

**Tooele City Council and the  
Tooele City Redevelopment Agency of Tooele City, Utah  
Work Session Meeting Minutes**

Date: Wednesday, June 7, 2017

Time: 5:00 p.m.

Place: Tooele City Hall, Large Conference Room  
90 North Main St., Tooele, Utah

**City Council Members Present:**

Chairwoman Debbie Winn

Scott Wardle

Dave McCall

Brad Pratt

Steve Pruden

**City Employees Present:**

Mayor Patrick Dunlavy

Glenn Caldwell, Finance Director

Michelle Pitt, Recorder

Roger Baker, City Attorney

Jim Bolser, Community Development and Public Works Director

Rachelle Custer, City Planner

Lisa Carpenter, Deputy Recorder

Randy Sant, Economic Development and Redevelopment Agency Director

Minutes prepared by Michelle Pitt

**1. Open Meeting**

Chairwoman Winn called the meeting to order at 5:00 p.m.

**2. Roll Call**

Debbie Winn, Present

Scott Wardle, Present

Dave McCall, Present

Brad Pratt, Present

Steve Pruden, Present

**3. Discussion:**

- Hialeah Run at Tooele

Presented by Jeff and Alan Cohen

Jeff Cohen explained that the last time he was before the Council, the Council expressed some concerns about the proposed development. Mr. Cohen stated he wanted to address those concerns. He said that the smell from the fish food plant wasn't an issue for them because it did not bother them. He said that if it bothered the tenants, they could leave and find somewhere else to live. Mr. Cohen indicated that the traffic study was done and was included in the materials that would be given to the Council. He said that the economic feasibility study would be done before the project begins. He said that they, as developers, felt that putting the commercial atmosphere in the back of the project was not conducive, but the front of the property was. He felt that since this area is zoned light industrial, the proposed development would add to that. The project would provide places to live which would be close to rapid transit. He said that they are not in to making a cheap, ugly project, and that they would make sure the project looked nice.

Rob Haywood, with the Richie Group addressed the Council. He said that since 2016, they have brought 994 multi-family units to the Wasatch Front area. He added that they were the first developers to bring in multi-family housing which are smart homes. He feels that they have amenities such as gyms and pools that make people want to stay. They also hire professional managers, and mentioned that they like Connerstone, who are in the Tooele area. Mr. Haywood showed the Council a conceptual layout and design. Mr. Haywood said that he has found that cities and towns want to bring high density developments to areas that are suited to mass transit. Mr. Baker asked for a clarification of what was meant by "mass transit". Mr. Haywood said that the housing units would be within walking distance of the bus stop, or the park and ride. The Council members were given a confidential report which included the traffic study.

Councilman Wardle asked if the developers had current letters of interest for the commercial portion of their property. Mr. Cohen indicated that they had one letter of interest in progress, and others who have expressed interest.

Chairwoman Winn indicated that this item would be placed on the next business meeting.

- Ordinance 2017-17 An Ordinance of Tooele City Amending Tooele City Code Chapter 8-4 Regarding Nuisance Vegetation and Allowing the Emergency Abatement of Imminent Fire Hazards Due to Vegetation  
Presented by Roger Baker

Mr. Baker explained that this amendment arose from a discussion between himself, Mr. Bolser, the fire chief, Trisha Waltz, and Rachelle Custer regarding the interpretation of the existing code. Mr. Baker stated that currently, weeds beyond 15 feet from the property line are not considered a nuisance. The code should say what a nuisance is, not what it is not. This amendment would expand the mow strip requirement from 15 feet to 30 feet from the property line. The fire chief had said that expanding the mow strip requirement from 15 to 30 feet would buy a critical amount of time in preventing a grass fire from spreading to neighboring developments. Mr. Baker explained that this ordinance does four things: (1) redefines the term "unimproved land" to say it is real property that is not built upon with a primary structure; it doesn't have a house or

a business on the property. If there is a house or business on the property, it is improved land; (2) clarifies that the property owner is responsible to keep the weeds down between the road edge-of-asphalt and the property line. It doesn't matter what improvements exist between the road and property line, it is the property owner's responsibility to cut the weeds to avoid a nuisance citation; (3) increases the mow strip width from 15 to 30 feet; (4) allows emergency abatement by listing nuisances of such importance that they warrant an emergency abatement. It allows the City to take care of the emergency without all of the notice requirements that are usually afforded to property owners. The fire chief requested that the City declare that an emergency abatement process be available for vegetation conditions that create a fire hazard. Mr. Baker further explained that the code is not going to run over property rights, but will allow for emergency abatement, and allow the City to provide the proper notices on the back side.

Councilman Wardle said that he had some of the property owners that lost their houses in last year's fire express real concern that a large fire would happen again. A perfect storm happened a year ago with wind and fire. Councilman Wardle said that he would hate to see that happen again. He would like these amendments be put in place.

Councilman Pratt stated that after the incident last year a lot of questions were asked of how the City could prevent the catastrophe and how it could be minimized in the future. The mow strip width increase will help, especially when the wind is blowing. Last year's fire became apparent that 15 feet is not a very big requirement. Some property owners have come to him to ask what the safe distance was. These changes put a vehicle in place for the City to take care of emergency situations. Councilman Pratt went on to say that sometimes contacting property owners, especially if they don't live here, may not work because they don't realize the condition of their property.

Chairwoman Winn said she appreciated Fire Chief Bucky Whitehouse's input in these amendments.

Councilman McCall indicated he liked the stricter requirement. When it's dry like it is right now, the additional width will slow a fire down. Councilman McCall said that owners need to cut their grass, and maybe the whole field, instead of just the mow strip. Mr. Baker indicated that he appreciated Councilman McCall bringing that issue up. Mr. Baker said that he hadn't mentioned that any undeveloped property that is smaller than five acres, has to cut the entire field. If the property is larger than five acres, they are allowed the 30 foot mow strip. Mr. Baker said that if that didn't address Councilman McCall's concern, the Council may want to discuss the issue further in a future meeting. Mr. Baker suggested that because of the current hot season, to move forward with the ordinance, then maybe discuss it further later.

Chairwoman Winn mentioned that Randy Sant and Lisa Carpenter joined the meeting.

- Ordinance 2017-19 An Ordinance of Tooele City Amending Tooele City Code Chapter 5-6 Regarding Home Occupations Presented by Roger Baker

Mr. Baker stated that the definition of home occupation is in the land use portion and it's also as a regulation in other sections of the code. Mr. Baker added that he was suggesting that definitions, as a matter of the rules of drafting good legislative, should define the term. The other sections of the code should regulate that defined term. The definition of a home occupation will be listed in Title 7, and the regulations will be merged so that they are no longer conflicted. Mr. Baker went on to say that the definition in Title 7 does not allow home occupations such as vehicle repair, body shops, firewood sales, welding, nursing homes, and it defines musical instruction. Mr. Baker explained that the City allows musical instruction, but they don't want to allow a marching band, so it specifies that businesses can only have one student at a time. Councilman Wardle stated that he struggled with only allowing one person at a time. Councilman Pruden added that maybe the type of instrument could dictate the number of students. Ms. Custer stated that dancing instruction allows more than one student at a time. Chairwoman Winn said that maybe it could be covered under the nuisance ordinance, rather under the business license home occupation definition. Mr. Baker felt that it was better addressed in the definition, but that the nuisance and noise ordinances also had a role. Councilman Wardle asked for further discussion on this issue.

Mr. Baker explained that Senate Bill 81 does not allow a City to collect a fee for licensing home occupations unless that business materially exceeds the offsite impact of the primary residential use alone. He stated that he has discussed this issue with staff, the League of Cities and Towns, and other attorneys about how to measure the impacts in the neighborhoods. After those discussions, he concluded that it can't be done in any legally definable way. He cited an example of someone that was a wood hobbyist who has a wood shop, but only does it as a hobby, not a business. Then there is someone next to him doing the same thing, but sells his wares, and asked how one would cause more of an impact than the other. Mr. Baker said that he looked at the issue in terms of customers coming to the residence. But asked how that would be different than visitors, friends, or family members coming and going. Councilman Pratt said that there are a lot of home businesses, such as vinyl cutting, where they sell a kit including cut wood, to put together crafts. He also asked how the City could set a definition, because some people pick up products, and what kind of impact does picking up product bring.

Councilman Wardle asked about charging a fee for inspections, and if that could be considered a run around the law. He asked how many building inspections the building department did on home occupations. Ms. Custer answered that there were alot. Councilman Wardle stated he would like to study this issue more before it was codified. He felt that the City didn't need to be so regulatory. Mr. Baker stated that it was an unfunded state mandate from the legislature. Mr. Baker added that the City still can license home occupations, but are not able to recover a cost for licensing them. Mr. Baker asked if the Council was interested in knowing what types of home occupations there are in the community, or not, because they could decide to not even license them. Councilman Wardle stated he felt like it would be beneficial to sit down with staff for clarification. He also wanted to contact Senator Andregg to ask him for clarification on this bill. He stated he didn't want it to appear like the City was creating a run around in charging the inspection fee. Mr. Baker stated that some cities were going to charge a fee, saying that all home businesses with customers impact the neighborhood.

Ms. Carpenter stated that a lot of cities have received a GRAMA for a list of home occupations. She has learned that the request is coming from an organization hired to do a study for Senator Andregg. There may be additional bills regarding home occupations in the near future.

Mr. Baker clarified that if the City conducts an inspection, they will be able to impose an inspection fee, which happens to be larger than the business licensing fee. Mr. Sant said that there are some businesses that require inspections for safety purposes. The legislature agreed that those types of inspections were acceptable, and Senator Andregg concurred. Councilman Wardle stated that he felt that lines 133-136 on the bill were vague. He again stated that he wanted some time to try to contact Senator Andregg for clarification on the bill.

Mr. Sant said that he felt like Senator Andregg had a business in his district, who was put through a process and charged a fee. The business owner felt it was not done correctly. The compromise was that cities wouldn't charge a fee, but would still be able to license them.

Councilman Wardle said that he would like the code to say which types of businesses need inspections, and which don't. Mr. Baker said that if the City provides an inspection, they have the right to recoup the cost. Mr. Baker asked if the Council wanted to handle this issue in two phases: the business license fee, then the inspection fee. Councilman Wardle indicated he would contact Senator Andregg to see what direction the bill would go in January. Mr. Sant felt that would be a good tactic, to contact him and let him know how difficult it was going to be for cities.

Councilman Wardle asked what the penalty was for businesses that don't obtain a license. Mr. Baker answered that they could be charged with doing business without a license, which was a misdemeanor.

Mayor Dunlavy said that this law creates serious problems for cities. There is a cost associated with licensing businesses. If the City can't recoup the cost, it takes away from other services the City provides. Councilman Wardle said that as long as the City can substantiate the inspection fee, he was okay with it, but he didn't want it to look like it was a way to get around not being able to charge the license fee. Councilman Pruden wondered how it was fair to the brick and mortar businesses who are paying fees and rent, to not charge home-based businesses. Mayor Dunlavy stated that the City used to collect licensing fees based on gross sales. The legislature came back and changed the law so that cities could only charge what it costs to process the license. Mayor Dunlavy indicated that a while ago the City did an informal study, and fees were different all across the state. Ms. Carpenter added that some cities are charging a processing fee, instead of the business license fee. Councilman Pruden asked Councilman Wardle to talk with Senator Andregg, and then the Council will discuss this more in a future meeting.

- Ordinance 2017-21 An Ordinance of Tooele City Amending Tooele City Code Chapter 5-1-8 Regarding Business Premises Inspections  
Presented by Roger Baker

Mr. Baker indicated that this ordinance discusses the inspection fee. It is clear that the City has the authority to do inspections, and clarifies that when an inspection is done, there is a \$50 fee. Councilman Wardle wants to discuss this again at the next meeting.

- Ordinance 2017-22 An Ordinance of Tooele City Amending the Tooele City Code Chapter 5-7A-7 Regarding Solicitor ID Badges  
Presented by Roger Baker

Mr. Baker explained that there is a provision in the business code requiring agricultural, itinerant, and transient merchants, to have ID badges. Mr. Baker stated that when someone is going door to door, the City wants them to have an ID badge, but if someone has a fruit stand, they don't need to have an ID badge, just the business license on the premises. This amendment clarifies that the ID badges are for solicitors. It also takes out the requirement for them to provide photographs to the City.

- Ordinance 2017-23 A Resolution of Tooele City Establishing Fees for Various Administrative Appeals  
Presented by Roger Baker

Mr. Baker said that the City Code Enforcement Officer, Trisha Waltz and Michelle Pitt noticed that some appeals did not have appeal fees in the Fee Schedule.

Mr. Baker explained that during policy discussions, staff discovered that, although we have an administrative hearing officer, very few appeals have established appeal fees which help run the administrative hearing program. Mr. Baker listed the types of appeals that did not have a recouping cost associated with it. Mr. Baker stated that there were a couple of appeals that had a fee of \$150. Mr. Baker said that a fee cannot over-recover the cost of administrating the program, it can't create revenue, or be a tax. He said he believed that the \$150 fee under-recovered the cost of the program, but a fee that would recover the cost would cause people not to appeal at all, and the City doesn't want to do that. Although some appeal fees might seem to create a situation that would legally be considered absurd, such as a \$50 parking ticket, Mr. Baker recommended a \$150 fee for all appeals. He went on to say that the appeal fee is not intended to prohibit appeals. Mr. Baker added that his recommendation was that the City shouldn't provide a service to a specific individual without a fee because that would cause the general taxpayer to pay for a service rendered to an individual.

Councilman Pratt said that he struggled with the \$150 fee, especially in the case of a traffic ticket. The \$150 amount seemed high. He said that there were some instances where a property owner doesn't take care of their property because they can't afford to take care of it, then they have to pay a high appeal fee. Councilman Pratt said, at the same time, weighing the cost of taking care of the program, shouldn't be on the backs of citizens in the community. He said that he wanted to take care of the costs and expenses of the appeals, but he didn't want to put in a situation where it was too much, or too little of a fee. Chairwoman Winn asked if the fee could be adjusted depending on the appeal. Mr. Baker answered that the Council could waive the fees, could undercharge, or set any amount. Depending on what the Council decided, it may be more complicated to administer. Mr. Baker added that it would be easier to have a uniform fee. Mr.

Baker said that the \$150 fee would under-recover every appeal the City received. Mr. Baker asked the Council if they felt that someone should be refunded their appeal fee if they won their case. Mr. Baker recommended that they do pay the fee whether they win or lose because there is still a process taking place at a cost to the City. If the appellant wins, it doesn't mean that the City was evil or wrong.

Councilman Wardle said he remembered the City having to pay a fee when they filed with the court to defend a lawsuit. He would like to see what other municipalities are doing, and what they are charging before he makes a decision on this issue. He asked staff to check with other cities to see what they are doing. He also wanted to see a breakdown of the cost to administer the program. Mr. Baker indicated that he would bring an estimate of the cost for the City to administer the program. Councilman Wardle felt it was important for the public to see the full measure of the cost, so that the Council could show that it was not a tax.

Mayor Dunlavy stated that in the past it was the Recorder who was the parking appeal officer and an appeal fee wasn't charged. The Council decided that it should be moved away from an employee, and go to a more impartial program with a higher standard. The hearing officer is now an attorney.

Chairwoman Winn indicated that this matter would be brought back before the Council in two weeks.

- Listing Agreement for Tooele Commercial Park  
Presented by Randy Sant

Mr. Sant stated that this matter had been discussed in previous meetings. The RDA has 268 acres in the Tooele Industrial area by USU and TATC. Given the fact that this property has been improved, Mr. Sant felt that the RDA should start selling the property. It would promote economic development in the City. Mr. Sant indicated that he had talked with CBRE, Caldwell Banker, and a couple of local people. He suggested that the RDA go with Caldwell Banker as the listing agent, at a 6% commission. Mr. Sant explained that the RDA would still have control over the offer, if it didn't meet goals or objectives. The RDA could suggest a 4% commission, or base it on the sale. Mr. Sant said that the RDA has a right, with a 30 day notice, to cancel the agreement. He recommended that the RDA approve the agreement and retain Caldwell Banker Commercial as the listing agent. He further explained that the agreement required the RDA to consent that the owner's agent broker could represent both the buyer and the owner, but said he didn't see a problem with that. Mr. Sant went on to say that the appraisal came in at \$56,000 an acre. He would like to add that any costs be included in that so that the RDA net \$56,000 an acre.

Mr. Baker indicated that he would prepare a resolution for the Council for approval.

#### **4. Close Meeting to Discuss Litigation and Property Acquisition**

**Councilman Pratt moved to close the meeting.** Councilman McCall seconded the motion. The vote was as follows: Councilman McCall “Aye,” Councilman Wardle “Aye,” Councilman Pratt “Aye,” Councilman Pruden “Aye,” and Chairwoman Winn “Aye.”

Those in attendance during the closed session were: Glenn Caldwell, Jim Bolser, Mayor Patrick Dunlavy, Roger Baker, Michelle Pitt, Randy Sant, Councilman McCall, Councilman Wardle, Councilman Pratt, Councilman Pruden, and Chairwoman Winn.

The meeting closed at 6:20 p.m.

No minutes were taken on these items.

#### **5. Adjourn**

**Councilman Pruden moved to adjourn the meeting.** Councilman Pratt seconded the motion. The vote was as follows: Councilman McCall “Aye,” Councilman Wardle “Aye,” Councilman Pratt “Aye,” Councilman Pruden “Aye,” and Chairwoman Winn “Aye.”

The meeting adjourned at 6:54 p.m.

*The content of the minutes is not intended, nor are they submitted, as a verbatim transcription of the meeting. These minutes are a brief overview of what occurred at the meeting.*

Approved this 21st day of June, 2017

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Debra E. Winn, Tooele City Council Chair