

**Tooele City Council
Business Meeting Minutes**

Date: Wednesday, August 5, 2009
Time: 8:00 p.m.
Place: Tooele City Hall Council Chambers
90 North Main Street, Tooele Utah

City Council Members Present:

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

City Employees Present:

Mayor Patrick Dunlavy
Roger Baker, City Attorney
Shannon Wimmer, Assistant Finance Director
Sharon Dawson, City Recorder
Lisa Carpenter, Deputy Recorder
Cary Campbell, Public Works Director
Paul Hansen, City Engineer
Chief Ron Kirby, Chief of Police

Others Present:

Shawn Milne, Planning Commission

Minutes prepared by Elisa Jenkins

Chairman Pruden called the meeting to order at 8:00 p.m.

1. Pledge of Allegiance

The Pledge of Allegiance was led by Boy Scout Troop 458.

Chairman Pruden welcomed Troop 458 who were working on their Citizenship in the Community merit badge.

2. Red Cross “Nominate a Hero” Program Presentation Presented by Neva Christensen, Development Director

Ms. Christensen gave a slide presentation to the Council of the important work the Red Cross does in the community. She then explained that the Red Cross is looking for “hero nominations” from members of the community. The Red Cross has an annual hero’s luncheon and they honor people in about 10 different categories. If there is someone in

the community that has done something outstanding she encouraged the community to consider them for this award. The deadline for nominations is November 30, 2009. Ms. Christensen distributed a copy of the nomination form to members of the Council. (A copy of the nomination form is included with the minutes). She thanked the Council for allowing her time at this meeting and indicated that if anyone has questions to feel free to e-mail her.

3. Open Forum for Public Comment

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

Melanie Hammer, 1883 North 120 W, addressed the Council. Ms. Hammer stated that she has lived in Overlake for about 11 years. She wanted to thank the Council, the Mayor, Mr. Baker and others that helped with the lawsuit. She indicated that the people in Overlake appreciate the great representation that was given. She attended a few days of the trial and she believes that the jury got it wrong. She thanked them again for their efforts.

Sam Woodruff, 755 South 330 W, addressed the Council. Mr. Woodruff read a written statement to the Council. The statement read: “Three weeks ago I brought to the attention of the Tooele City Council a grave and very pressing issue of hostile work environment at Tooele City Hall. One that was totally promulgated by City Attorney Roger Baker. I brought this information to the Tooele City Council because you, collectively as a Council hold his contract of employment. It is your responsibility as a governing body to see that a proper investigation is carried out and corrective actions have been taken. To date a few meetings have been held but no material changes have occurred. I ask myself why? This then leads to the comments made by Michael R. Johnson as soon as I left the room three weeks ago, an attempt to discredit and belittle me has no effect on the facts of the matter. The instance I referred to actually happened, it is up to you to decide if you should sweep them under the rug or do something about them. However, I did find Mr. Johnson’s comments to be extremely distasteful, quite immature, and very unprofessional, especially for an up and coming star of the Salt Lake Legal Community. This makes me wonder where the defense strategy came from during the Tooele Associates trial. It seems obvious to me that avoiding the facts, belittling the witnesses, and mudding the water to the point of information overload, these are usually the tactics of the losing side. Nobody seems to want to accept responsibility for the lawsuits with Tooele Associates except to blame a money hungry developer. Let’s go back to 2003 and see how the lawsuit started. After many complaints to Mayor Roberts and to Tooele City Council no changes were made in the way that the City did business with Tooele Associates. In a final attempt at some sort of agreement or compromise Drew Hall was given the final call by Michael R. Johnson then Chairperson of the Tooele City Council, this was his response – if you do not like it Drew then sue us. As many may recall I stood in front of this City Council in 2004 and predicted that you would lose this case as well as the case with Grantsville. Win, lose or draw you have still lost because you have thrown away over \$5 million dollars. This is money that this City needs for infrastructure improvements, for children’s programs and to curb gang related

activity. Was I wrong or did the newspaper print wrong information when it declared a \$20.7 million dollar judgment? Appeal? That is the right of every American. I say that you use your own money and stop spending my tax payer money if you want to appeal. You as a Council have legitimately eliminated any possibility of bonding for infrastructure improvements in the near future. You as a Council has impaired the City's ability to remain financially stable. You as a Council have done all this without performing your due diligence in this case. Not one of you have brought both sides together to discuss the issues. Not one of you have talked to Drew Hall personally to get together and discuss what has gone on. You have merely relied on the very questionable legal advice of Roger Baker and the extreme bias of Charlie Roberts. To bad, so sad for the Tooele City tax payer."

Councilman Johnson told Mr. Woodruff that they will be responding in detail in time. Councilman Johnson indicated that Mr. Woodruff made an oral allegation at the last meeting and he has received nothing in writing to investigate. All he has been presented with is what was said in the City Council meeting. He has not received a written protest, or an appeal or anything for them to act upon.

Mr. Woodruff said that Councilman Johnson needs to talk to the administration and see what is going on.

Councilman Johnson stated that Mr. Woodruff should know as a former employee of the City that there are procedures to go through and they work their way through the procedures. The Council has not been presented with anything than what has been said orally at the City Council meeting three weeks ago. He asked Mr. Woodruff what he would like them to do?

Mr. Woodruff would like the Council to look into the matter. He said that there has been a complaint filed and the Council should look into it.

Councilman Hansen noted that he has not received anything either.

Councilman Johnson asked Mr. Woodruff to give him a copy of his complaint and he will determine if he should look into it. He also indicated that his e-mail is on the website if he would like to get a hold of him.

Mr. Woodruff indicated that City Hall has the complaint. It is not his complaint; it is his wife's complaint. He said that there have been some meetings held but very little has been done about it.

Councilman Johnson said he does not know what to do unless they get presented with a request.

Mr. Woodruff stated that he will make sure it gets to the Council.

Councilman McCall noted that he has not seen anything concerning this matter either.

Mr. Woodruff said the Council should do something about it. He asked if the Council will sweep it under the rug?

Councilman Johnson asked Chief Kirby to give a status report on the skate park issue.

Chief Kirby noted that he did not come specifically prepared to address this issue, but was happy to update the citizens as to what is taking place. He appreciates the difficulty the citizens around the skate park are in. He said there is no “magic bullet” that will solve this problem instantly. The solution of the problem will take some time. He said that the solution will involve a partnership with the citizens around the skate park, which is what they are working on. They are in the beginnings of a neighborhood watch program in this area, which he feels will be very beneficial. Chief Kirby met with the Mayor and they discussed possibly working with the curfew law. Some of the solutions for the skate park will be found in the solutions city wide such as the solutions for graffiti, and gangs. The solutions they are looking at are comprehensive. They have taken immediate action by stepping up patrols, and having the officers interact directly with the kids in the park. They have provided some immediate relief and the long term solutions are still in the works.

Councilman Johnson understood that they are possibly looking at surveillance equipment and the cost and effectiveness of that. He understands that they are not ready to make a proposal yet.

Chief Kirby indicated that they are looking into surveillance equipment which is thousands of dollars, but have not made a decision yet.

Councilman Wardle noted that he has driven by the skate park several time over the last few weeks and he has noticed more parents in the park, which he feels is critical. He realizes that this problem will not be fixed overnight but hopefully the things that have been done are helping as they continue with the comprehensive strategy.

Chief Kirby indicated that they would love to have a problem free park, but that probably won't happen. They are trying to provide relief to the citizens that live around the park. He has meet with them and he understands that their concerns are real, and they need to be provided with some immediate relief. Hopefully the solutions that they find will be long term.

Chairman Pruden closed the open forum at 8:25 p.m.

4. **Resolution 2009-41 A Resolution for the Tooele City Council Adopting an Identity Theft Prevention Program.**

Presented by Shannon Wimmer

Ms. Wimmer explained that this identity theft prevention program formalizes practices that the finance department has already been practicing. The formalization comes from a federal law that has been put into effect that requires the policy and the program to formally be adopted by the City Council. This program trains the finance department to be able to watch for identity theft and gives them routes to report suspicions. The Finance Director is the director of the program. This will be reviewed every year and reported to the federal government as to how the program is working. This is called a red-flag program and it is their responsibility if a red-flag is noted to double check and make sure the property owner does own the property and are getting credit in their name. This program is set more people who pull credit reports, but utility companies were included in the program.

Councilman Johnson noted that he did not get a copy of the program; he likes to review them before they are approved.

Mayor Dunlavy stated that this is a mandated law.

Ms. Wimmer said that the contract was created by the Utah League of Cities and Towns. She has a copy that she can get to the Council.

Councilman Hansen moved to approve Resolution 2009-41. Councilman Wardle seconded the motion. All members present voted “Aye”.

5. **Resolution 2009-42 A Resolution of the Tooele City Council Ratifying a Contract with Superior Excavating for Construction of the 2009 Culinary Waterline Replacement Project**

Presented by Paul Hansen

Mr. Paul Hansen explained that as part of Tooele City’s ongoing maintenance program they have water revenue funds, road funds, sewer funds and variety sources of funding for the repair and replacement of aging infrastructure. This resolution is to ratify a contract with Superior Excavating for replacement and upgrade of a substantial part of the City’s aging culinary water infrastructure. The project was publically put out for bid and advertised in the local newspaper. The City had five plan holders; however they only received a single bid. When you only get one bid, you are concerned that the bid prices remain competitive. The City however, always looks at the bid and sees how it comes in line with other prices received from the City. Mr. Hansen compared the costs that were submitted this year with last year’s bid which had multiple bidders, and Superior had the low bid last year that the Council awarded the contract to. He used last years unit bid prices compared to this years unit bid prices for the same scope of work it is an increase of \$3,700. He believes that the bid prices are fair and they are inline with what was done last year. They did publically bid it, they could re-bid it but it would cost the City additional funds and additional time to get the projects completed. The bid amount was \$1,191,700.00, and they are asking for a 5% contingency authorization which is used at the approval and discretion of the administration. That money is not an automatic

payment, rather it will only be used based on need and review and approval by staff. The scope of work involves nearly 1 ½ mile of pipeline replacement and the replacement of service laterals in excess of 250 homes. He is asking for the Council's support of this contract.

Chairman Pruden asked if this project is spread across the City?

Mr. Hansen said that this project does take in many areas of the City.

Councilman Johnson noted that Mr. Hansen sent an e-mail to the Council informing them that they only had one bid. The e-mail asked if they should re-bid or go with the single source. The e-mail also said that the proposal including contingency funds was for \$1 million dollars, and he recommended awarding the contract to Superior Excavating. He said that there were some responses to the e-mail from the Council. Now the contract is for \$1.2 million. He is not sure why it changed.

Mr. Hansen stated that when they initially scoped this project he incorrectly used a unit price number from last years bid. When he used the correct number it put the current bid prices right in line. Subsequent into sending the e-mail out he spoke with administration and some of the contractors and it was staff and Administrations' recommendation to proceed.

Councilman Johnson asked if Mr. Hansen's recommendation is the full \$1.2 million?

Mr. Hansen said yes. If the Council wants to hold it back to \$1 million they could reduce the scope of work. It is the Council's discretion.

Chairman Pruden noted that a re-bid process would push the improvements into the fall and winter and would possibly delay the project.

Mr. Hansen indicated that it would possibly push the project into next spring.

Councilman Johnson asked why a project of this size was only advertised locally.

Mr. Hansen indicated that was a decision that has been a policy on recent projects to try and keep the work in Tooele. This is consistent with the incentive to keep local businesses in use. When there are projects that are very unique such as a water tank, or well house their policy is to expand to a larger market because of the lack of contractor availability. They have not had a shortage of bidders willing to bid on this type of project in the past.

Councilman Johnson asked what happened with this project?

Mr. Hansen stated that he spoke with a few contractors and they indicated that they could not bond for the amount of this project based on other work they had on-going. That is why Western Excavating and Wind River Construction did not submit a bid.

Councilman Hansen understands the logic behind using local contractors. He reviewed the process that Mr. Hansen went through. When Mr. Hansen asked the Council for their opinion two weeks ago, it was his opinion that the project be re-bid. He does not like single source awards. Because the administration only received one bid, Mr. Hansen did what he could to keep the work load locally, and Councilman Hansen felt that the scope should be expanded. He feels that in this economy there are contractors that need work and are willing to competitively bid. He noted that Superior Excavating is a great company and they have done a great job in the past. He is personally against a single source bid. If someone bid lower the City could save some money. He understands that it will be delayed if it is not approved and these are important projects. He also feels if it would have been re-bid two weeks ago it would have to be delayed as much. He would like to see the bid process expanded outside of Tooele. He is sure that everything was done legal. This is his opinion.

Chairman Pruden feels like Mr. Hansen followed the policy that has been established. He feels that it is a fair bid and it is important to employ local people and he does not want to see this work get delayed.

Councilman Wardle noted that two weeks ago when the e-mails were sent there was not a majority of the Council that felt that this project needed to be re-bid. He feels that the legal requirements have been met and it is important to keep the work locally.

Councilman McCall talked to Mr. Baker about the legalities of this resolution. He agrees with Councilman Hansen about the possibility of re-bidding. He also feels that Mr. Hansen did the job that he was asked to do as far as the bidding process. He also realizes that the citizens need this work done and does not want to delay the process. He is at a cross road of what he would like to see done.

Councilman Wardle noted that he would express concern on this bid if the bid came in unusually high. Part of this process has been reviewing where they were last year; the bid is right in line where it should be with inflation.

Councilman McCall agreed with Councilman Wardle. But he also feels that when contractors are out of work they might reduce the price to get the job. He asked if this job can be broken down into smaller projects?

Mr. Hansen indicated that they considered that but typically the cost savings come with a larger project than several small projects.

Mayor Dunlavy stated that the decision that was made was the right decision and was made for the right reason. He said that his administration feels very strongly that they need to keep as much business in this Community as they can. There is a banner on City Hall that is a City wide and county wide proposal to keep the taxes in the community so you own it, which is vitally important to this community. This was not a sole source project and to say it was a sole source project is incorrect. This project was bid the way it

was supposed to be bid. There are contractors locally that have a reputation of doing good work they do not feel there is a need to go outside the scope. He feels just because it is a project of this size it is not a reason to go outside the City or the County to get a contractor because they would have mobilization costs and other costs. The bidding project was done properly. The City has a contractor that they know and has previously done work for the City. The prices were fair, honest and upfront. The decision was made to award this contract to a reputable, in the local area, contractor because they know them and they do good work. Mayor Dunlavy said that it has been implied that they did something wrong and they did the right thing for the right reasons.

Councilman Johnson does not think anyone did anything wrong. He said he received the first e-mail and then did not hear anything else and then it changed. He just wanted to know why it had changed.

Mr. Hansen stated that they did receive a re-bid from two of the five contractors.

Councilman Hansen asked if in the memo that he received it indicated that this was a sole source?

Mayor Dunlavy said that they never sole source unless there is only one source.

Mr. Hansen said that there were five plan holders, but that they received a single bid. This is not the same as sole source where you only seek prices from one business.

Councilman McCall also does not feel anyone did anything wrong. He was concerned about the legality of the matter and discussed his concerns with Mr. Baker because he was unsure of the process. He also would like to see work kept in Tooele. Mr. Baker answered his questions and then he was o.k.

Councilman Johnson asked what Mr. Hansen's engineer's estimate of the correct unit price was?

Mr. Hansen said that for the basis of the cost he went to last years bids. He had a bid tabulation that listed every bidder and their individual bid items and what was the low, the high, and the average price. He indicated that Western Excavating bid a unit price last year on service lateral replacement of \$900. He used that number from the spreadsheet, but all other bidders were between \$1,500 - \$1,800 for that one item. He stated that when he used that number incorrectly it resulted in a \$200,000 cost difference. When he used the number that was awarded last year which was right in the middle it put it right where Superior bid their prices this year.

Councilman Wardle moved to approve Resolution 2009-42. Councilman McCall seconded the motion. All members present voted "Aye" except for Councilman Hansen who opposed.

6. Minutes: July 15, 2009 Business Meeting and Closed Meeting

Councilman Wardle moved to approve the minutes as presented. Councilman Hansen seconded the motion. All members present voted “Aye”.

7. Invoices

Presented by Sharon Dawson

- Fabian & Clendenin for Tooele Associates Inspection Fee Case through June 30, 2009 in the amount of \$25,457.50.
- Western Excavating for the Skyline Storm Drain Project in the amount of \$16,251.89. Mr. Paul Hansen indicated that a significant portion of this cost increase was to account for avoiding a high pressure gas line which was higher than represented by the company prior to work. The cost to relocate the gas line would have been significantly higher than having Western Excavating modify the storm drain system.
- Fatpot Technologies for annual maintenance fees through 2010 with the Homeland Security Grant for two invoices that totaled \$40,775.00.

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

8. Adjourn to a Discussion Meeting:

Councilman Hansen moved to adjourn the meeting to a discussion meeting. Councilman Wardle seconded the motion. All members present voted “Aye”. The meeting adjourned at 8:49 p.m.

Discussion Meeting:

- a) To Re-address City Council Meeting Times

Councilman Pruden explained that in the spring the Council meetings were moved to 8:00 p.m. and it was decided that they would re-address this in the fall.

Councilman Wardle noted that they are now moving into fall and winter and the meetings have been running late. He would like to see the meetings moved back to 7:00 p.m. There will be school children that will be involved in the meetings and he feels that 8:00 p.m. is to late.

Councilman Johnson indicated that he works in Salt Lake and Councilman McCall works in Dugway. He will accommodate what the Council decides to do but it is easier for him to get the meetings a little later. It is not necessarily the City Council meeting time that is hard for him it is the meetings before the Council meeting. It is very difficult for him to be to a meeting at 5:30. He does recognize the fact that they need to be sensitive to the

public needs. He does not feel that getting parents out of the meeting by 8:30 is to big of a problem. He will do what he can to accommodate.

Councilman McCall stated that he would prefer to leave the time as it is now. If the Council decides to change it, he will do what he can. He suggested having the Strategic Planning Meeting after the City Council meeting if it is moved back to 7:00 p.m. It is hard for him to make it to a meeting at 5:30 as well.

Chairman Pruden stated that is something to consider. He also noted that sometimes the Council needs to be aware of items that will take place at the Council meeting prior to the meeting.

Councilman Hansen stated that he can accommodate either way the Council decides.

Mayor Dunlavy stated that it makes it a really long day for the staff and he suggests moving the Council meeting back to 7:00 p.m.

Chairman Pruden stated that if they change the meeting time they will need to do it at the next Council meeting by Resolution.

Councilman Johnson would like to see the other meetings after the Council meeting. He suggested have a half hour meeting before the regular meeting.

Chairman Pruden asked Mr. Baker to draft a Resolution to change the meeting times back to 7:00. The Council will discuss when they would like to have their other meetings take place.

The discussion meeting adjourned at 9:00 p.m.

Approved this 19th day of August

Chairman Pruden