

## LEGAL, LEGISLATIVE AND SAFETY COMMITTEE

OCTOBER 11, 2011

3:45 P.M.

Councilman Murphy, Chairman, called the meeting of the Legal and Legislative/Safety Committee to order with Councilpersons Ladd, Berz, Scott, Gilbert, Robinson, Rico, Benson and McGary present. City Attorney Michael McMahan; Management Analyst Randy Burns; and Shirley Crownover, Assistant Clerk to the Council, were also present.

Others present included Bill Payne, Chief Parker, Lee Norris, Larry Zehnder, Jim Templeton, Danny Thornton, Jerry Stewart, Johnny Feagans, Dan Johnson, Dennis Malone, Steve Leach, Greg Haynes, John Bridger, Gary Hilbert, and Daisy Madison.

**On motion of Councilman Rico, seconded by Councilwoman Ladd, the minutes of the previous meeting were approved as published.**

Chairman Murphy began with a discussion surrounding **Resolution (g)** that authorizes a lawsuit against Jason Headrick regarding a continuing nuisance at 1004 Brynewood Park Drive. Mr. Payne noted that Dennis Malone would be handing out pictures. He began with the timeline and events, stating that he would hit the highlights. He stated that in 2005, the applicant received a Fill Permit. He was informed in 2006 that the size of the pipe installed was too small—this was both verbally and also a written Notice of Violation. In 2007-2008, the applicant completed the work but did not make modifications to the size of the pipe. This went to Court in 2008 and Mr. Headrick did get the site stabilized; however between 2008 and 2011 there was a collapse of the system, and Mr. Headrick was asked to Show Cause, and the situation was not corrected. He said that he would hire an engineer to correct the situation but had not proceeded to do so. Mr. Payne stated that the photos show the makeshift version of the pipe and water in the street and onto neighborhood property. He went on to say that there were problems with water in the neighborhood, and at this point, it is a significant issue—that it was dire enough to have this declared a public nuisance. He stated that it would cost from \$20,000 to \$30,000 to correct.

Councilwoman Robinson stated that she had a couple of questions. She wanted to know about the Court proceedings in 2008 and the ruling. Mr. Payne stated that Mr. Headrick was ordered to present a Plan of Review and was fined \$50.00 plus court costs in July of 2008. There was a Compliance Order in August of that year, and he did stabilize but did not present the Plan of Review. Councilwoman Robinson wanted to know where we would file the lawsuit. Attorney McMahan stated Chancery Court, most likely—that it is a common law nuisance; that he will be directed to correct this situation or we will correct it at his expense. In the event that he does not pay, a lien will be placed on the land. Councilwoman Robinson mentioned the \$50.00 fine, asking if we would ever change this law or if he could be charged \$50.00 each day. Attorney McMahan explained that this would take a legislative action and would have to be voted on by the people—50% of the people who voted in the governor's race. He stated that it would be difficult to get this changed.

Mr. Payne added that State Law does allow for Civil Penalty in the amount of \$5,000; that if Mr. Headrick failed to comply, he could be fined this amount in addition to the cost of repair.

Councilwoman Scott noted that after the lawsuit is filed, we could be reimbursed in the form of a lien but also there would be expenses for the last several years and the cost of attorney fees to make this happen. Attorney McMahan stated that attorney fees might be possible, but we could get only the amount of money to correct the problem, prompting Councilwoman Scott to say "this is a flawed mess".

Councilwoman Berz confirmed that they went to Court in May. Mr. Payne stated that they went to Court in 2008 and also May of this year for Show Cause. She wanted to know what happened in May. Mr. Payne stated that Show Cause Hearing was held and Mr. Headrick was in attendance, and he told Judge Paty he would correct this and left and did not follow through. He stated, again, in May that he would hire an engineer to do the work but there had been a delay.

Councilman McGary wanted to know our options if we don't take this to trial. Attorney McMahan explained that we were not seeking just a \$50.00 fine; that he would have to correct the situation or the City would do it at his expense. Councilman McGary responded "then if we win, he pays". The answer was "yes".

The next issue was **Resolution (d)** authorizing a Change Order to the Agreement with Jones and Jones Architects for additional services to evaluate the Ross's Landing area for an increased amount of \$19,800, for a revised contract amount not to exceed \$188,300. Adm. Zehnder asked if there were any questions concerning this. He went on to say that the City has a contract with Jones and Jones, and he wanted to capitalize on their expertise and was suggesting this change order be executed for additional work at Ross's Landing; that this impacts future developments.

Councilman Benson inquired as to where we were with the Hargreaves clean-up? He wanted to know where we were in litigation. Attorney McMahan stated that Hargreaves was in the Court of Appeals but was not part of this scope. Adm. Zehnder added that there were always operative aspects; that he did not work with Hargreaves, and we were doing this after the fact—that it was not necessarily a Hargreaves' issue; that a lot of things were happening and changing. He also used this time to show appreciation to those Councilmembers who were involved in the Greenway Opening a few Sundays ago, mentioning Councilman Gilbert. He stated that it was a great event.

Chairman Murphy next moved to **Ordinance 5(a)** on next week's agenda that establishes a Special Exceptions Permit relative to the regulation of structure heights in certain scenic areas. He mentioned deferral of this and asked Mr. Bridger and Robert Bradham of the Chamber of Commerce to make a presentation.

Mr. Bradham stated that he thought the Council was aware that a process began last year; that they were unsuccessful in obtaining a Grant for this but did not feel that they should stop planning for the future just because there was no Grant. He mentioned a person that they had come here from Salt Lake City, who did a really good job; that RFQ's were on the Planning website, and they received 17 responses from around the country for this long-range planning process; that they narrowed this down to 7 for RFP's, and they would be ready to arrive at three finalists sometime in November; that there would be very public meetings and were looking for a venue. He stated that the meeting in November would serve as the public Kick-Off; that they had had an expert leadership group, including Mayor Littlefield and Mayor Coppinger. He reiterated that this needed to be a very open process, and they were committed to this; that they wanted all citizens in the region to have an opportunity to have input.

Councilman McGary stated that he had a quick question. He wanted to know how much input the public would have and would they be in on the decision making process? Mr. Bradham responded that the Chamber is not leading this process; that 20-30 people have participated and been very involved; that they wanted the average citizens of the region to be involved; that this needs to be a Public Plan.

Councilwoman Berz stated that her question was "What does this have to do with Ordinance (a)? Chairman Murphy responded that this was just an update on the Strategic Plan, to show that it is moving forward.

Mr. Bradham went on to talk about fundraising, stating that we have to match it 2 to 1; that one half million dollars had been contributed by the City and another half million dollars by the County; that we were up to \$2 million dollars and raising private funds; that we had \$3 million dollars locally without a Federal Grant. He mentioned that October 6<sup>th</sup>, we applied to HUD for a Grant of between \$1 and \$5 million dollars, but they would be committed without a Grant. Mr. Bridger stated that their Staff was paid labor working behind the scenes; that when we get into the public scene, we will talk about the website; that they were real excited about this.

Councilman Benson asked if this was the outgrowth of the meeting held at the Chamber six months ago when they had the visitor from Salt Lake City. He asked if this was like the second stage of Venture? Mr. Bridger responded that it was more like Vision 2000. Councilman Benson stated that this was timely, and we need to do this. He asked if Councilwoman Berz was saying to defer Ordinance (a) to tie it into this Study.

Chairman Murphy stated that there were people here today to voice their support for Ordinance (a); that Mr. Gilbert was present from Battery Heights. He went on to say that his question was does this need to be broad-based with voices from the Preservation Groups; that 100 people would be on the Steering Committee, and he wanted to know who would be picking them.

Mr. Bridger responded that it would be open to anybody to participate.

Another representative explained that there was no process yet; that we were just hiring someone to build the process; that this was a continuation of other processes, but we wanted this to be more regionally based with a broad based leadership group; that thousands of people would be reached through town hall meetings and surveys and anyone who cares to can participate; that it will be broad based and a priority for citizens to voice their priorities, and the Council would have a responsibility to their constituents.

Chairman Murphy asked who was selecting the leadership committee? The representative explained that stakeholders are willing to come to the table; that we wanted consultation on Best Practices to help us to understand how to be responsive and fair.

Councilman McGary wanted to know what constitutes a stakeholder? The representative responded that the City and County are stakeholders, also philanthropists in the community and the building community. Councilman McGary stated that if private businesses could be stakeholders—how much money did they have to contribute? The representative explained that they were groups that are broadly represented in the Chamber.

Councilwoman Berz stated that we are all stakeholders, and she was 100% behind this; that it was for people at all levels and not just the ones with money; that she was very interested. She wanted to know if all of this was instruction because of the decision that the Council will be asked to make later? Chairman Murphy stated that he just wanted to show that this process is getting off the ground.

Chairman Murphy stated that we would now move on to ethanol; that ethanol, according to the Planning Staff, is allowed in M-1 Zone but not M-2; that it is not named in either zone, but they felt it should be in M-1; that in M-2 Zone, we would have to establish a procedure to get a Special Exceptions Permit—that we were not talking about an individual case. Mr. Bridger confirmed that this would hold true for anything in an M-2 Zone.

Councilman Gilbert stated that his comments were being made based on the discussion concerning Special Exceptions Permit; that he was totally against anything dealing with ethanol or petroleum; that this had been discussed in the past, and he had urged to not open this big door; that if we pass this, it will allow not only ethanol, but other things. He went on to say that he was a little kid when there was an explosion (petroleum), noting that other things would be included with this Ordinance; that he totally disagreed with this—petroleum or ethanol. He stated that he did have a question—that he did not think there were other ethanol facilities or petroleum facilities in this area.

Mr. Bridger asked if he was talking about in the Industrial Park? He stated that there was petroleum but no existing ethanol at this time.

Mike Price mentioned J.T Terminal, prompting Councilman Gilbert to say then there is one more in this area. He asked if J.T. Terminal was by rail and was told “yes”. Councilman Gilbert reiterated that he was totally against this—that there could even be something more dangerous than ethanol.

Councilman McGary stated that he was curious as to our options if we do not pass the Special Exceptions Permit process—what other options do we have? Mr. Bridger explained that it was only allowed in M-1. Councilman McGary stated that we asked for information last week as to what other communities are doing. He asked if others do have Special Exceptions Permits? Mr. Bridger stated that he was not aware of it. Councilman McGary asked if Special Permits were in M-2 or other Zones? Mr. Haynes responded that it varied. Councilman McGary asked if we would be establishing a precedent if we passed this Ordinance? Mr. Haynes acknowledged that there were others with Special Exceptions Permits in either light or heavy industrial areas.

Councilwoman Scott noted that the question had been asked “Do we have ethanol terminals?” and “yes, we do”. She stated that it was on the River and was more than ethanol; that it has to be put on trucks and go to where it is mixed in the Bonny Oaks area; that we had had no problems with the ones doing this for many years, and she thought this would be better than transporting truck after truck. She noted that this Ordinance pertains to two zoning areas—M-1 for tanks and petroleum related and M-2 with a Special Permit for ethanol only. She stated that she agreed with Councilman Gilbert that we did not want an open door and needed to make sure that this is not Pandora’s Box; that it needs to be amended to be ethanol only and if it becomes anything else, the Permit would be revoked; that ethanol is not imported as much—that it should be limited to this and this only. She went on to say that we had spent time talking about the fears and safety of moving this product. She mentioned a data base for accidents that she had looked into—this included fatalities or injuries—that it was really a good data base, and she found only one minor injury in transporting ethanol, which was amazing. She stated that she did think we should understand the “slippery slope” of Special Permits. She went on to say that it is good to go by a recipe and to think about the benefits and downsides, and a truly unique Special Exceptions Permit is the answer.

At this point in the meeting, Chairman Murphy recognized Commissioner John Brooks.

Councilwoman Berz mentioned Senator Corker’s speech concerning getting rid of subsidies for ethanol.

Councilwoman Scott noted that we did need to protect the community, and they should know that if anything else is brought in, the permit goes away.

Attorney McMahan agreed that the property would remain M-2 and if ethanol ceased, it would have to be a use consistent with M-2 uses.

Councilwoman Berz stated that she was concerned about people in Councilman Gilbert's district; that there is a slippery slope with Special Exceptions Permits. She questioned us saying this is okay, whereas pancakes on Gunbarrel Rd. is not okay; that the public good is 800 trucks off the road—that this figure had gone all over the place; that with Special Exceptions Permits, one size does not fit all, and this is not necessary to the public good; that this could be called class legislation, and it does set a precedent; that we had talked about a monopoly, now there was no monopoly. She questioned who favors what—that we are growing and changing and need to get away from favoritism; that Special Exception Permits are granted judiciously and on prior commitments, and we need to be very, very careful—that this is not a popularity contest, and we need to be careful about planning and something being for the public good; that she would vote against this because it is a bad precedent.

Councilwoman Scott stated that it was her understanding that this terminal will become economically not feasible to trucking ethanol across the city; that ethanol was not previously distributed out of this site; that it would become a monopoly. She stated that she did not understand the political game portion of this.

Councilwoman Berz responded that we deal with this all the time; that people argue well for their districts; that Councilman McGary argued well when representing his district; that it is a political process, and we need not to get on that level (that she was not talking about politics in a bad way). She stated that we needed to look at the big picture and be really careful with this unless it is clear and convincing for the public good; that it can be one person's opinion, and we need to look at the big picture.

At this point, Councilman Benson allowed Councilman Gilbert to make comments ahead of him. Councilman Gilbert stated that his community was here to talk; that they don't want this to happen; that if one blows up, it does cause a problem for the community, and this has happened. He wanted to know how far the switch was from the main road—that this question had not been answered. He stated that we needed to listen to the community because they live there, and their voices should be heard—they don't want ethanol in the area; that this one is questionable, and we need to listen to the community; that we are opening up a door, and he will vote against this Ordinance.

Councilman Benson stated that we are getting off track; that **Ordinance 6©** is only for a Special Exceptions Permit process. He went on to say that he had no problem with ethanol but asking for a Special Exceptions Permit for everything in the world; that getting into the issue—a Covenant has been violated; that a Land Use Plan was violated, and they are trying to come in through the back door. He stated that this worried him more than the ethanol.

**REDISTRICTING**

Chairman Murphy stated that the redistricting process would allow the opportunity for public comment—that it would be an open process. He asked Attorney McMahan to give some background.

Attorney McMahan stated that we had to do this every ten years; that we all have to redistrict for two compelling reasons. (1) One Man—One Vote. He stated that ideally all districts would have the same amount of people, but we can't achieve this. He mentioned a variance of 10%, and we now have a 30% variance—that Councilman Benson has the largest district and Councilman Gilbert the smallest; that we have a 30% variance and need to bring it down to 10% or less. (2) This is subject to the Voting Rights Act. It is a balancing act, and we have to preserve the rights of minorities and majorities so that all have an equal chance.

Chairman Murphy asked about the term "contiguous". Attorney McMahan responded that there can't be a space between districts; that all the districts have to touch each other—there can be no gaps. Chairman Murphy stated that Randy Burns would show us the technology we will use to undergo this process.

While Mr. Burns was getting prepared, Councilman Gilbert asked if this was discussed last time?

Chairman Murphy asked Mr. Burns if he had the lavalier microphone, with Mr. Burns indicating that he could go get it.

Mr. Burns proceeded with his presentation, showing what we would start with by showing the districts adopted last time. He stated that we had more time then; that it was in October of 2003. He stated that he would show where we would begin the process now. When redistricting, we look at the primary residences of current councilmembers, going over each district; that this guarantees that no current councilperson will lose their seat.

Councilman McGary asked if a councilperson could be redistricted out of their district, stating that he understood that a person had to only reside in his district one year before an election. Mr. Burns stated that "no" a councilperson could not be redistricted out of their district, with Attorney McMahan stating that it could happen. Councilman McGary asked about the one year within a new district? Chairman Murphy stated that if a councilperson was moving, they needed to make it a public record. Attorney McMahan stated that this would rarely happen.

Mr. Burns continued with where we start the process, explaining that the software we use is Redistricting On-Line Software, which allows you to build and load data; that we build by census blocks and manipulate the figures as we go.

Councilman Gilbert asked if the language Attorney McMahan had talked about was built into the scenario of this software, and the answer was “yes”. Mr. Burns thought that he had an early scenario saved, but it was not there now. He stated that this software is the way we will do it.

Councilwoman Berz confirmed that there were only two variables—population and not diluting minority districts (demographics). Mr. Burns stated that that was the goal. Councilwoman Berz noted that there were too many people in her district and Councilman Benson also had too many in his; that their districts were contiguous. She questioned if we would move from her district into Councilman Gilbert’s and from Councilman Benson’s district into her district or if it could go the other way? Mr. Burns stated that all the pieces have to fit, and we can see it on-line as we do it; that it will take a while as we build it and go across.

Councilman Benson stated that Councilwoman Berz can’t pick the individuals that she wants. She responded that her district looks like a “jester booth”, and she could not believe it was not gerrymandered.

Mr. Burns showed a demo plan that was unrealistic, stating that we have to be very selective and go in and select blocks that we want to add to a precinct; that the next time, we will see changes being made.

Chairman Murphy stated that this is the process—that populations that are too great will go to districts that are too small, making sure there are no breaks and islands and that we are contiguous and also have racial balance.

Councilwoman Berz asked if each Councilperson could have access to this information so that they could play with it themselves. Mr. Burns explained that we have only one licensed software.

Chairman Murphy stated that councilmembers would have to coordinate with Mr. Burns and Chairman Ladd could direct his timing.

Councilman Benson stated that the last time we did this, it worked efficiently with just Mr. Burns and Leamon Pierce; that they worked out drafts and brought them back to the rest of the Council. He asked if we could not possibly do it that way this time? Mr. Burns responded that we would see; that we could see when we get into this. Councilman Benson reiterated that they did a good thing last time.

Chairman Murphy stated that he wanted this process to be completely open and to do this process in public 100% of the way; that the Council had been pleased by the former drafts, but he thought this would exceed Mr. Burn’s capability and time.



Chairman Murphy announced that we would do redistricting again in two weeks and start working with this program. He asked if at this time members of the public wished to comment, stating that he would limit the time of their comments.

**Steven Harper of the Democratic Party** spoke first asking if voting records would be made available. Mr. Burns explained that we only look at population. Mr. Harper stated that he was confused about voting precincts, asking if the Election Commission precincts would be subdivided with this process or if people would be voting from the same precinct—that there was confusion surrounding this.

Chairman Murphy stated that he thought the Council would respect existing precincts to the extent that was possible; that a portion of his district was de-populated, with no compelling reason for it to be in one district or the other; that some requests might be made of the Election Commission.

Councilman Benson explained that this is easily handled; that the City election is the only one this time; that we will get the precincts set up after we know what the districts are; that this is no big problem with only one election in April.

Councilman Gilbert stated that if this is the case, it might confuse a lot of people if it were a presidential election and different from just a city election.

Chairman Murphy stated that we don't want to change precincts, but to make it viable, the Election Commission might have to move something like this; that precincts are not static animals; that we will try to work with the building blocks provided; that we can make the request of the Election Commission to change precincts. He then went on to say if people cannot come to these meetings, we will have an e-mail address available.

Chairman Ladd asked that the Council meet at 5:15 for a non-agenda item.

The meeting adjourned at 5:00 p.m.