



MURRAY CITY MUNICIPAL COUNCIL COMMITTEE OF THE WHOLE

The Murray City Municipal Council met as a Committee of the Whole on Tuesday February 6, 2018 in the Murray City Center, Conference Room #107, 5025 South State Street, Murray Utah.

Council Members in Attendance:

Diane Turner, Chair	District #4
Dave Nicponski, Vice-Chair	District #1
Dale Cox	District #2
Jim Brass	District #3

Absent: Brett Hales District #5

Others in Attendance:

Blair Camp	Mayor	Jan Lopez	Council Director
Doug Hill	Chief Administrative Officer	Jennifer Kennedy	City Recorder
Jennifer Heaps	Comm. & Public Relations Director	Pattie Johnson	Council Office
Danny Astill	Public Works Director	G.L. Critchfield	City Attorney
Jim McNulty	Development Services Mgr.	Tim Tingey	ADS Director
Jennifer Brass	Resident	Cory Wells	Water Department
Kathleen Stanford	Resident		

Ms. Turner called the Committee of the Whole meeting to order at 5:30 p.m. and welcomed those in attendance.

1. Approval of Minutes

Ms. Turner asked for comments or a motion on the minutes from January 2, 2018. Mr. Brass moved approval. Mr. Cox seconded the motion. Passed 3-0. All were in favor. Mr. Nicponski arrived later at 5:35 p.m.

2. Discussion Items

2.1 Vacation of Rifle Street Right-of-Way – Danny Astill

Hamlett Homes made a request for the city to vacate the current right-of-way on Rifle Street at 4800 South near the old fish factory, where property was demolished. A new right-of-way would be established for a future development.

A map was shown to pinpoint the current right-of-way area on Rifle Street, which was believed to be granted to the city many years ago. Mr. Astill said due to lack of evidence, the city does not believe the right-of-way property was a purchase.

Mr. Brass noted the property was a mobile home park in the past. Mr. Astill agreed and stated the property was fenced off for years by original and current owners, the Nelson Brothers, and the property appears to be in better condition now.

Hamlett Homes is under contract to purchase the property located at 118 West 4800 South, with a proposal for an office, and 61 units - consisting of single family homes, townhome style, to be constructed.

The request was made for the city to vacate, pending council consideration. A photo depicted the city's new right-of-way, which would be a much larger public street than before.

2.2 Proposed Rezone 1222 Bullion Street A-1 to R-1-10 – Tim Tingey

Plans to rezone Bullion Street went to the planning commission where public comments occurred. Mr. Tingey shared photos of the rezone area.

Mr. McNulty confirmed the planning commission reviewed the proposed rezone on January 4, 2018 during a public hearing. The council would consider the rezone on February 20, 2018.

Applicants, MPG Construction and property owners, the Costello family, are working closely together to develop the area. A slide show and map were presented related to the area on Bullion Street and Walden Glen Drive, where existing zones were noted. The Costello's existing home would remain in place, as well as, another lot for their personal use. In order to create the project layout, a lot-line adjustment would be necessary, which would be conducted administratively by the planning staff and the city engineer. The adjustment would not create additional lots, but rather allow existing lots owned by the Costello's to be larger as per their request.

McNulty explained the rezone area was 5.84 acres, where concept and preliminary plans are not available at this time for a subdivision plat. However, if the parcel is rezoned from the current agricultural zone, to the R-1-10, which is low density residential, MPG Construction would proceed with a subdivision plat providing approximately 12-16 lots.

Mr. McNulty explained the general plan supports the development of the residential area, as well as, the Ivory Homes project for low density residential. He highlighted parts of the general plan analysis to explain low density residential zones that were former agricultural lands. This change was carefully considered based on characteristics of the site and surrounding area, and policies of the general plan, with compliance to Murray City and Salt Lake County development standards. Potential future development in the R-1-10 Zone and its associated impacts can be mitigated.

He explained the term 'compliance to Murray City', meant if rezoning was granted, developers would move forward in compliance with Murray City Code, Title 17, which is the subdivision ordinance.

After the public hearing was held on January 4, 2018, and public comments were addressed the planning commission recommended approval of the rezone. Mr. McNulty reported 8-10 residents opposed the rezone, and a dozen others were in great support of new home construction.

Ms. Turner noted a member on the planning commission, who supported the rezone lived in the area and explained why he favored the project. Mr. McNulty said development plans were in the works for over 18 months, when traffic studies were conducted, and city engineers reviewed all public utilities, in order to ensure services would be available to the area.

Mr. Cox inquired about traffic study results, related to increased traffic from the new Ivory Homes project on one side of the road, with the additional 16 proposed lots on the Costello property. He wondered how traffic would be handled on Bullion since it was a small two-lane road continuing to 700 West, and already congested during school hours.

Mr. Tingey explained the traffic study conducted by Hales Engineering concluded no change would be necessary. The results were based on timing, and access for the amount of people traveling in and out of those neighborhoods because the area was typical of what was seen in other neighborhoods, related to right-of-way. In addition, including both potential subdivisions, there was not enough density to justify a recommended change at this point because there were four additional access points in and out of the area, consisting of north, south, east and west, not found in similar areas.

Mayor Camp clarified the original information packet had a slightly different site map which was modified after the hearing in order to remove a piece of land from the rezone. He wondered if the legal language had been changed as well. Mr. McNulty affirmed the current map depicted the entire area of the A-1 zone that would be changed to R-1-10. In addition, Mr. Tingey would clarify the legal description and verify both site maps and reaffirm those changes in a public hearing if necessary.

Ms. Lopez noted property west of the proposed rezone area, not included for development on the rezone map; she wondered who owned the property. Mr. McNulty explained the property was city owned, considered wetlands, and part of a flood plain. However, the entire area has sensitive land constraints with the Jordan River nearby, and high water tables. Developers may not be guaranteed the yield they desire. Therefore, reviewing the subdivision process was important, in order to ultimately determine how challenging those sensitive issues could be.

Mr. Brass commented setbacks from the bank of the Jordan River would be required. Mr. McNulty confirmed there would be many technical details to work out.

Mr. Nicponski wondered what could be done about finishing the area between the new development, and the existing residential areas off of Bullion. Mr. Tingey explained there was nothing that could be done to separate the two areas within the rezone process.

2.3 Open and Public Meeting Act Training – G.L. Critchfield

Annual training related to conducting open and public meetings occurred where informational material was shared, and general principles were reviewed. Mr. Critchfield addressed the council first by asking why the Open and Public Meeting Act (OPMA) was important to the city council. He explained the purpose of the OPMA was to ensure city business be conducted in public view. Because all action taken, and all deliberations should be available for public participation and observation.

He told the council to keep in mind this year that shining light on their actions was imperative - by allowing everyone, to know everything being done, and everything being considered - by them. He stated the act of open deliberation itself, provides a remedy preventing many consequences. For example, following the OPMA prevents the city from being sued by the attorney general, the district attorney, or a private person, who may have had their rights violated, because a city council did not follow the rules.

Mr. Critchfield discussed the significance of being sued by a private person and should a private person prevail, the city would be required to pay that person's attorney fees, and all costs associated with the case, which was costly. He said the remedy for that situation would be, having a judge declare in a court of law that action taken by the council was void. In other words, if 45 minutes was spent listening to public comments, and council members reviewed meeting packets, and staff took great time to prepare accurate minutes, the whole meeting could be for not – if the OPMA was not followed.

Mr. Critchfield stated legislation emphasizes the importance of closing a meeting, when not to close a meeting, and the consequences of closing a meeting that should not have been closed. He explained by violating one of those provisions, a judge can confiscate the recording and/or meeting minutes for review, to determine if a council had justification for closing a meeting. If a council had reasonable cause for closing a meeting, the case would be dismissed. However, if no justification was found for closing a meeting, a judge would publically disclose information that should have been made public. Anyone who violated one of the OPMA provisions, could be found guilty of a Class B misdemeanor. Therefore, he stressed the importance of conducting all council business in public view, so that all could see what the city was doing – which for Murray, was a common practice of good government, by keeping no secrets behind the scenes.

He said the OPMA could be frustrating at times for staff, the council, and the administration, because there was an inherent inefficiency built into the OPMA, which was not a streamlined decision-making process. He felt the legislature could have provided an easier method, however, they did not. He explained legislators believe in the value of having a group of individuals come together, to deliberate, and discuss from different viewpoints, with different backgrounds. The hope is for the group to come to a compromise and build a consensus, which was more important than efficiency. As a result, by doing so, the process was often slowed, which essentially allows the public to have seat at the table. The public gets to read the agenda, decide whether to attend meetings that allow for public knowledge and monitoring. They see and hear council conversations and opinions, and they are provided a time to comment. He said the OPMA is inefficient, as far as accomplishing things, but it is efficient for getting things done with public participation.

The OPMA highlights the difference between the legislative branch, and the executive branch of government. When conversations relate to legislation, the council becomes policy makers. Compared to the executive side, where policies are implemented. He noted the mayor was not subject to OPMA for many reasons, which clearly displays the importance of separating the two powers - city council and city administration.

Requirements and provisions of the OPMA:

- Publically post and notice all meetings
- Publically post and notice the annual meeting schedule
- Provide a time for public comments at council meetings
- Prepare agendas for each meeting and post publically
- Provide sufficient detail on agendas
- Abstain from discussing issues not scheduled on the agenda

Mr. Critchfield noted the importance of conveying agenda content that was understandable for the lay person. Decisions made by the council effect every resident in the city, he said it was important to share information without being too verbose.

Ms. Turner asked if scheduled agenda items that did not require taking any action - could be openly discussed during council meetings. Mr. Critchfield stated yes, however, it was easy for lines to be blurred by the public, about whether or not a specific item required action, or not. Therefore, he would prefer conversations not occur about topics not scheduled on the agenda. For example, during public comments, the council would not typically debate, address or discuss issues with citizens, because the concern was not related to agenda items. Public comments were designed for the public to make statements to the council, and not have conversations at that time.

Mr. Brass noted frustration could easily come when public comments were negatively directed at the council, and often a response would be the natural thing to do. However, he felt by not engaging in conversation, or not giving a response – silence would clarify the fact that a public comment or concern was typically not on the agenda, validating the reason why a response would not be given.

Mr. Critchfield explained the OPMA covers meetings, and therefore, it was important to note - *What is a meeting*. Because meetings tend to bring up occasional controversial issues and topics, knowing when a meeting was necessary, and knowing when the council should convene as a public body to address matters within their jurisdiction, was imperative. For example, he noted the upcoming city council meeting, following the Committee of the Whole meeting, would require the city council to comply with the OPMA. However, he said other meetings might not seem as clear, such as, study sessions, retreats or pre-meetings – all of which, are open public meetings.

For other meetings, such as, social events or private gatherings, where council members are invited, or by chance find themselves together as a group –he said the important key was to recognize the situation and stressed that council members not discuss issues related to upcoming agendas in private or as a group. He warned against human nature and wanting to discuss matters of common

interest as a city council, but since these types of gatherings would not be publically noticed, and not public meetings, avoiding those discussions would be advised.

Mr. Brass inquired about meetings held out of state, for example, the National League of Cities, and the American Public Power Association, when council members travel together to learn about new policies and government interests. He wondered then, how would the OPMA play into those types of group discussions, which would never be on an agenda. Ms. Turner wondered as well, since most of those discussions were proactive workshops, and the council might anticipate future action.

Mr. Critchfield responded, if the council finds itself in a quorum, which is three council members or more, and a potential future topic arises, they should not discuss the matter. He stated philosophical conversations were fine, however, items that could make their way onto an agenda, should be avoided at all times with no private discussions related to those issues. He explained such discussions were not good practice, because the public would have no idea these deliberations occurred – even if the item was scheduled months away. It was better to be safe than sorry, and the law should be followed at all times. The worst thing the council could do was to make a mistake in this area, which would undermine the public's confidence in city government.

Mr. Critchfield clarified conversations with citizens would not be a violation of the OPMA, however, a citizen could, individually or as a group, have discussions with each member, in order to form some type of outside consensus - this, he said, should be avoided.

Mr. Brass wondered how council members would know if a citizen had privately visited another council member unknowingly, or emails were sent out separately requesting phone calls from council members— because council members typically do not report to each other. He felt certain circumstances might be an unavoidable and could be an interesting dilemma because typically, council members always want to respond to constituents.

Mr. Critchfield stated if council members were not soliciting the interaction, a conversation of that sort should be fine, however, if a council member was soliciting information or trying to avoid the OPMA, those conversations should not occur. He noted it would be good policy to inquire citizens what other council members were notified or included in the solicited issue.

Mr. Critchfield affirmed, there was nothing wrong with conversing with constituents, he would just advise council members to be careful and mindful of the OPMA.

Ms. Turner felt good communication between council members was important, if a specific group was soliciting council members individually. Mr. Critchfield agreed that type of situation occurred recently and felt the council learned to be aware of it. He said it was better not to speak with groups soliciting council members individually.

Mr. Critchfield explained there were narrow exceptions for closed meetings and the city did not typically face those situations. However, if and when the need should arise, a closed meeting requires a quorum of council members present in a public meeting, before a meeting could be closed. The agenda would convey the issue to be discussed during the closed meeting, and there would be no

action taken during closed meetings. A recording of the closed meeting would still be required, which would be protected under the Government Records Access and Management Act, (GRAMA). However, if a closed meeting was associated to security measures, or personnel issues, related to character, no recording of the meeting would be necessary.

Mr. Brass wondered whether a form must be filled out prior to closing a meeting, and another form filled out once the closed portion of the meeting ended. Mr. Critchfield stated a form was not necessary, however, a recording of the meeting would reflect, as public record, who moved to close the meeting, who voted yes, and who voted against closing a meeting.

Ms. Turner noted the Murray council seldom closed meetings, and believed it only occurred once since she began her public service tenure. Mr. Critchfield said that was a fact to be very proud of.

Ms. Turner wondered about emails and texting. Mr. Critchfield stated if content was related to city business, the information would be protected by GRAMA. He added texting one another during public meetings should not take place.

Mr. Brass noted receiving texts from citizens in the audience on occasion, which he typically ignored. Mr. Critchfield explained any information gathered that informs the deliberation of the council, should be made public record, therefore, disclosing text information would be allowed.

Mr. Cox wondered about disclosing text messages during a council meeting. Mr. Critchfield explained the safest way was to disclose the text message, who the message was from first, and what their interest was related to.

Mr. Brass said as a general rule he did not delete emails from his city email account. Mr. Critchfield felt that was good practice.

Ms. Turner asked about electronic meetings and wondered if votes called in by telephone, would count. Mr. Critchfield said yes, as long as a quorum of the council was present at a physical location, the call was prepared for in advance and noted on the agenda, and a disclosure was given, as to the location of the absent council member. He noted, if a council member was absent, due to sudden illness, and therefore, not stated on the agenda, disclosing the situation at the beginning of a council meeting would be allowed and votes could still be counted if the council member wanted to call in to the meeting.

3. Announcements: Ms. Lopez made the following announcements:

- Wednesday, February 7, 2018 - Meet State Legislators, Holiday City Hall, at 7:00 p.m.
- Saturday, February 10, 2018 – Chamber of Commerce Legislative Breakfast, Doty Education Center, 9:00 a.m.

4. Adjournment: 6:15 p.m.

Pattie Johnson
Council Office Administrator II