

SPECIAL CITY COUNCIL MEETING
Tuesday, April 19, 2011 7:00 p.m.
Public Safety Building
3925 W Cedar Hills Drive, Cedar Hills, Utah

Present: Mayor Eric Richardson, Presiding
Council Members: Scott Jackman, Stephanie Martinez, Ken Kirk, Marisa Wright
Absent: Jim Perry
Konrad Hildebrandt, City Manager
David Bunker, City Engineer
Greg Robinson, Assistant City Manager
Courtney Hammond, City Meeting Transcriber
Lt. Sam Liddiard, Police Department
Others: Pauline Iverson, Grant Iverson, Matt Powell, Derek Kirk, Diane Kirk, Jane James, Sarah Durocher, Jay Taggart, Donna Lyle, Bob Lyle, Greg Anderson, Scout Troop 1191, Scout Troop 1192, Greg Gordon, Tonya Edvalson, Jerry Dearing, Lance Allen, Michael Stuy, Jim Madsen, Jeff Lindstrom, Paul Sorenson, Diane Sorenson, Brett Ormsby, Dan Lloyd, Ken Cromar

COUNCIL MEETING

1. This Special Meeting of the City Council, having been properly noticed, was called to order at 7:09 p.m. by Mayor Richardson.

Invocation given by C. Wright.

Pledge of Allegiance.

SCHEDULED ITEMS

2. Review/Action to Award the Contract for the Community Events and Recreation Center (7:11 p.m.)

See handouts.

Staff Presentation:

Konrad Hildebrandt stated that the low bidder for the Community Events and Recreation Center (CERC) was Peck Ormsby with a base bid of \$2,106,800 along with proposed bid alternates. Staff recommended that the Council instruct the Mayor Richardson to administratively enter into this agreement. The CERC building will be a great asset to the community in the present and into the future. Residents of the City voted for and constructed the golf course. The City Council that approved the golf course did so to fulfill four major roles: to provide reservoirs for a city-wide pressurized irrigation system, to provide a beautified open space, to provide a recreation facility, and to create a revenue source. This CERC includes a golf pro shop because the golf course is a recreational facility, which is a small percentage. There are three programmed cost-revenue centers: the golf portion, the restaurant/grill, the events center. Programming for the events center is varied and wide. Receptions are just one of the many uses for the events center. Other uses include yoga, dance, karate, book clubs, gardening classes, etc.

Jay Taggart stated that bid alternates give the cost of some additional options. In this case there were four: (1) the cost if the basement matches the footprint of the main level (2) mechanical unit over the dishwasher (3) radon mitigation (4) sewer pump.

Eric Johnson stated that the Cedar Hills' ordinance is inconsistent with itself in regards to refunding impact fees. One section talks about returning the fee to the fee payer, the next to the homeowner. The state statute that controls impact fees, states the refund goes to the developer. If it was decided that the money would be returned, he would recommend that the City deposit the money to the court, and let the court decide to whom the money would be returned. The developers and landowners could then make their presentations to the court about their claim to the refund. He believes that the stronger position would be that the money would be returned to the entity that posted the fee, in most cases the developer. This position is bolstered by a recent case in Lehi City when an organization representing homebuilders sued Lehi City because it had not properly used impact fees and should refund fees to developers. The developers prevailed. As for timeframes for the use of impact fees, the law just changed in the last legislative session. The statute says that impact fees are to be spent or encumbered within six years. There is allowance for extenuating circumstances. Some of the recreation impact fees were paid more than six years ago. The city auditor has suggested that the City should encumber or spend those funds, or it may be required to return them. The new act changes the language slightly when it comes to the extenuating circumstances. It says that if you extend the use of funds, you need to state a date when the funds will be encumbered or spent. He recommended to the City Council that it act promptly or risk losing the funds. He does not see a reason why the City would warrant an additional extension. It could be argued that the new statute clarified the statute rather than changed it. The money collected in impact fees cannot pay off the bond. It has been his opinion at all times that the City Council would have paid down the bond if it were legal to use the money that way; it is not. He further stated that golf is considered a recreation. The impact fees were collected for a pool and recreation center. Courts have held that golf courses and golf course related business, including pro shops, are legal for cities to own and operate. It would be similar to pools selling goggles and swim fins, which is common and legal. The money cannot, however, be used for parks and trails because it was collected for recreation. A splash zone would fall into the pool category because it is part of a pool complex. You do not have to have all aspects of all pool facilities to qualify. Similarly, you don't need to have all aspects of all recreation facilities. The types of activities offered at recreation centers, given that they can change by season or interest, are administrative rather than legislative decisions.

Council Discussion:

- C. Wright stated that she didn't agree with everyone's opinion last week, but she genuinely respects the comments and views of all those who participated. She was concerned when she left the meeting last week because there was bad information and misconceptions. Jerry Dearing made a statement that a refund of impact fees would go back to residents rather than developers. She contacted the City's attorney, an expert in municipal law. The money will not return to the homeowner but to the person who pulled the permit, the majority of which are developers. She stated that she fears that some may feel that Eric Johnson tells the Council what they want to hear because the City pays him. She asked that a library be part of the CERC building. He did research and found no indication that a library is recreation, and the Council could not use these impact fees for a library. She stated that she was angry at him for that opinion, didn't agree with his opinion, and argued with him about it. She poured her heart and soul into that proposal, but she dropped it because counsel said it was not legal. She has based her decision on feedback from Mr. Johnson. She has been getting comments from both sides of the issue. Everyone is

asking her to do the right thing. The decision she is making tonight is backed by the city attorney. If the money could pay off the bond, she would vote for that. It can't. She feels allowing the refund to go back to developers is irresponsible. She will not tell the youth of the City they cannot have a recreation center because developers got richer. She wants to make it clear that she is not doing anything dishonest or illegal. She has done her due diligence and will vote with a clear conscience. She is making a decision that is best for the community. She initially thought the Blue Ribbon Committee was a great idea. It became apparent that it is hard enough for five people on the Council to come to an agreement. Adding 30 more made consensus impossible. She appreciates their service, and they provided great feedback. Many of the participants were against having a facility at the golf course. Most came away with an understanding that a facility at the golf course would help the golf course financially.

- C. Kirk stated that he ran for City Council to pay the debt off on the golf course. Charelle Bowman regretted that it was not paid off in her term. He has been called a liar by many residents because some believe that the impact fees can pay off the debt. They think the Council is willfully deceiving them. It is not. He has received many emails in favor of the recreation center. It is difficult for Council Members to determine what the majority wants. There are many that are vocally against this, but there is also a silent majority. A traditional recreation center would cost \$30 million. There is a limited amount of money that will not build a traditional center. He wants to use the money rather than lose it. He thanked those that are opposed to it, and those that are in favor of it. He will be voting with a clear conscience.
- C. Jackman stated that he is concerned with using recreation center money when the designation of the building includes a golf pro shop and a reception center. He would like to emphasize that the primary purpose of this building is recreation. He is in favor of striking the term "events" from the name. He stated that the only thing the Blue Ribbon Committee agreed on was to not refund the money. He is concerned that the price on this facility is going up, the deadline for the use of impact fees is up, and the price tag is such that the City will not be able to build a more traditional recreation center and/or pool.
- Mayor Richardson stated that at some point the recreation wish list exceeds the funds. He feels strongly that the Council should not indebt the City. This has been an issue for years. This decision may mean that future recreation wants will be excluded. There may not be leftover funds for everything on the wish list.

MOTION: C. Kirk - The City Council finds that the City is approving and awarding a bid for a recreation center. And also finds that the variety of recreational activities expected to occur at or be directed from the recreation center will vary and change from season to season and from year to year and that the determination of which programs and activities to pursue or to be implemented at any given time is an administrative matter generally delegated to the mayor and staff. And so by doing, authorizes the mayor to sign the construction contract and for the mayor to work with staff to provide a variety of recreation services and activities in the recreation center that will serve the most families and citizens in the City of Cedar Hills. We also find that the City has invited and received substantial public input on the recreation activities for the City to provide, both at this recreation center and throughout the City, but that numerous varying and shifting factors, like the state economy, retail sales in the City, citizen response, and many other factors impact what specific recreation activities the City ultimately undertakes to provide at any given time and that these undertaking are temporary and changing in nature. And that we find this action by the Council to be an administrative action. Seconded by C. Martinez.

AMEND MOTION: C. Jackman - To amend the motion by directing the mayor and staff to change the name of the building by removing “Events” and referring to the building as the Community Recreation Center and emphasize recreation activities. Accepted by C. Kirk and seconded by C. Martinez.

Yes - C. Jackman
C. Kirk
C. Martinez
C. Wright Motion passes.

Further Discussion:

- C. Jackman stated that he opposed this building before, but now supports it because of the recreation nature of the center and to avoid losing the fees.

3. Review/Action on Resolution Adopting Fees (8:15 p.m.)

See handouts.

Staff Presentation:

Greg Robinson stated that in the past the City adopted fees for non-resident sewer rates to encourage those that use the sewer to come into Cedar Hills. The recommendation is to lower the rates back down to just double the resident rate. There is currently no non-resident late fee, which is proposed at \$20, double that of residents.

Council Discussion:

- Mayor Richardson stated that this rate was to ensure that residents were not subsidizing non residents. Current analysis indicated that the non-resident rates were too aggressive. His intention is to adjust back fees.

C. Wright excused. (8:20 p.m.)

MOTION: C. Jackman - To adopt Resolution 4-19-2011A, as stated with the removal of a 4x non-resident rate and also removing 8x non-resident rate and adding a universal non-resident late fee of \$20. Seconded by C. Kirk.

Yes - C. Jackman
C. Kirk
C. Martinez Motion passes.

4. Review/Action on an Interlocal Agreement with American Fork City to Provide Pressurized Irrigation to American Fork Residents (8:22 p.m.)

See handouts.

Staff Presentation:

David Bunker stated that this was tabled from the last meeting. This packet includes the

interlocal agreement. It is proposed that a master meter be installed on the main line. The City would be reimbursed for infrastructure, and American Fork City would pay the City an annual administrative fee. The stated fee of \$1,000 is steep; \$400 is more appropriate.

Council Discussion:

- C. Kirk stated that he would like to see a provision for price increases. The fee may be appropriate today, but too little five years from now. He also proposed changing the turn on date to “within five days of Cedar Hills annual turn on date” in case dates change for water turn on.

C. Wright returned (8:26 p.m.)

- Mayor Richardson stated that there should be some termination date for renewal or renegotiation after 15 years.

Changes:

- In #2 - \$400 annual administrative fee to be reevaluated every five years.
- #5 - change to “within five working days of delivery to Cedar Hills’ citizens.”
- #6 - terms of agreement shall remain in effect for 15 years.
- If residents come into Cedar Hills, the property reverts back to Cedar Hills.

MOTION: C. Kirk - To approve the mayor to enter into an Interlocal Agreement with American Fork City for the purpose of providing pressurized irrigation service to residents of American Fork City as per the interlocal agreement as amended by Council. Seconded by C. Jackman.

Yes - C. Jackman
C. Kirk
C. Martinez
C. Wright Motion passes.

ADJOURNMENT

5. Adjourn

This meeting was adjourned at 8:31 p.m. on a motion by C. Kirk, seconded by C. Jackman, and unanimously approved.

Approved by Council:
May 3, 2011

/s/ Cathy D. Larsen
Cathy D. Larsen, Deputy Recorder