

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

Date: Wednesday, June 17, 2009  
Time: 8:00 p.m.  
Place: City Hall Council Chambers  
90 North Main Street, Tooele Utah

**City Council Members Present:**

Steve Pruden, Chair  
John Hansen  
Mike Johnson  
Scott Wardle

**City Council Member Excused:**

Dave McCall

**City Employees Present:**

Mayor Patrick Dunlavy  
Doug Bayly, Assistant City Attorney  
Glenn Caldwell, Finance Director  
Sharon Dawson, City Recorder  
Lisa Carpenter, Deputy Recorder  
Rachelle Custer, City Planner  
Cary Campbell, Public Works Director  
Steve Newkirk, Assistant Chief of Police

**Others Present:**

Debbie Winn, Chamber of Commerce  
Shawn Milne, Planning Commission

Minutes prepared by Elisa Jenkins

Chairman Pruden called the meeting to order at 7:00 p.m. Chairman Pruden excused Councilman McCall from the meeting, and welcomed Boy Scout Troop 1701 who are working on their Communications and Citizenship in the Community Merit Badges.

**1. Pledge of Allegiance**

The Pledge of Allegiance was led by Boy Scout Troop 1701.

**2. Open Forum for Public Comment**

Chairman Pruden invited anyone from the public who would like to address the Council to come forward.

Gary Nord, 484 Highland Drive addressed the Council. Mr. Nord had some concerns about the enforcement of dogs that roam free. He has noticed many dogs in his neighborhood not on leashes or behind fences. He feels that he has a right to walk around his block and not be accosted by dogs. He would like to see the enforcement of the leash law in his neighborhood.

Chairman Pruden suggested speaking with Captain Newkirk and he will contact the animal control officer.

Shirley Beagley, 486 W 500 S addressed the Council. Ms. Beagley wanted to voice her concern of the 8:00 p.m. starting time for City Council meeting. She feels that it would be very hard in the winter to come that late. She would like to see the meetings kept at 7:00 p.m.

Chairman Pruden indicated that they are trying this schedule for the summer and they will re-look at it again in the fall.

Ms. Beagley asked if there are any laws against dogs that bark all the time.

Captain Newkirk said that there are nuisance laws that deal with barking dogs.

Chairman Pruden suggested that Ms. Beagley also talk with Captain Newkirk.

Councilman Wardle thanked Ms. Beagley for her concern on the time change; they will look at it again in the fall.

Shawn Milne, 719 N 300 W addressed the Council. Mr. Milne also concurred with Ms. Beagley on the time change for City Council meeting.

Chairman Pruden closed the public hearing at 8:08 p.m.

**3. PUBLIC HEARING & MOTION on Resolution 2009-32 A Resolution of the Tooele City council Adopting the Final Budge for Tooele City Fiscal Year 2009-2010.**

Presented by Mayor Patrick Dunlavy

Mayor Dunlavy stated that there are no substantive changes that have been made other than the one that has been presented and put on display for the public. He stated that because of the economy the budget is nearly \$2 million less than last year's budget.

Chairman Pruden thanked Mr. Caldwell and Mayor Dunlavy for their work on the budget.

Chairman Pruden stated that this is a public hearing if anyone would like to come forward and discuss the budget. No one came forward.

**Councilman Johnson moved to close the public hearing.** Councilman Wardle seconded the motion. All members present voted “Aye”. The public hearing closed at 8:11 p.m.

**Councilman Wardle moved to approve Resolution 2009-32.** Councilman Hansen seconded the motion. All members present voted “Aye”.

4. **Resolution 2009-33 A Resolution of the Tooele City Council Approving Budget Adjustments for Fiscal Year 2008-2009.**

Presented by Glenn Caldwell

Mr. Caldwell explained that each year they have to adjust the budget at year end. He then outlined the adjustments that needed to be made before the end of the fiscal year.

**Councilman Hansen moved to approve Resolution 2009-33.** Councilman Wardle seconded the motion. All members present voted “Aye”.

5. **Resolution 2009-30 A Resolution of the Tooele City Council Authorizing the Mayor to Sign a Contract with Tecserv, Inc., for Consulting Services and to Perform Computer Network Maintenance Activities for Tooele City.**

Presented by Sharon Dawson

Ms. Dawson stated that this contract with Tecserv, Inc. is the same as last year, there was no increase. It is for a one year term from July 1, 2009 to June 30, 2010. The contract is for the consulting services and the computer network maintenance activities.

Chairman Pruden asked Ms. Dawson to convey to Tecserv the Council’s appreciation for keeping their fee the same.

**Councilman Hansen moved to approve Resolution 2009-30.** Councilman Johnson seconded the motion. All members present voted “Aye”.

6. **PUBLIC HEARING & MOTION on Amended Plat for West Point Meadows Condominiums to Modify the Design of the Buildings to be Constructed Located at 600 North 680 West.**

Presented by Rachelle Custer

Ms. Custer stated that this development will consist of 63 condominiums units. The current plat consists of 64. They are losing a unit because originally the units were platted to be up and down units, with this amendment they will be side by side units. There is a sewer easement that requires one of the units to be lost. The buildings have

incorporated the designs necessary to meet the multi family design guidelines. There are two, four, and five unit buildings in this development. Several buildings have been constructed. They changes will be that the up and down units will now be side by side so the exterior elevation will change.

Chairman Pruden asked if the number units are the same.

Ms. Custer said that the number of units is decreasing by one because the units will be side by side so they will loose one due to the sewer easement.

Chairman Pruden asked if the proximity of units 2082 and 2091 are o.k?

Ms. Custer said that they have to follow the International Building Code. The Building Code requires that they can not have openings and other criteria if buildings are certain distances of each other.

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

Ron Martinez, with America West Development addressed the Council. Mr. Martinez has an interest in this property. He gave copy of a letter to the Mayor and the City Council, a copy of this letter is included with the minutes as Exhibit A. Mr. Martinez read the letter about his concerns regarding amending this plat.

Mr. Martinez stated that he does not feel that the amended plat is problematic; he feels that the due process is the problem. He indicated that this is an amendment to a plat and under Utah Code all property owners are required to sign the plat. He has been asked to sign the plat and he will not sign the plat because he is in a lawsuit with Mr. Higley. His concern is he doesn't want his interest marginalized or his property rights violated. He referred to section 10-9a-608 of the Utah State Code which talks about vacating, altering and amending a subdivision plat. He stated that a fee owner (which is singular) can amend the plat with out any signatures from the existing owners. That is not the case with this plat, it is not a few owner plat there are other owners. He has chosen not to sign the plat because of the lawsuit he is in. He reiterated that he does not have a problem with the plat itself; it is the due process that he has a problem with.

Councilman Johnson asked if Mr. Martinez is an owner in a land Liability Company?

Mr. Martinez indicated that he owns two lots in West Point Meadow Condominiums. He pays taxes on two lots 203 and 224. He is requesting that the City Council be careful in the due process and not treat this in a way that would by bias or capricious. He would like to see this tabled for some review. He said that the County is concerned about recording this plat, and they have not heard back from their attorney.

Councilman Johnson asked Ms. Custer to further explain the amendment on the plat.

Ms. Custer stated that the section requires that all property owners sign the amended plat. It does give the City a step that was brought to them by the applicant's attorney which states that if all the applicants do not sign the plat they must be given notice of a public hearing. That is what they have done in lieu of the signatures.

Councilman Johnson asked why the City is amending the plat?

Ms. Custer stated that the plat amendment was requested by the developer in order to change the building elevations from up and down units to side by side units.

Councilman Johnson asked if it matters to the City one way or the other?

Ms. Custer stated that she did not have a preference. She said they must build to what is recorded.

Councilman Wardle indicated that he was confused to the ownership Mr. Martinez has, he looked at the back of the plat where the signatures are and he does not see a signature from Mr. Martinez.

Mr. Martinez said that his signature is on the original plat. He has been an owner for many years.

Councilman Johnson asked if he is an owner of a unit or a owner of the property.

Mr. Martinez stated that he is an owner of a unit. He recorded the original plat.

Councilman Johnson asked if he was the original developer.

Mr. Martinez said yes. He said that he does not have a problem with the plat; he has a process with the process. He quoted Section 10-9a-608 from the Utah State Code which states "a fee owner of land as shown as on the last County assessment rolls in a subdivision that has been laid out and platted as provided may file a written petition with the land use authority to have some or all the plat vacated altered or amended". He reiterated a fee owner; this plat is not owned by one person.

Councilman Johnson asked how amending this plat would interfere with his dispute with Mr. Higley?

Mr. Martinez said that the way the code reads, a few owner can come and get the vote of the City Council to amend the plat. The applicant is not, nor ever has been a fee owner. Because there is not a fee owner it means that every owner has to sign the plat.

Councilman Johnson said that this Council does not want to be a pawn in the litigation between Mr. Martinez and Mr. Higley. The Council does not want any part of that. He asked Mr. Martinez how action by the City Council will harm him?

Mr. Martinez said that it is a problem in the due process. His contention is if the Council allows the applicant to move forward as a fee owner it is wrong. He feels that his due process is violated, because the plat is not signed.

Councilman Wardle asked Mr. Martinez if the plat was exactly the same if he would have a problem signing the plat.

Mr. Martinez said he would have a problem signing the plat because of his lawsuit with Mr. Higley. He has a problem with the due process.

Councilman Johnson asked what the problem was with the due process? Mr. Martinez indicated that he was o.k. with the plat. Councilman Johnson feels that Mr. Martinez is trying to use the Council as leverage.

Mr. Martinez said that his property rights are being violated. He feels that the applicant is doing the exact opposite. He said that the applicant knew he could not get his signature so their lawyer misinterpreted this section and thereby is trying to subordinate his interests.

Councilman Johnson noted that the County Recorder Calleen Peshell was in the audience and asked her if she had any information about this plat.

Ms. Calleen Peshell addressed the Council. Ms. Peshell said that she has had several discussions regarding this plat and that is why she came to see what the City Council was going to do. Ms. Peshell indicated that the Council's approval process is different than her objective in the recording process. She indicated that in Section 10-9a-608 of the Utah State Code the approval does not require any ownership signatures. When it comes to the County Recorder's office she will require ownership signatures. Her question of what does she do with the owners that do not sign the ownership plat, is currently before the County Attorney. She has not yet from the County Attorney. This is the first of several subdivisions with this same problem, and it will set a precedence. This current re-write of the statute is totally different than the prior way a plat was amended. Currently the County Recorder will require the owner's signatures on the plat.

Councilman Johnson noted that even if the Council passes this the County can not record it because they do not have all of the signatures needed, unless the County Attorney says go ahead.

Ms. Peshell said that these people have a vested ownership interest by a deed and they have borrowed money to secure their investment. She feels that they have a right to sign the plat but she can not convey ownership without a signature.

Councilman Johnson said that maybe this should be tabled until they can get some more information.

Councilman Wardle questioned Mr. Martinez that the plat came in as he wanted it to, but the Council should not vote for it because he would be harmed. He does not understand that.

Mr. Martinez said that this is not a fee owner situation. If he chooses not to sign a plat and he has a vested interest he has certain rights. He said he will either negotiate or litigate. He said that he has vested rights.

Councilman Wardle said that if this plat came before the Council and it was not a fee owner the Council approving or denying does nothing for the signature, which is a process that comes after the Council. He feels that the harm would come after City Council when it goes to the County Recorder's Office. Councilman Wardle feels that Mr. Martinez is asking this item to be tabled until his litigation is over.

Mr. Martinez said no, he would like an opinion from the City Attorney on this section of the Utah State Code. He said that the Council can pass this and then he would appeal it.

Councilman Johnson verified that Mr. Martinez is saying that he does not have a problem with the actual plat; he has a problem because he is an owner and he feels his rights are being violated. He is saying that there is no due process but he is not harmed by it.

Mr. Martinez said that he is here because he feels his interests are being subordinated. He is not saying that he is not being harmed by it. He does not have a problem with the plat. He does not want his interest marginalized. He does not feel that the City Council should practice outside the Code.

Councilman Johnson verified that Mr. Martinez is saying that his position is that all owners should sign the plat.

Mr. Martinez said yes.

Councilman Johnson verified with Ms. Custer that there has been a change in the State Law that says if all owners are notified and there is a public hearing then the plat can be amended without all of the signatures.

Ms. Custer stated that was her understanding.

Dennis Hepworth is a partner with Mr. Higley and is the applicant of the amended plat. He feels that what is before the Council is whether to approve the amended plat. He feels what Mr. Martinez is suggesting is a separate issue that should be dealt with outside this Council meeting. He doesn't feel that Mr. Martinez has presented any reasonable objection as to why the plat should not be amended. He does not feel like it should be tabled.

Councilman Johnson asked Mr. Hepworth if he is saying to approve this now and then they will have to deal with it when it gets to the County.

Mr. Hepworth said yes. He said it is their attorney's position that when Mr. Martinez is holding a situation hostage over a separate problem that the statute has been written to get around that. This situation should be dealt with outside the City Council meeting. Their position is that they are presenting a legitimate reason for amending the plat. They are changing stacked units to side by side units to get rid of outside staircases. He feels that this is a positive change. Nothing they are doing is harming the interest of any owner of this project. He feels that it is improving everyone's position because it will make the property more valuable.

Councilman Johnson asked Mr. Bayly if he knew anything about this item.

Mr. Bayly stated that he does not know anything about this and he would recommend that the Council table it, so they can gather some more information. He thinks Mr. Martinez might be looking for a test case to take before the Utah Supreme Court, so he feels it would be wise to look at it before it is approved.

Mr. Hepworth said that this is the third time this plat has been before the Council. It has been approved twice before.

Aaron Austin, an owner of a West Point Meadows Condominium, addressed the Council. He does not have all the details that have gone on in the past but it is his understanding that about two years ago they had all the signatures they needed but was denied because of a deadline. This amendment has something to do with the condos receiving FHA approval. He has recently contacted a real estate agent and wanted to sell his condo, but it can not be sold right now. No condo in this development can be sold right now. He had a friend that was trying to buy the model and it was under contract for months but no lender will lend on it because of the FHA approval issue. It is his understanding that something was not done right in the first place. FHA approval has something to do with how the HOA is being run, reserve funds, etc. Most of the people that live there now were lent to by Key Bank on a Community Reinvestment Fund. Key Bank is done lending on that now and they were the only one lending. He is very frustrated; he doesn't understand what all these issues are and he feels like his time to sell and buy a new home has passed.

Councilman Johnson asked if they tabled this for two weeks if that would be o.k. He said that even if they passed this tonight it will be held up at the County Recorders Office. He does not want to get caught in the middle of a lawsuit and favor one or the other.

Mr. Austin wanted to emphasize that this has been delayed for years. He has been an owner for two and half years. It does not affect those owners who are not considering selling. He and his wife who would like to sell and have no options.

Councilman Wardle said that Mr. Austin's situation concerns him. He does also not want to be Mr. Martinez's test case. He feels that the Council should table the item for two weeks to get some more information.

Mr. Austin said that it was his understanding that they get the signatures for the amendment or they have this meeting.

Councilman Johnson said that Mr. Martinez has brought up a statute that the neither the Council nor the City Attorney has looked at.

Mr. Austin stated that effectively their units have no value. His real estate agent has suggested that the owners that can not sell figure out whom they need to bring litigation against. He understands that this is a huge mess.

Chairman Pruden said that regardless of what the Council does tonight it can not go forward until the County receives interpretation from their Attorney.

Mr. Austin stated that someone is making his condominium have no value.

Councilman Wardle hopes that both Mr. Martinez and Mr. Hepworth understand the position the Mr. Austin is put in. He hopes that they will be ready in two weeks because this is serious. The City has spent a lot of time in Court and even the threat of that offends him. It is his opinion that this is hurting people and the position that Mr. Austin has been put in is very important.

Mr. Martinez said that he does not agree with Councilman Wardle's opinion.

Councilman Wardle said that this amendment has gone through the Planning Commission process and this is the first time they have heard about it. He has a problem with the due process that Mr. Martinez is speaking about.

Mr. Martinez said that it is a law.

**Councilman Johnson moved to close the public hearing.** Councilman Hansen seconded the motion. All members present voted "Aye". The public hearing closed at 8:50 p.m.

**Councilman Johnson moved to table the amended plat for West Point Meadow Condominiums for a period of two weeks, to July 1, 2009, at that point they will have the City or County Attorney's interpretation to act at that time.** Councilman Hansen seconded the motion. All members present voted "Aye".

7. **Resolution 2009-31 A Resolution of the Tooele City Council Retaining Robert Mansfield and Lawyers under his Supervision of the Law firm of Snell & Wilmer L.L.P., for Legal Services.**

Presented by Randy Sant

Councilman Johnson stated that Snell & Wilmer is his law firm and Robert Mansfield is his partner and he will not be voting.

Mr. Sant stated that they have been trying to acquire the rest of the right of way for Phase 2 of 1000 North. This will take 1000 North to SR-112 and complete that road and then connect into SR-36. As of today they have the right-of-entry that UDOT needs to move forward with the project but they do not actually own the right of way. He said that the property owners have been willing to work with them and they are making progress. He said that they want to retain outside council to help with this process. Mr. Sant stated that he felt that Mr. Mansfield is the most knowledgeable about this situation. They would like to retain him for legal services. They have been using him for past few weeks the retainer came a few weeks ago but it was not soon enough to get it on to the last agenda. The contract is a retainer fee of \$5,000 which is paid at the time of signing and the hours will be deducted from that.

Councilman Pruden asked if this is money is coming out of the RDA funds.

Mr. Sant stated that the money will be coming out of the bond funds that they have for the acquisition of the right of way.

**Councilman Hansen moved to approve Resolution 2009-31.** Councilman Wardle seconded the motion. All members present voted “Aye” except for Councilman Johnson who abstained.

Chairman Pruden then turned the next agenda item to Councilman Hansen who is the chairman of the RDA.

8. **PUBLIC HEARING & MOTION on Resolution 2009-03 A Resolution of the Redevelopment Agency of Tooele City, Utah, (“RDA”) Adopting the Budget of the Tooele City Redevelopment Agency for the Fiscal Year Beginning July 1, 2009 and Ending June 30, 2010.**

Presented by Randy Sant

Mr. Sant stated that this budget was reviewed with the Board two weeks ago and there have been no changes. It has been advertised and been available to the public for the last seven days.

Chairman Hansen stated that this is a public hearing if anyone would like to come forward and address this issue. No one came forward.

**Councilman Pruden moved to close the public hearing.** Councilman Wardle seconded the motion. All members present voted “Aye”. The public hearing closed at 8:55 p.m.

**Councilman Pruden moved to approve RDA Resolution 2009-03.** Councilman Wardle seconded the motion. All members present voted “Aye”.

## **9. Approval of Contract for doing Annexation Study**

Presented by Randy Sant

Mr. Sant explained that this proposal for scope of services and a contract for the firm of Lewis Young Robertson & Burningham to do two things. First they will do move forward to do some annexation policy plan updating; there have been a number of legislative changes since the last annexation plan. They had the time of completion as June 30, 2009. Mr. Sant will talk to them about, they were under the impression that this would have been approved the first of June not June 17, 2009, but he needs to verify that. He believes it to be a 30 day process. The Council can approve this knowing that that time would have to change. The fee for this is \$10,000. Then they will proceed to determine whether it is viable to meet with the property owners and proceed with an annexation of the property in question. That will take 75 days after the contract is signed and the fee for that is \$12,020. There is a map attached to the contract. The area they are looking at is about 900 acres across from the Miller Sports Park where an industrial park is currently proposed to be built. He said that they should have prepared a resolution to adopt this, the attorney's recommendation is to bring this back for the council to ratify with a resolution. Mr. Sant would like to get the o.k. for Lewis Young Robertson & Burningham to begin the preliminary work. The Council gave Mr. Sant the o.k. to move forward.

## **10. Minutes: June 3, 2009 Business Meeting Minutes**

**Councilman Johnson moved to approve the minutes.** Councilman Wardle seconded the motion. All members present voted "Aye" except Chairman Pruden who abstained because he was not present at the last meeting.

Councilman Johnson noted on page five under the Clegg Land Trade in the first paragraph the firm should be Snell Wilmer not Wimmer.

## **11. Invoices**

Presented by Sharon Dawson

Ms. Dawson presented the following invoices for payment:

- Home Saving Bank for Debt Service for the Central Building Loan in the amount of \$28,125.00.
- Holme Roberts & Owen for May professional services for Tooele Associates lawsuit in the amount of \$290,015.77.

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

12. **Adjourn**

**Councilman Hansen moved to adjourn the meeting.** Councilman Wardle seconded the motion. All members present voted “Aye”. The meeting adjourned at 9:00 p.m.

Approved this 1<sup>st</sup> day of July 2009

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Chairman Pruden