

**Tooele City Council and Joint RDA  
Business Meeting Minutes**

Date: Wednesday, May 07, 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  
Scott Wardle  
John Hansen  
Dave McCall

**City Employees Present:**

Mayor Patrick Dunlavy  
Sharon Dawson, City Recorder  
Glenn Caldwell, Finance Director  
Roger Baker, City Attorney  
Paul Hansen, City Engineer  
Chief Ron Kirby, Chief of Police  
Cary Campbell, Public Works Director  
Milo Berry, Communities that Care  
Officer Becky Bracken  
Jaclynn Bonelli, Project Coordinator for Communities that Care

**Others Present:**

Debbie Winn, Chamber of Commerce  
Tim Gilley, Tooele Transcript

Minutes prepared by Elisa Jenkins

Chairman Pruden called the meeting to order at 7:00 p.m.

**1. Pledge of Allegiance**

The Pledge of Allegiance was led by Tim Gilley.

**2. Mayor's Community Recognition Awards**

Presented by Mayor Dunlavy, Chairman Pruden and Chief Kirby

Mayor Dunlavy said that there is nothing more important to any community than the youth, and their interaction with each other. He also said that it is his honor to recognize the youth at this meeting. He thanked the teachers and administrators for their support in

nominating these students. These awards are very special and are not the typical awards given to students.

Chairman Pruden stated that they give the award recipients a goody bag. Some of the things in the goody bag are: a certificate from the Mayor, a bucket of balls at the golf course, a Tooele City lapel pin, a pencil from USU, a gift certificate from Iceberg, a gift certificate from Papa Murphy's, and a wristband that states "Mayors Recognition Award" along with a few other things.

Mayor Dunlavy also stated that the "Communities that Care" program is very important. The Communities that Care Program is a youth assistance program to help students in the schools. He recognized Milo Berry and his staff for all their hard work in helping the youth in this community. Tooele City also has a parenting program for any parent who would like some ideas or help in being a parent.

Chairman Pruden then presented the awards to the following students:

Kelsie Morrison, Overlake Elementary  
Joshua Gallegos, Harris Elementary  
McKenna Dewsnup, Copper Canyon Elementary  
Dallin Taggart, East Elementary  
Johnathan Gibby, Middle Canyon Elementary  
Taylor Leavitt, West Elementary  
Michael Schmidt, Northlake Elementary

Mayor Dunlavy thanked award recipients' parents, siblings and grandparents for their support and the positive role they play in these students' lives. He thanked the students again for the great job they have done.

### **3. Award Presentation**

Presented by Jaclynn Bonelli

Ms. Bonelli is the project coordinator for the school based programs, with the Communities that Care. Ms. Bonelli said that it has been her privilege to work with Officer Becky Bracken. Officer Bracken has been involved with the 6<sup>th</sup> grade program, the Lions Qwest Skills for Adolescents. Officer Bracken has been in the classrooms teaching about positive behavior, drugs, alcohol, tobacco, and violence. Officer Bracken has a great enthusiasm with the students. She is done with her teaching in the class room but still continues to visit the students to let them know that she cares about them. Ms. Bonelli invited Officer Bracken up to receive her award. Ms. Bonelli presented a plaque to Officer Becky Bracken and thanked her for her service to the 6<sup>th</sup> graders of Tooele City.

Officer Becky Bracken said that Tooele City has the best 6<sup>th</sup> graders, and thanked them.

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

**4. Open Forum for Public Comment**

Chairman Pruden invited anyone from the public who wished to address the Council to come forward. No one came forward.

**Councilman McCall moved to close the open forum.** Councilman Wardle seconded the motion. All members present voted “Aye”. The open forum closed at 7:24 p.m.

Chairman Pruden welcomed a Boy Scout in the audience from Troop 153 who is working on his Citizenship in the Community Merit Badge.

**5. Resolution 2008-20 A Resolution of the Tooele City Council Adopting the Budget Officer’s Tentative Budget for Tooele City Fiscal Year 2008-2009, and Establishing the Time and Place of a Public Hearing to Consider its Adoption**

Presented by Glenn Caldwell

Mr. Caldwell stated that state code requires that the City Council adopt by resolution a time and place of a public hearing to adopt the annual budget. The meeting will be June 18, 2008 at 7:00 p.m. Copies of the budget will be available at his office or the Recorder’s office.

**Councilman Hansen moved to adopt Resolution 2008-20.** Councilman Wardle seconded the motion. All members present voted “Aye”.

**6. Resolution 2008-15 A Resolution of the Tooele City Council Retaining the Services of Simon and Company for Federal Affairs Assistance**

Presented by Randy Sant

Mr. Sant stated that at the request of the City Council they have solicited proposals from Washington DC lobbyist firms that would assist the City in obtaining grant funding for the next three years. Mr. Sant stated that the administration recommends that they retain the services of Simon and Company. The fee for the service is \$32,000 a year with a \$2,500 reimbursable expense. Simon and Company will work with the City in setting goals and objectives and they will also work with Mr. Sant. They will also serve with the federal delegation. After the contract is approved, Mr. Simon will meet with the administration and outline goals and objectives, and then Tooele administration will go to Washington to meet with the delegation.

Councilman Wardle asked if this will be funded by the RDA.

Mr. Sant said that it would probably be funded by an enterprise fund, but there could be some funding by the RDA.

**Councilman Wardle moved to adopt Resolution 2008-15.** Councilman Hansen seconded the motion. All members present voted “Aye”.

7. **Resolution 2008-18 A Resolution of the Tooele City Council Adopting the National Incident Management System (NIMS)**

Presented by Police Chief Ron Kirby

Chief Kirby said that this rose out of events of 9/11. Public Safety officials learned of some need for improvement in the way agencies (i.e. police, fire and other agencies) interact and communicate with each other. Through research since 9/11 this National Incident Management System (NIMS) has been created. This is a method for preventing some of the troubles of 9/11 in communication and coordination with different agencies. Tooele City is already doing these things, but in order for the City to obtain federal funding this has to be adopted by resolution. He doesn't see any changes in the way they operate.

Councilman Johnson asked if this program has an unfunded federal mandates or is this more of a process.

Chief Kirby said that it shouldn't cost anything at all.

**Councilman Johnson moved to adopt Resolution 2008-18.** Councilman Hansen seconded the motion. All members present voted “Aye”.

8. **PUBLIC HEARING & MOTION on Resolution 2008-13 A Resolution of the Tooele City Council Regarding Tooele City's Use of, and Right of Access to, A Tooele City six-inch Force Main Pipe within and to the South of the Overlake Project Area.**

Presented by Roger Baker

Mr. Baker stated that the recitals of this resolution set forth the City's position with regards to a six-inch force main pipe, which in this case was initially constructed for the conveyance of sewage. Mr. Baker continued to say that this pipe is the subject of ongoing litigation with Tooele Associates. Tooele Associates, mostly in depositions, expressed concern that the permanent use of this six-inch force main in this location as a secondary water transmission line might interfere with the future development plans of Tooele Associates.

Mr. Baker stated that this resolution affirms that the City will abandon and cease any use of the force main pipe or access rights if one of the following two events occurs: 1) if the court rules in Tooele Associates' favor and finds that Tooele City lacked the right to

utilize and access the pipe or 2) the Tooele City Council approves a final plat that includes any portion of the six-inch force main pipe within the Overlake Project area. This is nothing that has not been said through depositions, affidavits, and papers filed with the court. However, attorneys for Tooele Associates have expressed a lack of confidence about the binding effect of those prior expressions. This resolution will make an affirmative statement by the legislative body regarding the City's intention for this pipe. The resolution also states that the location of this pipe will not be the basis for the Council to disapprove, or condition approval of, any final or preliminary plat within the Overlake Project Area. The reason that this resolution is accompanied by a public hearing is because state law requires that when cities dispose of significant parcels of real property that first there must be a public hearing to allow the public to comment on the proposed disposition of that property.

Councilman Johnson asked if the pipe was real property.

Mr. Baker responded by saying that they are trying to be extra cautious that they comply with the requirements of Utah Code 10-8-2. This may not be a parcel of real property, but it is a fixture attached to parcels of real property with easement interests claimed and rights of access. At whatever point in the future the City abandons its interests in this line, the public hearing requirement for disposal will already be met.

Councilman Johnson stated that if the secondary system is ever put into operation a bigger line will be needed. He thought that Mr. Paul Hansen was working on some prognostications for how much it would cost.

Mr. Paul Hansen stated that they have done that and have provided it to the Council; it would be several hundred thousand dollars to put it in a new location.

Chairman Pruden stated that this is a public hearing if anyone would like to come forward and address this issue.

Matt Muir, an attorney for Tooele Associates addressed the Council. Mr. Muir stated that Tooele Associates would like to note the dispute that Tooele City has any ownership interest in this pipe or real property through which it runs. Tooele Associates has not seen a draft of this resolution nor did it receive any advance notice of this hearing. Mr. Muir stated that the resolution as it has been represented by Mr. Baker is substantially different than representations which have been made to the courts by Tooele Associates employees, including Mr. Hansen who represented in an affidavit that the pipe will be abandoned when Tooele Associates needed to remove it for future development. That is substantially different than the pipe being abandoned when the City Council in its discretion approves a final plat.

Councilman Johnson gave his copy of the resolution to Mr. Muir.

**Councilman Hansen moved to close the public hearing.** Councilman Wardle seconded the motion. All members present voted "Aye". The public hearing closed at 7:37 p.m.

**Councilman Johnson moved to adopt Resolution 2008-13.** Councilman McCall seconded the motion. All members present voted “Aye”.

**9. Ordinance 2008-03 An Ordinance of the Tooele City Council Amending Tooele City Code Chapter 1-23 Regarding Document Retention and Disclosure**

Presented by Roger Baker

Mr. Baker stated that this ordinance is an examination of the Tooele City’s records, reproduction and retention ordinance as compared with the equivalent state statutes. Mr. Baker said that in 1992 the City Council adopted a GRAMA ordinance. The ordinance mirrored the state Government Records Access Management Act (GRAMA) statute. The provisions were nearly identical to the provisions of the state law. One of the disadvantages is that the state GRAMA law has been amended every year in his recent memory. Every amendment in creates an inconsistency with the City law. This would require the City to also have annual updates. Mr. Baker said that there is no purpose in having a City ordinance which is redundant of the state ordinance to which they are bound anyway. It is the recommendation of the City administration that they repeal all of the provisions that are duplicative of state law and to retain and revise those provisions that are not addressed to state law.

Councilman Johnson asked Mr. Baker to review those provisions.

Mr. Baker stated that they have kept the purposes intact to expand upon them. It is the City’s intention to comply with the state record’s law. In section 10 the City declared its intention to follow the state’s retention schedules. In section 11 it requires that document requests be submitted on forms that the City has approved. It also states that the City Recorder is the City Records Officer. Section 9 explores privacy issues. The current ordinance states if a document is embarrassing to someone then it is private. That is not the standard in state law. This tries to define better what privacy issues mean. This ordinance also repeals a specific fee and provides that the fees be established by resolution. State law says that the Mayor will establish the fees. The administration has done this but will bring the fees to the Council as a matter of legislative policy. He has attached a red-line and a clean version to the Ordinance. He has also attached the new form that will be used. The fees will be dealt with on the next agenda item.

Councilman Johnson asked why the Utah Court of Appeals is not included under section 1-23-9?

Mr. Baker said there is no reason; he suggests that it reads Utah Appellate Courts.

Mr. Baker said he has had extensive discussions with the Mayor’s office and the Recorder’s Office regarding this Ordinance.

Councilman Johnson said that it makes sense to make these changes.

Mr. Baker said this will simplify the administration.

Chairman Pruden explained to those present in the audience that GRAMA is where citizens can request records from a public entity.

Mr. Baker said that it is the state equivalent of the U.S. Freedom of Information Act.

**Councilman Wardle moved to adopt Ordinance 2008-03.** Councilman Hansen seconded the motion. All members present voted “Aye”.

**10. Resolution 2008-14 A Resolution of the Tooele City Council Revising Fees Charged for the Reproduction of Public Records**

Presented Roger Baker

Mr. Baker explained that this is a companion to the Ordinance that was just approved. This revises the fee schedule to include fees for reproduction of documents for the public. State GRAMA statutes state that fees must be designed to recover the actual cost of making copies. In his view it prohibits the City from charging a fee to recover the costs to search for documents. He is recommending what the state law allows the City to do.

Councilman Johnson asked if he should get the Attorney General’s opinion on that issue. The time and effort it takes to find a document is substantially more than it takes to make a copy.

Mr. Baker said that finding documents takes tremendous resources. The state statute allows one to charge for the time only if you are compiling a record in a different form from which it is normally kept. For example, if you are compiling a spreadsheet to one document from a bunch of other documents, you may charge for the time it takes to create that new document.

Councilman Johnson suggests the Attorney General’s opinion. Some research could take days.

Mr. Baker agreed with Councilman Johnson. They should be able to charge that fee. But it states very plainly in the statute that they are not allowed to do that.

Mr. Baker further explained that with Ms. Dawson’s help they have developed a spreadsheet to try to determine the costs once the document has been found (i.e. the costs of taking the document from its location, making copies, returning it, mailing, and the cost of the copier and its supplies.) They can only charge the rate of the lowest paid employee that could do the job. Mr. Baker has attached a blank worksheet to the Resolution that explains in the footnotes of how those per unit costs were established. Mr. Baker ran various scenarios of what it would cost the City to make different amount

of copies (e.g. 1, 5, 9, 10, 50, 100, 500), to see how the revenues they would collect under each of those scenarios would match up with the costs the City would incur. (These scenarios and a summary chart are included with the minutes as Exhibit A as an official part of this meeting.) He has charted the results of the various scenarios with the costs and revenues and they fit very closely together. After running the scenarios he found that made a downward adjustment in the fees for the more voluminous requests. The largest cost is in the first copy. He feels these assumptions are very conservative. If there are 100 documents from a 100 files that doesn't fit in this worksheet because the time costs will be greater, but it is his practice to be conservative.

**Councilman Hansen moved to adopt Resolution 2008-14.** Councilman Wardle seconded the motion. All members present voted "Aye".

**11. Resolution 2008-19 A Resolution of the Tooele City Council Increasing the Amount Charged by Tooele City for Access to Municipal Water Rights Pursuant to Tooele City Code 7-26-3(2) and Administrative Policy**

Presented by Roger Baker

Mr. Baker explained that Tooele City requires that all new development applications be accompanied with water rights sufficient to service their developments in addition to other things like impact fees that pay for source development, and storage capacity necessary to serve the development. He also said that under very limited circumstances the City accepts a fee in lieu of actual conveyance of water rights. Those circumstances are for a non residential development that requires 10 or fewer acre feet of water, and for a single lot residential development (one lot split into two); the owner of the newly created lot may pay a fee in lieu of water rights conveyance. Those limited circumstances are described in a written policy developed by the administration and concurred with by the City Council. Mr. Baker stated that the \$10,000 per acre foot of municipal water right that is currently being charged is significantly less than the market value. The City is experiencing a significant pressure from people coming for access to those rights, simply on a cost saving basis. The City has initiated an appraisal of local area water rights and their fair market value. The City administration recommends the fee be increased from \$10,000 to \$15,000 per municipal water right.

Councilman Wardle asked when the appraisal will be finished.

Mr. Baker said 45 days.

Councilman Wardle said that by establishing \$15,000 per acre foot if the administration is assuming that the amount will come in much higher than lower?

Mr. Baker responded by saying that he believes that amount determined by the appraisal will be higher than \$15,000. Mr. Baker knows of one comparison of an acre foot of water for \$21,000. He feels that they are asking for a low amount of \$15,000 and then they will let the appraiser tell them what the market value is.

Councilman Wardle said that the administrative policy is set to expire on June 30, 2008. Will there be a new resolution at that point or would it be better to wait for 45 days and revisit the administrative policy?

Mr. Baker said that the administration is recommending that this be approved immediately as an interim measure pending the outcome of the appraisal for two reasons 1) so they are not giving away at sub-market and 2) they have some pressure to increase from 10 acre-feet to 20 acre-feet for certain non-residential developments based on criteria that the Mayor and his staff will develop.

Councilman Johnson stated that as of July 1, 2008 the City will not be able to sell access to its water rights because it expires June 30, 2008.

Mr. Baker said that he would encourage the Council to extend the deadline of the new policy.

Council McCall asked if the City could stop selling water rights credits until after the deadline is passed or until after they have received the appraisal.

Mr. Baker said that having established a written policy they should follow it. He is asking that the amount be raised slightly and have the date extended.

Councilman Wardle said as he understands this they will raise the amount to \$15,000 pending a review by an appraisal which should be back by the June 30 and once it is back they will have a new administrative policy.

Councilman Johnson suggests that they change the effective date from May 2, 2007 to May 7, 2008 and then to also change the effective through date from June 30, 2008 to August 31, 2008 for residential and non-residential. He also suggests changing the fee shall be established from \$10,000 to \$15,000.

Mr. Baker said that because this is an administrative policy they are also asking for Council approval to draft some criteria so they can exceed the 10 acre foot limit to a new 20 acre foot limit.

Councilman Wardle asked hypothetically if the appraisal comes back between \$22,000 and \$24,000 can the limit be re-established?

Mr. Baker said that regardless of what end date the Council decides on the administration will be bringing back a new policy with a longer term.

Councilman Wardle asked if they will have to continue to bring back resolutions to the Council when the amount changes.

Mr. Baker recommends that the administration bring the administrative policy back to the City Council when it changes and approve it by resolution. The Ordinance gives the administration the ability to craft the policy; and it gives the Council the right to set the fee. He would like it set in a context with a clear record and a resolution is the best way for that.

**Councilman Johnson moved to adopt Resolution 2008-19 with the changes to the administrative policy to be 1) the effective date be May 7, 2008 2) from the effective date through August 31, 2008 on residential and non-residential 3) change the fee from \$10,000 to \$15,000 4) draft criteria regarding non-residential development, and 5) increase the non-residential limit from 10 acre-feet to 20 3acre-feet.**

Councilman Hansen seconded the motion. All members present voted "Aye".

**12. Minutes: April 16, 2008: Business Meeting, Discussion Meeting and Closed Meeting**

**Councilman Hansen moved to approve the minutes as presented.** Councilman Wardle seconded the motion. All members present voted "Aye" except Councilman Johnson because he was not present at the meeting.

**13. Invoices**

Presented by Sharon Dawson

Ms. Dawson presented the following invoices for payment:

- Utah Industrial Depot for lump payment for Carlisle Syn-Tech in the amount \$1,317,333.33.
- Dyer Waldbillig for legal services for the Grantsville litigation for April 2008 in the amount of \$9,587.46.
- Fabian and Clendenon for inspection fee trial for the Tooele Associates litigation in the amount of \$43,526.45.
- PriceWaterHouse Coopers for Wikstrom report for March 2008 in the amount of \$8,674.13.
- PriceWaterHouse Coopers for Tooele Associates litigation March 2008 in the amount of \$31,662.33.
- Holme, Roberts & Owen LLP for the Tooele Associates litigation for March 2008 in the amount of \$41,193.88.
- LECG, LLC for the Lamb litigation in the amount of \$19,502.40.
- Judge Netting for the replacement of poles at the golf course caused by wind damage in the amount of \$23,500.00.
- S & R Event Rental for pole tents and hardware in the amount of \$13,035.20.

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

**14. Mayor's Report**

The Mayor had nothing to report at this time.

**15. Adjourn to a Closed Executive Session to Discuss Pending Litigation**

Councilman Hansen moved to adjourn the meeting. Councilman McCall seconded the motion. All members present voted "Aye". The meeting adjourned at 8:07 p.m.

Approved this 21<sup>st</sup> day of May 2008

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Chairman Pruden