

**HARRISVILLE CITY COUNCIL
MINUTES OF REGULAR MEETING**

January 26, 2010

The City Council of Harrisville City convened in a regular session on Tuesday, January 26, 2010, in the Harrisville City Hall at 7:00 p.m.

PRESENT:	Richard Hendrix	Mayor
	Chad Allen	Council Member
	Wayne Crowther	Council Member
	Darla Fowers	Council Member
	Bruce Richins	Council Member
	Grover Wilhelmsen	Council Member
STAFF PRESENT:	Jennifer Morrell	City Recorder
VISITORS:	Ruth Pearce	Jeff Pearce
	Jim Mackley	Bob Howard
	Kevin Butters	Joe Chambers
	Jan Chambers	Matt Jensen
	Mike Junk	

Mayor Richard Hendrix called the meeting to order and welcomed all visitors. Council Member Wayne Crowther led the Pledge of Allegiance and offered the opening ceremony.

CONSENT AGENDA

Action to approve the minutes of January 12, 2010.

Council Crowther said that Gene Bingham's name was not included in the list of staff present.

MOTION: Council Member Grover Wilhelmsen moved to approve the Consent Agenda with the addition of Mr. Bingham's name to the minutes. Council Member Chad Allen seconded the motion. All Council Members voted aye. Motion passed.

AGENDA ITEMS FOR DISCUSSION/ACTION

1. Confirmation of City Recorder appointment.

Mayor Hendrix made a recommendation to appoint Jennifer Morrell as the Harrisville City Recorder.

MOTION: Council Member Wayne Crowther moved to confirm the appointment of Jennifer Morrell as City Recorder. Council Member Darla Fowers seconded the motion. All Council Members voted aye. Motion passed.

2. Discussion/action on final acceptance for Wildflower Estates Phase 2.

Matt Jensen appeared before the council for questions. Council Member Bruce Richins asked if he could clarify some rumors he heard concerning homes with sinking foundations and cracking walls in Phase 2. Mr. Jensen stated he didn't have anything to do with the homes being built so he was not aware of the situation. He stated that he has worked with Gene Bingham and Jones & Associates engineering firm to take care of four or five items they were asked to complete.

MOTION: Council Member Bruce Richins moved to give final acceptance to Wildflower Estates Phase 2 based on the letter of January 18, 2010 from Jones & Associates and release of all

retainage in escrow. Council Member Darla Fowers seconded the motion. All Council Members voted aye. Motion passed.

3. Discussion/action on advisory opinion from State of Utah Property Rights Ombudsman for appeal from CE Butters/SPS Tire & Service Center.

City Attorney Mike Junk appeared before the council. He stated that this is more of a status review because the council made and passed a motion to deny the appeal of Mr. Butters. The matter was sent back to the Planning Commission for further review. He said after the council made that particular motion a determination was made to get an advisory opinion from the state ombudsman.

Because there is a new council member, Mr. Junk gave some history on the matter stating the City has had an ongoing situation with the Butters and their property. There was a lawsuit with specific orders from the court to rezone some of Butters property. The City complied with the court order and asked the Butters for a site plan to show what they intended to do with their rezoned property. Their site plan included a portion for temporary parking not covered with hard surface. Mr. Junk stated this does not comply with our City ordinance. He further stated that the Planning Commission gave a three year temporary use of the unpaved parking area. The Butters filed an appeal on the ruling wanting the Council to take away the three year temporary portion and allow a longer period of time to use the parking before installing the hard surface.

Mr. Junk reminded the Council that the Planning Commission made its ruling in October of 2008. The appeal was tabled by the City Council several times as attorney opinions were filed by Mr. Junk and Joe Chambers, counsel for the Butters. In March 2009, after all the legal briefing, Mr. Junk felt it was contradictory to our ordinance to allow any kind of approval of parking without the hard surface. The Council followed his recommendation and denied the appeal sending it back to the Planning Commission to follow the ordinance.

Mr. Junk said we have now received the advisory opinion. One of the issues was whether the Council could deny the temporary unpaved parking when it was Mr. Butters who appealed that particular issue. It is clear from the advisory opinion that the Council has that authority. In this case, it was outside of the City ordinance to allow the temporary period for unpaved parking. Mr. Junk said the reason he felt this is more of a status review is this body has already denied the appeal and sent it back to the Planning Commission. He said now that we have received the advisory opinion the Council can stand by their ruling and send it back to the Planning Commission.

Mr. Junk opened it up for questions from the Council. Council Member Richins asked if Mr. Junk agreed with the advisory opinion. Mr. Junk stated he felt it was a scholarly, well written opinion. Council Member Richins asked what "de novo review" means. Mr. Junk said it means we hear it over again, starting new. They are essentially asking if the Council is bound by what the Planning Commission does. The opinion states that the Planning Commission is an advisory board and the Council has authority to make a ruling independent of the Planning Commission. Mr. Junk affirmed for Council Member Chad Allen that the Council first made its decision on the matter March 10, 2009. Mr. Junk said some time has elapsed because city officials decided to seek a second expert opinion because of possible litigation. They decided to get an opinion from the State Property Rights Ombudsman.

Mayor Hendrix asked if it would be appropriate for Mr. Chambers to make some comments. Mr. Junk said it would not be a problem but reiterated this is just a status review as the Council has already made a decision. Mr. Chambers addressed the Council saying he disagreed with one point made by Mr. Junk. The information given to him by Kevin Butters is that a final decision was not made. He asked Mr. Butters to clarify his understanding of the motion made in March. Mr. Butters said he thought it was to stipulate it not being a final decision, to send it back to the Planning Commission so they could preserve their appeal rights with District Court without starting the toll on the statute of limitations. Mr. Chambers said if this had been a final decision they would have needed to appeal the decision within a 10-15 day period to the District Court. He stated that if Mr. Butters is right, and the Council did not make a final decision but stipulated to hold it pending a Planning Commission decision, then it preserves their right to appeal. Mr. Junk responded saying Mr. Chambers is correct, the Council did not make it final for the appeal right but made a decision to send it back to the Planning Commission still preserving their appeal right.

Mr. Chambers further stated that the Butters want to put a building on the front parcel as soon as the economy allows them to although they have no definite plans and can not commit at this time. Also, he doesn't understand from the opinion how paving the ground will control water run off. He acknowledged they did have a nonconforming use and were subject to reasonable regulation on it. He also felt the City was not using common sense in creating a win-win situation as Butters would have to spend \$60,000 to \$70,000 to pave the area only to tear it up for future use. He said if you do this on an equal protection basis and apply it to Butters then there are a lot of other areas in the city that will also have to have it enforced equally. He feels it is bad public policy to enforce ordinances unequally. Council Member Richins said he was not aware of any other gravel parking lot next to the street.

Mr. Junk responded stating we cannot get into a position as a Council to start looking at the economics of our ordinances and start saying because of economic problems we can give someone an opportunity and look away from the City ordinances. He said it is clear that we require hard surface parking. We can not have people come in and make this economic argument to be given a period of time to comply with an ordinance. He is stating that the City needs to give equal protection on the flip side and apply the ordinances to those people we know are breaking them. He told Mr. Chambers and Mr. Butters, if they knew of other parking lots or of individuals who are parking on surfaces that contradict our ordinances, let us know and we would go through the same process as we are on this case to bring them into compliance.

Mr. Chambers argued that all nonconforming uses get to stay the way they are until there is a triggering event. He said in this case, the triggering event was construction to improve the driveway and the solution for Butters would be to not do any new construction and leave it the way it is. Council Member Darla Fowers responded by saying we have only heard one side tonight but the Council has heard extensively from constituents up and down the roadway regarding the health and safety issues they face on a daily basis. She feels it is to them that we owe some allegiance and some help and support and should go forward as they previously indicated they would.

Mayor Hendrix asked if there was any further discussion. Council Member Wilhelmsen asked if the real issue wasn't just the parking but health and safety issues from the gravel driveway bringing dirt into the air and out into the road. He also asked where the site plan comes into the whole thing. Mr. Chambers said they were not required to submit a site plan but did so the City could comply with the court order for rezoning. Mr. Junk responded saying they were mandated to make some changes as far as zoning but to ensure Butters was in compliance with the new zoning they required a site plan. The site plan was submitted to the Planning Commission bringing us to this point.

MOTION: Council Member Darla Fowers moved to send this back to the Planning Commission with the State Property Rights Ombudsman opinion. Council Member Bruce Richins seconded the motion. All Council Members voted aye. Motion passed.

Kevin Butters asked to know what the complaints are and said they would make every effort, short of paving, to control the dust even if this dispute goes on for six more years. He asked what they could do to solve the problem stating they don't want to be bad neighbors.

4. Discussion/action on time and dates for 2010 Council Meetings.

Mayor Hendrix would like to recommend that council meetings continue to be held on the 2nd and 4th Tuesday at 7:00pm each month. A work session will be held the first Tuesday of the month at 6:30pm if there are agenda items. He also recommended that Planning Commission meetings be held the 2nd Wednesday of the month at 7:00pm as they have been.

Council Member Richins asked if changing times would help get more people to the meetings. Council Member Fowers said we have talked before about changing the location and taking some of our meetings to locations around the city. Council members agreed that 7:00pm was working and continued discussion may be needed to find ways to get people more involved.

MOTION: Council Member Darla Fowers moved to set the times and dates for the 2010 City Council meetings and Planning Commission meetings as discussed. Council Member Wayne Crowther seconded the motion. All Council Members voted aye. Motion passed.

5. Public Comments.

Ruth Pearce, 295 E 1150 N, wanted to let those who were CERT trained know there would be some continuing education for CERT members. The training will start February 3rd and be held the first Wednesday of every month. The class in February will be held at the Ogden Fire Department on 21st & Grant and will be put on by Rocky Mountain Power. They will discuss how to handle downed power lines. This will be a refresher course for those already trained. Mrs. Pearce said it will be the same date every month but held in different places. She will provide information when it becomes available to be included in the City newsletter.

6. Mayor/Council Follow-up.

Council Member Wilhelmsen submitted the payment information for the Safe Routes to School radar equipment to Pam Crosbie. He said the bids and proposals must be submitted with it. Mayor Hendrix asked if we are required to keep track of what has been spent so we don't spend more than the grant amount. Council Member Wilhelmsen said they do need to track it to some extent but are confined to what was requested.

Mayor Hendrix mentioned that the midyear conference for the Utah League of Cities and Towns will be in St. George on April 7-9. He said those who are interested should try and go. He recommends it for new council members as it is geared toward newly elected officials.

Council Member Richins said tomorrow would be the "Day with the Legislators" for Youth City Council. He will be taking down 10 of the 14 members. He mentioned the new playground was complete and looks good although it might need more bark chips added.

Council Member Allen asked if Bob Howard had been given a response from staff since his inquiry at the last council meeting. Mrs. Morrell said it was in progress.

Adjournment

Being no further business, Mayor Hendrix moved to adjourn the City Council meeting at 7:50 p.m.

Richard Hendrix, Mayor

Jennifer Morrell, City Recorder

Approved this 9th day of February 2010