

MINUTES OF THE CITY COUNCIL MEETING HELD MAY 22, 2007, AT 7:15 P.M., IN THE  
COTTONWOOD HEIGHTS CITY COUNCIL CHAMBER

MEMBERS PRESENT: Mayor Kelvyn Cullimore, Councilman Don Antczak, Councilman Scott Bracken, Councilman Gordon Thomas

EXCUSED: Councilman Bruce Jones

STAFF PRESENT: City Manager Liane Stillman, City Attorney Shane Topham, Deputy City Manager Kevin Smith, Public Relations Specialist Bob Warnick, Planning Director Michael Black, City Treasurer Gary Harmer, Finance Director David Muir, City Engineer Brad Gilson

OTHERS PRESENT: Keith Biesinger, Judi Kilgore, Alan Brown, Wendy Henderson, Teresa Campbell, Kevin Campbell, Martin Stevens, Jean Stevens, Sue Gray, Sharee Dayley, Curt Gray, Shiljue Tanmoham, Doug Shelby, John LeBaron, Kim Fisher, Shane Peterson, Cyle Buxton, Bob Evans, Rebecca Reese, Mr. Lindsey, Zach Ellingson, Dan Bartlett, Corbett Ford Mike Watson, Robby Russo, Scout Troop 708

1.0 **WELCOME/PLEDGE OF ALLEGIANCE**

1.1 Mayor Cullimore called the meeting to order and welcomed those attending.

1.2 The pledge of allegiance was led by Zach Ellingson, Senior Patrol Leader, Scout Troop 708..

2.0 **CITIZEN COMMENTS**

2.1 Ken Brady, explained to the Council why he continues to take his neighbors' fence down. He presented his information to the Council noting that he has paid property tax for the past 15 years on the subject property.

Lt. Russo stated that the Sheriff's office has been dispatched to this address on several occasions because of threats being made. He stated that it is his position that the boundary dispute is civil in nature and should be resolved using the civil process.

3.0 **REPORTS/PRESENTATIONS**

3.1 **Unified Fire Authority Report**

3.1.1 Chief Watson presented the April fire report. The month closed with 144 medical runs compared to 166 in 2006; and 55 fire calls compared to 95 fire calls in 2006. Chief Watson reminded residents that spring is here and there is more pedestrian traffic. He encouraged people to stay away from river banks because mountain rivers and streams are flowing at faster rates and higher volumes. The grass fire season has begun and there has been one grass fire in Cottonwood Heights.

The customer service messages for Station 110 and 116 were reviewed.

**3.2 April 2007 Financial Report Dave**

3.2.1 Finance Director, David Muir reviewed the April financial report. He noted that the City is nearing the end of the fiscal year and expenditures are under budget. He pointed out that the third quarter payment of the franchise cable tax revenues has been received and is at 88% of budget.

**3.3 April 2007 Public Works Report**

3.3.1 Deputy City Manager Kevin Smith reported on the pavement work east of 2700 East and Fort Union, noting that Creek Road and Bengal Blvd will be chip sealed before the end of June. The 2300 East projects will be completed in the next two weeks.

3.3.2 Mr. Smith said that the Old Mill Pond is in the preliminary stages and core testing will be done tomorrow on the embankments to see what type of material the City will be dealing with. The testing is critical to the design of the pond.

**4.0 ACTION ITEMS**

**4.1 Consideration of Ordinance No. 84 Amending the General Plan (a/k/a Hog Wallow General Plan Amendment)**

4.1.1 Planning Director Michael Black reviewed the subject property and gave a brief history of the zoning in the area. The applicant, Keith Biesinger, is requesting a change from R-1-8 to Neighborhood Commercial (NC) in order to bring his business into compliance and expand the use. Staff recommended denial of the application based on an inability to show that an expansion can be accomplished without jeopardizing the public interest. Mr. Black stated that there is not enough room to buffer any more than what exists at this time; additional parking would be required and could create additional problems.

4.1.2 Keith Biesinger, applicant, asked the City Council to override the Planning Commission's March 2007 denial and follow the Planning Commission's 2005 recommendation that the Hog Wallow property be zoned Neighborhood Commercial. The issue before the Council is whether an individual's property rights can be disregarded simply because a minority of the adjacent property owners find the use of the property as a neighborhood bar offensive. He stated that under Section 19.88.070 and 19.88.090 a property owner has the right to enlarge or move a nonconforming building subject to the approval of the Board of Adjustment and has the right to change a present use to any of the conditional uses permitted under the Neighborhood Commercial Zone subject to approval of the Planning Commission.

Mr. Biesinger said that under the County's zoning ordinance there were many permitted uses available that did not require public comment and a large number of conditional uses that did require public comment. Under Cottonwood Heights' zoning ordinance he is allowed no permitted uses and only 25 conditional uses, all of which require public comment. The low density residential zoning adversely affects the marketability and market value of the property raising the specter of an adverse condemnation suit against the city. The neighbors within the 500 foot radius requirement can be categorized into those that oppose any change in the present use of the Hog Wallow property; those who would be delighted for a change of any commercial use other than a bar and those who are indifferent. He believes the complaints will continue whether or not Hog Wallow is rezoned or left with the present zone. Mr. Biesinger said that

rezoning the Hog Wallow property to Neighborhood Commercial reflects its 60 year history as a commercial use and will alleviate the potential of an inverse condemnation action against the City. It would also provide notice to future buyers into the Old Mill Estate that they are moving next to a neighborhood bar as allowed under the City's NC zone.

4.1.3 Councilman Bracken asked what the worse case scenario for the NC zone would be.

Mr. Black said there could be an expansion with another floor, and if the applicant found a way to get more parking on site, the current structure could be taken down and replaced.

4.1.4 Mayor Cullimore opened the public comment.

4.1.5 Shafique Jonmohamed, stated that he recently purchased a home in the Old Mill area and feels that the traffic in the area is bad, especially on Saturday. He agreed with the denial of the request and does not want to see further expansion.

4.1.6 Allen Brown, Old Mill resident, stated that he is opposed to the rezone of the property and the bar because of the traffic, the noise and the smoke.

4.1.7 Shaun Campbell, resident east of the bar, told the Council he is not able to enjoy his back yard because of the noise. He said that the language is offensive, there is litter, and safety is an issue because of the lack of street lights. He expressed opposition to the permit.

4.1.8 Kurt Gray, neighbors, said that they are not adverse to the bar, but are concerned about the traffic and parking in the area. There are no street lights and litter is a problem.

4.1.9 Sue Gray, neighbor, stated that she does not object to the bar, but does object to the fact that there is not enough parking.

4.1.10 Judy Kilgore, asked the Council to deny any expansion of the bar. She stated that she does not mind it being there, but has issues with the trash, traffic, noise and smoke. She stated that she is not comfortable with the clientele that frequent the bar.

4.1.11 Doug Shelby, passed out photographs of the bar from 1927, and said that maybe the subdivision next to the bar should not have been approved. Mr. Biesinger has fixed up the bar and it is much improved. Mr. Shelby said he would like to see some consideration given by the City, that if Mr. Biesinger can improve some of the problems, especially the sound, that they work with him and that if it is in the public interest to restructure the building it should be considered. He believes it is wrong for the City not allow him to improve the building if he is willing to put the money into it.

4.1.12 Sherry Daily, area resident, said that she does not have a problem with the bar, but parking is inadequate and she does not want to see any more building done.

4.1.13 Bob Evans, stated that Mr. Biesinger has done great improvements to the property. He said there are problems with parking, but it is only occasional.

4.1.14 Mayor Cullimore stated that while there are issues, they are not all attributable to what goes on at the Hog Wallow. He pointed out that what is before the City Council, is not a zone change, but a

request for a change to the General Plan which if approved would allow Mr. Biesinger to apply for a zone change.

- 4.1.15 Mr. Biesinger stated that he is cognizant of the complaints. He explained that he uses a decimeter after 10:00 p.m. to make sure the noise does not exceed 50 decibels. He said that everyday after 3:00 p.m. an employee picks up garbage from the top of the subdivision to the bridge. He stated that when he made his presentation to the homeowners' association he was surprised at the animosity and realized that there is nothing he can do to make the homeowners in the area happy.
- 4.1.16 Shane Peterson, Old Mill Estates, expressed concern with the traffic in the area. He explained that the road winds, and as the traffic grows there could be more serious accidents. He asked the Council to prevent further expansion of the property.
- 4.1.17 Kyle Buxton, lives above the subdivision and remembers when it was vacant. He said that every one of the people in the room knew what they were moving next to and believes in property rights as one of the fundamental liberties of this Country. Mr. Biesinger was there first, and if these people did not like it, they did not have to move there and they can surely move elsewhere. He said there are probably many people that run businesses out of their homes in this subdivision and Mr. Biesinger probably hasn't complained about any of the businesses, or any of the family parties that they have at their houses. If he is willing to spend the money to improve his business the Council should work with him.
- 4.1.18 Mayor Cullimore stated that there is no question that Mr. Biesinger has made significant efforts to try and be a good neighbor. He asked the City Attorney if there is a vehicle by which Mr. Biesinger could make improvements to the property that did not increase the intensity of the use, but that could enhance the operation and address some of the issues without a zoning change or general plan amendment.

City Attorney Shane Topham said that reasonable improvements can be made to the extent that they do not increase the detrimental impact on the surrounding neighborhood of the nonconforming use.

- 4.1.19 Councilman Bracken asked if it makes a difference whether the zoning is Neighborhood Commercial or nonconforming when looking at possible future plans by the Planning Commission.

Mayor Cullimore explained that if there is a zone change to Neighborhood Commercial there are certain conditional uses that run with that zoning, that under the new LUDMA laws would make it more difficult to challenge future uses of that property beyond what it is now. The entitlements that would go with a rezoning that might be applied for if the general plan were amended, would have some impact on what the Planning Commission could or could not do as far as regulating what happens on that property in the future.

- 4.1.20 Mr. Black said the expansion of a nonconforming use is permitted. He stated that he will meet with Mr. Biesinger if he would like.
- 4.1.21 Mayor Cullimore expressed appreciation to the applicant for being a good business owner in the community, and trying to be sensitive to the needs of the citizens around the business. He encouraged the applicant to continue working with the City and the neighbors. He stated that he

has a concern about amending the general plan because of the door it opens for future zoning which could lead to greater intensity of use on the property.

- 4.1.22 Councilman Thomas agreed with Mayor Cullimore's comments and expressed concern about changing the general plan.
- 4.1.23 Councilman Bracken agreed with the comments made by the Mayor and encouraged Staff to work with Mr. Biesinger.
- 4.1.24 Councilman Antczak commented that the nonconforming use is not very popular with most individuals and he is sympathetic to this situation. He asked the applicant to work on mitigating those issues that are offensive.
- 4.1.25 City Manager Liane Stillman stated that the applicant also leases the Holladay Gun Club and she has had numerous occasions to deal with him. He has always been accommodating and helpful, and a total gentleman to work with.
- 4.1.26 The ordinance failed for lack of a motion.

4.2 **Consideration of Ordinance No. 85 Amending the General Plan (a/k/a City-Initiated General Plan Amendment)**

- 4.2.1 Planning Director Michael Black reviewed the subject properties. This is a city-initiated General Plan which gives the City a chance to fix problems in the General Plan. There are four areas involved:

**Area 1: from 6723 South to 6855 South on 1300 East:** This area includes all of the properties that front onto 1300 East, some of which are residential and some of which are commercial. The current General Plan designation is Regional Commercial which is much too intense for the properties and does not provide the buffering that is required. Staff is recommending a General Plan amendment to the Mixed Use designation which would allow for the Mixed Use, Neighborhood Commercial, and Residential Office zones which is more compatible with the adjacent low density residential uses. The Planning Commission recommended approval.

- 4.2.2 Mayor Cullimore asked for public comments relating to this area. None were received.
- 4.2.3 **Area 2: from 7369 South Creek Road to 7425 South Creek road including 7269 South Union Park Avenue and 7335 South Union Park Avenue:** This area is an identical situation to the first area. Staff and the Planning Commission recommended that the General Plan be changed to Mixed Use for this area to offer increased buffering.
- 4.2.4 Mayor Cullimore asked for public comments relating to this area. None were received..
- 4.2.5 **Area 3: 6748 South Big Cottonwood Canyon Road;, 6851 South Big Cottonwood Canyon Road, and 6694 South Wasatch Blvd.:** This is similar to the first two areas. The current zone is R-1-8 and the current General Plan designation is Low Density Residential. Staff is recommending Residential Office for this area because of the traffic principals, buffering, access; and to be consistent with past General Plan and Land Use maps that were in place in this area.

- 4.2.6 Mr. Black reviewed several residential office buildings which are created to buffer low density residential developments from busy streets and non-compatible commercial uses.
- 4.2.7 City Engineer Brad Gilson reviewed the traffic that would be generated with residences and with Residential Office development. The Residential Office allows access management, which consolidates all of the access onto Big Cottonwood Canyon Road onto a single access point, or perhaps two points.
- 4.2.8 Mayor Cullimore asked for public comments relating to this area..
- 4.2.9 Sue Gray stated that she would be in favor of residential development in this area.
- 4.2.10 A resident of Old Mill Estates said that he would like to see as little commercial as possible and questioned why the Planning Commission rejected the proposed General Plan amendment originally. He would prefer to have this area as a park.
- Mayor Cullimore noted that this is private property and to make it a park is only an option if someone wants to purchase the property for that purpose.
- 4.2.11 Teresa Campbell, said that she loves to walk along creek and would support commercial development because it sounds like if the development were to be commercial it would allow a more natural park feel. .
- 4.2.12 Doug Shelby, Walker Development General Partner, stated that they pay the taxes on the property and will have some use for it in the future. He believes that this proposal would have received a positive recommendation from the Planning Commission if they had seen the presentation that was given tonight. He stated that the Residential Office would be good because it would maintain openness. He stated that he can work with the City to make a very nice trail and blend it with parking and plantings. There would be shared access points and shared parking.
- 4.2.13 Dave Clark, Old Mill Estates, said that there are 16 conditional uses under the Office Residential zoning and four of them could potentially be opened 24-hours a day. He said a park would create a better buffer zone than the residential or the Residential Office. He voiced opposition to the change.
- 4.2.14 Kurt Gray said the lesser of two evils may be the commercial, and suggested that the City take a lesson from communities that are forward thinking such as Irvine, CA which incorporates commercial along with residential. He believes vehicle count is greatly underestimated with the Residential Office.
- 4.2.15 Judy Kilgore, expressed concern about the traffic in the area which she believes is becoming dangerous. She said that Big Cottonwood Canyon Road is a dangerous road and urged the Council to look at the big picture.
- 4.2.16 Allen Brown, said he purchased his house because the area looked almost like a park. He suggested buffering Cottonwood Heights from Holiday because they have caused major havoc in their area. He expressed opposition to any changes in this area and suggested this area be kept as a wilderness.

- 4.2.16 Keith Biesinger said that in 1988 he and Kelly Thomas bought the Hog Wallow property and the zoning was Forestry – 5 acres and none of the giant ugly houses were there. He said the silent majority is getting no credit. There are 88 families that live in the area and those attending tonight do not have a right to speak on everyone’s behalf.
- 4.2.17 Wendy Henderson, said there is no park-like look along the trail on Doug Shelby’s property, it is dilapidated and his past has not shown anyone that he likes park space. She stated that the General Plan should not be changed.
- 4.2.18 Councilman Antczak said it would be difficult to develop a PUD on the subject property because of the narrowness.
- 4.2.19 City Manager Liane Stillman, explained that this is a city-initiated plan so that the City can accommodate the use of the \$2 million in grants it has received to build a trail, and of which this neighborhood will be the main beneficiary. She explained that the City will cross in front of the Old Mill at a straight-away site where there is high visibility. The long term plan is to have the trail on the north side of the creek where there are no residential homes at this time. The plan is phased with the initial phase to include landscaping as part of the project and the existing segment can be enhanced and beautified to create a vibrant area.
- 4.2.20 Councilman Antczak said that if he had his way the valley would still be open with no houses in the area. He said that everyone would like to see the property remain open space, but it is not feasible for the City to purchase it. He believes that the recommendation from the Planning Director is the least impact to this area.
- 4.2.21 Mayor Cullimore stated that he does not discount the possibility of turning the property into a park one day if the money is available and if the City felt it was consistent with an over all plan. He explained that the traffic patterns associated with a Residential Office zone would be complimentary to the neighborhood traffic patterns and would avoid the potential of 15 accesses onto the subject property. The City wants to observe the flood plain and believes that the open space issue is better addressed with Residential Office than Residential. He stated that he is inclined to approve the General Plan amendment but expressed concerns about the Planning Commissions’ recommendation to deny the amendment, but would vote in favor of it if asked.
- 4.2.22 Councilman Thomas noted that a parks master plan study is going to be done.
- 4.2.23 Mayor Cullimore pointed out that the City’s intent when they adopted the General Plan was not to change anyone’s property from what it was before the City incorporated. This property was overlooked, and the City is returning it to what was anticipated in the General Plan prior to incorporation.
- 4.2.24 This item will be continued for three weeks to gather additional information from the Planning Commission.
- 4.3 **Consideration of Ordinance No. 86 Adopting Title 2 “Governance and Administration,” of the Cottonwood Heights Code**
- 4.3.1 Mayor Cullimore stated that the Council spent months reviewing the proposed ordinance which is now ready for adoption.

4.3.2 **MOTION:** Councilman Bracken moved to approve Ordinance 86 adopting Title 2 of the Cottonwood Heights Code. The motion was seconded by Councilman Thomas and passed unanimously on a roll call vote.

4.4 **Consideration of Ordinance No. 87 Establishing Temporary Zoning Regulations for Short-Term Rentals**

4.4.1 City Attorney Shane Topham explained that this is a temporary zoning regulation for up to six months that the Council can pass if it finds a compelling public interest, without a public hearing or input from the Planning Commission. He stated one of the concerns with the current short-term rental ordinance is that people will be inclined to turn basement areas without safety egresses into bedrooms to maximize the occupancy of a rental, parking and other safety issues. It is intended to limit the number of total occupants of a short term rental and to make sure the bedrooms are truly bedrooms that comply with the standards under the IBC.

4.4.2 **MOTION:** Councilman Antczak moved to approve Ordinance No. 87. The motion was seconded by Councilman Bracken and passed unanimously on a roll call vote.

4.5 **Consideration of Resolution No. 2007-24 Appointing Kevin Cromar as Chair of the Historic Commission**

4.5.1 Councilman Thomas moved to approve Resolution No. 2007-24 appointing Kevin Cromar as chair of the Historic Commission. The motion was seconded by Councilman Bracken and passed unanimously on a roll call vote.

4.6 **Consideration of Resolution No. 2007-25 Approving a Civil Legal Services Agreement with Wm. Shane Topham**

4.6.1 Councilman Antczak moved to approve Resolution No. 2007-25 approving an agreement with Shane Topham for Civil Legal Services. The motion was seconded by Councilman Thomas and passed unanimously on a roll call vote.

5.0 **CONSENT CALENDAR**

5.1 **Approval of May 8, 2007 Minutes**

5.1.1 The May 8, 2007 minutes were approved as submitted.

6.0 **ADJOURN BUSINESS MEETING AND RECONVENE WORK SESSION**

6.1 **MOTION:** Councilman Antczak moved to adjourn the business meeting and reconvene the work session. The motion was seconded by Councilman Bracken and passed unanimously on a voice vote. The business meeting adjourned at 9:55 p.m.