

**Tooele City Council
Business Meeting Minutes**

Date: Wednesday, March 5, 2008
Time: 7:00 p.m.
Place: Tooele City Hall Council Chambers
90 North Main Street Tooele, Utah

City Council Members Present:

Steve Pruden, Chair
Mike Johnson
Dave McCall
Scott Wardle
John Hansen

City Employees Present:

Mayor Patrick Dunlavy
Roger Baker, City Attorney
Glen Caldwell, Finance Director
Sharon Dawson, City Recorder
Lisa Carpenter, Deputy Recorder/City Council Liaison
Cary Campbell, Public Works Director
Paul Hansen, City Engineer
Milo Berry, Communities That Care
Chief Kirby, Chief of Police

Others Present

Minutes prepared by Lisa Carpenter

The meeting was called to order at 7:02 by Chairman Pruden.

1. Pledge of Allegiance

The Pledge of Allegiance was led by Shirley Beagley.

2. Mayor's Community Recognition Awards

Presented by Mayor Dunlavy, Chairman Pruden and Chief Kirby

Mayor Dunlavy explained that these awards are given to special young people for special accomplishments. These students are recommended by their teachers and administrators for this award. We'd like to thank the teachers for their nominations along with Milo Berry for this program. This program truly helps

families prepare for challenges. We'd also like to thank their families, their peers, grandparents and parents. There is nothing more important to the administration and the City Council than the youth of this community. He appreciates these students and their efforts.

Chairman Pruden noted that these students will be receiving a goody bag which includes gift certificates from Papa Murphy's and Dairy Delight. The goody bag also includes a shirt from the Chamber of Commerce, a water bottle and pencil from USU, a certificate from the Mayor as well as some other goodies. The Mayor has also included a purple wrist band that says "Mayors Recognition Award". Chairman Pruden then presented the awards to the following students.

Teah Stokes from Tooele Jr. High School
Lizzie Stewart from Tooele Jr. High School
Kelsey McCarty from Tooele Jr. High School
Briana Hamilton from Tooele Jr. High School
Gage Stewart from Clarke Johnson Jr. High School
Erik Houghtby Clarke Johnson Jr. High School
Sadie Palmer Clarke Johnson Jr. High School

The Mayor congratulated these students for their hard work.

3. Open Forum for Public Comment

Chairman Pruden invited anyone to come forward who wished to address the council.

Shirley Beagley, 486 West 500 South, addressed the Council. She had a question regarding the left arrow lights on Main Street. Going North on Main and needing to turn left on Vine Street, there is no arrow after a certain time of day.

Paul Hansen said he will ask UDOT but to have Steve Pruden follow her.

Chairman Steve Pruden asked if there were sensor pads, but that Mr. Hansen would check on that.

Ms. Beagley also asked who to talk to when people push their snow from across the street into someone else's driveway?

Chairman Pruden mentioned to call the Police Department!

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Jerry Henson, 179 South Fifth Street, stood to address the Council. He commented that there is a serious problem on his street. He recently replaced the sidewalk. Most of it was broken so he removed those sections and put in road

base and concrete. He then put in for reimbursement with the City, but the road is in such disrepair. Who do we contact as far as when it will be repaired?

Paul Hansen answered by saying that particular road is not on the list for this year.

Mr. Henson mentioned there have been road patches but a friend fell in to one. They have pictures of the road. There has also been a lot of water settling in those potholes and he thinks there is a leak underneath the street

Chairman Pruden responded that Paul Hansen would take a look at it but could the water be from runoff?

Mr. Henson answered by saying that he didn't think so. He believes there are leaks in the pipes because the road is in such disrepair. There is water seeping in and coming out. Something needs to be done.

Chairman Pruden emphasized again that Paul Hansen would come look at it but asked Roger Baker about the reimbursements from the City to Mr. Henson.

Mr. Henson noted that he is on the list but that he is like the 100th. He just didn't want to go another winter without it being taken care of and he didn't want to wait to have the sidewalk replaced.

Mr. Baker mentioned that for him to answer these questions he would need more actual information, and for Mr. Henson to get with Cary Campbell and to check what has been done.

Mr. Henson said that someone from the Water Department did come by at one point and said it was water runoff from the Canyon, but I don't think that is the case.

Chairman Pruden said to talk to Mr. Hansen and Mr. Campbell.

Mr. Henson also mentioned that he would like to be on the Variance Board.

Chairman Pruden told him to get his name to the Mayor.

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Mr. Russ Hammond, 250 S Coleman Street, wanted to thank the Council and the Mayor for all that they do. He didn't have any complaints but wanted to introduce himself as the new Chairman of the Downtown Alliance.

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Ron Clements, 248 E Utah Avenue, stood to address the Council. He stated that he has been waiting for a variance for his property for about three months, but that he also wants to be on the Variance Board.

Chairman Pruden asked what his variance was for.

Mr. Clements answered that it was for a garage.

Chairman Pruden asked Rachelle Custer what the time frame was on his variance.

Ms. Custer stated that they had recently lost some members of the board and don't have a committee right now.

Councilman Johnson asked if members of the Planning Commission could sit on the Board of Adjustments.

Roger Baker answered by saying that the Board of Adjustments is generally the appeal authority for Planning Commission decisions.

Councilman Mike Johnson moved to close the open forum. Councilman Scott Wardle seconded the motion. All members present voted "Aye". The open forum closed at 7:32 p.m.

4. **Resolution 2008-07 A Resolution of the Tooele City Council Authorizing the Mayor to Renew the Dow-James Memorial Park Lease Agreement with the Tooele OldTimers Athletic Association**

Presented by Mayor Patrick Dunlavy

Mayor Patrick Dunlavy wanted to first take a few minutes answer some of the concerns of the individuals that spoke in the open forum:

To Ms. Beagley: When the traffic lights were changed and the new lights were put in we spoke with UDOT and if you'll recall the lights were a little bit long going East and West. We made a specific request to shorten that time. They did a study and sent engineers out for a full week. They study the traffic flow at all times of the day or night. They found that there was more traffic after school than in the evenings. That is the reason they are set the way they are. It was based on their study. That does not mean we can't make another request.

To Mr. Henson: With this last winter's weather, which has been devastating, more so on our roads than I've ever seen. We are working feverishly right now. We are putting about 8 tons of cold mix in potholes. In many cases it is not just pot holes. The road is actually disintegrating. It's going to be a very expensive process and we're having a tough time trying to do such repairs. That is a priority for our road crew right now.

To Mr. Clements: I would like to apologize on the time frame of your variance. When your request came through, we sent out the letters to the board and we were already short one member. Well, one leaves during the winter, but one had resigned and we're trying to replace those members.

Having said that, I'd like to move on to Resolution 2008-07. This is a continuation of a long agreement. Mr. Giles asked for an extension of the agreement and it has worked out fine.

Councilman Johnson asked what we were getting out of this.

Mayor Dunlavy responded that there is really no return to us but they do the repairs and maintenance on the buildings, run the concessions. They do use it as a clubhouse, as well. It really is a huge benefit to the City in that sense.

Chairman Pruden mentioned that he wants to make sure it gets used and that he sees no problem.

Councilman Wardle mentioned that there are only three good parks in Utah. One is a professional park, one is in Murray and the other is here. I know the Babe Ruth World Series is coming to Murray. He would like to see more organizations come here

Councilman John Hansen moved to approve Resolution 2008-07.

Councilman Scott Wardle seconded the motion. All members present voted "Aye".

5. **Resolution 2008-08 A Resolution Clarifying the Repayment Schedule for \$10,000,000 Tax Exempt Adjustable Mode Industrial Development Revenue Bonds (Conestoga Wood Specialties, Corporation Project) Series 2007 which will be Payable solely from the Revenues Arising from the Pledge of a Loan Agreement with Conestoga Wood Specialties Corporation; and Related Matters**

Presented by Roger Baker

As a reminder, Utah Law and Federal Tax Law allow certain private projects to use the city's tax status and the city's name to acquire tax exempt bonding for the construction of their factories and facilities. That is the case here with Conestoga Wood Specialties. The City assisted them in obtaining up to \$10,000,000 bond issue. Eric Johnson, bond counsel to the City, apologizes for not being here. All this Resolution does is clarify the lengthy bond documents on one tiny point, to change the annual bond payment to be due April 1st of each year rather than April 11th. That change requires a resolution signed in 5 originals.

Councilman Scott Wardle moved to approve Resolution 2008-08.

Councilman John Hansen seconded the motion. All members present voted “Aye”.

6. **Resolution 2008-09 A Resolution of the Tooele City Council Accepting the Completed Public Improvements Associated with Loma Vista Subdivision and Tooele Heights, Phase 1**

Presented by Paul Hansen

This is the resolution for the start of warranty for both Subdivisions, as noted. They have completed all of their public improvements. We will be holding a 20% bond, which is just over \$300,000, for a one year period of which we will continue to monitor the subdivision for any defects that may arise over that time.

Councilman Johnson asked if Mr. Hansen personally inspected this subdivision.

Mr. Hansen answered in the affirmative.

Chairman Pruden mentioned that he had gone by there Saturday and that they were already digging holes and that it looks great. They are doing a great job up there on that subdivision.

Mr. Hansen commented that to define the word “inspect,” he made a visual observation and reviewed the documentation but did not do the inspections entirely himself.

Councilman Wardle mentioned that it was interesting to look at this subdivision because of the fact that they have kept that area nice. They have truly done a wonderful job keeping it clean.

Councilman Mike Johnson moved to approve Resolution 2008-09.

Councilman John Hansen seconded the motion. All members present voted “Aye”.

7. **Minutes: February 6, 2008 & February 20, 2008**

Councilman John Hansen moved to approve the minutes as presented.

Councilman Scott Wardle seconded the motion. All members present voted “Aye”.

8. Invoices

Presented by Sharon Dawson

Ms. Dawson presented the following invoices for payment:

- LECG, LLC for outside legal counsel in the amount of \$18,244.80.
- CLYDE SNOW SESSIONS & SWENSON for outside legal counsel in the amount of \$19,051.70
- HOLME ROBERTS & OWEN LLP for outside legal counsel for January 2, 2008 to February 11, 2008 in the amount of \$29,143.88.
- ATLAS SCALE CO, INC for scale pit construction & installation of scales in the amount of \$10,500.00.
- FERGUSON ENTERPRISES, INC for the operation & maintenance of PRV's for Highland Drive and 400 North in the amount of \$12,424.25.
- SUPERIOR EXTERIORS, INC for repair of wind damaged roof at Fire Station Number 2 in the amount of \$14,290.00.
- BROKEN ARROW for 1219.7 tons of road salt for the Streets Department in the amount of \$18,642.33.
- FATPOT TECHNOLOGIES, LLC for homeland security funds in the amount of \$38,652.92.
- DYER WALDBILLIG for legal counsel for the Grantsville Litigation in the amount of \$14,428.39.
- QUALITY CHEVROLET for one 2008 Silverado 2WD regular cab Chevrolet truck for the Parks & Recreation Supervisor in the amount of \$16,829.00.
- QUALITY CHEVROLET for one 2008 Silverado 4WD extend cab Chevrolet truck for the Parks & Recreation Golf Course Supervisor in the amount of \$24,150.00.
- TOOELE CITY CORPORATION payment for City's share of storm drain portion of Special Improvement District No. 2000-1; payment for fiscal year 2008; arrears fiscal year's 2003-2006 in the amount of \$36,903.82.
- GREAT WESTERN PARK & PLAYGROUND for 5 swings for park projects in the amount of \$29,464.49.
- GREAT WESTERN PARK & PLAYGROUND for 4 pedestal grills; 20 8 foot aluminum benches; 7 drinking fountains for Tooele City Park Projects in the amount of \$26,880.23.

Councilman Scott Wardle moved to approve the invoices as presented by Ms. Dawson. Councilman Dave McCall seconded the motion. All members present voted "Aye".

9. Mayor's Report

Mayor Dunlavy wanted to introduce our new City Attorney, Matt Johnson, to the Council.

Mayor Dunlavy & Paul Hansen met with Settlement Canyon Irrigation. We talked with them about our meter readings and billing issues that we normally speak to them about. We had asked them for a request to start taking water out of the dam. The board approved that and we've been taking water since last Thursday.

Mr. Hansen wanted to clarify that it is not dam water it is actually water from a culinary source.

Councilman Johnson recalled a conversation about that reservoir probably needing to be dredged? Maybe we do it and they give us pre-paid water for a number of years. It just makes sense to add capacity, especially on a year like this where we've been fortunate enough to have some water. Maybe its a million dollars and we just don't have it.

Mr. Hansen answered in the affirmative that we have indeed approached them in doing just that because we believe it would be in their best interest to do so and to us as shareholders. But we've not tried to push or dictate how they run their business. We certainly would encourage them to look at that in other ways that they could maximize their water use.

Councilman Wardle asked if it looked like we would have water in the pipe. Or is water coming off the spillway?

Mr. Hansen answered that it is just too early to tell.

Mayor Dunlavy commented that it is just a waste and that is the reason they made the request that they did was so that may help that not happen.

Chairman Pruden Commented that he was up there Saturday and it is filling.

Mr. Hansen mentioned that the information regarding the snowpack up on Rocky Basin is just under 100%, so the mountains are at normal capacity. So even though we've seen excess moisture in the City, the mountains are normal.

Chairman Pruden asked if we were going to start this spring with our tanks full.

Mr. Hansen answered that the tanks are full now.

Chairman Pruden then asked if we were going to cross connect between tanks "whatever" and "whatever?"

Mayor Dunlavy answered that it would happen some time this spring. That would be tank 3 to tank 5. We also have our pipe in and we've got a back-up for it...things improve as the sun comes up!

Mr. Hansen commented that they actually don't have a back up motor for Well 9. When he was at the Rural Water Conference this past week, he spoke with Nickerson Pumps who will be giving us a revised cost estimate on a motor. Well 9 is not the only water source that would enable us to lift up to Tank 5. The City is going through a re-zone on the area up there so there are certain steps that need to be taken before we can finalize the alignment of that property.

Councilman Johnson brought up the fact that Mr. Henson asked about leaking in the Open Forum. Do we have people checking on this so we're not losing millions of gallons of water needlessly?

Mr. Hansen answered that we truly have to rely on the residents. We cannot continually cover the entire City to see what can be done, that is not practical or feasible. As we receive information, such as tonight, we will look into it. He will try but it will have to be towards the end of next week.

Councilman Johnson asked when the splash pad would be ready.

Mayor Dunlavy answered when the weather cooperates and we get a contract.

Councilman Johnson asked how long it would take to complete.

Mayor Dunlavy answered plumbing wise it may be a little technical but once we get going possibly a month or two. At this time I'd like to give Roger Baker time to answer some questions.

Roger Baker commented that Councilman Johnson asked about the Lamb litigation. The contractor that built our wastewater treatment plant in 2000 brought a claim against us for about 3 million dollars. They are claiming that we delayed the project. We vigorously contend against those allegations. We approved 12 change orders and gave them extensions of time. Any other costs and delays were all their internal problems and not any fault of ours. We have completed fact discovery which means we have disclosed our facts and documents and witnesses and we have received their documents which are tens of thousands of pages – mostly construction related documents because it was such a complex project. We have yet to complete expert reports and depositions. The reason you've had some fairly large invoices recently is because of the extensive document review that Tom Boyle has gone through in preparation for filing a motion for summary judgment. We sent a request for admissions and they had a certain number of days to respond. If they do not respond, then all of the facts that we asked them to admit are deemed "admitted" by virtue of their failure to say otherwise. They did not respond and have not responded. They are at this

point between 6 months and 1 year after the deadline so we are relying on them, in part, on their admissions.

He wanted to also comment on why you are still seeing invoices from Gainer Waldbillig is that Grantsville has failed to work with us in a cooperative fashion to write a judgment for the court to sign. Here we are 3 months after the judgment and it still hasn't been signed. We have been given verbal judgment but still don't have it in writing. Both parties have now told the judge what they think and that it should say we've asked that the judge to decide. So now we are waiting for the judge. Once entered by the judge then we will know if Grantsville will appeal the judgment.

We do still need Gainer to review the documents that relate to the Army Depot and the financial transactions as part of the effort to respond to the Wickstrom expert report. So we regret those continuing costs, but they remain necessary.

Mayor Dunlavy commented about Councilman Johnson asking for a Legislative update from Randy Sant. Mr. Sant had to leave early to go back because they still aren't through. There is still a fairly significant municipal legislation that is going on. I asked him to put an update together and we would do it in a couple of weeks.

10. Adjourn

Councilman Scott Wardle moved to adjourn the meeting. Councilman John Hansen seconded the motion. All members present voted "Aye". The meeting adjourned at 8:05 p.m.

Approved this 19th day of March 2008

Chairman Pruden