

MINUTES OF THE COTTONWOOD HEIGHTS CITY COUNCIL MEETING HELD TUESDAY,
NOVEMBER 12, 2013, AT 7:00 P.M. IN THE COTTONWOOD HEIGHTS CITY COUNCIL
CHAMBERS

Members Present: Mayor Kelvyn Cullimore, Councilman Scott Shelton, Councilman Scott Bracken, Councilman Mike Peterson, Councilman Tee Tyler

Staff Present: Deputy City Manager Linda Dunlavy, City Attorney Shane Topham, Public Relations Specialist Stephanie Dickey, City Engineer Brad Gilson, Public Works Director Mike Allen, Community and Economic Development Director Brian Berndt, Police Chief Robby Russo, City Manager John Park

Excused: Assistant Fire Chief Mike Watson

Others Present: Nancy Dahill, Don Antczack, Craig Call, Cecily Ryan, Bob Morton, Nancy Kuhn, Larry Hansen, Sharon Hansen, Christine Mendel, Steve Birt

1.0 **WELCOME/PLEDGE/ACKNOWLEDGEMENTS**

1.1 Mayor Kelvyn Cullimore called the meeting to order at 7:00 p.m. and welcomed those attending.

1.2 The Pledge of Allegiance was led by Mayor Cullimore

1.3 Councilman Bracken introduced Youth City Council Representative Morgan Anderson

2.0 **CITIZEN COMMENTS**

2.1 There were no public comments.

3.0 **PUBLIC HEARING**

3.1 **Public Hearing to Receive Input On the proposed amended budget for Cottonwood Heights for the period of 1 July 2013 through 30 June 2014**

3.1.1 Finance Director Steve Fawcett explained that there are nine issues being addressed, most of which involve taking care of carry over amounts or re-appropriating funds that were not able to be spent during the previous year. He reported that there will be a slight increase in the sales tax revenue projection. Several items are related to the capital improvements budget. Proceeds from several grants, which have been received, were also being appropriated. The total current revenue increase is just under \$40,000.

3.1.2 There was no public comment. The public hearing was closed.

3.2 **Public Hearing on a Proposal to Vacate an Easement at 3287 E. Enchanted Hills Circle**

3.2.1 Community and Economic Development Director Brian Berndt described the proposed request and stated that the issue pertains to the vacation of the easement located at 3287 East Enchanted Hills Circle.

3.2.2 Curt Valentine expressed opposition to the proposal and is of the opinion that allowing vacation of the proposed easement would open other adjacent areas for vacation as well.

- 3.2.3 Sharon Hansen stated that when she bought her home 40 years ago, she understood that Salt Lake County declared the property a green belt easement that would never be built on due to grade, the instability of the soil, and the potential for flooding. She believes that the easement could cause a potential risk, it is too steep, and the soil is sandy which creates a dangerous situation.
- 3.2.4 Mike Wilson, General Manager of Metropolitan Water District of Salt Lake and Sandy City, expressed concern with the site being developed for a home. He stated that this would not be in harmony with the District's needs in overseeing and maintaining the Salt Lake Aqueduct in its operation, maintenance, and repair. He encouraged the City Council to maintain the existing open space easement and also indicated that the District was not inclined to grant access to a home across any easement they held.
- 3.2.5 John Marsh, a neighboring resident, asked for clarification regarding the difference between the plat amendment sought by the property owners at the recent Planning Commission and the vacation of easement being proposed tonight.
- 3.2.6 City Attorney Shane Topham confirmed that they are two separate issues.
- 3.2.7 Mr. Marsh stated that staff made a recommendation at the previous meeting that the request not be granted because it was designed as open space. He detailed his opposition to the proposed vacation.
- 3.2.8 Craig Call, attorney representing the applicant, stated that he has just recently become acquainted with this issue. He read a statement saying that what is being questioned is five words on a plat. He further stated that if you want to permanently burden in perpetuity a significant piece of real estate, you'd probably want it to be a little more formal and predictable than that. The words are written immediately below three lots on the plat, and you can see those three lots, but the wording is not on the drawing. Mr. Call asked if there are any other drawings from the staff report in the file and if the Council was provided the staff report that was given to the Planning Commission.
- 3.2.9 Mayor Cullimore stated that the Council has not yet received the staff report.
- 3.2.10 Mr. Call indicated he is here to raise issues more than answers and that he appreciates listening to the citizen comments. He stated that the problem with the words is the number one issue, they refer to an easement, but there's no easement document anywhere other than the plat. They fail to amicably describe what the easement area is. He referenced the original plat and described in detail problems of interpretation. Mr. Call read a short paragraph from the Utah Supreme Court Chief Justice Crocket.

Mr. Call further described the details in question on the plat and stated that the assumption is whatever is meant by those easements should be construed narrowly. He stated that the County has allowed three buildings already, and perhaps four, in this supposed open space area. So whatever it meant, it didn't stop the County from allowing structures to be built in the area that clearly is included in the described easement with those specific words on at least one of the other plats. Mr. Call alleges it is not known what the language meant, whether it was temporary or permanent, whether it was meant to bind and in fact doesn't even say who owns the easement. Those are the words on the plat, but there's no conveyance on the plat. It only says on the plat that the area is dedicated to public use or conveyed for public use.

Mr. Call indicated again, that he has lots of questions and that this issue is not cut and dried. The easy answer is to try to work out some kind of solution. He indicated that the question of what the water line easement says needs to be clarified. What is known, is that when somebody comes in for

a building permit on this property, they are going to have to comply with all of your rules based on soils, stability, and slopes and all those kinds of things. We're certainly not expecting a pass from all of that. Again, this is a matter that will take some time. We certainly want to respond to any evidence that is presented on the issue and provide the information you'll need to make a wise decision. Mr. Call stated that he would be happy to respond to any questions.

- 3.2.11 Mayor Cullimore assumed that Mr. Call would agree that the inability to access the property over the aqueduct is a significant issue.
- 3.2.12 Mr. Call concurred and stated that the City has the ability to resolve the issue, one way or the other, and will appeal the Planning Commission's decision in order to see the Board of Adjustment's view regarding the kinds of issues that have been raised. The property in question is only 10% of the land. He confirmed the applicant's position that the easement is void for vagueness.
- 3.2.13 Mayor Cullimore said that if this was done for this piece of land, they would argue they would need to do that for the entire easement running the full length of the City.
- 3.2.14 Mr. Call replied that when there is ambiguity, the use of property should prevail, especially when the public needs can be so completely accommodated. The law says that when you have a contract, it's between the parties. Third parties can have expectations, but the wording of the contract is what drives it. The irony of it is, if the triangle parcel is examined that would be created by adjusting the easement, that triangle is not in the easement. The extent that the exact boundaries of the easement could possibly have been expected is hard to understand. They're talking about a 5,000 square foot adjustment to a 70,000 square foot lot in which case the expectations are 90% met.
- 3.2.15 Terry Marsh stated the proposed property is located directly behind her home. She stated that this would infringe on her privacy and flooding is imminent. The natural habitat will be interrupted. She was promised when she purchased her home that there would be no homes constructed on the subject property.
- 3.2.16 Cecily Ryan, a nearby resident, stated that she is unclear as to the details of the property description and drawings.
- 3.2.17 Nancy Coon, resident for over 20 years, shared her opposition to the vacation of easement.
- 3.2.18 Larry Hansen, a Mirinda Way resident, stated that when they purchased their property 40 years ago, they were aware of the easement and knew it was not buildable property. The easement is detailed on the Reindeer Hills plot and showed the easement running through Mirinda Way. He was informed that it was a greenbelt easement prior to purchasing his property.
- 3.2.19 Mayor Cullimore stated that the issue requires clarification as to whether it is, in fact, an easement and to resolve ambiguities. The long-term perspective has been that there is an easement there, but there is an argument that the easement may be in question. The City Council's job is to make a legally sustainable decision.
- 3.2.20 Mr. Berndt presented a detailed description using Google Earth and stated that the easement was in place well into the early part of the 1970s.

4.0 **REPORTS/PROCLAMATIONS/RECOGNITIONS**

Standing Monthly/Quarterly Reports

4.1 October Police Report

Police Report Specialist Sheila Jennings presented statistics for the month of October. She reported that Priority 1 calls were down slightly and response times were under five minutes. With regard to the overall crime view there has been an increase in theft with a total of 59 for the month. Arrest details were given involving the theft of contractors' tools and a theft ring spanning three counties. Arrests for October totaled 112, eight involved juveniles. There were 15 DUIs reported.

Crime by District was next presented. District 1 totaled 233, District 2 totaled 89, District 3 totaled 128, and District 4 had a total of 101. There were 301 traffic citations issued, 64 warnings, and 11 DUI's. Traffic crashes totaled 50, 13 of which resulted in injury.

A complete report is available on the City's website.

4.2 Public Works Report

Public Works Director Mike Allen presented the October Public Works report. He stated that the Questar line on 1300 East is near completion. The Sprint fiber line going up Fort Union is progressing with the majority of remaining work being concrete. Mr. Allen reported that the broken water line on King's Hill was not as bad as originally thought and was quickly repaired.

New construction and utility work is underway on Bengal Boulevard and approximately 3300 East. Asphalt care was detailed and Mr. Allen reported that TerraCare is working on potholes and making preparations to crack seal the roads. Plans to repair several traffic signals were discussed.

Mr. Allen reported that the street sweeper recently completed the fall sweep for the year. The Big Cottonwood Trail project plantings were reviewed and an expert from UDOT recommended several problem areas be deleted from the project. Discussion is to take place in order to determine liquidated damages.

Trip hazard mitigation workers had not returned to start on the rest of the contract. It was noted that weather will be a factor in its completion.

Bill Winfield, with TerraCare, reported that they received all of their snow vehicles and drivers have completed their assigned routes. Two trucks will constantly be on primary routes. Route maps will be available in each truck and an emergency phone number will be available. Signs that are noticeably leaning along the primary routes will be straightened.

A complete report is available on the City's website.

4.3.1 Financial Report

Finance Director Steve Fawcett presented the financial report for October. He stated that property tax collections will start coming in the end of November. Sales tax revenue was up 24% for the month of September compared to October, which is up 12%. As expected the rate of increase seen in September was not sustained.

Mr. Fawcett reported that Fee in Lieu collections will begin and have been posted. The collections made during the first six months of the fiscal calendar year are deferred. Business license activity and zoning activity are on target and departmental expenditures are in line. Mr. Fawcett stated that

the budget amendment will change several items and the activities are all progressing as expected. It was reported that external auditors will be on site for the next week.

A complete report is available on the City's website.

5.0 ACTION ITEMS

5.1 Consideration of Resolution No. 2013-47 Approving Entry Into an Interlocal Agreement with Cottonwood Heights Parks and Recreation Service Area for Landscaping and Maintenance Services

5.1.1 Mayor Cullimore explained that the above resolution is for an interlocal agreement with Cottonwood Heights Parks and Recreation Service for area landscaping and maintenance. It is an annual contract that runs January through December and totals approximately \$135,000.

5.1.2 **MOTION:** Councilman Bracken moved to approve Ordinance No. 2013-47. The motion was seconded by Councilman Shelton and passed unanimously with one abstention. Councilman Peterson abstained from the vote due to a conflict of interest.

5.2 Consideration of Resolution No. 2013-48 Approving an Agreement with Salt Lake County for Tier II Zoo, Arts and Parks Funding for the Cottonwood Heights Arts Council

5.2.1 Mayor Cullimore explained that the above resolution is an agreement with Salt Lake County for a Tier II Zoo, Arts, and Parks grant for the Arts Council in the amount of \$5,300.

5.2.2 **MOTION:** Councilman Peterson moved to approve Ordinance No. 2013-48. The motion was seconded by Councilman Tyler and passed unanimously on a roll call vote.

5.3 Consideration of Resolution No. 2013-49 Approving an Agreement with Salt Lake County for Tier II Zoo, Arts and Parks Funding for the Cottonwood Heights Historical Committee

5.3.1 Mayor Cullimore stated that the above resolution is from the same source as the previous motion, but was awarded to the Cottonwood Heights Historical Committee in the amount of \$2,500.

5.3.2 **MOTION:** Councilman Peterson moved to approve Ordinance No. 2013-49. The motion was seconded by Councilman Tyler and passed unanimously on a roll call vote

5.4 Consideration of Ordinance No. 213 Adopting an Amended Budget for the Period of 1 July 2013 Through 30 June 2014

5.4.1 Mayor Cullimore explained that the above ordinance pertains to the adoption of an amended budget for the period of 1 July 2013 through 30 June 2014.

5.4.2 **MOTION:** Councilman Bracken moved to approve Ordinance No. 213. The motion was seconded by Councilman Peterson and passed unanimously on a roll call vote.

6.0 CONSENT CALENDAR

6.1 Approval of Minutes for September 24, 2013

6.1.1 The minutes stood approved.

7.0 ADJOURN BUSINESS MEETING AND RECONVENE WORK SESSION IN ROOM 250

- 7.1 **MOTION:** Councilman Tyler moved to adjourn and reconvene the work meeting. The motion was seconded by Councilman Peterson and passed unanimously on a voice vote. The business meeting adjourned at 8:35 p.m.

Minutes approved: 12/03/2013