

**MINUTES OF THE COTTONWOOD HEIGHTS CITY COUNCIL MEETING HELD TUESDAY, JULY 14, 2015, AT 7:00 P.M. IN THE COTTONWOOD HEIGHTS CITY COUNCIL CHAMBERS**

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

**Staff Present:** City Manager John Park, Administrative Services Director Linda Dunlavy, Public Relations Specialist Dan Metcalf, City Attorney Shane Topham, Community and Economic Development Director Brian Berndt, Police Chief Robby Russo, Assistant Fire Chief Mike Watson, Community and Economic Development Director Brian Berndt, Public Works Director Mike Allen, City Engineer Brad Gilson, Senior Planner Glen Goins, Assistant Police Chief Paul Brenneman

**Excused:** Councilman Mike Shelton

**Others Present:** Bob Tuttle, Debi Tuttle, Owen Lambert, Virginia Lambert, Steve Robbin, Kay Robin, Bob Meyer, Ronald Coleman, Charla Nieman, Michael Nieman, Eugenie Murdock, Eric Felt, Joyce Felt, Rob Hortin, Serena Hardy, Cindy Leamming, Rick Gatherum, Audra Mia

**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 Councilman Peterson.

**2.0 CITIZEN COMMENTS**

2.1 There were no citizen comments.

**3.0 REPORTS**

**3.1 Standing Monthly/Quarterly Reports.**

**a. Monthly Police Report – Assistant Police Chief Paul Brenneman**

3.1.1 Assistant Police Chief Paul Brenneman, presented the Police Report for the month of June and noted that the suspect from the stolen property incident at the home on the NE corner of Creek Road and Danish Road was identified. He is presently out of state, but being located.

He indicated that calls for service by source were similar to the previous month; and calls by priority showed a slight increase in the Priority 1 and Priority 2 calls. There were 302 reports for District 1; 113 for District 2; 143 for District 3; and 107 for District 4.

Response times last month for Priority 1 calls averaged approximately five minutes due in large part to the absence of three officers. Assistant Chief Brenneman stated that there were 124 adult arrests and 11 juvenile arrests.

Police Chief Robby Russo explained that the department will begin implementing a new program at Butlerville Days to assist lost children. A wrist band will be provided that will list the information of the child's parent should they become separated during the event.

**b. Public Works Report – Public Works Director Mike Allen**

- 3.2.1 Public Works Director Mike Allen presented the July report. He noted that the CDBG grant for ADA ramps on Bengal Boulevard are nearly complete, and the City has an additional \$50,000 grant that can be used during the upcoming year.

The Bengal Boulevard project upgrades for Cottonwood Improvement District have been completed and the crew is working on manholes, patching, and items for the city hall project. There were several setbacks due to water line breaks that are being repaired and staff will re-notice appropriately. The Fort Union Park and Ride concrete work has also been completed and final inspection will be done this week.

Other items currently being done include storm drain mapping; approval of new trip hazard mitigation contract; street sweeping; street light work order; and the 50/50 sidewalk program.

City Manager John Park reported that staff is currently working on the Highland Drive freeway on-ramp, as well as doing preliminary work on the Wasatch Blvd. Park and Ride.

**4.0 ACTION ITEMS**

**4.1 Consideration of Ordinance No. 246-A Approving a General Plan Amendment on Properties Located at 7765 and 7749 South Forest Creek Lane**

- 4.1.1 Senior Planner Glen Goins presented information regarding the general plan amendment and zone change request for properties located at 7765 and 7749 South Forest Creek Lane. The proposed ordinance would amend the land use plan from RR-1-21 to R-2-8, which would be an 8,000 square foot minimum lot size and allow twin homes. The Planning Commission recommended denial of the general plan amendment and the zone change, citing compatibility issues with the surrounding zoning. The Commission also felt that despite RM zoning across the street, Highland Drive was a sufficient border for separate land use designations.

- 4.1.2 Charla Neiman, property owner, said she is seeking a general plan amendment and zone change for two parcels in order to build luxury townhomes. She explained that the property development as proposed, would be separated from all other surrounding

properties. They, along with the LDS church, have agreed to move the access to the property from Highland Drive to Forest Creek Lane and exit at the traffic light. After completion of the proposed construction, they would construct a new access road to the property that would come off of the road adjacent to the development. She also explained that a homeowners' association (HOA) would be established and they will not use any more of Forest Creek Lane and should be considered an exterior property. Mrs. Neiman also explained that they tried unsuccessfully to sell their .50-acre property over the past eight years as a single-family residence and have been unable to do so. She noted that noise from Highland Drive has always been a factor and by allowing them to rezone the two parcels to R-2 will help create alternative housing for families who want to live in the area. Their intent is to build twin homes and occupy one of the residences.

Mrs. Neiman explained that the property is arranged to accommodate four units, and the layout of the property was based on hours of research to find the best possible use of the property, and to be able to obtain the funding to complete the development. She explained that they have always been concerned for the safety of their neighbors, and although they have the support of staff, the Planning Commission still has questions. It is the opinion of the Neimans' that the most suitable option for their property is to rezone the property and build twin homes to enhance the community, as well as provide a transition between high density housing and commercial development along Highland Drive.

- 4.1.3 Mayor Cullimore said that currently the general plan designation for the Forest Creek area is rural residential. The purpose of the General Plan is to help communicate to the public and developers what the City's anticipation and expectation is for properties in any given area. He further explained that to change the zone as requested would require the General Plan be amended first and changed to medium density as opposed to rural residential. As a result the Council is considering first whether to change the General Plan to allow for medium density housing and second whether to then allow a change in zoning from the RR-1-21 to R-2-8.
- 4.1.4 Mayor Cullimore opened the public hearing.
- 4.1.5 Bob Meyer explained that he did the Neiman noise study and referenced 65 DBA, which is considered normal conversation or office level of sound. The berm in front of their road was specifically designed to reduce noise. He said that the Holmes' property was deliberately excluded from the master plan for rezoning because it acts as a buffer between the Tuttle property on the west and north, and the migration from RO to higher zoning in the area. He also said that when Highland Drive was widened, the residents were given a choice of accessing it off of Highland Drive or selling their property to the County. Mr. Meyer commented that the Neimans' financing reveals that an employee signed as the owner of a financial company that they no longer work for. It is Mr. Meyer's opinion that the applicant will get the property rezoned, not obtain financing, and will sell leaving the City with 8,000 square-foot lots. He expressed his strong opposition to the proposed project.

- 4.1.6 Lisa Magaro expressed her support for the proposed development
- 4.1.7 Joyce Felt indicated that she is a real estate appraiser by trade and expressed disappointment in the neighbors. She stated that the proposed property is along Highland Drive, and other properties along Highland Drive have been given consideration for different zones such as RO, which the Neimans' could have asked for, but out of consideration for their neighbors did not. She expressed support for the project.
- 4.1.8 Ronald Coleman lives on Forest Creek Lane and believes the proposal will negatively impact the surrounding single-family residences. He believes that if approved, it will open the door to others wishing to do the same. His opposition is not personal, he is concerned with the well-being and quality of life for himself and his neighbors.
- 4.1.9 Rob Hortin expressed support for the Neimans' request. Due to the property's unique shape, he believes it deserves consideration.
- 4.1.10 Rick Gatherum, Forest Creek Lane said the neighbors suspect there has been a "bait and switch" going on where acceptable homes are switched with lesser homes that will not be complementary to the neighborhood. The proposed zone change is also a concern. He said that if there is a way to approve the Neimans' plan contingent on building homes of the same value as the surrounding PUDs, there might be more support because protecting the value of their homes is most important. Mr. Gatherum expressed support for the proposed plan.
- 4.1.11 Eric Felt expressed support for the proposed change.
- 4.1.12 Cindy Leaming said her biggest concern is with the number of people the proposed project will bring to the neighborhood, which she believes would create a safety hazard. She expressed opposition to the project.
- 4.1.13 Audra-Mia Lyons said a neighborhood meeting was held and 15 of the 19 homeowners were present. 14 were opposed to the project and felt they signed a petition under false pretenses and have since retracted their names. As a real estate agent she believes that projects like the one proposed affect surrounding property values. People visiting their private, local neighborhood park were also of concern. Ms. Lyons requested the Council drive through the community to get a better understanding of the concerns.
- 4.1.14 Eugenie Murdock said that she is offended that it has been stated that everyone is in favor of the proposed project because they signed a petition, not understanding what it meant. She commented that the support the Neimans are receiving is from people who live outside the area.
- 4.1.15 Debra Tuttle said that she wants to preserve what attracted the Neimans to the neighborhood in the beginning and would like the integrity and design of the General Plan maintained.

- 4.1.16 Mayor Cullimore explained that the two options before the City Council would be to take action, or to postpone action for two weeks to consider the comments that have been made. He noted that Councilman Shelton, who represents District 1 where the subject property is located is not present.
- 4.1.17 Councilmen Bracken, Tyler and Peterson said that they reviewed the record and were ready to take action. Councilman Peterson noted that he was also amenable to postponing action until the next business meeting.
- 4.1.18 A letter from Ken Bell expressing support for the Neimans' request for a zone change was read into the record. Mr. Bell believes the value of the proposed units would be \$450,000 to \$500,000 which is similar to other homes in the neighborhood. He said that the property is unique and is bordered by streets on three sides, an intersection on Highland Drive with a traffic signal, and over 500 apartments across Highland Drive to the east.
- 4.1.19 Glen Goins, Senior Planner, confirmed that the Planning Commission voted to recommend denial to the City Council by a unanimous vote.
- 4.1.20 Mayor Cullimore stressed the importance of recognizing that in the United States of America there are private property rights. He explained that because there are zoning ordinances and a General Plan does not mean it is written in stone. People have a right to explore the use of their property as the law allows. Simply because someone is applying for a zone change, it does not mean that laws are being thrown out or inappropriate changes made. The Planning Commission's role is to make a recommendation to the City Council, because a zone change is a legislative action and requires the City Council to make the final decision. It is also the role of staff to review proposals and see what can be done to accommodate a property owner's request. Mayor Cullimore stated that it is his opinion that people should be allowed to do what they want with their property, but noted that it should be weighed against the impact on surrounding properties and should not infringe on the property rights of others.
- 4.1.21 Councilman Bracken stated that zone changes grant a property right in perpetuity until someone else changes it. He said that he reviewed the proposed ordinance and looked at all possible alternatives and that keeping good planning principles in place is important and does not feel that granting the General Plan amendment was the right decision.
- 4.2 **Consideration of Ordinance No. 246-D Denying a General Plan Amendment on Properties Located at 7765 and 7749 South Forest Creek Lane**
- 4.2.1 Councilman Bracken said that he voted in favor of the RO zone changes mentioned along Highland Drive, and if this were the primary access he would have taken a different position. He said that he was not aware of some of the history, but for those reasons he would vote to deny the proposed General Plan amendment.

- 4.2.2 Mayor Cullimore said that he was impressed by the visuals presented by the Neimans. However once the zoning is changed, the entitlements are established and there is no assurance that what has been presented visually will be realized. To allow an R-2 zone in this area would be an encroachment into a zone that has a very distinct character. He said that the General Plan ensures that there is consistency that residents can depend on. The Neimans' argument that their lot is subject to more noise than other lots has merit, but he did not find it persuasive when weighed against the other impacts discussed.
- 4.2.3 **MOTION:** Councilman Bracken moved to approve Ordinance No. 246-D denying a General Plan amendment. The motion was seconded by Councilman Tyler and passed unanimously on a roll call vote. Vote on motion: Councilman Bracken-Aye, Councilman Peterson-Aye, Councilman Tyler-Aye, and Mayor Cullimore-Aye.
- 4.3 **Consideration of Ordinance No. 247-A Approving a Re-zone of Properties Located at 7765 and 7749 South Forest Creek Lane from RR-1-21 to R-2-8 and Amending the Zoning Map**
- 4.3.1 Action was not taken on the above matter due to the previous motion made on agenda item 4.2.
- 4.4 **Consideration of Ordinance No. 247-D Denying a Re-zone of Properties Located at 7765 and 7749 South Forest Creek Lane from RR-1-21 to R-2-8 and Amending the Zoning Map**
- 4.4.1 **MOTION:** Councilman Peterson moved to adopt Ordinance No. 247-D denying a rezone. The motion was seconded by Councilman Bracken and passed unanimously on a roll call vote. Vote on motion: Councilman Bracken-Aye, Councilman Peterson-Aye, Councilman Tyler-Aye, and Mayor Cullimore-Aye.
- 4.5 **Consideration of Resolution No. 2015-45 Consenting to an Appointment to the Arts Council**
- 4.5.1 Mayor Cullimore explained that the proposed Resolution appoints Jannalee Hunsaker to the Cottonwood Heights Art Council.
- 4.5.2 **MOTION:** Councilman Bracken moved to approve Resolution No. 2015-45. The motion was seconded by Councilman Tyler and passed unanimously. Vote on motion: Councilman Bracken-Aye, Councilman Peterson-Aye, Councilman Tyler-Aye, and Mayor Cullimore-Aye.
- 4.6 **Consideration of Resolution No. 2015-46 Approving an Agreement with Precision Concrete Cutting, Inc.**
- 4.6.1 Mayor Cullimore explained that the proposed Resolution is for the approval of an agreement with Precision Concrete Cutting, Inc. to provide concrete cutting, grinding and other forms of sidewalk trip hazard mitigation.

- 4.6.2 **MOTION:** Councilman Tyler moved to approve Resolution No. 2015-46. The motion was seconded by Councilman Peterson and passed unanimously. Vote on motion: Councilman Bracken-Aye, Councilman Peterson-Aye, Councilman Tyler-Aye, and Mayor Cullimore-Aye.
- 4.7 **Consideration of Resolution No. 2015-47 Approving an Agreement with Cambria Financial Group LLC, d/b/a ATM Event Company**
- 4.7.1 Mayor Cullimore explained that the proposed Resolution is for the approval of an agreement with Cambria Financial Group, LLC, d/b/a ATM Event Company to provide an ATM machine at 2015 Butlerville Days.
- 4.7.2 **MOTION:** Councilman Peterson to approve Resolution No. 2015-47. The motion was seconded by Councilman Bracken and passed unanimously. Vote on motion: Councilman Bracken-Aye, Councilman Peterson-Aye, Councilman Tyler-Aye, and Mayor Cullimore-Aye.
- 5.0 **CONSENT CALENDAR**
- 5.1 **Approval of Minutes for June 16, 2015 and June 23, 2015.**
- 5.2 The minutes stood approved.
- 6.0 **ADJOURN BUSINESS MEETING AND RECONVENE WORK SESSION IN ROOM 250.**
- 6.1 **MOTION:** Councilman Tyler moved to adjourn the business meeting and reconvene the work session. The motion was seconded by councilman Shelton and passed unanimously on a voice vote.
- 6.2 The business meeting adjourned at 8:34 p.m.