

CITY COUNCIL MEETING

Tuesday, September 16, 2014 7:00 p.m.
Community Recreation Center
16040 N Clubhouse Drive, Cedar Hills, Utah

Present: Mayor Gary Gygi, Presiding
Council Members: Trent Augustus, Rob Crawley, Mike Geddes, Jenney Rees,
Daniel Zappala
David Bunker, City Manager
Chandler Goodwin, Assistant City Manager
Jeff Maag, Public Works Director
Greg Gordon, Recreation Director
Eric Johnson, City Counsel (7:47 p.m.)
Courtney Hammond, Transcriptionist
Others: Lt. Sam Liddiard, Karl Volden

COUNCIL MEETING

1. This meeting of the City Council of the City of Cedar Hills, having been properly noticed, was called to order at 7:06 p.m. by Mayor Gygi.

Invocation given by Mayor Gygi
Pledge of Allegiance led by Chandler Goodwin

2. Approval of Meeting’s Agenda

MOTION: C. Rees—To approve the agenda as is. Seconded by C. Geddes.

Yes - C. Augustus
C. Crawley
C. Geddes
C. Rees
C. Zappala Motion passes.

3. Public Comments

Mr. Wilkinson stated that he had some questions for the Council: How many chickens and pets a person is allowed to have. Has the golf course ever made any money?

Mayor Gygi stated that the golf course has been subsidized by the city every year, and referred Mr. Wilkinson to staff for his further questions.

CONSENT AGENDA

4. Appointment of Members to the Cultural Arts Citizens Advisory Committee

David Bunker stated that there are four new names for the Arts Committee. Those that are part time staff are serving on this committee in their personal time.

5. Minutes from the September 2, 2014 City Council Meeting

MOTION: C. Rees—To accept the consent agenda, which is the appointment of members to the Cultural Arts Citizens Advisory Committee and the minutes from the September 2, 2014 City Council Meeting. Seconded by C. Zappala.

Yes - C. Augustus
C. Crawley
C. Geddes
C. Rees
C. Zappala Motion passes.

CITY REPORTS AND BUSINESS

6. City Manager

Flag football is under way.

Soccer is halfway through the season.

New golf score cards are in. The new design reflects the city's branding. There are no sponsors on the new score cards because of past issues with advertising.

Council has received a copy of the 2015 Budget Document, which will be submitted for the Government Finance Officers Association Distinguished Budget Award.

Utah League of Cities and Towns (ULCT) Northern Conference was held last week.

Timpanogos Special Service District (TSSD) is continuing its policy to not accept green waste at this time. Compost is for sale.

Several streets have recently been resurfaced through a process called micro surfacing. Street sweepers will come by in a few weeks.

He met with Highland City staff and council members about the golf course holes and maintenance area in Highland City, but owned by Cedar Hills. This information will be forwarded to the Mayor and Council. The lower nine holes were included in a Highland subdivision as open space, though that developer did not own the land. That is one of the reasons why they are not in favor of a boundary adjustment into Cedar Hills. There is a potential of doing a combined maintenance facility with Highland. C. Zappala proposed providing written assurance that Cedar Hills would also keep the lower nine golf holes as open space in perpetuity.

7. Mayor and Council

C. Zappala posted on his blog about the water system and the recommendations from the water committee.

Mayor Gygi will be meeting with legislators tomorrow to talk about upcoming sessions. The city is preparing to go to San Francisco for a bond refinance meeting.

SCHEDULED ITEMS

8. Review/Action on a Resolution Amending Certain Fees to the Official Fees, Bonds and Fines Schedule, Relating to Timpanogos Special Service District (TSSD), and Building Permit Renewal/Extension

David Bunker presented a proposal for a change to the fee schedule. TSSD has amended their fee for a connection to the sewer main, decreasing it to \$2,475 from \$2,563. The second fee is for expired or abandoned building permits. To restart the process would cost the city about \$50. The proposed fee is \$50.

MOTION: C. Zappala—To approve Resolution 09-16-2014A, a resolution adding, amending, or deleting certain fees to the official fees, bonds and fines schedule of the City of Cedar Hills, Utah. Seconded by C. Augustus. Vote taken by roll call.

Yes - C. Augustus
C. Crawley
C. Geddes
C. Rees
C. Zappala Motion passes.

9. Review/Action on Release of Durability for the Woodis Subdivision

Jeff Maag stated that the Woodis subdivision was comprised of two lots. The development portion has been completed. It has been inspected, corrections were made, and the city re-inspected. Staff recommends releasing the performance bond in the amount of \$32,744 and accepting the durability bond of \$6,458.80.

C. Augustus stated that he trusts staff's recommendation.

MOTION: C. Augustus—To approve the release of the Performance Bond of \$32,744.00 and accept the Durability Bond in the amount of \$6,548.80 and begin the durability period. Seconded by C. Geddes. Vote taken by roll call.

Yes - C. Augustus
C. Crawley
C. Geddes
C. Rees
C. Zappala Motion passes.

10. Discussion on Accessory Apartments

Chandler Goodwin stated that the city allows accessory apartments as a conditional use granted by the Planning Commission. During work session, council suggested asking the Utah County Association of Realtors for advice on regulating accessory apartments, delegating the conditional use permit for accessory apartments to staff, and looking at Provo's code. Provo has a document for residents outlining the requirements for accessory apartments and the process for getting accessory apartments licensed.

Break taken at 7:35 p.m.

Reconvened at 7:47 p.m.

11. Discussion and Review with the City's General Counsel, Eric Johnson, related to the February 18, 2014 City Council meeting discussions

C. Crawley stated that he was concerned with some of the training given at the February 18 meeting. He came onto the city council skeptical about some of the decisions the council had made, for example spending \$30,000 on a GRAMA request for emails. He felt that both sides on that debate were being unreasonable. He came onto the council to be open and transparent so

there wouldn't be the need for as many GRAMA requests. In the February meeting he was told that he couldn't share information for reasons of attorney/client privilege. He sought a second opinion on some of that training. For instance, he has since learned that the mere presence of an attorney-client relationship does not constitute attorney/client privilege. Likewise, this other attorney opined that an email among council members can be shared with others. He has been frustrated because he feels that the training he received from Eric Johnson inhibits his ability to be open and transparent with his constituents.

C. Rees stated that the attorney that C. Crawley contacted has no experience in municipal law. She contacted two attorneys with experience in municipal law and asked for their opinion on the transcript from that February meetings. They stated that the transcript provided was the straightforward and innocuous stuff and suggested it is best to err on the side of caution.

C. Zappala stated that they were told in work session that these would address generic questions. Now specific issues are being addressed about whether or not Mr. Johnson's opinion has sound.

Eric Johnson stated that without any involvement from him, this has already been addressed on public forums. If he is to be questioned in the public, he would like the opportunity to respond in public. He received his undergraduate degree, a bachelor of science from BYU in physical plant administration. He then worked in hospital administration. He went back to school and received an MBA graduating in the top 5%, and attended BYU Law School graduated in top 3%. He was on law review, trial advocacy and others. After law school he clerked for a justice on Utah Supreme Court. Justice Stewart asked him to write first drafts of legal decisions. In that capacity he got a feel for what judges expect and anticipate in a winning argument. He then went to work for one of the toughest litigators in Salt Lake. Fourteen years ago he started working exclusively in municipal law. His firm represents approximately 200 communities throughout the state on selected matters and as general counsel. He didn't disagree with legal analysis provided by C. Crawley or feel that it that contradicted his training. He was asked to give training on the Open and Public Meetings Act. He referred to a statement that says that emails can be exchanged between council members as long as it isn't during an open meeting. He mentioned the attorney/client privilege, not giving a full explanation, but mentioned that the universal aspect of attorney/client privilege that the attorney needs to be included in the email. He didn't mean to imply that is the only requirement for attorney/client privilege. If an email is exchanged among city council, and one or more council member forwards it to the attorney, the fact that it was forwarded to the attorney is privileged and does not need to be disclosed in discovery. He assumes that when he receives an email chain, that person wants to inform him so that he can give legal advice. If the email informs them of something that he then talks to them about, that email stream falls under attorney/client privilege. Any seeking of legal advice is attorney/client privilege. There are nuances to municipal law that are different from private law. Attorney/client privilege applies to both. The city council, as the governing body of the city, holds the privilege. The council can choose to waive it by a vote, but one individual on the council cannot make that decision alone. At the February meeting he spoke of the law and also of common courtesy and manners. When the common courtesy guidelines are not followed it leads to friction and conflict and diminishes the effectiveness of the council. C. Crawley stated on the public forums that Mr. Johnson gave bad legal advice. He apologized for fluidity with which he talked about laws and common courtesy. He understands how C. Crawley could have misunderstood what he said. Mr.

Johnson stated that he is biased in favor of the majority of the City Council at all times. There have been decisions made over the last 10 years that have been contrary to his advice, but he has stood behind those Council decisions. He has never been and never will be politically active in the community and refuses to allow signs in his yard or make contributions to campaigns. He lives in the same neighborhood as Mr. Cromar, and they attend the same ward. He does not express his political views to others. There are some things Mr. Cromar raises that he agrees with and others he disagrees with. He always disagrees with his methods. He views Mr. Cromar's actions as promoting his own political agenda, and the city cannot finance the advancements of anyone's political agenda. He has seen and had to document lies told by Mr. Cromar, including lies about the timeline of GRAMA requests and tax liens against his property. Knowing of those lies certainly influences Mr. Johnson in his interactions with Mr. Cromar. The city has only acted defensively in its interactions with Mr. Cromar, never offensively. City Council members can contact Eric Johnson; however the chief executive officer is the mayor. There have been instances where different council members come to him asking advice on different sides of the issue. After his analysis, inevitably one side feels his advice was politically motivated.

C. Crawley stated his primary allegiance is to those he represents. C Crawley apologized for stating that there is a bias or conflict of interest because Mr. Johnson lives on the same street as Mr. Cromar. He agreed that where the attorney lives is less relevant but clarified that he has felt that there have been so many personal attacks going back and forth that it does make it hard to be unbiased from an attorney's perspective.

C. Rees stated that in regards to loyalty, she did not interpret Mr. Johnson's advice as having to choose, but rather that the council needs to work together. Church, Johnson and Blaisdell represents ULCT, meaning every city in Utah is entitled to get legal advice of his firm. Three great attorneys can have three different interpretations of the same law. As a member of the council, she apologized to Mr. Johnson that the internet was used to attack him. No employee should be treated that way. She felt uncomfortable that happened.

C. Zappala stated that it takes three votes to get things done in the city. Every council member has allegiances to others. When you compromise your relationship with the council by doing things against established policy, you can't get things done. This discussion centered around a meeting that occurred on February 18. Seven months have passed. Much of the problem was a misunderstanding. The public forum accusations were entirely inappropriate. It could have been resolved with a direct conversation with Eric Johnson.

Mayor Gygi was brought into this discussion when it was alleged that Eric Johnson was politically motivated. He finds that charge offensive. Every single one of the questions could have been dealt with directly with Mr. Johnson. C. Crawley had concerns that the city chose to spend \$30,000 on GRAMA request. His opinion is that the city did not choose to spend that money. At that point in time there was an interim mayor interim city manager and an interim recorder. No one was qualified to respond to a GRAMA request that the city had to respond to within a certain amount of time. That amount also included appearing before state records committee three times. Going forward the GRAMA review is done by employees, lowering the cost.

C. Geddes stated that he appreciates the advice and expertise.

MOTION: C. Rees—To go into Executive Session pursuant to State Code 52-4-204 and 52-4-205 to discuss character, competency and pending or reasonably imminent litigation.

Seconded by C. Augustus. (9:32 p.m.)

Yes - C. Augustus
C. Crawley
C. Geddes
C. Rees
C. Zappala Motion passes.

EXECUTIVE SESSION

MOTION: C. Augustus—To adjourn Executive Session and Reconvene City Council Meeting Seconded by C. Geddes. (10:19 p.m.)

ADJOURNMENT

12. This meeting was adjourned at 10:19 p.m. on a motion by C. Augustus, seconded by C. Geddes and unanimously approved.

Approved by Council:
October 22, 2014

/s/ Colleen A. Mulvey, CMC
City Recorder