MURRAY
CITY COUNCIL

MURRAY CITY MUNICIPAL COUNCIL
COMMITTEE OF THE WHOLE

The Murray City Municipal Council met as a Committee of the Whole on Tuesday, August 7, 2012, in the Murray City Center, Conference Room #107, 5025 South State Street, Murray Utah.

Members in Attendance:

Jim Brass	Council Chair
Dave Nicponski	Council Member
Darren V. Stam	Council Member
Jared A. Shaver	Council Vice Chair
Brett A. Hales	Council Member

Others in Attendance:

Cathy McKitrick	Salt Lake Tribune	Dan Snarr	Mayor
Janet M. Lopez	Council Office	Jan Wells	Mayor's Chief of Staff
Frank Nakamura	City Attorney	Doug Hill	Public Service Director
Tim Tingey	ADS Director	Jennifer Brass	Citizen
G.L. Critchfield	Attorney	Peri Kinder	Valley Journals
Zachery Fountain	Mayor's Office	Todd Marriott	UTOPIA
Jennifer Kennedy	City Recorder	Candace Vigil	UTOPIA
Chad Wilkinson	Comm & Econ Dev		

Chairman Brass called the Committee of the Whole meeting to order at 5:15 p.m. and welcomed those in attendance.

Minutes

Mr. Brass asked for action on the minutes from the Committee of the Whole meetings held on June 19, July 10 and July 17, 2012. Mr. Shaver moved approval as written. Mr. Hales seconded and the motion was approved 5-0.

Business Item #1: **Utah Infrastructure Agency (UIA)/Utah Telecommunication Open Infrastructure Agency (UTOPIA) – Darren Stam**

Mr. Stam mentioned how interesting his attendance at numerous meetings involving the UIA had been since the beginning of the year with his appointment to the Board. He thought it would be good to present a recap of where the agency had been, where it is currently, and where it is going.

Eight years prior Murray joined with eleven cities to form UTOPIA. One big problem today is the $185 million in debt. Without that, no concern would exist with UTOPIA, he stated. Another issue is a shortfall annually of $3.1 million in operational expense. These are the problems that must be dealt with and there are a couple of options, Mr. Stam related.

Mr. Stam used the whiteboard for illustration of the first option and posed the question, "What would happen if the cities stopped - allowing it to quit growing, dissolve operations and fall apart?" The cities would still be responsible for the sizable debt - about two years of the original 30 year commitment had been paid. Operations would need to be covered. The revenue would decrease, and eventually, because it was not viable, the providers would abandon the service. The problems from this option would result in lost customers, and because of no revenue, costs would actually increase. An unequal build-out of cities' infrastructure would be left behind. West Valley City has only an 8% build, Murray has a 60% build and the others vary. This could create lawsuits between the cities.

Mr. Stam clarified that this example applies if any of the UTOPIA cities stopped putting in money and helping the agency grow.

At this point UTOPIA would be forced to shut down so the operations cost would be eliminated, the $185 million in debt would remain and the inequality between cities still exists. If it were sold, only cents on the dollar would be realized. You then have people who have paid the connection fee and have no service, so they may decide to file a suit against the City.

Mr. Hales asked if people had paid the City for the connection fee. Mr. Stam said they make payments to the City and Mr. Shaver said it doesn't matter who the contract is with, Murray and the cities are UTOPIA so they, therefore, would sue the City.

Mr. Nicponski said that if UTOPIA was sold, even at cents on the dollar, the service would be taken over by that entity. Mr. Stam pointed out that if that happened the cities still have the debt.

The next option is Utah Infrastructure Agency (UIA), which was formed to try to make the entire UTOPIA project work. The cities approved $65 million for UIA. Mr. Hales asked why UIA was formed. Mr. Stam answered that UTOPIA had no more bonding capacity. In order to grow the UIA was created.

UIA was approved for $65 million in bonding and received $17 million in federal stimulus money. The plan was based over the next five years with goals to pay for its own bonding, to cover the operations of $3.1 million and pay on the $185 million UTOPIA bond.

Phase I in year 1, $29 million of the bond was withdrawn. The $17 million in stimulus was granted and they went to work. Problems included three months of delays in completing the bonding due to hold ups with the cities and bank. Additionally, the tsunami wiped out three of four fiber plants creating another three-month delay.

Another issue is that UIA had only eight of the original eleven cities join resulting in a smaller market.

Mr. Hales asked what the other three cities did. There would be no growth in their cities; although the service is still being provided to existing customers there, Mr. Stam said and it is operational because the eight cities are paying the cost of operations.

The three cities that did not join UIA are Payson, Tremonton and Perry. Tremonton is built out and Payson has some infrastructure.

Mr. Stam said that on the positive side some adjustments had been made. To give customers an option to the $2,750 queue a lease arrangement was created.

Mr. Nicponski asked for an explanation of the queue. A customer had the choice to pay the $2,750 up front for connection or $25 per month for 20 years. The lease gives an opportunity to pay an additional $5 per month with a two year contract and the lease amount would continue as long as the person had service. About half the customers select the lease option.

One of the problems to be overcome was the number of residential subscribers to meet the needs, Mr. Stam noted; therefore, they have gone to businesses. Commercial rates result in eight to ten times' higher return.

Mr. Marriott added that the demand in residential is significant in the markets UTOPIA has; however the saturation rates are very high.

The commercial does produce more revenue per subscriber. At the end of the first Phase more commercial and fewer residential subscribers were connected. In September the revenue will cover the bond payment for the $29 million. Of the $17 million in stimulus, $5 million remains to go into Phase II construction projects. The $3.1 million in operations was covered from the $29 million and it has been reduced to $3 million.

Mr. Stam mentioned that one drawback was building where the stimulus required, which was not necessarily the most profitable areas; but had to be done. Necessary building is completed and the more profitable connection areas can be built with the remaining stimulus money.

As Phase II begins, $10.5 to $11 million will be requested for the next round of funding from the bond money to add to the $5 million to continue building. The goals are the same: to pay for bonding and cover the operation costs. Conservative projections show that this should be covered in less time than Phase I. Operation costs are anticipated to be reduced to $2.5 million. Operational costs are paid from the bonding money. Mr. Marriott said that about $250,000 to $300,000 would be reduced from the operational costs in the next Phase. The five year plan did not include operational costs in years four and five; however it was understood that during the growing time the operational costs could not be covered.

Mr. Stam reviewed that as some goals had been met in Phase I, during Phase II a smaller amount of bond money would be withdrawn and projections indicate that more business connections will be sought. He asked if it is better to go forward or backward?

Mr. Shaver said that before answering that question he wanted to know why only $10.5 million to $11 million would be withdrawn from the bond.

Mr. Marriott said there is some economy of scale, technologies and markets that would be expanded before effectively addressing some of the Phase II projections that originally were planned. It was scaled back conservatively to harvest some of the stimulus sites and business sites that can show a return. We are not being as aggressive as could be getting operations and other goals of the five year plan as quickly; however looking at what sits in front that is something that UIA can be most effective at right now. Some things will allow the agency to go and reclaim some of the things that would have been done in Phase II originally. There are so many details, Mr. Marriott added.

Mr. Shaver said that his response would be, "yes." Right now UIA is meeting its own bond payment. Operation costs can't have dropped. He asked if they are meeting some of the operational costs from the revenue that was created; because if sales are increasing he doesn't see how operations could have dropped.

Mr. Marriott referred to the diagram on the white board……… operation costs declined because of growth in new areas, revenues are increasing at the same time; therefore more is being carved off.

Mr. Shaver concluded that the deficit for operations is going down. Mr. Marriott confirmed that. Mr. Shaver asked if it would make sense to be more aggressive in building to begin attaching the third goal [begin paying the $185 million debt of UTOPIA]. Mr. Marriott said that if he could be more aggressive he would but when you look at everything in more detail his recommendation is to do this now. The Phase does not necessarily mean a year. The Phase could be completed in four to five months and he could be back talking about Phase III. The operational burn rate is based upon a year and adjusted as they move through the process. Maybe more success will be realized in Phase II and in four to five months the fiber has been put into the ground as projected and revenues are accumulating faster.

Mr. Stam said that there is hanging fruit that is ripe, some is not, and the point is to go for what is ripe.

Mr. Brass stated that when UIA started the previous year, the discussion was that the second bond withdrawal would not be taken if the benchmarks were not hit. Of the three benchmarks laid out, probably one was reached. The budget was restated and operations are showing a greater deficit than was originally thought. He said he had been a Council Member from the beginning and he cannot forget that the agency is not meeting operations and $185 million in debt remains. He does not feel the three options presented are the only options. He suggested another option: should building continue if people are not signing up or should the revenue [from connections and sales] be gone after? As building continues the loss of money is growing. He commented that what is needed is to get people to sign up for the network. He asked if there is a better way to build, and has asked from the beginning, can wireless be deployed. It does not cost $3,000 to go from the curb to the house with wireless. Wireless gets revenue and then when people decide they want more; there is an idea of where to build and who will subscribe to it. He mentioned that he continues to see numbers with modified plans; however, operations are not being covered. UTOPIA is an operation based business and if operations are not being covered it is not good. His concern about the budget stems from not seeing how the operations and maintenance would be met, let alone keep growing the business. A lot of money is being spent. We have $29 million in bonds, another $10.5 million has been requested and $185 million with only about $60 million in assets.

The original projections called for $400 million to build out the network, Mr. Marriott responded. He said that Mr. Stam is doing a great job explaining more succinctly and as the agency is growing progress is being made toward the goals. To suggest hibernating and taking revenue only, would result in a loss of momentum, ability and confidence coupled with the loss of money. He thinks Mr. Brass is alluding to a capital chase where you are always going after capital and chase your tail in terms of operation deficits. He is cognizant of that. Currently, you have the stimulus in the ground and other assets that need to be harvested. There is a lot of demand, the problem is not demand, the problem is satisfying the demand. In terms of wireless, Mr. Marriott said that every single technology was considered in order to accomplish the purpose. Where it can be used, wireless technology had been deployed. To do wireless the way fiber is being done now, will initially and over time cost more money. It is used to supplement, augment and to bridge connectivity gaps.

Mr. Marriott addressed the comment that UTOPIA or UIA never hit the benchmarks. He asked for fairness on that after sitting for a year and a half working on issues with banks and delays by the cities put the agency in a bind. There was a late start and from a standstill; however now the machine is getting better, not at 100%, but there is still about $3 million dollars of capital money in the bank that cannot be used for operations. Had that been put in the ground it would have closed that gap. One thing noted from the State Legislative audit was a huge graph showing the deficit in terms of subscribers hit last year; however, the revenues exceeded expectations for most of that time. Now they are getting a little under. Revenue is the name of the game, not subscribers. That is the picture to look at and he would worry about how to get that revenue. It is a tough picture but progress is being made, otherwise he would suggest looking at an alternative. He said he is always open to someone buying the network, if anyone made an unsolicited bid, he would consider it.

Mr. Hales said that he made that comment at the Legislative audit and he clarified that Mr. Marriott was actually open to that. Mr. Marriott said it would be his fiduciary duty to entertain any of those options for the cities.

Mr. Stam pointed out that the Phase I money was scheduled to be used from July 2011 to June 2012 and enough was remaining to carry operations through September meaning UIA has been very cognizant of spending to go longer on those funds. Relating to subscribers, the original plan called for 150 new per month and crossing into Phase II the agency is averaging 170 new per month.

Mr. Brass asked what the net per month is, with the losses. Mr. Marriott did not have that information, but noted that he could get it. Mr. Stam said that previously they experienced a 3% loss rate over a year. Mr. Marriott said that was how they were able to produce the lease because they figured the new subscribers with the loss rate to determine if they would be able to sustain from a risk stand point over a 20 year period of time. Additionally, would it be fiscally responsible to run on a lease basis. It turned out that even with the worst drop rates they were still in-the-money, Mr. Marriott explained.

Mayor Snarr said one problem was the video production and asked where that technology stands. He commented that the businesses are after the internet because speeds are incredible. He said his works fine; however, he wondered if a premier video production is coming that people could take advantage of.

Mr. Marriott said that video is very emotional. He noted they are not a video company. They expected to have it at some point; although, a relationship with Dish Network was established. Dish is one of the top three content providers in the world. At some point it is anticipated that they will deliver video over those lines. A new service provider has been signed that will bring a fantastic video production.

In conclusion, Mr. Stam mentioned that one big factor from the Legislative audit was that UTOPIA was not told to shut down. Recommendations were given on how to move forward.

He mentioned a rumor circulating that indicated because he was in favor of UTOPIA he could not be in favor of Murray employees. He disagreed because the only way to cover the debt is to be successful [in offering the service]. The sooner that debt is covered the more money there will be for employees.

He said that in talking to a citizen about UTOPIA, another City official suggested that the resident "just wait." He did not concur on that thought.

Mr. Nicponski complimented Mr. Stam on the presentation and Mr. Hales added that UTOPIA is one of the biggest concerns of his constituents and he proposed that the City continue on. Mr. Brass stressed that the more information the City has the better. He has no issue with the technology, his issue is with the money that has to continue coming out of the General Fund. It is currently $1.7 million per year. No one else is providing service better than UTOPIA.

Mr. Marriott thanked the Council for the time and mentioned that Mr. Stam had charged into UTOPIA and gained a great deal of information. He heads the Finance Committee and is in touch with him on a weekly basis. Mr. Stam has the latest information. That kind of involvement is essential and he has been instrumental in getting service for Murray residents and business.

The Council will hold additional meetings on this in the future.

Business Item #2 **Council Initiative Workshop and Committee of the Whole Formats**

Mr. Brass introduced this topic commenting that one problem that has been occurring in these meetings is time. A certain amount of time is scheduled and then the discussion goes beyond that. The former topic clearly required more time; however, there are so many items to come before the Council. He asked if the Council Members would like to add a third meeting per month or if they would prefer to start earlier in the day to accomplish the business. Every Committee of the Whole runs short of time.

Mr. Shaver suggested that an additional meeting could be added for specific topics like the one that just took place.

Mr. Stam asked if another Council Meeting would also be required or just the Committee of the Whole. Mr. Brass responded that it would be for discussions only, not Council Meeting.

Others Council Members felt they would like to come earlier rather than add another day during the month.

Business Item #3 **Strategy Session to Discuss Pending Litigation -** The City Council may vote to close the meeting pursuant to Sections 52-4-205 and 52-4-506 of the Utah Code. – Frank Nakamura, Murray City Attorney

Mr. Nakamura said that the discussion was related to existing litigation. The Open and Public Meetings Act talks about imminent litigation and Murray is beyond that in existing litigation with Reagan Outdoor Signs versus Murray City. Public bodies are allowed to close a meeting to discuss settlement that clearly falls into the realm of closed meetings. It requires a motion, second and two thirds vote to close the meeting. No decisions will be made; however this provides an opportunity for the City Attorney to brief the Council on existing litigation.

At 5:58 p.m., Mr. Stam moved the City Council go into a Closed Session to discuss the pending litigation issue. Mr. Shaver seconded the motion. The motion was unanimously approved by voice vote 5-0.

(In accordance with Section 52-4-506 of the Utah Code, an unedited recording of the closed meeting was made and will be retained permanently in a format that meets long-term records storage requirements. This recording is protected under title 63G, Chapter 2, Government Records Access and Management Act.)

Following the Closed Meeting, the Committee of the Whole meeting resumed and was adjourned at 6:30 p.m.

Janet M. Lopez
Council Office Administrator