

**Tooele City Planning Commission
Business Meeting Minutes**

Date: Wednesday, August 11, 2021

Time: 7:00 p.m.

Place: Tooele City Hall Council Chambers
90 North Main Street, Tooele Utah

Commission Members Present:

Tyson Hamilton
Dave McCall
Melanie Hammer
Shauna Bevan
Matt Robinson
Paul Smith
Nathan Thomas
Weston Jensen

Commission Members Excused:

Chris Sloan

City Council Members Present:

Ed Hansen
Maresa Manzione

City Employees Present:

Andrew Aagard, City Planner
Jim Bolser, Community Development Director
Roger Baker, City Attorney
Paul Hansen, City Engineer

Minutes prepared by Katherin Yei

Chairman Hamilton called the meeting to order at 7:00 p.m.

1. Pledge of Allegiance

The Pledge of Allegiance was led by Chairman Hamilton.

2. Roll Call

Tyson Hamilton, Present
Dave McCall, Present
Melanie Hammer, Present

Shauna Bevan, Present
Matt Robinson, Present
Paul Smith, Present
Nathan Thomas, Present
Weston Jensen, Present
Chris Sloan, Excused

3. Public Hearing and Recommendation on the Proposed Ordinance 2021-22 An Ordinance of Tooele City Amending Tooele City Code Sections 7-26-1 and 7-26-2 Regarding the Conveyance of Water Rights for New Development

Presented by Roger Baker, City Attorney

Mr. Baker stated Utah owns all the water in Utah, but allows people to use it, or gives them the right to use it, hence the term “water right”. He stated dry water or paper water is referred to as water rights, because it tells you on paper what you can use. Wet water is a way to refer to a water source. He stated to measure water rights is in acre-feet. One acre-foot of water is the amount of water needed to fill a one-acre swimming pool one foot deep. The State of Utah requires four acre-feet of water to irrigate one acre of alfalfa, or a four-foot depth.

Commissioner Thomas asked what the time limit was on the acre-foot.

Mr. Baker stated the acre-foot limitation is per year, though some water rights are limited to, for example, April to September because that is when the water flows.

Mr. Baker stated the fifth amendment states the government cannot take someone’s property unless they pay for it, with just compensation. He stated just compensation is typically determined by fair market value appraisal, but the law does allow Tooele City to take property from a developer without paying for it, if it offsets an impact the developer is creating on the City. He cited a U.S. Supreme Court case and a Utah Supreme Court case. He stated the state code states the limit the City can take by exaction, which represents an equilibrium between an impact created by a developer and the City requirement to mitigate that impact. He stated the State of Utah requires four acre-feet for one acre of irrigation and 0.45 acre-foot for interior water usage per house. He stated they get the 0.45 by taking a reasonable average statewide of interior domestic usage. He stated there has been an Ordinance in Tooele City since 1998 that requires the developers to give the City water rights for all new development.

Mr. Baker stated there are many studies that question the acreage for irrigation and interior usage of a home. He stated by doing the three-year water study, they measured how much interior water Tooele City uses per house, which showed 0.25. He stated the state requires the City to do a study to help build a water distribution system for the new developments. He stated they are recommending a change for the interior exaction from 0.45 acre-foot to 0.25 acre-foot per house. He stated the number may need to be adjusted in the future, but it is a number the City can defend and avoid mitigation. He stated they are not recommending a change in the outside use because the City’s new water master plan shows that number to be correct.

Commissioner Robinson asked if there has been other Cities that have lowered the number or done independent studies or if the change is based strictly on Tooele's findings.

Mr. Baker stated every town is different and every study will show something different in terms of water usage. He stated how cities have been challenged and some have lowered their water rights exaction. He stated he is skeptical to apply water usage data from other communities to Tooele City because they are different and there is not a connection between them.

Commissioner Robinson asked if there are any plans to move it on the state level, knowing that the states guidelines have been there for decades and slow to move. He stated he worries the state will catch up and drop lower than what they have, recognizing Tooele does have the three-year water study, knowing there are estimates and holes in the data.

Mr. Baker stated he strongly suggests against going lower than what is recommended because the state has multiple agencies that deal with water and there are many differences. He stated if they go below the recommended number and undershoot it, they are subsidizing developments, giving them a benefit, they haven't paid for, and spreading the cost to all the other residents of the City that have already paid their way.

Chairman Hamilton stated his question was if they were going to low, but Mr. Baker addressed that.

Commissioner Robinson asked how often the water usage was reported to the state.

Mr. Baker stated the study info was sent this year to meet the new state requirements.

Mr. Hansen stated water usage collected from the meters is reported every year. He stated the data that had been collected for the last three years is what made the master water plan, including areas with irrigation water, multi-family residents, and single-family residents, showing very little difference for interior water usage.

Commissioner Jensen asked if it was just the metered usage that is taken into the data and reported.

Mr. Hansen stated the water meters is how they record their data.

Commissioner Jensen asked how the unmetered areas, like a park, was measured.

Mr. Hansen stated they assumed a duty of 4 acre-feet per net acre for irrigation for areas without meters, with used available flow meter records on those that had data.

Commissioner Smith asked how they know the outside use verses inside use.

Mr. Hansen stated irrigation shuts off the end of October and doesn't start until April. They looked at the winter months as the best indication of what would typically be used as the interior residential dwelling on a monthly basis. They have found over history and records of other communities that this method is a reasonable estimate for the interior use in the homes.

Commissioner Smith stated this year he has been conserving water. He asked how that works in the data.

Mr. Hansen stated they are able to calculate numbers and modify to help count for variations like that. He stated the consultant studying the data in as much detail as they could because they wanted to exhaust every possibility.

Chairman Hamilton stated during data mining they use many variables and outliers to get to the exact number.

Mr. Hansen stated he was so involved in the study, and the City has been straight and forth right with the information. He states they will be updating master plan as frequent they set it for impact fees and in six years they will look again to adjust accordingly.

Commissioner Robinson stated the meters read gallons, which is transferred to gallons/ERC, which is then transferred to acre-feet/ERC for that requirement. He asked if that is where the 0.25 comes form for interior use.

Mr. Hansen stated yes for residential interior use.

Commissioner Robinson asked how the 245 gallons/ERC relates to what has been used in the past.

Mr. Hansen stated in the past the meters didn't have as accurate of records.

Commissioner Robinson stated they want to use the data that is acceptable to our city but that 245 gallons/ERC range is incredible.

Mr. Hansen stated that the information shows that people are more efficient in their water use and advances in plumbing and household uses and there are smaller family sizes, that it naturally brings the numbers down.

Commissioner Smith stated there is a water problem with the drought. He asked where the surplus of water the City has been getting is.

Mr. Hansen stated there are two different divisions: Division of water rights and drinking water division. He stated the Drinking Water requires the City to study water usages and adjust the master water plan accordingly. He compared water rights to a fishing license; you have the right to develop up to the potential of the water right, but there is no guarantee the water will be found to that same quantity.

Commissioner Thomas stated our attorney is supplying the advice and facts that they should listen to.

Chairman Hamilton opened the public hearing.

Steve Evans stated he highly recommends to accept the .25 and recommend the city meters stuff they don't have to help support the studies and numbers. He stated there is a new state law that the irrigation systems that have to metered by 2030.

An email was sent in by David Lewis IV.
It reads as follows:

Good Evening Commission Members,

I am writing you representing both the Political Affairs Committee of the Northern Wasatch Home Builders Association, as well as D.R. Horton.

Water is a significant part of development. With water conservation becoming much more mainstream we believe it is wise of the city to re-evaluate the water requirements. The appliances we install in homes are much more water-wise than they have been in decades past. It stands to reason that as the use inside the homes decreases, the requirement should likewise decrease.

We thank you for this re-evaluation and stand behind a reduction in the indoor water requirement.

Commissioner McCall moved to forward a positive recommendation on the proposed Ordinance 2021-22. Commissioner Thomas seconded the motion. The vote was as follows: Commissioner McCall, “Aye”, Commissioner Robinson, “Aye”, Commissioner Bevan, “Aye”, Commissioner Hammer, “Aye”, Commissioner Smith, “Naye”, Commissioner Thomas, “Aye”, and Chairman Hamilton, “Aye”.

4. City Council Reports

Presented by Maresa Manzione, City Council Member

Council Member Manzione stated the City Council had a report from the Mayor, Mr. Baker, and a number of residents that discussed the damage of the flood. She stated they approved Ordinance 2021-28, Amending Table 2 of Chapter 7-16 and the 25 Townhome Lots Located at Approximately 1150 North Franks Drive. She stated after a long discussion, they tabled Ordinance 2021-21, changing the zoning to MR-16 located at Approximately 740 West McKellar Street until the developers brought back a traffic study.

Chairman Hamilton stated the Planning Commission should recommend traffic studies.

Council Member Manzione asked to be excused to attend another meeting.

5. Review and Approval of Planning Commission Minutes for Meeting held on July 28, 2021.

There are no changes to the minutes.

Commissioner Robinson moved to approve the July 28th minutes. Commissioner Bevan seconded the motion. The vote was as follows: Commissioner McCall, “Aye”, Commissioner Robinson, “Aye”, Commissioner Bevan, “Aye”, Commissioner Hammer, “Aye”, Commissioner Smith, “Aye”, Commissioner Thomas, “Aye”, and Chairman Hamilton, “Aye”.

6. Planning Commission Training on Water Rights

Presented by Paul Hansen, City Engineer

Mr. Hansen stated the training is to understand the general broad discussion on water rights. He reviewed prior appropriation, beneficial use, “First in time, first in right,” wells, water right uses, diversion, and depletion. He showed how to use Utah Division of Water Rights by seeing what the water usage is, change application, and points of diversion. He stated they are doing everything they can to use Water Rights to their full potential.

7. Adjourn

Chairman Hamilton adjourned the meeting at 8:48 p.m.

The content of the minutes is not intended, nor are they submitted, as a verbatim transcription of the meeting. These minutes are a brief overview of what occurred at the meeting.

Approved this 8th Day of September, 2021

Tyson Hamilton, Tooele City Planning Commission Chair