



MURRAY CITY MUNICIPAL COUNCIL COMMITTEE OF THE WHOLE

The Murray City Municipal Council met as a Committee of the Whole on Tuesday, January 8, 2013, in the Murray City Center, Conference Room #107, 5025 South State Street, Murray Utah.

Members in Attendance:

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

Others in Attendance:

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| Dan Snarr | Mayor | Tim Tingey | ADS Director |
| Janet M. Lopez | Council Office | Jan Wells | Mayor's COS |
| Frank Nakamura | City Attorney | Doug Hill | Public Service Director |
| Pete Fondaco | Police Chief | Craig Burnett | Police |
| Justin Zollinger | Finance Director | Chad Wilkinson | CED |
| Trae Stokes | City Engineer | Mike Dykman | Fire |
| Patricia Griffiths | Library Board | Kellie Challburg | Council Office |
| Jennifer Brass | Resident | Kim Fong | Library |
| Gamal Herbon | Library | Dianne Wiscomb | Library |
| Bruce Cutler | Library | Lois Holt | Library |
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Chairman Brass called the Committee of the Whole meeting to order at 4:45 p.m. and welcomed those in attendance.

Minutes

Mr. Brass asked for corrections or action on the minutes from the Committee of the Whole meeting held on October 16, 2012. Mr. Hales moved approval as written. Mr. Shaver seconded and the motion was approved 4-0.

Mr. Brass asked for corrections or action on the minutes from the Council Initiative Workshop held on November 13, 2012. Mr. Stam moved approval as written. Mr. Hales seconded and the motion was approved 4-0.

Mr. Nicponski was excused.

Business Item #1: **Budget Opening Fiscal Year 2013- Justin Zollinger**

Mr. Zollinger said there are quite a few line items to discuss in the budget opening.

The first line item is that the DEA (Drug Enforcement Administration) received more money this year from the Federal government. According to the contract, Murray City is entitled to 5% of that, which equals an increase of \$972.00.

The City authorized the outright purchase of police vehicles so the line item for the Capital projects budget in the amount of \$510,000 is for that purchase.

The Fire department was awarded a grant for \$3,012.00.

The Parks department budget needed to be increased because after the water meters were replaced, it was found that the old ones must have been reading too low, hence the increase in water costs. The Parks department had spent \$160,000 by the end of December and the budget was only \$200,000. The funding mechanism is a portion of sales tax that has a positive variance in order to cover that. The City needed to make a move on this line item, before they run out of their budget completely. The increase is good for the Water fund, but not the other fund, but accuracy is the most important thing. The total increase of that budget is \$50,000.

The City authorized the purchase of some salters in the 2012 fiscal year budget. The salters were not delivered until the next October. The prior year budget has been closed, so the money needs to be carried forward for that purchase. The exact dollar amount for that is \$39,557.

The City received \$1.2 million for the project on 5900 South State Street. Public Works and Utah Department of Transportation (UDOT) are both ready to start this project, so the City would like to open the budget for \$100,000, and UDOT will also pay the City \$100,000 as the funding mechanism.

The Water Fund would like to spend an additional \$75,000 on line maintenance. There have been a number of unforeseen water line breaks. This money will come from the Water Fund reserves. The Water department would also like to add \$410,000 to the line item for well head protection, this is for unforeseen costs to stabilize and rehabilitate McGee Springs. The original budget is not enough to cover the project costs. The Water Fund is in a strong position as far as reserves, so that is a fortunate position to be in.

The Water department would also like to add \$450,000 to a line item for pipe replacement projects. Because of the major water line breaks at Fashion Boulevard, the Water department has decided to replace the water line between 5900 South and 6280 South prior to the street being repaved. Mr. Zollinger said the Mayor is in favor of repairing the line before the road is repaired. Mr. Shaver asked if this specific water line was included in the water line repair project. Mr. Zollinger thinks that this line was not included in that. Mr. Hill said that is separate. There have been numerous water line breaks, besides Fashion Boulevard. The cost of the repair to Fashion Boulevard was unforeseen and wasn't included in the budget. The other water breaks have occurred over the last six weeks, so it is a combination of things. Mr. Shaver asked

if the water line fund was meant for replacing water lines, and also for building out lines. Mr. Hill agreed that this would be a portion of that also.

The City would like to have authorization to pay down electric revenue bonds early in the amount of \$2.8 million. The City has bonds that are 5%, it would be great to have an investment of 5% but that is hard to find. The next best thing is to pay off debt that is at 5%. Mr. Nicponski asked where the \$2.8 million is coming from. Mr. Zollinger replied from the Power funds reserves. Right now the fund is at \$13.7 million. It is probable that the fund will still finish above \$10 million at the end of fiscal year. Mr. Zollinger said that the \$2.8 million will pay down principal and interest both.

Mr. Shaver asked for a definition on callable and non-callable bonds. Mr. Zollinger explained that non-callable bonds are not eligible for an early payoff. The Power Fund would like to work their way out of debt as quickly as possible, thinking that they could pay a little bit down each year. Mr. Nicponski asked what the overall bond total amount was. Mr. Zollinger said that it is at \$19 million. This will take the amount down to a little over \$16 million, and the City will save that 5% interest, which roughly totals \$100,000 per year.

The Library Fund received a Federal grant awarded for the Young Adult library.

The Sports Mall paid off their loan. It was a 9% interest rate, so it is both good news and bad news. It is good because the City received one-time money, but the interest earnings in the future will be affected. Staff is moving that amount from the General Fund to the Capital Improvement Fund.

Business Item #2

Valley Emergency Communications Center Audit Report- Justin Zollinger

Mr. Zollinger explained that when looking at an entity, the question needs to be asked if the entity can cover their operating costs. The reports passed out today on the Valley Emergency Communications Center (VECC) is comparative from year to year. The total operating revenue went down slightly from \$10,965 to \$10,800, this was mostly due to a grant received the prior year. Their operating expenses also went down by approximately the same amount. This was a result of depreciation. The operating income of \$367,000 is a good spot to be in.

Most of the debt that VECC has drops off in 2016. This could possibly lower the amount they are asking the City to pay. Either way, VECC will be in a better spot. VECC had an increase of 6.9% in their health insurance. That is a fairly modest increase; the City had an 8.5% increase in health insurance.

One possible concern is that the income for service has decreased from \$5.1 million to \$4.6 million. A comment was made that the Midvale police department dropped out when they joined the County, this could be the reason.

The investment that VECC made in Capital assets decreased by \$85,000 this year. This could be that they had fewer items to invest in, but they also need to continue to increase their Capital in order to maintain this entity.

Cash reserves as a percentage of the total revenue is 12.5%. Mr. Shaver asked about the non-cash investing capital on page 14. That line went from \$403,000 to \$0.00. Mr. Zollinger didn't know the answer on that.

Murray currently is paying \$118,930 to VECC for Fire and \$347,386 for Police. Mr. Nicponski asked if this included the passing through to 911. Mr. Nicponski estimated that we pay VECC approximately \$800,000 per year. Mr. Nicponski pointed out that Sandy City just left and VECC will be looking for ways to patch that hole. Mr. Stam also pointed out that Bluffdale left, and Taylorsville is talking about it. Mr. Nicponski said that things could change in Taylorsville with the new Mayor. VECC will have to address this loss of income. Mr. Nicponski said that if the City takes care of their share, it will be an increase of about \$123,000. It is a baseline over there, and VECC can't really lose people just because Sandy left.

Mr. Nicponski said there are four alternatives: staying with VECC and helping them become whole, participating in the County system, participating in the Salt Lake City system, which is what Sandy did, or also the possibility of having your own system. Mr. Brass suggested scheduling a meeting to discuss that when there is more time. Mr. Nicponski agreed and said he just wanted to make everyone aware that this discussion will be coming in the future.

Mr. Zollinger stated that the revenue dropped off when Midvale left, now if Sandy leaves, the revenue will continue to drop. Will Murray be left holding the bag, he asked. Mr. Brass said that if the expenses don't decline proportionately, then Murray will be left holding the bag. Mr. Zollinger said it is a concern that should be addressed.

Mr. Stam said that a certain amount of personnel will drop because of the fewer calls, which will address a significant portion of it. The Legislative audit and recommended mandate is putting the County and VECC back together. Isn't that eventually going to take place, he asked. That will eliminate one of those options but also may change the whole valley. Mr. Nicponski agreed and added that Brad Dee, the legislator that is spearheading that issue is the majority leader, and he may get what he wants. First, the City needs to see how VECC responds, and then see what the legislature does, and act accordingly. Mr. Brass reiterated that some time should be spent on this issue.

Mr. Nakamura said that the City shouldn't be left holding the bag, regardless. Even if Sandy leaves, they should assume that the bond covenants are in place. Mr. Brass asked Mr. Nakamura to put it on the agenda for a later time.

Business Item #3

Open Meeting Act Training- Frank Nakamura

Under Utah law, the City is obligated to provide annual training on the Utah Open Public Meetings Act. This body here is very experienced and has done an excellent job. The purpose behind this is to ensure open transparency. The training is interesting because we work with it every day, and everyone ensures that the topics discussed are within the agenda, and staff does an excellent job on noticing for public hearings on the Utah governmental web sites. Murray doesn't have any issues on this topic.

Ironically, today Mr. Nakamura picked up the Tribune and Saratoga Springs had an issue with this subject. Even though the letter of the law could be being followed, perception is reality. Staff always needs to remain sensitive to that. We all live in the electronic age, with laptops, and phones, and need to be careful that the perception is not that texting or emailing is

going on. Even though it sounds like the Saratoga Springs Councilmembers were within the letter of the law, perception is important also.

The other issue that the Utah Open Public Meetings Act has not caught up with is the social media that happens when business takes place on Facebook, etc. That hasn't really been addressed, but it is important to remain sensitive as far as deliberations and discussions about issues. Discussions should be in the open, subject to public notice.

Mr. Nakamura believes that many entities don't follow the closed meeting provisions as well as Murray does. Murray doesn't have many closed meetings, and only then if they relate to real property sales, or the competency or professional abilities of an individual. The reasons that closed meetings are allowed are specific. Murray has only had one or two closed meetings, and he appreciates that. Murray doesn't try and get it in under some general provision like litigation or personnel. The notices are handled by the staff and City recorder very well. Staff works with Ms. Lopez, and Ms. Kennedy to ensure that the wording is correct and specific on the agendas. The City has done very well with not going out of the boundaries of what was on the agenda.

If there is public comment, those issues can be addressed within the public comment section of the meeting, but no decisions can be made.

Mr. Nakamura provided the Open Meeting Statute. There was an issue regarding quorums and electronic communications. As a reminder, there needs to be three members present in order to have a quorum, even though they are available through electronic means, there needs to be three physically present.

Mr. Nakamura believes that the minutes are very thorough, but do need to be approved.

In addition to the training that Council members receive through the Utah League of Cities and Towns, constant training is happening at every meeting.

Mr. Nicponski asked what happened in Saratoga Springs. Mr. Brass said that it was a land use discussion on a zone change, and two council members, the City attorney and the City manager, exited the meeting during the meeting. There was a discussion and they returned to vote. Because of that, there was opposition to the zone change and a lawsuit is being filed. Technically, they did not violate the Open meetings act, because there were only two of them, not a quorum, but it doesn't look good.

Mr. Brass said that there have been two closed meetings on the Central Valley Board, dealing with personnel. After the meeting, they wanted to discuss it in the open meeting, but it wasn't on the agenda, so the discussion had to wait until the next meeting.

Mr. Shaver mentioned that Mr. Nakamura said that there needs to be three people present to form a quorum, but it also states that if there are three people present it can be considered a quorum. If there are three Council Members having a discussion that could be considered a quorum also and that cannot be done outside of the Open Meeting Act. Council Members need to be careful that if an item is discussed, that there are not three or more present discussing that item. Mr. Nicponski asked if a social outing, such as a gala is acceptable. Mr. Brass commented that the Council Members can all sit down together at a social meeting but not conduct business. There is another word that is used, such as coincidental or an accidental meeting that is acceptable. Mr. Nakamura said that it is when decisions are being made, and there are three Council Members present, is when the Open and Public Meeting Act would

come into play. Again, perception can be a reality. In the Saratoga Springs case, it was only two members, but caused problems.

Mr. Nicponski asked about when sending an email, and a person hits the reply all button, does that constitute an open meeting at that point. Mr. Nakamura said that sending the public documents is considered a public record. The law has not really caught up to the technology available. He believes that issue hasn't been addressed. Council Members need to be sensitive to perception that business is being done outside the view of the public. There is a business reality that requires documents to be sent out electronically and emails are being sent. Business decisions cannot be made outside of the public view and must be on an agenda. The tricky area is social media and electronic technology, and the law has not caught up to it. He believes that the Councilmen have been sensitive to this, and there have not been any issues in the City.

Business Item #4

Interlocal Board Representatives-Jan Wells

Ms. Wells sent a list of the boards that the City associate and work with. This became a practice a few years ago to go through certain boards and clarify the people serving in those positions, and make any adjustments moving forward.

In talking with Mr. Nakamura, staff named the top 7 boards on the list: Utah Telecommunications Open Public Infrastructure Agency (UTOPIA), Utah Infrastructure Agency (UIA), Valley Emergency Communications Center (VECC), Utah Association Municipal Power Systems (UAMPS), Central Valley, Trans-Jordan, and the Wasatch Front Waste and Recycling District (WFWARD) board. The WFWARD board is a new board. The representatives should be on a resolution and passed next meeting. Ms. Wells gave a list of who had served on those boards in the past year. Many of those people can continue serving. Sometimes, Council Members like to make changes and adjustments.

Mr. Shaver asked a question earlier about which boards are required to have elected officials as representatives. The only two boards that require that are: VECC and the WFWARD board.

Mayor Snarr said he thought that Central Valley required it also. Mr. Brass confirmed that all the District board members are elected officials. Mayor Snarr said that South Salt Lake and Murray are the only two cities in the Central Valley, the rest are all in the improvement district. Ms. Wells said there is a staff employee as an alternate. Mr. Brass said that often the managers on Central Valley serve as alternates, in fact all of them. Mr. Nakamura clarified that the board member has to be an elected official but a staff member can serve as an alternate. Mr. Brass said that the employee can technically vote also, according to the bylaws. Ms. Wells said in the past, it has always been elected officials from Murray.

Mr. Stam asked if VECC required an elected official. He has often seen City managers and other representatives there. Ms. Wells asked if they were voting members or alternates. Mr. Stam said that he knows they voted. Ms. Wells said she would guess that they were alternates in that case. Mr. Nicponski agreed that there are a number of City managers that attend those meetings. Ms. Wells said that VECC may not require that then. Mr. Shaver said that if it is supposed to be an elected official and the chair is not an elected official and making decisions that affect the Cities, are those decisions binding. Mr. Nakamura said that depends on the bylaws of the organization, and he isn't aware of VECC's bylaws. Ms. Wells said many of them do have the flexibility to let staff member's vote, due to the difficulty of Council Members getting there.

As far as UTOPIA, Ms. Wells and Mr. Fountain are members of that Board. Mr. Stam and Mr. Hales are members of the UIA Board. The idea was to have Councilmembers on one Board and Administration on the other to let each other know what is happening. Mr. Stam asked about a rumor that Mr. Fountain was leaving at the end of the Legislative Session, which is a couple of months away. Ms. Wells said she would be fine to receive suggestions for another alternate, or the change could be made when Mr. Fountain leaves. Ms. Wells suggested that the City keep a watch on that one.

Mr. Stam and Mr. Nicponski have served on VECC. Mr. Shaver asked Mr. Nicponski if he has a conflict with that one. Mr. Nicponski said that he gets there enough, but the Interim Legislature is that day, so it depends on the action going on. He said Ms. Wells has come in the past, and that she fits in with the City Managers. Mr. Shaver said then it brings up the issue if it needs to be an elected official or if according to the bylaws someone else from administration could go and represent them, as an alternate. Those questions need to be answered. Mr. Stam suggested that they could be better at informing the alternates because he was never informed when Mr. Nicponski couldn't make it, and so he has never attended. Ms. Wells asked if someone would like to look at that. Those meetings are the third Wednesday of the month at 2:00. Mr. Brass asked if Mr. Nicponski would like to continue with those. Mr. Nicponski said he will do it, unless someone has a burning desire. Ms. Wells said VECC is an important board, and has a lot going on right now and possibly an alternate can help Mr. Nicponski. Mr. Nicponski said that would be helpful if they know if that could be a staff person or not. Ms. Wells said she assumes it could be a staff person if Randy Fitz is the Chair person, but she will check into it.

The UAMPS board is staffed with representatives.

The Central Valley Board does need to be an elected official but the alternate can be a staff member. Mr. Shaver commented that Mr. Brass has been doing that for a long time. Ms. Wells asked Mr. Brass if he was comfortable continuing with that. He said he was, especially with the water quality of the Jordan River, he would prefer to keep an eye on that. Ms. Wells commented that there are some levels of expertise that come from serving on a board.

Trans-Jordan has Russ Kakala as the representative, and Doug Hill as the alternate. Ms. Wells said Mr. Hill has helped out for a long time on that also.

The new garbage board, the WFWARD, has Mr. Brass as a representative. Mr. Brass said he has only attended one meeting, and discovered it was a four year commitment. Ms. Wells asked if Mr. Brass needed an alternate and if could be a staff employee. Mr. Brass said he doesn't know enough about it yet. Ms. Lopez said the meetings are the same day as Central Valley, but at 9:00 am. Mr. Brass confirmed it is the third Thursday. Mr. Hales volunteered to serve as alternate if needed. Ms. Wells said that a few details need to be sorted out, but otherwise everyone will remain in those positions.

Mr. Brass suggested a quick break and reminded everyone of the joint meeting of the Murray City Municipal Council and the Murray City Library Board. This meeting has been noticed for 5:30. He invited the Library board to join the Council up at the table.

Business Item #5

Joint meeting with the Murray City Library Board

Mr. Nakamura noted for the record that there was a separate notice that went out regarding this joint meeting, in addition to the notice that generally goes out for Council meetings. Everyone's presence is appreciated. Mr. Nakamura introduced G.L. Critchfield, the land use expert in the Legal department. He has spent a lot of time preparing documents and unraveling this transaction. Mr. Nakamura has spoken with Kim Fong regarding this transaction, and Trae Stokes has worked with the engineers on the new junior high and that has involved a lot of legal descriptions.

The School District notified the City that they would like the City to vacate and close a portion of Hillside Drive, in order to construct this new Junior High. Once the property is vacated, the property will revert back to the underlying property owners, in this case it will be the school. The City will have a Public Hearing on the vacation, and the permanent closure of Hillside Drive, and the notice has been provided. The City is required to notify all real property owners that had access to the right of way that is being vacated. The utility companies have also been notified. For the purpose of the Council, the standard of review will be to determine if there is a cause to vacate the property and will it be detrimental or materially injure the public or property owners by the vacation. That Public hearing will be on January 22nd, 2013.

As this issue came up, the School was interested in doing an overall plat of the area, working with Mr. Stokes. It was discovered that the property underlying the Library was in the name of the City. This was unbeknownst to the City, and the City thought that it was leasing the property from the School District, and in fact the record showed that the City owned the property. Originally, when the City decided to build the Library the City was going to construct the Library and lease the property from the School District.

When looking at the financing of this transaction, it was going to be done through the Municipal Building Authority; the underwriters told them that the City must own the real property in addition to the building that was to be constructed. The District was not obligated to participate, but that may be a benefit to building the Library on the property. The School District agreed to enter into an agreement with the City, and convey the property by special warranty deed to the City to help with the financing under the Municipal Building Authority Bond. This agreement was entered and dated December 4, 1991 that the property would be conveyed to the City for \$50 and that can be used for part of the bond financing. Once the bonds were paid, and the property wasn't needed for collateral then the School District has the option of taking it back and going back to the lease agreement. The original lease agreement was for 50 years at \$1 per year. The underwriters had said there would be no financing with the lease of the land. Bonds were issued and proceeds were used to construct the Library, and there was a bond commitment.

In 1997, the City decided to refinance these bonds, this was a usual occurrence when the interest rates were lower and the City could save some money. The City asked the School District if the City could still use the property as collateral. The City asked for the School District to sign another agreement allowing the City to extend this option by holding the property, and using it for collateral. The School District signed an agreement allowing the City to use the property as collateral and refinance the property. The City also refinanced the Public Services building and the Park Center at the same time. Bruce Cutler asked if that was done using the same property that was deeded from the District. Mr. Nakamura said yes it was, among other City properties that were done at the same time through the Municipal Building Authority. The City doesn't use the Municipal Building Authority very much anymore, because the Legislature

allowed the City to use sales tax revenue to pay bonds. In 2007, the City decided to issue sales tax bonds and pay back all the other bonds. There was no need to pay interest rates on Municipal Building bonds, when everything can be paid off with sales tax bonds. The bond documents show how that transaction was processed.

In 2007, the proceeds from the sales tax bonds paid off the obligations and the property was no longer needed for collateral. At that point, the School District had the right to get the property back for \$50, and in exchange the City would get the lease. The 50 year lease would run to 2041. As soon as the sales tax bonds paid this off, the City didn't notify the School District of any options, and therefore nothing was done. It didn't come up, because of the minimal amount of \$1 per year. Mr. Brass said that the School District was also under the impression that they owned the property. Mr. Nakamura agreed and also said that the School District may have thought that the property was released when the bonds were paid, but that doesn't automatically happen. It automatically happens for other properties, once the bonds are paid off and everything is released. There were some formalities under these agreements that had to take place.

Under the agreement, the City needs to notify that the bonds have been paid off, and the School District has the option of purchasing the property for \$50, and then concurrently enter into a lease with the City. This would be the same original lease that would expire in 2041. The City has always owned the building and improvements, subject to the bond's collateral. The lease of the ground is the subject of the lease until 2041, with the option to renew for another 50 years, if mutually agreed upon. If it is not renewed, then the District is obligated to purchase the building and improvements at fair market value.

Mr. Shaver asked if there were two different leases. Mr. Nakamura said there is just one lease. Mr. Shaver asked if the City had been paying the \$1 and kept the obligation of the lease, even though the property had been in the City's name. Mr. Critchfield said the lease spilled over into the agreement, and the agreement became the \$50, which terminated the lease. Mr. Nakamura said the City needs to re-create the lease, but under the old lease according to the agreement. The lease terminated, but under the agreement, once the property went back to the School District, the original lease with all its terms and conditions will be adhered to. The lease will be the same, but needs to be re-executed, because it was terminated.

The City spoke with the Title Company today, and this will go into escrow and will all happen simultaneously. The Title Companies are checking and re-checking the legal descriptions.

The one difference on the lease is regarding a panhandle, a little piece to be taken out in order to square up the plat. Mr. Stokes said the little piece has sidewalk access for pedestrians. It is the sidewalk that goes from the library property up to Hillside Drive. This is a small piece behind the sewing machine shop that follows the fence line. Mr. Nakamura said that the County Recorder wants square pieces, and the School District wants an entire plat done of the whole area, for several reasons. In order to plat this with the County Recorder, it makes a square piece of land. Nothing really changes from the standpoint of the Library. It is a piece that attaches to the southeast corner of the parking lot.

Mr. Brass asked if it is essentially a correction of a clerical error and just bring it back to what it was. Mr. Nakamura said in 2007 the property should have gone back to the School District, and the School District didn't have to help the City out in terms of bonding, but they did. The agreements are pretty clear as to what needs to happen.

Mr. Cutler asked if there was a current bond on the latest remodel, and if that was created from sales tax revenue. Someone said that was from the City fund, and the Library is paying back the City. Mr. Nakamura said there are bonds, such as sales tax and utility bonds. Mr. Herbon asked if the Library needed to renovate, or add-on in the future, if it would be a problem with the Library leasing the property. Mr. Shaver said that depends on the bond. Mr. Nakamura said it could be a problem with a Municipal Building bond. Mr. Shaver said that it might because they take the property as collateral, whereas a sales tax bond they take the revenue generated from sales tax as the collateral. Mr. Herbon wondered if this might come up again in the future. Mr. Nakamura said that it is up to the School District since it is their property. The City might have to find another way to finance it; there are tax levies or other approaches to financing. Mr. Nakamura doesn't see many Municipal Building bonds because they are very expensive.

The Library Board will be meeting on January 16th. The Library Board, and the City, through the Mayor, gives notice to the School that the bonds have been paid, and therefore, they have the option. That has to be done jointly. The City is requesting a resolution to be on your agenda approving the notice to go to the School. There will be two other resolutions: giving a recommendation to the City Council regarding the lease, and a recommendation to the City Council regarding the purchase and sale of the property. There will be two recommendations and the notice that will be before the Library board.

The City Council will have to surplus the property to convey it back, and review and consider the recommendations of the Library board approving the agreement to surplus and then convey the property. The final action will be on January 22nd, when the City Council will be considering the vacation of Hillside Drive and the permanent closure. In regards to the utilities, that will be worked out separately, and then plat the new utilities. Mr. Shaver asked about the surplus and conveyance as one issue on January 22nd, and the next issue would be the vacation of Hillside. Mr. Nakamura said there will be four separate agenda items.

Mr. Stam asked if when something is surplussed, it usually means it isn't needed or used. Can something be surplussed when it is being used, he asked. Mr. Nakamura said the standard is whether there is cause to surplus it, and under this agreement it compels the City to convey it. Mr. Critchfield explained that there is no longer a need to own the property. Mr. Nakamura said a lot of our surplus is when it is not needed, but in this case, the City no longer needs to own it, based upon the two agreements.

Mr. Shaver said the standard is that a piece of property can be owned, but not the building on it. That is not unusual, he said. Mr. Critchfield said the purpose was to own the land to start the building as it is constructed.

Ms. Wiscomb asked about the stability and long standing of the Library, and is concerned that the School District could turn around and say you are out of here in 5 years. She understands the good faith but wondered if the School District had been approached about their intentions. Mr. Nakamura said the lease is until 2041, and in 2041 if the School District decides not to renew the lease, they would have to purchase the library. Ms. Wiscomb mentioned that there could be a lack of a new property and what would happen then. Mr. Critchfield said that five years notice must be given. Mr. Brass said the library has been discussed at length.

Mr. Nakamura said these questions are all outside the scope of the agreements in this transaction. The City and the School District always have the ability to negotiate a deal. He

believes there have been discussions and that there will be, but that is a separate transaction, not tied to this. Mr. Shaver said that holding the property in a legal way to force them to discuss is not a good option. The best option is to say they were kind in allowing us to use the property to create the bonds, and the City needs to be just as kind when giving it back. Ms. Wiscomb said she understands, and at this time, they don't need the property, and would consider the transaction. Mr. Hales clarified that is similar to saying they won't need it then, so they will give it up now. Mr. Nakamura said that the City is obligated to convey the property, the bonds are paid off, and there are so many documents and it is not vague. As far as other discussions, that is outside of this transaction.

Ms. Griffiths said the recorded documents declared that it is subject to the lease agreement. Mr. Nakamura said that the 1991 lease contract said that it has to be the same lease. Ms. Griffiths pointed out that some of the library items that were collateral are no longer there. Mr. Nakamura said that is a good point and there is a provision from the 1991 agreement regarding some security interest, and UCC1 filings. There was some sort of protection, if the City didn't convey the property, but those will all be released. The records have been searched and nothing has been filed to secure the personal items. Ms. Griffiths believes there is a moral obligation to enter the agreement to honor the lease and it has been a reciprocal issue within the history. There has been a lot of discussion about relocating the library and she believes that is premature at this point. Mr. Nakamura said they are simply discussions at this point.

Mr. Nakamura said this will be brought to the Library Board meeting on January 16th, and there will also be open public meetings. These agenda items will be brought then and the City Council will address them on January 22nd. There will still be a lot of work after that with the City Engineer, and the Title Companies. Mr. Nakamura thanked Mr. Critchfield, and Mr. Stokes for their hard work on this issue. Mr. Nakamura and Mr. Critchfield said the Title Company was told to record all documents, and the option to purchase was recorded, but a title search wasn't done in all these years. This was picked up when the School District did a recent title search on all of their properties.

Mr. Brass said the Library is a gem and is nationally known. The School District hasn't ever given any indication that they would like the property. Mr. Brass said it would be nice to make a deal, if you need to expand, and get more parking, once the footprint is done. Mr. Shaver has had the opportunity to look at the footprint, and it is nestled up on the east side of Hillside. Mr. Brass stated that it is an ongoing discussion but feels comfortable with the terms of the lease that the Library is safe for the foreseeable future. Ms. Wiscomb understands this is all in good faith, but has some concerns. Ms. Holt said they don't have any intention to renege on the agreement, but acknowledges the amount of work that has gone into this. If there was any possibility of transfer of land now, it may save some effort or money in the future.

Business Item #6

Home Occupation Ordinance Discussion- Tim Tingey

An ordinance was proposed several months ago to modify the Home Occupation zoning standards. That was City initiated and went to the Planning Commission. The Planning Commission had some concerns that Mr. Tingey would like to point out to the Council, and have a discussion.

The main issue relates to the modification made in 2007 prohibiting construction businesses as a home occupation. Residents have wanted this to be looked at again. There have been some changes put together.

The main issue is that construction businesses are now allowed through a major home occupation application process. These major home occupations are occupations that include clients coming to the home, or may result in neighborhood impacts if not properly managed. These major home occupation permits are personal to the applicant and non-transferrable. Some of these major home occupations would include: barbers, consultant services, counseling, home instruction, and the big one is the contractor/handyman and landscaper/yard maintenance contractor subject to the special conditions. Mr. Tingey said there are a few more on the list. Mr. Wilkinson said any other business with similar circumstances of having clients come to the home would qualify.

Mr. Tingey said the major home occupation application process is outlined as well. That means there would be a notice sent to all the neighboring property owners that is subject to the provisions outlined as it states. All adjacent property owners, including those across the street, would have to give their signature on this application that is submitted by the applicant, giving their consent to allow that business at that location. There would be a prepared form. If the neighbors do not give the required signatures, then it can be forwarded to the Planning commission for their consideration. In addition to that, the decision would be made within 10 working days. Also, as part of this change, there have been additional home occupations added that are prohibited. They include: vehicle sales, limousine or taxi services, sexually oriented business, and tattooing businesses.

The application process requires a great amount of information as well, before the determination is made by staff to: approve, approve with conditions, or deny. It could then go to the Planning Commission. This is basically the ordinance in a nutshell of what is being proposed.

The Planning Commission had some concerns related to two things:

- In 2007 construction businesses were not allowed as home occupations. They felt like there was not a need in the future to allow those. There had been enforcement problems in the past. They felt like those were not the type of businesses that should be allowed as home occupations.
- They also felt that the application process would be an administrative burden.

This is a discussion before bringing the ordinance to the Council to address any concerns, and also to make the Council aware of the Planning Commission's concerns. Mr. Nicponski clarified that the businesses listed would all be disallowed. Mr. Tingey confirmed that the majority of businesses have been disallowed for years. Construction businesses were added in 2007, and the underlined businesses would be the four additional ones. Mr. Brass asked if cabinet making businesses were allowed and carpentry was not. Mr. Tingey said it is related to the construction business.

Mr. Shaver asked for a clarification on the difference between handyman and construction. Those seem to be two separate items. Mr. Shaver said in his mind, the handyman is a single individual that has a truck that goes out and does work. Construction businesses have materials and equipment that may need to be stored on site. The plumber has a truck which he stores in his driveway or garage, and it may have pipes or supplies on it, but he is not doing his business in his home, he drives back and forth to locations. That seems similar to a handyman that does not do his business in his home. Whereas, a construction business usually has storage and materials on site.

This ordinance allows for contractors and handyman, and there are special conditions that there are no construction materials or equipment to be stored on the premises. Handyman and contractors would be allowed under this new proposed ordinance but they could not store materials.

Mr. Brass said there have been complaints not necessarily about stored materials, but that a bunch of trucks converge on the house in the morning to get their orders, and the neighbors get irritated about that. Mr. Stam thought that was included in what he read, that didn't allow the dissemination of employees from a location. Mr. Shaver said that issue was addressed in the slide that read people are not coming to the home to do the work; there would not be the traffic or congestion. Mr. Tingey said the main element is that the impacts are properly managed.

Mr. Shaver asked how this is different from clients, or personnel coming to the home. Mr. Brass said a barber, or cosmetologist could have clients coming to the home and could have a backup in clients. If home occupations were done with the use descriptions under the existing zone as a conditional use, then the control would be better if that business were to expand. Then the conditional use permit could be revoked because the business would be in violation. Mr. Tingey said if the conditions are not met here, then they are not adhering to the zoning standard.

Mr. Wilkinson said there is a big issue with conditional use because it goes with the property and is not personal to the applicant. This is not a conditional use; it is a major home occupation which is an accessory use. If you have a major home occupation use, conditions can be added to that but it does not run with the land. Mr. Stam asked about the conditions needing to be approved. If a home contractor wanted to have his business in the home, part of the conditions listed are that employees don't gather at the home. Mr. Shaver asked what the concern was. Was it the expansion, he asked. Mr. Tingey said it was the expansion, storage of materials and equipment, all of that. That does occur and some enforcement is needed. Even with the major home occupation process, there is still a chance of expansion and enforcement issues. That was the main concern. They didn't feel like having construction businesses in single family neighborhood areas is conducive to that environment.

Mr. Brass was approached by an individual that would not be allowed to move his business into the home under this ordinance, and believes this a result of the bad economy. He has laid off all his people, and his lease is expensive. He thinks this is a response to the economic downturn, which is now coming back. Planning and Zoning is concerned about the economy coming back and the business owners wanting to expand. How big can a business get, before turning them out on their own, he asked. There needs to be a way to help meet the needs of people so they can survive, and protect the neighborhoods also.

Mr. Shaver said that the City is asking a business owner to go out and solicit their neighbors to sign off on them. In the neighborhoods now, if there is a trailer or motorhome that is longer than 28 feet, the neighbors are asked to call and tell us. The City is not going out and trying to identify them. When a complaint comes in, then the City goes to look. If a construction business owner has asked his neighbors to okay it, those neighbors will watch them very closely. There are already issues with adherence to codes, and the neighbors are letting the City know. Those seem to be minimal compared to what we can benefit to those having major home occupations. In his mind, those outweigh the other.

Mr. Brass said Planning and Zoning voted it down almost unanimously. Is this being brought before the Council anyway, he asked. Mr. Tingey said that is the plan unless there is something that needs to be addressed. It would then need to go back to the Planning Commission for their recommendation. Mr. Hales asked if it would still move forward without the recommendation.

Mr. Brass said this will come before the Council anyway unless a change is made, then it goes back to Planning and Zoning. Mr. Shaver asked to confirm that if the neighbors won't give their signatures if it would still go to Planning and Zoning. If Planning and Zoning deny it, then it can be appealed to the Board of Adjustments, and then go to District Court.

Mr. Brass asked if anyone wanted changes made before this comes before the Council. Mr. Stam asked if someone can still go to Court the way it is written now, regardless of the changes. Mr. Brass said that they could sue if they wanted to.

Announcements

Mr. Brass welcomed Kellie Challburg as the new assistant to Ms. Lopez in the Council Office. Ms. Challburg comes with City experience, having worked with Cottonwood Heights City.

Ms. Lopez announced that the ULCT local officials day is January 30th and reservations need to be sent in. Please let her know if you want to go.

Mr. Brass thanked everyone for their support, since this is his last meeting as Council Chairperson.

Mr. Brass adjourned the meeting.

Kellie Challburg
Office Administrator II