

Heber City Corporation
City Council Meeting
January 4, 2010

12:30 p.m.

SPECIAL MEETING

The Council of Heber City, Wasatch County, Utah, met in **Special Meeting** on 01/04/2010, in the City Council Chambers in Heber City, Utah.

Present: Mayor David R. Phillips

Council Members Nile Horner
Robert Patterson
Alan McDonald
Benny Mergist

Excused: Eric Straddeck

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

Others Present: Gary McDonald, Kendall Crittenden, Ann Horner, Fred Schloss and Mike Thurber.

Mayor Phillips welcomed everyone in attendance. He excused Councilman Straddeck who was out of the City for the month of January in relation to his employment. He recognized Kendall Crittenden, Wasatch County Councilman and Gary McDonald, Wasatch County Housing Authority.

Reconsideration of Indemnification of the Wasatch County Housing Authority regarding Property Taxes owed on 5 lots dedicated to Affordable Housing in Mill Road Estates, Phases 1 and 2:

Councilman Horner indicated he sat on the Housing Authority Board. He said the issue before the Council was who owed the taxes on affordable housing lots in the Mill Road Estates Subdivision Phase 1 and 2. He indicated he had made a motion in the September 3, 2009, City Council Meeting that Ivory Homes be granted an extension to record Mill Road Estates Phase 3 and 4, if the affordable lots for Phases 1 and 2 were turned over to either the City or the Housing Authority. It was assumed they were without liens for taxes. He continued the issue was this: if Ivory Homes was not forced to pay those taxes, then either the City or Housing Authority had to pay them or the County had to waive them. He said the Housing Authority would lose \$900,000 in tax credit if those lots were not clean titled by Friday. He felt Ivory Homes owed the taxes and they should take responsibility for them. Councilman Horner said he had received

three e-mails today and had some phone calls from people residing in the Ivory Homes Subdivision. He indicated Ivory Homes had the opportunity to pay the fee-in-lieu but chose to turn the lots over to the Housing Authority.

Councilman Horner said another issue he was concerned with was that Heber City should not have allowed any lots to be built on until the affordable housing lots were turned over to the proper authority—he felt those lots should have been turned over five years ago. He said he was frustrated with staff because they did not follow through with that and now he was taking the heat. He indicated the home owners were angry now because they were not aware of affordable homes being built in their neighborhood.

Mayor Phillips indicated that whether Ivory Homes bid to build those homes or not, they had to be built. He suggested if the homes were built to the neighborhood criteria, there wouldn't be any bad feelings from the neighborhood. County Councilman Crittenden suggested the neighborhood residents should be invited to go see the C.R.O.W.N. homes in Wheeler Park. They could then determine if they felt the homes were in line with what was already built in their subdivision. Gary McDonald indicated the homes had to meet criteria and they couldn't be built without the approval of the committee.

Councilman Horner said he was not in favor of letting anyone off their obligation to pay the taxes. Councilman McDonald agreed and said he felt Ivory should be responsible for the taxes. He then asked about Ivory's agreement with the City and wondered if those taxes should have been paid up front. Anderson said the agreement was originally with Mike Stewart who subsequently sold to Ivory Homes. It was pointed out that Ivory Homes was bound to the original agreement made with the original developer.

Councilman McDonald suggested from this time forward there should be language in the agreement that the lots be transferred up front instead of at the end. He felt the agreements needed to be more clearly stated. Anderson said staff had had that discussion already and Mark Smedley, City Attorney, saw the need for that as well.

Councilman Mergist wondered if the City could legally stop Ivory Homes from building another home until this obligation was satisfied. Anderson said he was not legal counsel but questioned, if the City did that, could the Housing Authority go ahead with building.

Gary McDonald explained the program through C.R.O.W.N. Homes. They would come up with the home designs, make a recommendation, and ask for approval from the committee. Then the low builder would build the design approved. He said C.R.O.W.N. was not a developer or a builder. It was pointed out that the bidding process still had to be done and Ivory could possibly be the low bidder. Mayor Phillips pointed out that Ivory claimed they could build an affordable home and had suggested if the lots were given back to Ivory Homes, they would pay the taxes, and they would then build the homes on them. They also mentioned they had never deeded lots over to a community before and there were other programs they could participate in to meet the Affordable Housing criteria.

The question was asked if there was any doubt as to who owed the taxes. All of the Councilmembers felt Ivory Homes was responsible for the taxes. Discussion in relation to salvaging the tax credits. Discussion about whether the Housing Authority had considered issuing a letter that would guarantee the taxes. Gary McDonald said the City was the only entity that had the teeth to put pressure on Ivory Homes. He said, too, he had been working on getting the lots deeded since June. He said the plan was to build five spec homes. He did not know if the City had the financial backing to guarantee spec home sales. It was pointed out this issue came up after Ivory wanted to get an extension on Phase 3 of the development and the City would not give that extension until the lots were transferred.

County Councilman Crittenden said there was nothing preventing Ivory Homes from going before the County Council to ask for waiver of the taxes. Mayor Phillips said Ivory Homes was agreeable to that if the City would go with them to the County Council. Councilman Mergist felt Ivory Homes was trying to circumvent the process. Mayor Phillips suggested if the City indemnified, the City might have to write a check come April and then try and get the monies back from Ivory Homes. He said he was not in favor of giving the lots back to Ivory and then have them pay the taxes. He did agree, though, if Heber City issued the letter of indemnification, that made the City's position stronger when working to get reimbursed. Councilman McDonald suggested the Council needed to go into Executive Session to discuss this. Anderson said the Council could go into Closed Session for pending litigation.

Councilman Horner moved to go into Closed Session to discuss pending litigation / land issues. Councilman Mergist made the second. Voting AYE: Nile Horner, Robert Patterson, Alan McDonald and Benny Mergist. Those going into Closed Session: Mayor David Phillips; Councilmembers Horner, Patterson, McDonald and Mergist; City Manager Anderson and City Recorder Thurber.

The Council returned to Open Session at 1:50 p.m.

Councilmember Horner moved to indemnify the owing taxes on the five affordable housing lots that Ivory Homes had turned over to the Wasatch County Housing Authority; the City would pursue Ivory Homes to collect the unpaid taxes on those lots by March 1; until the taxes were cleared the City would stop any future building permits and possibly stop building in process in the Ivory Development, if allowed by law. Verification needed from the City Attorney about the building in process possibility. Councilman Mergist made the second. No further discussion. Voting AYE: Nile Horner, Alan McDonald and Benny Mergist. Voting NAY: Robert Patterson. Councilman Straddeck was excused.

Mayoral Council Assignments: City Council, Airport Advisory Board, Board of Appeals and Planning Commission: There was no discussion.

Discuss irrigation issues: It was indicated the Council had a meeting scheduled with Wasatch Irrigation Thursday evening at 5:00 p.m. Mayor Phillips asked if the Council felt prepared for that or if they needed some background information.

Anderson indicated this issue stemmed back to last January when the annual meeting was held by Wasatch Irrigation at which time Councilman Jeff Bradshaw had been asked to vote the City's shares. He had been nominated, along with Councilman Horner and Larry Hartley as members of that Board (other members were Bassett and Hutchinson) based on the stock shares represented. Thirty days after that, Claude Hicken contacted Mayor Phillips and said the election held was invalid because some of the Board members did not hold shares. It was pointed out the bylaws state 50% of the stock needed to be represented. Anderson suggested that had not taken place since 1940. Anderson said he had had some conversation with David Church earlier in the day. Church felt the City had the right to authorize voters. It appeared now the existing board had contacted Steve Clyde to work on the bylaws. Mr. Clyde provided a letter that outlined how entities voted their stock and said he did not feel Heber City had enough representation. However, in his letter he did not address the "class" of stock change as being proposed. It was indicated since that time the City had received a copy of the proposed bylaw changes and was not in agreement with them. Anderson reviewed the new fees the Board had voted on.

Councilman Horner said the concern of the Irrigation Company was that the City would have control because of the number of shares they owned. He said his concern was the reclassification of the water stock. He felt the City should have at least one vote. He indicated that, in relation to the Midway Irrigation, the Midway City representative could not vote as to the other members on the Board but they had a vote on other issues. Councilman Horner felt Heber City should not have control, but should have a say.

Anderson indicated that Dave Church said the new fees might or might not be legal but that the reclassification was questionable. Councilman Mergist said he did not want to see reclassification. Councilman Horner indicated, if the fee schedule was illegal based on reclassification, he would definitely not be in favor of it. Additional discussion in relation to fees, connections to subdivisions versus an individual lot, etc.

Anderson discussed the Wasatch Water Efficiency Team. It was formed with the idea that their staff would run the City's secondary system. They were anxious to develop operating reserves that first year. However, last year, after evaluation of the budget, it was decided the Public Works Department could manage the system--understanding that the work in finding the difficult connections had been done. Anderson continued that staff was anxious for WWET to use part of their reserves to pay for the expenses at the Cove Subdivision. Councilman Mergist wanted to know if there was a study done to determine if the Public Works Department could do the work or not. Anderson said there was no formal study. Councilman Mergist said he had issues with that because he did not think the City had enough manpower to manage the secondary irrigation system. He thought there was plenty of work in the City to be done without the secondary system. Mayor Phillips reviewed that the City had actually authorized certain work. WWET proceeded with that work but expanded on it and now was billing the City for work they did that had not been authorized by the City. He reviewed what the City was being billed for versus what was approved and the reserve that was built up by WWET (which was City money) which he thought was approximately \$45,000.

Mayor Phillips, bringing back the discussion to the irrigation issue, reviewed the two issues that the City had concern with based on the letter written by Smedley. One was reclassification and

the other was board members. Again he asked if the Council was ready to sit down with the Irrigation Board on Thursday night. Councilman Horner felt the reclassification needed to be addressed first and said he felt the board initialized in January was illegal. Mayor Phillips felt City Attorney Smedley needed to be involved in the meeting on Thursday night. He said Smedley had never gotten a response from the letter he sent Wasatch Irrigation in September.

Anderson indicated Wasatch Irrigation would be holding their annual meeting the last of this month and were probably moving forward as organized. He said the only recourse the City had was getting 50% of the stock holders together and take this in a different direction. Councilman Horner disagreed and said they were doing this illegally and should not move forward. Mayor Phillips suggested Mark Smedley write them a letter to postpone their annual meeting until some of these issues were resolved.

Councilman Horner said he had talked with two of the board members and they seemed to be in agreement with him. Mumford said he agreed with Councilman Horner in that he too felt the communication was not getting distributed to everyone. He thought there would be some merit to having a small meeting on Thursday and make sure everyone knew the concerns of the City.

The Council wanted to have Smedley get in touch with Wangsgard, water attorney. They felt it would be worth the money spent to get a water attorney's opinion on the issue.

Anderson said he would work with Jane Hinkson to see if he could make some sense of the financial issues.

As there was no other business, the Special Meeting of the Heber City Council adjourned at 2:50 p.m.

Paulette Thurber, City Recorder