

**Tooele City Council and
Tooele City Redevelopment Agency
Joint Business Meeting Minutes**

Date: Wednesday, April 6, 2011
Time: 7:30 p.m.
Place: Tooele City Hall, Council Chambers
90 North Main Street, Tooele Utah

City Council Members Present:

Scott Wardle, Chair
Mike Johnson
Steve Pruden
Dave McCall
Shawn Milne

City Employees Present:

Mayor Patrick Dunlavy
Glen Caldwell, Finance Director
Roger Baker, City Attorney
Michelle Pitt, City Recorder
Lisa Carpenter, Deputy Recorder
Cary Campbell, Public Works Director
Jaclynn Sagers, Communities that Care Director
Rachelle Custer, City Planner
Chief Ron Kirby, Chief of Police
Randy Sant, RDA Consultant

Others Present:

Tim Gillie, Tooele Transcript
Debbie Winn, Tooele Chamber of Commerce

Chairman Wardle called the meeting to order at 7:30 p.m. Chairman Wardle welcomed Boy Scout Troop 131 and the Stansbury Park Troop who were both working on their Citizenship in the Community Merit Badges.

Minutes prepared by Elisa Jenkins

1. Pledge of Allegiance

The Pledge of Allegiance was led by Councilman Johnson.

2. Mayor's Community Recognition Awards

Presented by Mayor Patrick Dunlavy, Jaclynn Sagers and Chief Ron Kirby

Mayor Dunlavy welcomed everyone who had come to support these young people. He stated that these awards are one of the most enjoyable things that he does. He feels that it is very important to recognize the youth in the Community. He said that the Communities that Care program has been in effect for over five years and the recipients of this award are very special young people. He thanked everyone for coming and introduced Ms. Jaclynn Sagers who is the Communities that Care Director.

Ms. Sagers welcomed everyone and thanked them for coming. She thanked the business partners in the community for their donations that each student will receive. Each student will also receive a certificate from the Mayor.

Ms. Sagers then presented the Mayor's Community Recognition Awards to the following students:

Kassie Johnson, Harris Elementary
Brandon Boren, Copper Canyon Elementary
Clarissa Bowen, Northlake Elementary
Ryan Brewer, Middle Canyon Elementary
Makenna Murray, East Elementary
Lindsey Trussell, Overlake Elementary
Catherine Velez, West Elementary
Makayla Petersen, Settlement Canyon Elementary

Ms. Sagers thanked all the families for coming and their support. She explained that in the bags there is a brochure about Guiding Good Choices, and if anyone is interested please contact her.

Mayor Dunlavy stated that this is a wonderful program that is run by Tooele City which is in the school helping students with the problems that they face every day. He stated that Ms. Sagers and her staff do a great job. He congratulated all the students again and thanked the students for being the great kids they are. He indicated that these students will be the leaders of the future. He also thanked family members for the role they play in these students' lives.

A brief recess was taken for a picture with the Mayor and the recipients of this award.

3. Open Forum for Public Comment

Chairman Wardle invited anyone from the public who would like to come forward and address the Council to do so. No one came forward.

Chairman Wardle closed the open forum at 7:54 p.m.

4. Resolution 2011-18 A Resolution of the Tooele City Council Approving and Ratifying an Equipment Procurement Proposal from Huber Technology to Provide Solar Drying Equipment for the Phase 1B Expansion and Upgrade of the Existing Wastewater Treatment Plant

Presented by Mayor Patrick Dunlavy

Mayor Dunlavy explained that this is an agreement that they have talked about with the expansion of the Waste Water Treatment Plant. This agreement is for the equipment. Administration felt that because of the amount they would like to bring it to the Council for approval in the form of a Resolution.

Councilman Pruden asked the Mayor to explain what is being done to the Waste Water Treatment Plant.

Mayor Dunlavy explained the City is in process of Phase 2 of the expansion of the Waste Water Treatment Plant. The expansion will allow the facility to handle the solid waste and process it. At this time they spread it on the ground. This new process will take it and turn it into a fertilizer type product.

Councilman Pruden moved to approve Resolution 2011-18. Councilman McCall seconded the motion. The vote was as follows: Councilman McCall, “Aye”, Councilman Johnson, “Aye”, Councilman Milne, “Aye”, Councilman Pruden, “Aye”, and Chairman Wardle, “Aye”.

Councilman Johnson noted that this should not exceed the amount of the bond.

5. Ordinance 2011-10 An Ordinance of the Tooele City Council Amending Tooele City Code Section 7-25-12 Regarding Political Signs

Presented by Roger Baker

Mr. Baker stated that he attended a meeting recently, and it was brought to his attention that certain elements of city sign ordinances were being challenged. He noted that even when changes to sign codes were negotiated to resolve the problems, the attorneys were successful in claiming their attorney’s fees in court. To avoid being sued and avoid paying the other side’s attorney’s fees he has researched the issue and looked at how other cities have dealt with this issue. Mr. Baker stated that it is very common for cities to restrict how early political signs can be put up in someone’s yard and how long those signs can stay on the property after the election. He said that it is common that when these provisions are challenged cities lose these cases. The Supreme Court of the United States has created distinctions between different kinds of speech there is personal speech and commercial speech. He said that under the first amendment personal speech is protected. Political speech is considered personal speech and warrants the highest protection under the first amendment. The city can regulate those kinds of signs but only under very narrow circumstances. The regulations cannot address what the sign says, and the regulation has to be written very narrowly to address only a significant government interest. The City can regulate sizes of signs, but cases that have addressed time restrictions have been overturned.

Councilman Johnson asked why this is not a reasonable time, place or manner restriction?

Mr. Baker stated that it is has to do with how different communities treat the different kinds of speeches. He indicated that in the Tooele City Code they protect commercial speech on signs. The signs can be there 24 hours a day, seven days a week, and 365 days a year. If they allow commercial speech to be on signs without time restrictions but on certain kinds of personal speech, which enjoy greater constitutional protection, they limit those on a time basis. Then the City is restricting personal speech more than commercial speech, which is an unlawful discrimination between different types of speech. Mr. Baker said that you cannot protect commercial speech greater than personal speech.

Chairman Wardle read part of 7-25-12 Signs permitted in all zones. (3) *One nonilluminated real estate sign per lot or premises not to exceed twelve square feet in sign area, and such signs must be removed 15 days following sale, rental or lease of the real estate involved.* Chairman Wardle stated that they had someone come before the Council a few years ago and they were allowed to place home show signs which is commercial speech and asked how they limit the time frame with those types of signs and not with political signs.

Mr. Baker said that his intention is to emphasize the need to protect personal speech including political speech over commercial speech. Commercial speech does not require the same level of protection and you can impose greater time, place and manner restrictions on commercial speech. When those provisions were enacted in the ordinance they specified certain governmental interests that were at stake and it warranted time, place and manner restrictions in a commercial speech context. He did not study that issue and is not prepared to discuss it.

Councilman Johnson asked why would political sign not be considered a temporary sign?

Mr. Baker said that the last time this was brought to the Council with some legal concerns they asked about this very provision and he had written in what governmental interest they were trying to protect which was avoiding visual clutter throughout the city. That is a legitimate government interest a legitimate interest is not the same as a compelling interest. The courts said that visual clutter is not enough to restrict personal speech. If someone wants to say “vote for someone all year long” the constitution protects that on personal property. This ordinance will continue to prohibit all signs in public rights-of-way. You cannot put signs on Tooele City park strips whether it is personal or commercial.

Councilman Johnson asked if Tooele City has ever cited anyone for having a political sign up outside of the current time restriction?

Mr. Baker said that no one has been cited. Their enforcement tool of choice is simply to remove the signs.

Chairman Wardle read a statement in the article that said *some cities have chosen to regulate election signs not as a distinct class, but simply as one variety of noncommercial speech, or simply as a temporary sign, and most courts that have considered this approach have approved.* Chairman Wardle understands that they are trying to protect free speech and not worry about the clutter.

Mr. Baker said that he is trying to protect free speech but that is not why he is presenting this to the Council. He is trying to protect the City from being sued for alleged violations of free speech. He is weighing the harm of allowing these kinds of signs to be allowed year round versus the risk of trying to regulate them. He is suggesting the risk of regulating the signs is much greater than the harm of allowing them.

Councilman McCall asked if this can be a policy instead of an ordinance?

Mr. Baker said “no”.

Councilman Johnson used an example; if someone wanted to put a sign on their property saying something negative about him he does not have a problem with that. He said that the problem is that when there is an election there are so many signs placed throughout the city, that he feels that it should be reasonable to place a time limit to how long they can be up. He is struggling with that issue.

Mr. Baker stated that is a reasonable regulation. The constitution requires more than a reasonable regulation it requires a compelling government interest and a narrowly tailored ordinance. They have to identify what is the harm by placing the time restriction. Generally, the courts have said that the harm of seeing signs year round do not rise to the level.

Councilman Johnson noted for example you can’t yell “fire” in a crowded theater that is a content restriction. A compelling interest would preclude that. He thought this would be a time, place and manner restriction

Mr. Baker said he is not suggesting that this is a time, place and manner restriction. He is suggesting the time place and manner restriction should stay in the ordinance. He is suggesting that you can’t protect commercial speech and not provide the same protections to personal speech. If a citizen wants to say a candidate is good or bad the city cannot stop them from placing a sign on their property.

Councilman Johnson asked if he can put up a sign in front of his house saying to go get your legal services at the law firm that he works for?

Mr. Baker said “no” that is considered commercial speech. Commercial speech is not allowed in residential areas.

Chairman Wardle asked if he could put up a sign saying that his law firm is good.

Mr. Baker said that is considered personal speech because it is an opinion.

Mr. Baker said that he is trying to keep the City from getting sued and it doesn’t hurt anyone to keep a political sign on personal property.

Councilman Johnson stated that it doesn't hurt anyone. He said that it is unlawful to place political signs on public property or in rights-of-ways. He asked if there was a limit for the number of signs that can be placed?

Mr. Baker indicated that government can't stop someone for expressing their opinion.

Chairman Wardle asked if there a difference between the definitions of an election sign and a political sign.

Mr. Baker said "no". An election sign and a political sign is personal speech.

Councilman Pruden moved to approve Ordinance 2011-10. Councilman Milne seconded the motion. The vote was as follows: Councilman McCall, "Aye", Councilman Johnson, "Aye", Councilman Milne, "Aye", Councilman Pruden, "Aye", and Chairman Wardle, "Nay".

Chairman Wardle turned the time over to Councilman Pruden who is chair of the RDA Board.

6. RDA Resolution 2011-02 A Resolution of the Redevelopment Agency of Tooele City, Utah ("RDA") Approving an Interlocal Agreement with Grantsville City

Presented by Randy Sant

Mr. Sant said the Council and the RDA has approved a settlement agreement with Grantsville City. He said that in order to move forward there needs to be an interlocal agreement between the Redevelopment Agency of Tooele City and Grantsville City. He thanked Mr. Baker for his hard work with this agreement; he said that he is a great attorney. He also thanked Jason Burningham for his work on this project. He said that this has been sent to bond council to make sure there are no problems.

Mr. Baker stated that they received today some minor general comments from the bond attorney that reviews agreements and bond documents for legality with IRS code and banking regulations. He indicated that they had a few minor suggestions that do not change any of the structure, just a few words changes.

Councilman Pruden asked if the tone of the agreement was the same?

Mr. Baker said the tone and the content is the same. Grantsville asked the City to do this before they approved it which Tooele City felt was reasonable. He made one other change that he discussed with the Council previously. The change is if they exercise their right to acquire the bonds to be refinanced to take advantage of lower interest rates, Grantsville thought it was fair and Mr. Baker agreed that Tooele City should pay the costs to refinance. Mr. Baker included a copy of the changes with the minutes as Exhibit A.

Councilman Johnson move to approve RDA Resolution 2011-02. Councilman McCall seconded the motion. The vote was as follows: Councilman McCall, "Aye", Councilman

Johnson, “Aye”, Councilman Milne, “Aye”, Councilman Pruden, “Aye”, and Chairman Wardle, “Aye”.

Mr. Sant said the next step is they will start preparing the community impact board application which they will try to have ready for Grantsville’s July meeting. They will continue to move forward to get this taken care of.

7. RDA Resolution 2011-03 A Resolution of the Redevelopment Agency of Tooele City, Utah Approving a Sales Tax Leakage and Economic Sustainability analysis to be Performed by Lewis Young Robertson & Burningham

Presented by Randy Sant

Mr. Sant said this was discussed in a previous work session. One of their goals is to improve on the retail sales in the community. This retail leakage study will become a very valuable tool as they look at which businesses will come to Tooele. The leakage survey will look at where people are going to spend their money outside of Tooele. They will use the survey to encourage companies to come to Tooele. They are leaving this at \$10,182.50, which will be the total cost of the study. It should be completed by the end of May.

Councilman Pruden stated that Mr. Burningham has always done a great job for the City and he is happy that he will be completing the survey.

Councilman Milne moved to approve RDA Resolution 2011-03. Councilman McCall seconded the motion. The vote was as follows: Councilman McCall, “Aye”, Councilman Johnson, “Aye”, Councilman Milne, “Aye”, Councilman Pruden, “Aye”, and Chairman Wardle, “Aye”.

8. Discussion on Transferring of Property Title for TATC

Presented by Randy Sant

Councilman Pruden said that there was a presentation last week where the governor came out and signed this and made the legislation legal and it is all because of Mr. Sant. He thanked Mr. Sant for his hard work on this.

Mr. Sant said that the RDA owns a small piece of property in the industrial park. The RDA needs to transfer the title to TATC. They have asked that the RDA give it to them at no fee. He said that this will clean up one of the worst junkyards in the industrial park. He wanted to get the RDA Boards approval so he can begin the process of transferring the title.

Chairman Pruden asked how big the property is?

Mr. Sant stated that it is a little less than an acre. He said that the RDA does not really need the property. He indicated that the property is probably valued at about \$30,000.

Chairman Wardle said that USU has committed to redo the entrance to the boulevard. He said that is significant.

Councilman Johnson asked if they will pay any transfer costs or recording fees?

Mr. Sant said those costs will be very minimum. He said that they will quick claim deed it, and there shouldn't be very many costs. TATC should pay to record the deed.

Councilman Prudent told Mr. Sant to go ahead and move forward on this issue.

9. Economic Update

Presented by Randy Sant

- 1) Mr. Sant asked the board to e-mail him their itinerary for ICSC.
- 2) Mr. Sant stated that they made a revolving loan to Radio Electric about five years ago. In the agreement they had to pay off the loan by a certain date. Radio Electric has been making very minimum payments and has asked for an extension. He would like to have the Board's authorization to work with them on a new payment schedule and have the due date extended.

Chairman Pruden said that he would like to help them since they have been making some kind of payment it shows good faith and told Mr. Sant to move forward.

- 3) Mr. Sant stated that Sweat Fitness has gone into foreclosure. The RDA had a second on the loan. The bank has not been able to sell the building. He said that they owed about \$15,000. This will probably be something they will have to forgive.

Councilman McCall asked if it would be beneficial to purchase the building.

Mr. Sant said there are some structural issues that need some major work.

Chairman Wardle said he would not like to get into this any further, and would like to move on.

- 4) Mr. Sant stated that project Zenon is looking at buying the Conestoga Woods building. They are competing with a bid in St. Louis. The state has made them an offer. They are waiting for a big contract from the Department of Energy and the Federal Government has to approve where they are locating. This is on hold until they get these issues worked out.

Councilman Pruden asked if project balloon is still pending?

Mr. Sant said they were behind with their capital projects and they are now prioritizing where they are. He indicated that the RDA has done what they said they will and now they might need to put a time limit on them.

RDA Chairman Pruden turned the remainder of the meeting back over to Chairman Wardle.

10. Minutes: March 16, 2011; Business Meeting and Work Session

Councilman Milne moved to approve the minutes as presented. Councilman McCall seconded the motion. The vote was as follows: Councilman McCall, “Aye”, Councilman Johnson, “Aye”, Councilman Milne, “Aye”, Councilman Pruden, “Aye”, and Chairman Wardle, “Aye”.

11. Invoices

Presented by Michelle Pitt

Ms. Pitt presented the following invoices for payment:

- Nickerson Company Inc. for repairs to a 250HP submersible pump located at well #6 in the amount of \$44,827.00.
- Western Excavating for final billing for industrial park cleanup project in the amount of \$84,000.00.

Councilman Milne moved to approve the invoices as presented by Ms. Pitt. Councilman McCall seconded the motion. The vote was as follows: Councilman McCall, “Aye”, Councilman Johnson, “Aye”, Councilman Milne, “Aye”, Councilman Pruden, “Aye”, and Chairman Wardle, “Aye”.

12. Adjourn

Councilman Milne moved to adjourn the meeting. Councilman McCall seconded the motion. The vote was as follows: Councilman McCall, “Aye”, Councilman Johnson, “Aye”, Councilman Milne, “Aye”, Councilman Pruden, “Aye”, and Chairman Wardle, “Aye”. The meeting adjourned at 8:34 p.m.

Approved this 20th day of April 2011

Chairman Scott Wardle