

MINUTES OF THE CITY COUNCIL MEETING HELD DECEMBER 19, 2006, AT 7:00 P.M., IN THE COTTONWOOD HEIGHTS CITY COUNCIL CHAMBER

MEMBERS PRESENT: Mayor Kelvyn Cullimore, Councilman Don Antczak, Councilman Bruce Jones, Councilman Gordon Thomas

EXCUSED: Councilman Scott Bracken

STAFF PRESENT: City Manager Liane Stillman, City Attorney Shane Topham, Deputy City Manager Kevin Smith, Finance Director David Muir, Public Relations Specialist Robert Warnick, Planning Director Michael Black

OTHERS PRESENT: Mike Watson, Robby Russo, Corbett Ford, Dan Bartlett, Geri Douglas, Chuck O'Brien, John Gust, Don Machin, Mark Johnson, Bob Good, Ron & Deb Wolthius

1.0 WELCOME/PLEDGE/ACKNOWLEDGEMENTS

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

1.2 The Pledge of Allegiance was led by Councilman Gordon Thomas.

2.0 CITIZEN COMMENTS

2.1 Don Machin told the Council that he would be attending the meeting at the Cottonwood Heights Recreation Center regarding a proposed tax increase and questioned whether the Recreation Center had asked the City for money in the last six months.

City Manager Liane Stillman said that the City made a contribution to a golf tournament and one to a bike race as sponsors of the events. She also noted that the City has a contract with Cottonwood Heights Parks and Recreation for maintaining City facilities.

Mr. Machin said the tax increase represents 75% of the City and many elderly people live in the area that cannot afford any increases.

3.0 REPORTS/PRESENTATIONS

3.1 Presentation of Audit Report for FY06

3.1.1 Geri Douglas, Larson & Co., presented the audit report for 2006. Larson and Co. has audited the financial statements of Cottonwood Heights in accordance with generally accepted auditing standards and believes the financial statements are presented fairly in all material respects. The financial statements are presented in two formats, the government wide financials which resemble traditional statements provided in business and a fund financial statement with each fund being broken out by revenues and expenses in traditional government accounting formats. The net assets of the City totaled \$47,187,000 which was an increase from last year of \$2.1 million. The majority of the assets are invested in capital assets such as the roads and infrastructure. Government auditing standards require the auditor to report on compliance and internal control. There were no instances of non-compliance in the audit testing and no material weaknesses in internal control. Furthermore, there were no management recommendations. She commended staff on excellent work.

3.2 **November Financial Report**

3.2.1 Finance Director David Muir reviewed the November financial statement. He noted that there was an agreement with Salt Lake County on the final reconciliation of sales tax and the City should be receiving a check for \$161,000. Sales tax is strong and business licensing will pick up in the next three months. He mentioned that the City does not have any DUI credits and Gary is trying to find out why. He also reviewed the adjustments that were made to the original budget in October and November.

3.3 **Unified Fire Report**

3.3.1 Chief Watson presented the November 2006 fire report. There were 150 medical calls and 67 fire calls, which is down from a year ago. He reviewed the safety message for this month reminding people to monitor their Christmas trees to ensure the needles are not drying out and causing a fire hazard. He noted that chimneys need to be inspected annually and cleaned when necessary.

3.3.2 Chief Watson reviewed the customer service message for Station 110 and Station 116. He also introduced Captain George Painter and the crew from Station 116; Engineer Matt Wyatt who is filling in for Chris Cage; and Jo Loader, Station 110.

3.4 **Salt Lake County Sheriff Report**

3.4.1 Detective Corbett Ford reviewed the statistics for the month of November. He reviewed the 2005-2006 reportable and non reportable accidents along Highland Drive from Fort Union Blvd. to Bengal Blvd. There were 47 reportable accidents during 2005 and to date this year there have been 50 reportable accidents. Detective Ford was asked to try to pinpoint accidents at the intersection of 7205 South and Highland Drive for next month's report.

3.4.2 Detective Ford reviewed the calls for service to White City. In 2005 there were 1206 calls for service resulting in 958 cases and to date this year there have been 1502 calls for service resulting in 1012 cases.

Mayor Cullimore explained that White City is not located within the Cottonwood Heights city boundaries, but is located within the boundaries of Sandy City. Since Cottonwood Heights has become a city it has been providing all of the police protection for that area. Beginning in January, Cottonwood Heights resources will no longer cover the White City area. Detective Ford will continue to track the backup provided by Cottonwood Heights to White City.

In Cottonwood Heights there were 912 calls for service resulting in 601 cases in the month of November. He noted that the calls for service decreased and the number of cases increased. Assaults jumped from 8 in October to 22 in November; and there was a decrease in family offenses and damaged property.

3.4.3 Detective Ford reviewed the case of Cody Spafford, who stole his father's car and abandoned a firearm during a foot pursuit with Sgt. Brenneman. The firearm was eventually recovered and was taken into evidence.

- 3.4.4 Detective Barttlet reviewed a marijuana arrest and a residential burglary case. Those involved in the residential burglary were sent to jail and a firearm was recovered. One of those involved will be charged federally due to previous convictions.
- 3.4.5 Councilman Thomas noted that Heath Lowry was publicly thanked for his help and support to a family involved in a fatal traffic accident.

4.0 ACTION ITEMS

4.1 Consideration of Ordinance No. 71 Amending Title 19 to Include New Chapter 19.18, “RR-1-29 – Rural Residential Zone”

- 4.1.1 Planning Director Michael Black explained that the proposed RR-1-29 zone is intended to be a transition zone between RR-1-21 and RR-1-43. The Planning Commission reviewed the ordinance and recommended approval to the City Council. Mr. Black noted that he received an email from Howard Norton opposing the zone change. (See attached).
- 4.1.2 Mark Johnson, homeowner representing the residents along Siesta Drive, believes that an intermediate zone is a step in the right direction, but does not agree with the specifics of the proposed zone. He said that the previous application for RR-1-21 zoning was reviewed by the Planning Commission and a recommendation was given to the City Council. He stated that in this case, it seems the Planning Commission step has been bypassed. The Planning Commission voted in favor of the zone, but did not address the specific issue of the Arbor application. He questioned if it was legal to hear the application at this City Council meeting. He believes the laws do not adequately protect the residents in the Meadows, the homeowners in the area, or the developer. He said that land developers that took an interest in this property had to pay top dollar, and now need top density to make it pay for itself. Mr. Johnson said that this situation has been adequately addressed in other states by requiring a conversion notice of 12-18 months for the residents that live in mobile homes.
- 4.1.3 Councilman Thomas stated that he is concerned with the lot area size. Section 19.18.040 states “To provide consistency with surrounding existing rural residential neighborhoods, new developments in the RR-1-29 zone shall, to the greatest extent reasonably possible, be organized in a manner that will allow the new development to match the physical context of the existing residential lots surrounding the new development, including, without limitation, locating the largest lots of the new development adjacent to the largest lots of the surrounding existing residential neighborhood.” He would like it changed to read “To provide consistency with surrounding existing rural residential neighborhoods, new developments in the RR-1-29 zone shall be organized in a manner that will allow the new development to be not less than the established zone of the adjacent neighborhood.” He said that this will give the Council something to measure by and asked them to consider this change.
- 4.1.4 **MOTION:** Councilman Thomas moved to amend Ordinance No. 71 by changing Section 19.18.040 to read: “To provide consistency with surrounding existing rural residential neighborhoods, new developments in the RR-1-29 zone shall be organized in a manner that will allow the new development to be not less than the established zone of the adjacent neighborhood.”

Second: The motion was seconded by Councilman Jones.

- 4.1.5 Councilman Jones said that some flexibility in a zone is appropriate and even though you can't always measure "what is reasonably possible" he would be concerned about the change.

Councilman Thomas said that there is flexibility and is concerned about what people will do in years to come.

Councilman Antczak said he has wrestled with this development as well as other development in the community because he has seen a real rural community destroyed by subdivision after subdivision noting if that development would not have happened many people would not be here today. He said that whether the lot size is ½ acre, ¾ of an acre, or one acre does not really matter because whatever is built on the property is not going to look like the rural area that is there now.

- 4.1.6 City Attorney Shane Topham said that in order to amend the ordinance, the amendment must be in writing before it can be passed. He asked if the proposal is to require one acre lots in a zone that has a 29,000 square foot minimum lot size.

Mayor Cullimore said the concept as he understands it is that there is a transition zone that can have half acre lots adjoining half acre lots, 1/3 acre lots adjoining 1/3 acre lots, and one acre lots adjoining one acre lots as long as the end result is not greater than the number of lots that would be allowed within that zone.

City Manager Liane Stillman questioned what would take precedence if a lot is adjacent to both a one acre lot and a ½ acre lot.

Mr. Black said that there is a potential problem with the wording. He questioned how the City could require one acre lots in a RR-1-29 zone which is contradictory to what the zone is established for.

- 4.1.7 Councilman Jones called the question. All voted in favor of calling the question.

Vote: The motion by Councilman Thomas failed on a voice vote.

- 4.1.8 **SUBSTITUTE MOTION:** Councilman Jones moved to approve Ordinance No. 71 as written. The motion was seconded by Councilman Antczak.

Mayor Cullimore said that this ordinance has been set up as a transitional zone to try and address the disparity between smaller and larger lots by establishing an average density of 1.5 units per acre which is consistent with the General Plan.

Vote: The motion passed on a vote of 3-1 with Councilman Thomas voting no.

- 4.2 **Consideration of Ordinance No. 72 Rezoning 19.57 Acres of Real Property Located at 1805 East Pelton Drive (7850 South) From RR-1-43 to RR-1-29 (a/k/a Meadows Rezone)**

- 4.2.1 Mayor Cullimore asked the City Attorney to address procedure as it pertains to this application.

City Attorney Shane Topham explained that the Planning Commission is a recommending body to the City Council. A rezone is a legislative decision and only the City Council can make legislative decisions. It is proper for a rezone that has been denied by the Planning Commission to go before the City Council for consideration. This is contemplated by the state statutes and City code. The City council can look at a recommendation from the Planning Commission and accept it, reject it, or modify it. He believes that this rezone is properly before the City Council for its consideration.

4.2.2 Ron Wolthius, adjoining property owner to the Meadows, stated that he believes that the proposed rezone of the subject property must go back to the Planning Commission because the application originally filed by Mr. Gust was for a rezone from RR-1-43 to RR-1-21. He said that the community has an interest in expressing their opinions with respect to this development under the new ordinance that was passed tonight. He said that in order to give the community adequate opportunity to address these issues and provide input to the Council, the Council is obligated to go back to the Planning Commission to address the rezone at another public hearing and enter their recommendations. He believes the Council is short-circuiting the system if it goes to a vote tonight.

4.2.3 Mayor Cullimore said that the Planning Commission held a hearing on this ordinance December 6th and recommended approval to the City Council. The City Council held a hearing on November 28, to discuss this ordinance and the possible rezoning of the property in question. In that meeting 1.5 units per acre was discussed and resolved. He said that Mr. Johnson questioned whether there was a requirement that the applicant go to the beginning of the process once the zoning ordinance is approved and reapply under the new zoning ordinance.

Mr. Topham stated that the Council has the ability to alter what the Planning Commission has done, and that this new tool is available as of passage of the last ordinance which enacts the RR-1-29 zone. He stated that if there is going to be dissatisfaction about the process then it is easily cured.

4.2.4 Mark Johnson, said that if this area is going to assume this zoning it would need to be with a set of conditions. When the Planning Commission first looked at the proposal to rezone from one acre to half-acre, they rejected the half-acre zone for this property. He attended the Planning Commission meeting where there was discussion and confusion on what was half way between a one acre lot and a half acre lot and without exception, every Planning Commissioner said that half way would be .75 acres and were then led down the path that it was between one and two units per acre which is .67 units per acre. He said that during that meeting the fact that the development is intended to be a PUD was never discussed. A PUD factors in the roads and open spaces when calculating density so a .67 zone ends up with an average lot size of .535 acre. He said that if this is passed there would need to be a set of conditions that the City is not obligated to the 1.5 units per acre, but is obligated to look at the stated objective of the zone.

Mayor Cullimore stated that the Planning Commission understood clearly what they were doing. When they reviewed this ordinance they knew there was particular applicability in this situation. There was almost a total acceptance of this ordinance by the Planning Commission. The fact that the applicant may apply for a PUD is a well-known concept and if they do apply under the City's PUD ordinance it would not happen the way Mr. Johnson has described it. Mayor Cullimore said

that the plans he has seen show .9 to one acre lots along Siesta Drive. He said that if the City were to go to a zoning of .75 acres instead of a density of 1.5 units per acre, there would be four fewer homes on 19 acres than what is possible under the RR-1-29 zone. In his opinion this would hardly be noticeable.

4.2.5 Councilman Antczak said the real factor in the development is the size of the lot frontage. He believes that the configuration that is being proposed shows that this is a transition zone and preserves the area.

4.2.6 City Attorney Shane Topham read UCA 10-9a-502 which states "The municipal legislative body shall consider each proposed land use ordinance and zoning map recommended to it by the Planning Commission, and after providing the proper notice, and holding a public meeting the legislative body may adopt or reject the ordinance or map either as proposed by the Planning Commission, or after making any revision the municipal legislative body considers appropriate."

Mr. Topham said that the City does not have a history of procedure and if the Council feels that citizens are dissatisfied with the procedure they can send the application back to the Planning Commission to go through the process.

Councilman Jones said that this property and this zone have had adequate opportunity for public comment and the notion of going back is not pleasing.

4.2.7 Mayor Cullimore asked what would be done if the application were sent back to the Planning Commission to make it absolutely defensible.

Mr. Topham said the applicant would amend his application for the new zone, a public hearing would be noticed before the Planning Commission, following the hearing the Planning Commission would act on the application under the RR-1-29 zone, and make a recommendation to the City Council who would then make its decision in a public meeting.

4.2.8 John Gust, Arbor Development, stated that the Council and Staff have been very cooperative. He wants to make sure it is done right and that no one is criticized for a premature vote. He said that they have tried to work with the residents and believe they have kept their word. He complimented the Mayor for the time and effort he has put in helping the residents of the mobile home park.

Mayor Cullimore asked if it is the intent of Arbor Development to have homes facing on Siesta Drive, not have a gate and not to have a wall.

Mr. Gust answered in the affirmative.

4.2.9 Mr. Black noted that Allen Packer and David Kezerian sent letters opposing the development (see attached) and Sharon Johnson, Craig Johnson and Bruce McMullin called expressing their support of the zone change.

4.2.10 Mayor Cullimore asked the developer what the negative impact would be if the application was sent back to the Planning Commission

Mr. Gust said that the people in the mobile home park cannot be noticed as planned.

- 4.2.11 Mr. Topham noted that he believes he is correct legally and Mr. Wolthius believes he is correct. He said that going through the process with the Planning Commission solves a potential legal issue and a political issue.

Mayor Cullimore stated that there was no formal recommendation from the Planning Commission to the City Council on re-zoning the subject property to RR-1-29 although he believed it was understood by the Commission to be applicable.

Mr. Topham explained that there is a recommendation on the application for the rezone to RR-1-21 which is a negative recommendation and is lodged before the City Council. The Council would be rejecting the Planning Commission's negative recommendation for rezoning to RR-1-21 and modifying it by imposing the RR-1-29 instead.

Councilman Thomas agreed with asking the applicant to reapply under the new zone.

Councilman Jones agreed with Mr. Topham that it is appropriate to act on the application and recommendation that is before the Council and to accept, reject or amend the recommendation. He stated he would not be opposed if others felt it better to renote the application.

Councilman Antczak stated that he is not opposed to renoting the application but his preference would be to move forward because there have been sufficient hearings on this item.

Mayor Cullimore recommended that the applicant reapply to the Planning Commission and recommended that this item be postponed. All agreed with that approach including the developer, John Gust.

4.3 **Consideration of Ordinance No. 73 Providing Additional Definitions and Clarifications to the Business License Fee Schedule**

- 4.3.1 Councilman Antczak stated that he does not agree that 40,000 square feet makes a business a "big box".

- 4.3.2 **MOTION:** Councilman Thomas moved to approve Ordinance No. 73 providing additional definitions and clarifications to the business license fee schedule. The motion was seconded by Councilman Antczak and passed 4-0 on a roll call vote.

4.4 **Consideration of Ordinance No. 74 Rezoning Approximately 0.18 Acres of Real Property Located at 6765 South 1300 East from R-1-8 to NC (Neighborhood Commercial) (a/k/a Stanworth Rezone)**

- 4.4.1 Planning Director Michael Black stated that the Planning Commission and Staff recommend approval of the proposed zone change.

- 4.4.2 **MOTION:** Councilman Antczak moved to approve Ordinance No. 74 rezoning 0.18 acres of property located at 6765 South 1300 East from R-1-8 to Neighborhood Commercial. The motion was seconded by Councilman Thomas and passed 4-0 on a roll call vote.

4.5 Consideration of Ordinance No. 75 Rezoning 0.25 Acres of Real Property Located at 7224 South Milne Lane From RR-1-21 to R-1-8 (a/k/a Kim Menzel Rezone)

4.5.1 Planning Director Michael Black stated that the Planning Commission and Staff recommend approval of the proposed zone change.

4.5.2 Councilman Antczak moved to approve Ordinance No. 75 rezoning 0.25 acres of property located at 7224 South Milne Lane from RR-1-21 to R-1-8. The motion was seconded by Councilman Jones and passed 4-0 on a roll call vote.

City Attorney Shane Topham noted that because the first rezone ordinance did not pass, the maps will have to be changed to reflect two zone changes instead of three.

4.6 Consideration of Ordinance No. 76 Establishing a Schedule for Regular Meetings of the City Council, Planning Commission and the Board of Adjustment for 2007

4.6.1 Councilman Antczak moved to approve Ordinance No. 76 which establishes a schedule for regular meetings of the City Council, Planning Commission and Board of Adjustment for 2007. The motion was seconded by Councilman Jones and passed 4-0 on a roll call vote.

4.7 Consideration of Resolution No. 2006-49 Approving a Purchase Agreement for Realty Located at 2399 East Bengal Blvd, Cottonwood Heights, Utah

4.7.1 City Attorney Shane Topham stated that the City is set to close on this property December 20, 2006, at 4:00 p.m.

4.7.2 **MOTION:** Councilman Jones moved to approve Resolution No. 2006-49 approving the purchase of property located at 2399 East Bengal Blvd. The motion was seconded by Councilman Antczak and passed 4-0 on a roll call vote.

4.8 Consideration of Resolution No. 2006-50 Approving a Purchase Agreement for Realty Located at 2385 Bengal Blvd., Cottonwood Heights, Utah

4.8.1 **MOTION:** Councilman Antczak moved to approve Resolution No. 2006-50 approving the purchase of property located at 2385 East Bengal Blvd. The motion was seconded by Councilman Thomas and passed 4-0 on a roll call vote.

4.9 Consideration of Resolution No. 2006-51 Approving an Interlocal Cooperation Agreement with Murray City Corporation for Power Pole Attachments

4.9.1 **MOTION:** Councilman Thomas moved to approve Resolution No. 2006-51 approving an Interlocal Cooperation Agreement with Murray City Corporation for power pole attachments. The motion was seconded by Councilman Antczak and passed 4-0 on a roll call vote.

5.0 CONSENT CALENDAR

5.1 Approval of November 28 and December 5, 2006 Minutes

5.1.1 The minutes were approved as amended.

6.0 **ADJOURN**

6.1 Councilman Antczak moved to adjourn the business meeting and reconvene the work session. The motion was seconded by Councilman Jones and passed unanimously on a voice vote. The business meeting adjourned at 9:35 p.m.

Approved:

Kelvyn Cullimore, Jr., Mayor

Don Antczak, Councilman

Scott Bracken, Councilman

Bruce Jones, Councilman

Gordon Thomas, Councilman