

**Tooele City Council and the
Tooele City Redevelopment Agency of Tooele City, Utah
Work Session Meeting Minutes**

Date: Wednesday, October 18, 2017
Time: 5:00 p.m.
Place: Tooele City Hall, Large Conference Room
90 North Main St., Tooele, Utah

City Council Members Present:

Steve Pruden
Scott Wardle
Brad Pratt
Dave McCall

Excused: Chairwoman Debbie Winn

City Employees Present:

Mayor Patrick Dunlavy
Glenn Caldwell, Finance Director
Michelle Pitt, Recorder
Roger Baker, City Attorney
Jim Bolser, Community Development and Public Works Director (joined the meeting late)
Randy Sant, Economic Development and Redevelopment Agency Director
Paul Hansen, City Engineer

Minutes prepared by Michelle Pitt

1. Open Meeting

Vice Chair Pruden called the meeting to order at 5:00 p.m.

2. Roll Call

Steve Pruden, Present
Scott Wardle, Present
Brad Pratt, Present
Dave McCall, Present
Debbie Winn, Excused

3. Discussion:

- Resolution 2017-44 A Resolution of the Tooele City Council Accepting the Completed Public Improvements Associated with the Copper Canyon PUD Phase 5 Subdivision
Presented by Jim Bolser

Mr. Bolser stated that accepting completed public improvements is a standard procedure that the Council has seen before for other subdivisions. The improvements for Copper Canyon Phase 5 have been completed. Mr. Bolser said that it was the recommendation of staff that the Council accept the public improvements for Phase 5. Vice Chair Pruden said he likes the way Copper Canyon does their project, to get one phase approved, fill it up, then get the next phase filled. Mr. Baker added that this item is on the business meeting agenda where the Council will do a formal vote.

- Resolution 2017-23 A Resolution of the Tooele City Council Establishing Fees for Various Administrative Appeals
Presented by Roger Baker

Mr. Baker stated that he had presented this item to the Council in a prior meeting. He said that tonight the Council will only discuss this issue, not vote. Page 1 of the Resolution identifies a number of areas where the City does not currently require fees, but for which expenses are incurred. Mr. Baker indicated that when he brought this issue to the Council before, the proposal was for the Council to approve a \$150.00 fee across the board. This time he is recommending different amounts of fees depending on the type of appeal, and that if the appellant is successful, the fee be reimbursed. Mr. Baker provided research as to what other cities charge for their administrative appeals. He said it was difficult to compare what other cities are doing because all cities are different in their fees, and how they are set up. For example, some cities still have a board of adjustment that hears these types of matters.

Mr. Baker explained that Page 11 of the packet depicts all of the appealable decisions and a recommendation of the proposed fee. He summarized that land use issues have a \$150.00 fee. Mr. Baker further explained that Mr. Bolser had previously researched what the appeal fee should be for land use issues, and had provided that research at that time. Mr. Baker added that the \$150.00 fee doesn't recover the City's costs, but he believed the appellant should pay something for a program that has an administrative hearing officer. The recommendation for animal appeals is \$75.00. For special event permits, water, and parking tickets there would be a \$25.00 fee. Mr. Baker stated that if someone wins the appeal, they get the fee reimbursed.

Mr. Baker asked the Council if they had any questions regarding the proposed Resolution, or if they would like it to come back for a vote. Vice Chair Pruden felt that the fees were fair. He liked the idea of people getting reimbursed if they win the appeal. Mr. Baker stated that he didn't believe there would be many cases where the appellant wins because the staff works really hard to get things right in the first place. The Council asked that the Resolution go on the agenda for the November meeting.

- Ordinance 2017-28 An Ordinance of Tooele City Amending Tooele City code Section 11-1-4 Regarding Commercial Handbills

Presented by Roger Baker

Mr. Baker showed a picture he took of a green bag on his way to work. He said that on Monday a lot of green bags had been thrown in the right-of-way. Vice Chair Pruden asked what the outcome was when the City contacts Media One with complaints. Mr. Baker said that he had an email address provided by Mayor Marshall of Grantsville. Mr. Baker sent an email asking about the program and asking for information about how to opt out. He received a response which said that he could subscribe or unsubscribe at moneybagutah.com. Mr. Baker said that he went to the website, and there is an opt-out page on the website.

Mr. Baker stated that he wrote an Ordinance with numerous recitals, in a draft form. The purpose of the Ordinance is that the City regulate the activity of throwing commercial handbills. Mr. Baker said that he based the Ordinance off Provo's ordinance. Vice Chair Pruden said that there was a difference between the green bags and phone books. He felt that the phone book people tried to get the phone books on porches, where the green bag people just threw them on lawns, ditches, and rights-of-way. Vice Chair Pruden said that there is an advertisement that often comes in the mail, where the company pays to have it delivered. He felt that the green bag company either needed to pay to get it delivered, or make sure they got thrown on porches. Councilman Pratt said that phone books are usually a once a year distribution. The green bags are being thrown multiple times per month, with some areas being inundated. He sees them in gutters and driveway approaches. Vice Chair Pruden felt that the green bags that were left in gutters were litter.

Councilman Wardle asked if the Ordinance defined the product, such as a green bag, or if it would cover other things. He asked if they were protected by free speech. He asked if the City would be banning neighborhood kids doing things like window washing or grass mowing by passing this Ordinance. Mr. Baker said that the Ordinance did not target any company. He said that he had gone to great pains describing that this is not a speech issue. The City is not regulating speech, rather, they are addressing the act of throwing, depositing, or attaching an item, defined as a commercial handbill, on private property without the permission of the owner. If the owner requests the item, they can be delivered, but they will have to be hand-delivered; not thrown. Mr. Baker went on to say that information can be distributed by mail or by personal delivery by someone who wants to take it. Vice Chair Pruden said that the City was not faulting the product, just faulting the delivery method. Mr. Baker said the City already has a City Code prohibiting advertisements without permission of the property owner, but the addition is that it cannot be thrown. Vice Chair Pruden asked if the Ordinance could be written saying that delivery has to be on the porch. He added that some people may want the product, but it shouldn't be thrown on the street. Councilman Wardle said that he worried that the Ordinance was too broad. He didn't want someone to be able to nit-pick this law in 7-8 years. Mr. Baker stated that he tried to make this Ordinance more narrow than Provo's. Councilman McCall asked if the City could contact the company to let them know that we are looking at an ordinance that might ban them from the City. He thought that if we sent them a copy, it might cause them to change the way they did things. He wondered if the City could appeal to the owners of the company to see if they would change things. Mr. Baker indicated his intention to send a copy of the ordinance to the company after it is passed.

Mr. Baker said that Provo's ordinance was from 1964. His opinion was that he built in as much factual grounds as possible, as many legal grounds as possible, and as much evidence as possible to support the lawful Ordinance. Councilman Wardle asked if the City was defining commercial handbill in the same manner as Provo. Mr. Baker answered that it was defined more narrowly and simply, although it was still a little longer than others. Councilman Wardle asked if he could have more time to review the Ordinance because his iPad was not allowing him to pull up the information. Councilman Pratt asked if Provo's ordinance prevented the green bags from being thrown there. Mr. Baker added that newspapers are thrown, but people ask for them. Vice Chair Pruden said that for him, the big issue was the porch factor.

Mr. Bolser added that political speech is treated differently, and plays by its own set of rules.

- New Utah Supreme Court Opinion on Land Use Decisions
Presented by Roger Baker

Mr. Baker indicated that on occasion a Supreme Court opinion came out that should be discussed. The Utah Supreme Court asked and answered a question: when an administrative decision is made and appealed to the Utah Supreme Court, what is it that the court is reviewing? Is it the decision made by the land use authority? The decision made by the district court that reviewed the decision? Mr. Baker said that this is an important distinction. The Supreme Court decided that it was reviewing the decision that was appealed to the Supreme Court. The body that makes a decision in a land use issue, is called the land use authority. In some cases the Council is the land use authority, and in others the Planning Commission is the land use authority. For example, the Council is the land use authority when they make decisions on subdivisions and water rights appeals. The Council is applying existing law. The Planning Commission is the land use authority when they make decisions on things like Conditional Use Permits (CUP). Mr. Baker said that the decision he was discussing involved the City of Moab and a CUP. In all administrative decisions, whether Planning Commission or City Council, the land use authority decision has to be supported by substantial evidence in the record. Tooele City defines substantial evidence in the code as needing enough evidence to convince a reasonable person, and it has to be in the record. It has to be spoken or written in the record, or in the minutes. Mr. Baker talked about Findings and Fact and Conclusions of Law, explaining that Findings of Fact are the facts that helped make a decision. Conclusions of Law is what was decided based on those facts. In this case, the Planning Commission was the recommending body. They prepared a 5 page report of Findings of Fact and Conclusions of Law supporting their recommendation. Moab City Council ignored the planning commission decision, denied the CUP, and did not cite any evidence or law. The district court decided that it was not supported by evidence or law, and the decision was thrown out. Mr. Baker went on to say that if a decision made by a local authority is not supported by evidence, it is considered arbitrary and capricious. Because this matter was a CUP, they should have been looking at whether the CUP would create detrimental effects to the neighbors. If they did create detrimental effects, they should have considered whether the effects could be mitigated. The land use authority can often impose conditions that will diminish some of the effects. In this case, the Supreme Court didn't review the City Council's decision, but reviewed the district court's decision and found that the district court was right to throw out the case. The Supreme Court made a statement that if the City Council is going to sit as an adjudicative body, in an administrative matter, they need to

produce Findings of Fact capable of review on appeal. Mr. Baker indicated that this case had a surprise ending: the Supreme Court said the district court, instead of throwing the case out completely, should have sent it back to the City Council and given them another chance to write Findings of Fact that had substantial evidence. It was a surprise that the Supreme Court gave the Council a new opportunity to write Findings of Fact.

Mr. Baker indicated that he was talking with the Council about this case because they sometimes act in an administrative capacity and it's important that they, especially if they deny a matter, write Findings of Fact that are capable of review on an appeal. Mr. Baker added that he would be speaking to the Planning Commission about this case as well.

4. Council Reports

Councilman Pratt: The next Council of Governments (COG) meeting is scheduled for the 24th. Councilman Pratt indicated he won't be able to attend. Part of the COG agenda has been withdrawn, leaving only one item on the agenda.

Councilman McCall indicated that the library meeting has been scheduled for January.

Councilman Wardle: Utah State University met a week ago. He wasn't able to attend, but he followed up with Jennifer. USU seems to be tying themselves more closely with Logan for activities. They are trying to streamline a hiccup between TTC and USU for enrollment of students in the nursing program. Enrollment is down 2%. Councilman Wardle also won't be able to attend the COG meeting.

Councilman Pruden: The Tooele City Arts Council has booked Eclipse 6 for the Christmas concert on December 4th at Tooele High School. Tickets will go on sale November 1st. Eclipse 6 is an acapella group.

Mayor Dunlavy: The Tooele County Health Department has asked the City to place someone on the board. Kathy Taylor has been serving on this board, on behalf of the City, for three terms. Their bylaws say that the maximum someone can serve is three terms. He asked the Council to come up with a name by the first of November. The person can be a council member, a department head, or a community member. Vice Chair Pruden asked when they meet. The Mayor indicated that they meet once a month, but he didn't know which day. He thought the term was 4 years.

5. Recess to Redevelopment Agency Meeting

Councilman Pratt moved to recess to a Redevelopment Agency meeting. Councilman McCall seconded the motion. The vote was as follows: Councilman Wardle "Aye," Councilman Pratt "Aye," Councilman Pruden "Aye," and Councilman McCall "Aye."

The meeting recessed at 5:49.

Roll Call

RDA Chair Brad Pratt
Scott Wardle
Dave McCall
Steve Pruden

Excused: Debbie Winn

6. Discussion:

Chairman Pratt explained that Mr. Sant would be speaking about all the items together. He indicated that Mr. Sant would go over the procedures, but explained that the Board will have a modification of the procedures in the 7:00 meeting. He turned the time over to Randy Sant.

- Review of Procedure for the RDA Meeting, Scheduled at 7:30 p.m.
Presented by Randy Sant
- Review of Project Area Plans to be Adopted
Presented by Randy Sant
- Review of RDA Resolutions to be Adopted
Presented by Randy Sant
- Review of Ordinances to be Adopted
Presented by Randy Sant
- Review of Procedure for the RDA Meeting
Presented by Randy Sant

Mr. Sant stated that back in May, the RDA Board adopted some survey area resolutions that identified three potential RDA areas, or Community Reinvestment Areas, for 31 acres of property on 1000 North. One of the areas initially included the property across the street owned by Greg Haer. In review of the areas, it was shortened, and only included the property that would be developed the quickest. Mr. Sant stated that Mr. Haer could petition his area in to a CRA if he chose. The plan addresses and meets the requirements under statute, and has a budget associated to them. No one has talked with the school district so this will not be presented at the next meeting. Mr. Sant stated that he will meet with the school district and the county, bring back the Resolutions before the Board, and discuss the budget. Mr. Sant said that procedure is the same for all project areas.

Mr. Sant described the proposed Community Reinvestment Areas:

The 1000 West industrial area is owned by 4 property owners: Cleggs, Tooele City (20 acres), Tooele Associates, and Bolinders. The property has been shown to some users in the past, but is not market ready. He felt the best piece of property is not necessarily along 1000 North, but is further west.

The Tooele Business Commercial Park is the property owned by the RDA, near where the education corridor has been built. The City would like start developing revenues. The RDA has done a good job at getting funding from the state for putting in the large infrastructure.

Mr. Sant stated that the law is specific on procedures that need to be followed for CRAs. He said that the RDA has complied with those procedures. Notices of public hearings have been properly advertised. He suggested that the RDA hold the public hearings to obtain comments from those that may want to amend, reject or accept the areas. The next step would be to adopt by the RDA through resolutions, then adopt by the Council through ordinances.

Chairman Pratt added that after the noticing had gone out, they had a request from Mr. Hall to include an additional piece of property in the area. It wasn't attached to the map, although it was included in the description. The map had been divided by the trail, and wasn't picked up. The area is 175 acres, zoned light industrial, and close to the lakes.

Chairman Pratt said that one of the taxing entities that is involved in this requested, and under the statute has the right, to consult with the RDA. Mr. Sant has been in contact with the superintendent and will meet with him on the 27th. He recommended that the public hearings be held, but continue them to a future date, and table the resolutions.

Chairman Pratt suggested to Mr. Sant that the RDA may be able to hold an RDA meeting on November 29th. This would provide time for proper notice. The Ordinances that needed to be passed by the City Council could be passed on December 6th. If the City wait until December 6th to do both meetings, the agenda might be too full. Mr. Sant said that when notices are mailed out this time, they will be mailed certified, return receipt requested.

Mr. Sant said that as to when to hold the meeting might depend on the meeting with the school board on the 27th. Chairman Pratt said that this was a complex procedure. He complimented Mr. Sant on the process he followed. He added that some of the taxing entities and members of the public hadn't responded to the notices.

7. Adjourn Redevelopment Agency Meetings

Councilman Pruden moved to adjourn and reconvene the City Council meeting.

Councilman McCall seconded the motion. The vote was as follows: Councilman Wardle "Aye," Councilman Pratt "Aye," Councilman Pruden "Aye," and Councilman McCall "Aye."

The meeting adjourned at 6:04 p.m.

8. Reconvene City Council Meeting

See notes on Item #7.

9. Close Meeting to Discuss Litigation and Property Acquisition

Councilman Wardle moved to close the meeting. Councilman Pratt seconded the motion. The vote was as follows: Councilman Wardle “Aye,” Councilman McCall “Aye,” Councilman Pruden “Aye,” and Councilman Pratt “Aye.”

Those in attendance during the closed session were: Mayor Patrick Dunlavy, Glenn Caldwell, Roger Baker, Paul Hansen, Michelle Pitt, Jim Bolser, Randy Sant, Councilman Wardle, Councilman Pratt, Councilman McCall, and Councilman Pruden.

The meeting closed at 6:04 p.m.

No minutes were taken on these items.

10. Adjourn

Councilman Wardle moved to adjourn the meeting. Councilman Pratt seconded the motion. The vote was as follows: Councilman Wardle “Aye,” Councilman Pratt “Aye,” Councilman Pruden “Aye,” and Councilman McCall “Aye.”

The meeting adjourned at 6:25 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 1st day of November, 2017

Debra E. Winn, Tooele City Council Chair

Brad Pratt, Redevelopment Agency Chair