

Heber City Corporation
City Council Meeting
February 5, 2009

7:00 p.m.

REGULAR MEETING

The Council of Heber City, Wasatch County, Utah, met in **Regular Meeting** on February 5, 2009, in the City Council Chambers in Heber City, Utah.

Present: Mayor David R. Phillips
Council Members Jeffery Bradshaw
Elizabeth Hokanson
Eric Straddeck arrived 7:45 p.m.
Nile Horner
Robert Patterson

Also Present: City Manager Mark K. Anderson
Deputy City Recorder Michelle Kellogg
City Engineer Bart Mumford
City Planner Allen Fawcett
Chief of Police Ed Rhoades

Others Present: Kathryn Rhoades, Todd Cates, Mitchell Burns, Tommy Carpenter, Harold Mitchell, Mike Carlton, Kristine Nichols, Ann Horner, Terry Shoemaker, John Robson, Glenn Grossman, Randy Birch, Eric Johnson, Keith Johansen, Kendall Crittenden, Martin VanRoosendaal, Gary VanRoosendaal, Neil Morkel, Scott Smith, Val Draper, Valerie Kelson, Mark Smedley, Rick Kellogg and others whose names were not legible.

Pledge of Allegiance: Councilmember Elizabeth Hokanson

Prayer: Mayor David Phillips

Minutes: January 15, 2009, Work Meeting
January 15, 2009, Regular Meeting

Councilmember Hokanson motioned to approve the minutes of the January 15th Work Meeting and Regular Meeting. Councilmember Patterson seconded the motion. There was no discussion.

Voting Aye: Councilmembers Bradshaw, Hokanson, Horner and Patterson. Councilmember Straddeck was excused.

OPEN PERIOD FOR PUBLIC COMMENT

Randy Birch: Birch mentioned the stop light going east at 100 South and Main Street. The newly painted stripe was confusing. Anderson said UDOT had been contacted and they recognized that it was done incorrectly and it would be restriped so the right lane could go right or straight ahead.

CONSENT AGENDA

Tommy's Texas BBQ LLC – Local Consent – Limited Restaurant Alcohol License –

Property located at 100 South 650 West: Councilmember Hokanson motioned to approve the Consent Agenda. Councilmember Horner seconded the motion. Mayor Phillips asked for discussion. Councilmember Hokanson asked to discuss the code language in Section 5.08.060 that stated “the initial ratio shall be one license per one thousand (1,000) population or portion thereof” at a future meeting. Anderson said he would ask staff in the Planning Department to address it. He thought we had one more license to give because he knew the population of Heber was in excess of 10,000.

Voting Aye: Councilmembers Bradshaw, Hokanson, Horner and Patterson. Councilmember Straddeck was excused. Motion passed.

APPOINTMENTS

Red Ledges Plat 1B – Plat Amendment – Property located at approximately 1900 East and

200 North: Councilmember Patterson motioned to approve the plat amendment for Red Ledges Plat 1B. Councilmember Bradshaw seconded the motion. There was no discussion.

Voting Aye: Councilmembers Bradshaw, Hokanson, Horner and Patterson. Councilmember Straddeck was excused. Motion passed.

Glenn Grossman – Boss Engineering – Acceptance/Denial of an Annexation Petition known as the Clair Anderson Annexation – a 19.17 acre parcel of ground located in the northeast

corner of Mill Road and 600 South: Harold Mitchell, the attorney for the Anderson Trust, requested the annexation. He said eventually the property would be developed and the owners

would like it to be a part of the City limits. It was his opinion that urban property should be in a City.

Anderson said the property included the 600 South right-of-way. Mitchell said one of his concerns with the property was the issue of how to handle Lake Creek which flows through there. Mayor Phillips asked Anderson if there were concerns since Twin Creeks Special Service District serviced that area. Anderson said Red Ledges was serviced by Twin Creeks Special Service District so that alone would not preclude this annexation. The City had the services in that proximity so it could service the property as well. He explained the petition process and asked the Council if they would like to proceed.

Mayor Phillips asked about the sewer service. Anderson said the City could provide sewer at less cost than the County. The City services were right there.

Councilmember Patterson asked why Mitchell didn't want to develop in the County. Mitchell said different rules apply at the different entities and better services were provided by the City. Councilmember Horner said the subdivisions to the east and north were part of the County.

Mayor Phillips asked if the Council was interested in accepting the petition for annexation and forwarding it on to the Planning Commission. Councilmember Horner made a motion to deny the petition for annexation. Councilmember Patterson seconded motion. Councilmember Hokanson said one hesitation was that when Planning Commission gets something to study they generally go in the direction of accepting the annexation. She asked if Mitchell's clients would develop the annexed property. Mitchell responded in the affirmative.

Mayor Phillips said if the development goes there, the impact will be on the City, so the City would definitely want a say in what was developed there. The Andersons wanted 32 lots put on the property which the City zoning would allow versus 14 or 15 lots on the property which the County allowed. Mitchell said if the City had to bear much of the impact costs anyway, the City might as well have some control regarding the property.

Voting Aye: Council members Horner and Patterson. Voting Nay: Council members Bradshaw and Hokanson. Councilmember Straddeck was excused. Since there was a tie in the vote, Mayor Phillips voted nay. Motion failed.

Councilmember Bradshaw motioned to accept the petition and forward the annexation request to the Planning Commission. Councilmember Hokanson seconded the motion. Voting Aye: Council members Bradshaw and Hokanson. Councilmember Straddeck arrived late. Voting Nay: Council members Straddeck, Horner and Patterson. Motion failed.

Another motion was made by Councilmember Horner to deny the petition for annexation. Councilmember Patterson seconded the motion. Voting Aye: Council members Straddeck, Horner and Patterson. Voting Nay: Council members Bradshaw and Hokanson. Motion passed.

Wasatch County School District – Discussion and/or consideration of Impact Fees Waiver for new high school – Continued from 01/15/2009 City Council Meeting:

Council members Horner and Patterson recused themselves due to a conflict of interest. Superintendent Shoemaker addressed the Council. He turned the time over to the attorney, John Robson. Robson said he did not have a dispute over the statute of impact fees. He wanted to address the language of the statute. The code stated impact fees were assessed for additional demand for public services. He named other schools in the State of Utah that were built or rebuilt and no impact fees were assessed. The School Board believed this was the same situation in Wasatch County - additional land was bought, but the new facility would be reducing the demand as far as electricity, water etc. because of a higher efficiency. He didn't think the code applied at all because this was replacement only.

Councilmember Bradshaw said the schools in that area would go from servicing five grades to servicing six grades. There would be additional children attending school that lived outside of Heber City. Also the new building was twice as big as the old one. The potential was for 1700 students. He asked for concrete reasons why the code would not apply to the new school. Robson said that was still a small percentage of the total, maybe a 10% increase in student population. As far as square footage was concerned, nobody would build a replacement school the same size as a school built 30 years ago. He argued it was the other construction in the area that created the new students, not the school.

Councilmember Hokanson said she moved to a new house and had to pay impact fees and her family hadn't grown. The reason the school was built was the increase in students. She stated this was the only time to collect fees for students who would attend there for years into the future. When the old high school was built, no impact fees were paid. The City absorbed the cost for 30 years. She said the City had already reduced the fees and may reduce them further but she didn't want to hear the argument that the school would have no new impact on the City.

Councilmember Bradshaw requested to know the total square footage for classrooms on the existing school versus the new building and maybe the City could base the fees on just the classroom space. The fees were discussed. Street fees had been reduced slightly, sewer fees had dropped, Heber Valley Special Service District dropped \$19,000 of its fees. It was discussed that some water rights were reduced. Mumford said the impact fee rates given to the school district were 2007 numbers, even though there had been an increase two years in a row. Mayor Phillips said if the City reduced the fees beyond what they currently were, it would have to take that amount out of the General Fund.

Robson again stated he thought the statute didn't apply. He asked the Council to look at the things the fees covered: sewer, roads and what impact the new school would have on these limited things.

Mumford said the State statute required a number to be spelled out and have the figures to back up what the City charged in impact fees. Councilmember Straddeck said he couldn't say everything that would come up as to where those funds would go, but when they did come up, the City would not be able to go back and charge the school for them. The City knew, based on the Master Plan, what might be needed in the future. He said Mumford could explain each facility where the money would be spent.

Mayor Phillips clarified that the School Board wasn't looking for a waiver but for an adjustment and the Council was trying to mitigate a way to figure out a fair amount.

Shoemaker said there was another reason why they were there tonight. He pointed out that Heber City children go to the County school and use the school pool. Heber City uses the school for Cowboy Poetry. The Heber City children also use the gyms on the weekend. He stated that relationships matter. Councilmember Bradshaw said Heber City residents pay property taxes like the other residents in the County to cover those uses of the school property.

Councilmember Hokanson said ongoing dialog was very important. She asked if there was a better way to assess these fees, and was open to suggestions by the School Board if they had thought of a more fair way. If the City Council assessed fees in a way that was lopsided one way or another it wouldn't be fair to the constituency. She thought taking on some of the impact would be an option. She was willing to look at all the options. She wanted both entities to feel good about the outcome and wanted to do what was fair for her constituents.

Anderson appreciated the relationship between the City and the schools. There was a bill in the State legislature to eliminate impact fees for schools built in the future. The \$172,000 impact was 2.8 % of the City's budget. It was .28% for the school's building budget. With the economy, it was a hard decision. With the bill in the State Legislature, the home builders testified that the bill should not pass if the cost would be passed on to the residential market. Anderson said the City would have to pass the cost of the fees onto the taxpayers through higher taxes. He didn't think it was fair to place the burden of the impact fees on the homeowners of Heber City to pay for the whole County's assessment.

Mark Smedley stated that if there would be an impact, the schools should pay for it. Mayor Phillips gave the Council some suggestions. The Council didn't want to pay for the fees from the General Fund, so that option was out. There was an impact – future growth. He suggested finding a way to assess intangible benefits that the school would be giving the community.

Councilmember Straddeck asked what dollar figure the school district had in mind. Ann Horner, a School Board member, said the school had already put out \$2 million on the roads and sewer during the building of the school. Mayor Phillips said the school might grow 20%. He figured 20% of \$138,000 was \$26,000. Ann Horner said they didn't have a figure in mind, but if the Council agreed on a number, the School Board would vote on that to decide if the school would pay it.

County Councilman Draper stood and said there were intangible benefits such as school nights at Dairy Keen, fundraisers for the Drill Team and other clubs and Cowboy Poetry. He would hope the City would be able to relieve the pressure of government and come together as people.

Councilmember Hokanson said that was very helpful. She asked Anderson about the sewer fees. He said if the School District installed pipes that were bigger than necessary for that school, then the City would reimburse them for those additional costs. They would need to fill out a form and the City would assess that.

Mark Smedley said the Council should not feel bad or think it had not been cooperative with regard to these fees. There was more discussion on fees. Councilmember Straddeck said intangible benefits go both ways. Cowboy poetry was the main fundraiser for the FFA club at the school. The City did its part in helping out the schools. Mayor Phillips asked if the Council wanted to vote tonight or wait for square footage numbers. Councilmember Bradshaw wanted to wait for the numbers.

Mumford said the total square footage was 90% greater. He had justified the impact fees and had given the school every break he could think of. Councilmember Straddeck asked if the Council was comfortable with the final number Mumford had figured. He didn't think the analysis would show anything different. He was in favor of submitting the number that was a true impact. Heber City's portion was \$144,087 according to Mumford. Councilmember Bradshaw clarified that credit had been given for the old school and the Bethers house, or that figure would have been \$383,351.

Mayor Phillips said there was a trade off in the interaction between the community and the school. Councilmember Straddeck stated the City did want to be a good neighbor but the other communities weren't in the room to say they would help build Heber's projects.

Mumford suggested a deferral in payment - agree to a number now but then defer it. That way, the City would keep the integrity of the assessment. Councilmember Bradshaw asked about square footage per student. It was discussed that currently there was 175 square feet per student and 185 projected square footage per student in the new school, which was not a significant difference.

Councilmember Hokanson said she would consider taking the impact down 50% because the other areas of the County do contribute to Heber's tax base. Mayor Phillips said instead of sharing revenue with the other towns, the City would be discounting the impact fees. Councilmember Straddeck said if the Council used that as the justification, it would see more non-residential entities asking for exceptions. Councilmember Hokanson said the Council was able to rule on fees however it saw fit.

There was more discussion. Smedley stated if the City reduced the fees, it would have to justify it, whether by intangibles or other factors.

Mayor Phillips asked the Council what they recommended. Councilmember Bradshaw pointed out that if the City collected the impact fees and didn't use them within six years, it would have to return the fees to the school district. Anderson said some current projects which were funded with impact fees were Center Street widening, 1200 East, the connection between the Watsons and the Christensens and the left turn at the Walmart intersection. Mumford also said the north end sewer was not an expected project, yet now it must be done.

Councilmember Straddeck asked if the Council wanted to use the number it had been given or wait for a future time to decide. Councilmember Hokanson motioned to reduce Heber City's portion of the impact fees by 50% Councilmember Bradshaw seconded the motion.

Voting Aye: Council members Bradshaw and Hokanson. Voting Nay: Councilmember Straddeck. The motion failed for lack of three votes in the affirmative.

Consider Adoption of Resolution 2009-01 – A Resolution Declaring the Intent to Designate a Special Assessment Area Composed of Two Property Owners, Namely the Heber Gateway Plaza 2 and IHC Properties, In the Event the Respective Property Owners Agree to a Suitable Acknowledgement, Waiver and Consent:

Anderson said this resolution was to form a special assessment area, if certain criteria were met, which were set forth in Section Two of the proposed resolution. With regard to the waiver and consent referred to in Section Two, he recommended, if the Council was interested in moving forward with this resolution, that the City include in that document an acknowledgement from the developer that the district would not be formed unless the applicants were able to show they had a purchaser of the debt onboard. In talking with Zions Bank and others, it was thought there were no buyers of this debt in the existing market. It may be up to a year before an interest in real estate backed bonds resurfaced. Even if the Council wanted to move ahead, there were no buyers at this time.

Mayor Phillips asked how binding this resolution was. Eric Johnson said signing the resolution would be a statement of good faith by the City Council. He explained there were many statutes that would have to be met before the Council would have to commit itself. When the owners get

this backing and from there go through the required steps, then the Council would approve the acknowledgement waiver and consent, which it could craft in a way that would give the assurances it needed. The Council would not be bound until the acknowledgment waiver and consent was approved.

Mayor Phillips said there were three things that stood out from the last meeting the Council had with the Gateway developers. The first was about speeding up the process in getting a commercial development, including having the developers put in the roads, and having better access to the hospital. That was a chief component. Another part that caused concern with the Council was not knowing what obligation the City would have if the business occupants couldn't make their annual payments. The Council would have to make sure that was considered. There was also a concern that by incurring this debt, the City would preclude itself from working on other developments and projects.

Councilmember Straddeck asked what the timing was for the blue area of the map, which was Phase 3, and what would be required for that to happen. Anderson stated the developers would be amending Phase 2. He said Phase 1 was completed, Phase 2 was in the development process with IHC and Phase 3 still needed final approval. It was clarified that after Phase 2 was completed, the City would take over the road maintenance for that Phase.

Councilmember Horner asked if Phase 2 was delayed because of lack of funds. Morkel said he was asking for this resolution in order to speed up the process and get it completed.

Councilmember Horner stated that if the City bonded for this, it would "tie its hands". It would hinder the City if it wanted to bond for other things. In his opinion, there were better things to bond for than to benefit one developer. There were a lot of unknowns that may take precedence in the future, and then the City would not be able to get additional loans. Currently, nobody wanted to lend money.

Morkel said Johnson had done many bonds. If a City bonds for economic expansion, there would be a better credit rating than a bond for any other issue. Johnson confirmed that with a variety of bonds which are issued, the City's capacity to borrow would diminish for each additional bond. That was because property taxes were generally pledged as security.

Councilmember Horner stated there would be no other way to pay the bond other than with the taxpayer's money. Johnson said with this type of bond, it would not cut into the City's capacity to issue other bonds. A special assessment tax would be issued in the special assessment areas. Only those occupants would be paying for the bond. That area would create its own revenue stream and wouldn't cut in to other areas. And since it was a commercial area, it could actually expand revenue. Councilmember Horner argued that the debt would still belong to the City. He

asked if the owner was current on his property taxes and was told yes. Councilmember Horner recommended denying this resolution.

Johnson said if the property owner did not pay the special assessment, the City would commit to foreclose on the properties and collect the money. The developer would benefit by having a bond with a tax exempt status. Councilmember Bradshaw asked how many bonding issues Johnson had worked with and did any of the cities have to commit to foreclose. Johnson said he had worked with between 30 and 50 bonds. He knew of some bonds that had begun the foreclosure process but the city never had to pay.

Councilmember Straddeck stated that he was comfortable with the assessment bond, although he struggled with what type of businesses would be going into that area. Scott Smith said commercial businesses have committed to be there. Morkel listed a liquor store, professional offices, food places, assisted living care center and an office building as some of the tenants. He affirmed that this was a good mix.

Councilmember Straddeck inquired about the timing of Phase 3. Morkel said it could be the end of the year before Phase 3 would be finalized.

Councilmember Horner asked what would keep every developer from asking the City to finance their projects. Morkel said the Council needed to set in its mind what types of bonds it would do. There was much discussion about the bond and the effects it would have on the City.

Anderson said from a staff standpoint, he could not recommend that the City should agree to every bond request made, but if there was something happening that would significantly benefit the community, it should be considered by the Council.

Councilmember Bradshaw said in his opinion, the thing the City needed most was commercial development. If there was something the City could do to stimulate growth, it should do it.

Councilmember Hokanson motioned to adopt Resolution 2009-01. Councilmember Bradshaw seconded the motion.

Councilmember Straddeck asked Councilmember Bradshaw if Phase 3 didn't happen could the resolution stand on its own view. Councilmember Bradshaw thought Phase 3 would happen either way, just not as quickly. Councilmember Straddeck wondered if there was a compelling need for the City to pass this resolution. If the road was not pushed through, he didn't see a need to fast forward this process. He thought Phase 3 would happen either way, just not as quickly. Councilmember Bradshaw said one important feature in this development would be access to the

hospital. Councilmember Hokanson said equally compelling as the economic development was the opening up of the corridor to help future transportation.

Councilmember Horner said the Council needed to remember that Phase 3 and maybe the IHC plan was not set in stone. It was clarified that IHC was part of this bond. A medical office complex was planned for that area. Councilmember Straddeck asked if this resolution allowed the developers to move forward with Phase 3, could they move forward, close on those properties, and then have the assessment bond include all 3 phases. Smith explained that Phase 3 would take time to get through engineering. He also stated that there shouldn't be worries about not being able to sell the lots in this commercial area because commercial was not on the same leg as residential. There had been a lot of interest by perspective tenants for the future phases.

Mayor Phillips asked if the bonding company required a 4:1 land to building value ratio, and if the City had that ratio. Smith confirmed that the City could qualify.

Councilmember Straddeck asked if the City could make a requirement that the properties in Phase 3 would all be bought and closed on before the bond would be issued and also if the developer would maintain the road. Smith said that the Council could put forth that requirement to close the properties. He also stated the developer already maintained the roads in Phase 1, so if it were legal, the developer would maintain the roads in the other phases as well.

Voting Aye: Council members Bradshaw, Hokanson, Straddeck and Patterson. Voting Nay: Councilmember Horner. Motion passed.

ACTION ITEMS

Ordinance 2009-01 – An Ordinance Adopting Section 15.08.045 of the Heber City Municipal Code – Subdivision Partial Acceptance: Councilmember Straddeck motioned to continue. Councilmember Horner seconded the motion. Voting Aye: Council members Bradshaw, Hokanson, Straddeck, Horner and Patterson.

Councilmember Straddeck motioned to adjourn the meeting. Councilmember Patterson seconded the motion. The meeting was adjourned at 11:15 p.m.

Michelle Kellogg, Deputy City Recorder