

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

Date: Wednesday, February 7, 2007  
Time: 7:00 P.M.  
Place: Tooele City Hall Council Chambers  
90 North Main Street, Tooele, Utah

**City Council Members Present:**

Mike Johnson, Chair  
Scott Wardle  
Steve Pruden  
Steve Bevan  
John Hansen

**City Employees Present:**

Patrick Dunlavy, Mayor  
Roger Baker, City Attorney  
Glenn Caldwell, Finance Director  
Ron Kirby, Chief of Police  
Cary Campbell, Director of Public Works  
Paul Hansen, Contract City Engineer  
Doug Bayly, Assistant City Attorney  
Lisa Carpenter, Deputy Recorder and City Council Liaison  
Rachelle Custer, City Planner  
Richard Jorgensen, Land Use Technician

Minutes prepared by Andrea Cahoon

The meeting was called to order by Chairman Johnson at 7:00 p.m.

**1. Pledge of Allegiance**

The Pledge of Allegiance was led by Ryan Robinson from Boy Scout Troop 126. Chairman Johnson welcomed Troop 126 who was present working on their Citizenship merit badge. He also recognized and welcomed Tooele County Commissioner Bruce Clegg who was in attendance.

**2. Mayor's State of the City Address**

Presented by Mayor Patrick Dunlavy

Mayor Dunlavy delivered his State of the City address. The speech, in its entirety, is included with these minutes as Exhibit A.

**Mayor's Community Youth Recognition Awards**

Presented by Mayor Dunlavy, Councilman Pruden, and Milo Berry

Councilman Pruden explained that the Council recognizes elementary students who have been recommended by their teachers, administrators, or peers as super citizens at the first City Council meeting each month. He then presented the Mayor's Community Youth Recognition Awards to the following students:

Alexis Buck, Northlake Elementary  
Cassiddee Treadway, West Elementary  
Sierra Whipple-Pageant, East Elementary  
Alana Zimmerman, Copper Canyon Elementary  
Kylie Patch, East Elementary  
Emily Clifford, Overlake Elementary  
Sydney Lee, Overlake Elementary  
Caitlyn Turner, Copper Canyon Elementary

Mayor Dunlavy congratulated the students, their parents, and family members. He expressed that "Communities That Care" is a wonderful program to help the youth in this community.

### **3. Sister City Update**

Presented by Dan Martin

Dan Martin introduced his co-chair, Cherie Martin. He then reported on the Sister City programs accomplishments, and plans for the future.

Jana Roberts made a presentation of gifts from the Russian medical exchange group that visited in 2006. She stated her hope that they can have a permanent Sister City display located at City Hall or in the library. She thanked the City for all of their support of this program. Mr. Martin expressed his hope that the City Council members could reciprocate visits to Russia. Chairman Johnson and Councilman Pruden stated they were interested in doing that. Mayor Dunlavy thanked the Martins for the opportunity of meeting the Russian medical group and for all of their work with the program.

### **4. Open Forum for Public Comment**

Chairman Johnson invited anyone from the public who wished to address the Council to come forward and do so. No one came forward to address the Council.

**Councilman Pruden moved to close the open forum.** Councilman Bevan seconded the motion. All members present voted, "Aye." The open forum closed at 7:51 p.m.

### **6. PUBLIC HEARING for Conestoga Wood \$10,000,000 Industrial Revenue Bonds, Series 2007**

Presented by Eric Johnson

Mr. Johnson reported that Conestoga Wood is investing 18 million dollars in their new plant in Tooele City. There are few things that a governmental entity can do to assist private business. Under the Federal tax code, in very limited circumstances, which this project meets, the City can lend its name so a small manufacturer is able to obtain a tax exempt loan, which decreases their interest rate. The bonds are fully secured by Conestoga, with a pledge of real property and credit backing. The City is not committing any funds. Conestoga is fully responsible for the funds.

Councilman Pruden said they are using the City's good name to obtain better financing terms. Mr. Johnson said for the people who buy the bonds, the interest on the bonds is not taxed.

Chairman Johnson stated this was a public hearing.

Chairman Johnson asked what the next steps are after the public hearing? Mr. Johnson explained that the bond sell is anticipated to occur on April 4, 2007. The Council will approve that sale that evening in their business meeting. The closing will occur a couple of days later. The City Council doesn't have anything else to consider until April 4.

Dan Martin asked what happens if there is a default on the loan? Mr. Johnson said a letter of credit can be drawn on to repay the bond. The 18 million dollars in improvements are also pledged for the 10 million dollar loan. If there is a default, it cannot come back against the City.

**Councilman Hansen moved to close the public hearing.** Councilman Pruden seconded the motion. All members present voted, "Aye." The public hearing closed at 7:56 p.m.

7. **Resolution 2007-04 A Resolution of the Tooele City Council Denying the Request of Tooele Associates, LP, and John Tooele, LLC, to Assign Certain Rights and Obligations of the Development Agreement for Overlake Project Area Between Tooele City and Tooele Associates to Certain Third Parties, Namely Perry/Tooele Associates, LLC, L.H. Perry Investments, LLC, Overlake Golf, LLC and Perry Homes, Inc.**

Presented by Roger Baker

Mr. Baker said the development agreement (DA) that Tooele City has with Tooele Associates (TA) for the development of the Overlake subdivision contains a provision for assignments. An assignment of a contract is when one party transfers the rights and obligations under that contract to one or more other parties. The provision in the DA says that for TA to assign all or any portion of the DA, it must obtain the City's prior written approval for the assignments to take place. It has come to Tooele City's attention that TA has sold off various properties to other parties who claim the rights under the DA. Tooele Associates did not seek the Council's prior written consent. They sent a letter dated September 5, 2006, requesting that the City Council approve an assignment of the DA rights and obligations to the parties listed in the title of the resolution. The resolution before the Council is a resolution denying that request for assignments. The reasons for denial are summarized as follows:

1. The City was deprived of the opportunity to give written consent as required by the DA.
2. The assignments do not purport to transfer the rights as well as the obligations, but only the rights, which puts the City at a disadvantage. The rights are transferred to parties who don't profess to accept the obligations.
3. The assignments would materially increase the burden on the City.
4. The lack of apparent financial resources of the various assignees (the other parties that want to receive the rights and benefits of the DA)

Mr. Baker further addressed reason number three. The DA requires TA to perform many obligations, i.e., the construction of public improvements, dedication of park lands and lands for schools, and other obligations. If the City allows the obligations to be assigned to multiple other parties, it becomes very difficult to determine which of those other parties must meet those obligations and to what extent. Who transfers park property? Other obligations? Who would have

the obligation to provide master planning documents? How would master planning documents for one portion of the development coordinate with documents for other portions of the development? It would become very complex. The DA deals with one developer, not multiple developers that may not have a relationship with each other. The development could become fractured and disjointed and cease to become what it was originally envisioned to be.

The fourth item that Mr. Baker listed was the lack of apparent financial resources of these other parties. The DA specifically mentions the importance of financial resources of other parties because the obligations under the DA are costly. The City Council needs to feel comfortable that whoever it is that owns these obligations has the financial ability to fulfill them.

The resolution references two specific documents, but those documents are under a protective order from the court under the law suit between TA and Tooele City. The documents include tax returns and partnership financial statements that reveal low cash values and asset values. Mr. Baker said that he couldn't disclose them to the Council in this resolution. The resolution concludes with a statement of explanation about how the properties that TA has sold to these other parties can be developed. That is that if TA were to consent to the removal of those properties from under the DA and that TA request that those properties be rezoned out of the Overlake P district to some other zoning district approved by the City Council, then those properties could be developed by their new owners under the City's regular zoning regulations. That is an option that the Council can make available to them under the City regulations. The City is not saying that property sold by TA cannot be developed. Chairman Johnson said TA can get the property back and develop it pursuant to the DA as well. Mr. Baker concurred.

Chairman Johnson said he went through this resolution in detail and felt comfortable that the findings and conclusions were accurate based upon his personal knowledge. Mr. Bevan agreed.

**Councilman Hansen moved to approve Resolution 2007-04.** Councilman Bevan seconded the motion. All members present voted, "Aye."

**8. Resolution 2007-05 A Resolution of the Tooele City Council Denying the Request of Tooele Associates L.P. for a 10-Year Extension of the Development Agreement for Overlake Project Area Between Tooele City and Tooele Associates**

Presented by Roger Baker

Mr. Baker said the development agreement (DA) mentioned in the previous resolution between Tooele Associates (TA) and Tooele City, is a ten-year agreement signed in December of 1997, and is valid through December of 2007. It provides for a renewal of the DA for an additional ten years upon one major condition. That condition is that TA has substantially complied with the terms of the DA. Tooele Associates has sued Tooele City for an amount in excess 200 million dollars. The City has filed a counter suit. The counter suit details many of the ways in which TA has breached the DA. In different terms, it outlines many of the ways in which TA has failed to substantially comply with the DA. Due to the lack of substantial compliance, this resolution is presented to deny the request dated September 29, 2006, to extend the DA for an additional ten years. He stated it seemed a little early for TA to request the extension (more than a year before first ten year term ends).

Chairman Johnson asked if it would be appropriate to deny the request without prejudice to them coming back at a later time if they believe they are in substantial compliance and requesting the

extension again? Mr. Baker recommended that TA gave the Council a request dated September 29, 2006. This resolution is in response to that request. If TA comes into substantial compliance between now and the end of the ten-year term, they can certainly come back and again request the extension.

Chairman Johnson said as of September 29, 2006, and as of today, TA is not in substantial compliance with the development agreement. Mr. Baker said this resolution does contain a list of 12 items in which TA failed to substantially comply with the DA.

**Councilman Wardle moved to adopt Resolution 2007-05.** Councilman Hansen seconded the motion. All members present voted, "Aye."

## **9. Bim Oliver Contract Amendment**

Presented by Roger Baker

Mr. Baker noted that this meeting was noticed as a joint RDA/City Council meeting because of this item. Community Catalyst Consulting, run by Bim Oliver, was contracted to do a downtown revitalization study and implementation strategy. The contract requires him to obtain \$250,000 in liability insurance coverage. Mr. Oliver requested that inasmuch as all he is doing for the City is holding meetings, talking to people, and writing reports, there really isn't any liability exposure to him or the City. He asked that he be relieved of the cost of having to secure that liability insurance. Mr. Baker said he did not have an objection to this request. Councilman Pruden said this is just a formality. Mr. Oliver is not going to expose the RDA. Mr. Baker felt any liability would be de minimus. He was asked by Mr. Oliver to present this amendment to the RDA board.

**Councilman Pruden moved to accept the contract amendment as presented by Mr. Baker.** Councilman Bevan seconded the motion. All members present voted, "Aye."

## **10. Resolution 2007-07 A Resolution of the Tooele City Council Authorizing the Sale of an Easement to the United States Army**

Presented by Douglas Bayly

Mr. Bayly said this resolution culminates a series of actions between the Army Corp. of Engineers and the City of Tooele. The Army Corp. of Engineers is studying the ground water northeast of the former Tooele Army Depot for possible pollution. The property is located north of State Road 112, and one mile east of Sheep Lane and is not within the City limits, but the City owns the property. It was part of a landfill that has been abandoned. In November of 2002 the Army asked for a right of entry on the City's property to access a test well that they had drilled on some private property. The City granted that right of entry. In 2003 the Army asked the City to amend that right of entry to allow the Army to install a monitoring well on the City property, and that was granted with the proviso that the Army formalize the amended right of entry into a formal easement. The Army is finally coming forward with that easement. The Army proposed that there be an easement of 0.4 acres giving them the right to work in the area where the well is located and access to the well. It is a 30-year temporary easement while they do ground water monitoring, or until completion of the study, whichever comes first. The Army proposed to purchase the easement for \$7,920 and also is offering the City \$2,886.65 for the rental of that property they have been using from November 2002 to December 2006. Given the fact that the government can take it by condemnation anyway, and the ground water studies are valuable to the City, he felt this was acceptable. The formal assessment

was done, and the City recommended to the Council that they approve the resolution.

Councilman Pruden asked what would happen if the City determined they wanted to sell the property? Mr. Bayly said they could sell it subject to the easement.

Chairman Johnson asked where the road to the site was located on the property and if they were comfortable with that location? Mr. Bayly said that Mr. Baker informed them that the City had already given the right of entry, so the location is a moot point. Mr. Bayly didn't think they were putting down asphalt, just a way they can get in to monitor the well.

**Councilman Hansen moved to approve Resolution 2007-07.** Councilman Wardle seconded the motion. All members present voted, "Aye."

**11. Resolution 2007-08 A Resolution of the Tooele City Council Authorizing the Mayor to Sign on Behalf of Tooele City a Contract with Counterpoint Construction for Construction of the Well No. 9 Well House**

Presented by Paul Hansen

Mr. Hansen explained that they had originally bid this project last fall, and then determined to rebid it. One of the requirements during the rebidding process was that the general bidders provide documentation that they had experience with projects of similar nature and size. He asked that they not accept the low bid as they did not have the necessary experience. He recommended that they award the bid to Counterpoint Construction in an amount not to exceed \$484,940.00.

Chairman Johnson asked if the low bidder was not as qualified? Mr. Hansen said that bidder gave no references and demonstrated no experience. They did not meet the minimum criteria for the project. This well is being built up Settlement Canyon to replace an old well and the company is ready to begin construction as soon as it is approved.

**Councilman Bevan moved to adopt Resolution 2007-08.** Councilman Pruden seconded the motion. All members present voted, "Aye."

**12. PUBLIC HEARING & MOTION on Ordinance 2006-14 An Ordinance of the Tooele City Council Creating a Planned Unit Development Zoning Overlay on Property Zoned R1-7 On and Around Little Mountain, and Prescribing Conditions**

Presented by Rachelle Custer

Ms. Custer said this is a PUD agreement with Patterson Development to develop a project called Little Mountain Estates. She explained that the first proposal they brought before the Planning Commission had homes right on top of the mountain. The Planning Commission did not like that. They have modified their concept plan to have the homes down in the valley. The homes will not be seen from Main Street. The development will include single family homes and town homes. This PUD zoning overlay will pull all of the homes that they could have had on top of the mountain down into the valley and gives the City perpetual open space on the top of the mountain through conservation easements. The plat is for reference only and there is no vesting to develop what this preliminary plat shows. That will come forward at a later date. This action sets forth the guidelines that must be followed if someone develops that area. The developer will be required to install a water system, tanks, booster pumps, and extend roads coming down to tie into SR-36. They will be

required to comply with all Tooele City ordinances and the PUD ordinances.

Chairman Johnson noted that there was not access to some of the lots shown. Ms. Custer said this was strictly a concept plat. She explained that flag lots are allowed in sensitive areas and will provide access to some of the lots. Flag lots are shown in the drawing. This Ordinance just establishes the guidelines in which they can develop the property. Chairman Johnson felt it was important to keep the homes off of the top of that mountain.

Councilman Wardle felt the staff and developer had drafted a very good compromise to a complex problem. He hoped that the developer understands that Little Mountain is a precious resource in the City and in the development of the area it is important that they adhere to this. He stated that he looked forward to what they would do with guarded optimism. As requests come for information about what types of homes will be built, he hoped the developer would be forthcoming with more information. He felt that the City needed to move forward with a hillside preservation ordinance to protect areas in the City.

Chairman Johnson stated this was a public hearing.

Dan Martin raised the concern of rain and runoff problems and the stability of the slopes. He didn't want the City to become liable for allowing homes to be built in what could become a disaster area. Councilman Bevan said the Council has the same concerns.

Chairman Johnson said they can address the land stability on a plat. They have discussed the storm water retention issue with the developer. Mr. Baker pointed out that the PUD ordinance requires that a geotechnical slope analysis evaluating issues of slope stability and structure bearing capacity be provided. Councilman Wardle asked if that will be recorded with each lot? Mr. Baker said this ordinance will be recorded and as the property is subdivided the title report on any parcel that is subdivided in this project will reference this ordinance and will notice any buyers. The PUD ordinance does reference water detention and retention, and he deferred that to Mr. Hansen.

Paul Hansen said he felt that Mr. Baker addressed the general concerns. He stated that the City shares Mr. Martin's concerns and have discussed those. The City does not want to get into a situation where slope stability and hillsides are a problem. That is the reason they specifically asked that the geotechnical requirement be included as part of the ordinance. They are also very cognizant that drainage down Skyline or down Settlement Canyon could be problematic and so they have included a provision that the runoff can't exceed what has historically come off of the property. They will minimize that. He didn't have the answers as to how they will do all of that at this time. If the PUD is approved, they will work on how they will make the development fit on the property.

Councilman Wardle asked Mr. Baker about the HOA. In the agreement it references that many things will be taken care of by them. He asked what guarantees the HOA will be set up and remain in place? In the event that the homeowners elect to suspend the HOA, what recourse does the City have? Mr. Baker responded that in section two letter Q of the PUD, under double frontage lots, the developer is required to form a duly organized HOA to handle certain maintenance obligations. Those are perpetual obligations. As to what guarantees the perpetual existence of the HOA, there is no practical way to require that, so the City is trying to build into this ordinance enough market forces that will be an incentive to the developer and the future homeowners to maintain the HOA. The homeowners' association would own property and the PUD practically requires an HOA to be created and kept alive so the property can be owned by them.

Mr. Martin wanted the Council to make sure they were satisfied with the results they receive. He understood that there is really no way to guarantee things. Chairman Johnson said this is just establishing a zone. When they come in for the plat approval with what they actually want to build, the City will make sure it is satisfied with the development in all aspects. Mr. Baker explained that at that time when the subdivision application is submitted, all of these items will not only be addressed and included, but properly engineered as well, as verified by the City Engineer. Ross Welch, representing Patterson Construction, said they were excited about the development and appreciated all of the consideration on this item. The Council stated they appreciated his patience.

**Councilman Hansen moved to close the public hearing.** Councilman Bevan seconded the motion. All members present voted, "Aye." The public hearing closed at 8:37 p.m.

**Councilman Pruden moved to approve Ordinance 2006-14.** Councilman Hansen seconded the motion. All members present voted, "Aye."

**13. Minutes January 17, 2007 (Work Session); January 17, 2007 (City Council); January 17, 2007 (RDA)**

**Councilman Hansen moved to approve all of the minutes as presented.** Councilman Bevan seconded the motion. All members present voted, "Aye."

**14. Invoices**

Presented by Mayor Dunlavy

Mayor Dunlavy presented the following invoices and preapprovals:

- A preapproval for Huber Technology for the sewer plant expansion in the amount of \$150,172
- A preapproval for Envirodyne Systems Inc. for the clarifier mechanism for the sewer plant expansion in the amount of \$87,200
- A preapproval for APG-Neuros Company for the diffusion system turbo blowers for the sewer plant expansion in the amount of \$244,044
- A preapproval for Environmental Dynamics for a fine bubble diffusion system for sewer plant expansion in the amount of \$63,940
- Hill Construction for the filter backwash upgrade in the amount of \$49,584 (previously approved prior to being invoiced)
- Western Excavating for an emergency replacement of a fire hydrant located at Main Street, south of the Subway restaurant, in the amount of \$9,490
- Nickerson Company to repair well #12 in the amount of \$9,984.
- Parsons Behle & Latimer for outside legal counsel in the amount of \$16,788.31. Chairman Johnson felt the invoice was inappropriate because it was not itemized. Mayor Dunlavy said he had a break down of the charges available if he wanted to review it. This legal work was for a personnel issue, not a lawsuit.
- Holme Roberts & Owen LLP for legal fees in December 2006 for the Tooele Associates litigation in the amount of \$28,244.25
- Clyde Snow Sessions & Swenson for December 2006 legal fees for the Grantsville City litigation in the amount of \$11,360.32
- Quality Dodge for a Dodge Grand Caravan for the Youth Services programs in the amount of \$18,176

- Quality Ford for a 2006 Ford Explorer in the amount of \$27,545. This purchase was funded by a grant for the forensic lab truck
- Broken Arrow for road salt in the amount of \$28,211.17

**Councilman Pruden moved to pay the states invoices.** Councilman Bevan seconded the motion. All members present voted, “Aye.”

**15. Adjourn**

**Councilman Pruden moved to adjourn the meeting.** Councilman Bevan seconded the motion. All members present voted, “Aye.” The meeting adjourned at 8:43 p.m.

Approved this 21 day of February 2007

---

Michael Johnson, Chairman