong and the property should remain part of the city.

- 3.1.10 Mark Macklis remarked that Mr. Baird takes a different view of citizen involvement and he commended the Council for their efforts. He considered the process to be a great success in that public comments were taken into consideration prior to the Council making its decision.
- 3.1.11 Tobin Atkinson thanked the Council for their efforts and encouraged them not to support the disconnect petition. He commented that the developer “changed the game” part-way through and back door machinations were revealed that the community wanted to address, which slowed down the process. Mr. Atkinson felt that a “bait and switch” tactic is being used by the petitioner who came in with a plan and then changed the plan. He expressed appreciation to the Council for taking the time to carefully review the request. Mr. Atkinson felt the property should be developed on the community’s terms with the developer.
- 3.1.12 Verl Buxton recommended the Council consider granting the request on the condition that the developer pick up the property and move it out west. He stated that there are many dead trees on the property that have never been cared for.
- 3.1.13 Bob Jacobs felt the process has worked and is the reason the City incorporated. He also was pleased that the county council members are supportive.
- 3.1.14 Bruce Baird stated that he feels that public clamor was involved in the decision. He also contended that slanderous remarks were made by members of the public. He said that the negative comments made about Mr. Diehl prove how dysfunctional the process has been. Mr. Baird claimed that Mr. Hogle’s comments about the CC&Rs and voting are false, and stated that Mr. Diehl owns the vast majority of the lots and whether he is voting as the developer or the lot owner. He noted that Mr. Kehr bought the property with full knowledge of what was happening. In addition, Mr. Beragoshi admitted in his testimony that Mr. Kehr bought the property with a worthwhile intent, which is to use the one lot as a bargaining chip to stop the development. He said that the delay on Mr. Diehl’s part was due to his trust in the city. Mr. Baird also commented that Mr. Hogle was wrong about the county’s approval being the lynch pin.
- 3.1.15 Ms. Geddes objected to Mr. Baird characterizing the public as a lynch mob and her of character assassination.
- 3.1.16 Mayor Cullimore stated that the Council will take all comments under advisement. The record will remain open if there are individuals that would like to make additional written comments. He noted that is the intent of the City to act within the statutory requirement of 45 days and make a decision at the first meeting in November.

4.0 **CONSENT CALENDAR**

4.1 **Approval of September 13, 2011 Minutes**

- 4.1.1 The minutes stood approved.

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

- 5.1 **MOTION:** Councilman Thomas moved to adjourn the business meeting and reconvene the work session. The motion was seconded by Councilman Tyler and passed unanimously on a roll call vote. The business meeting adjourned at 8:12 p.m.