

Minutes of the regular meeting of the City Council held September 5, 1990 at 7:00 p.m. in the Council Chambers of the City Hall, Bountiful, Utah.

Present:	Mayor:	Bob Linnell
	Council Members:	C. Harold Shafter, ReNee Coon, Bob Gramoll, Barbara Holt, and Leslie Foy
	City Manager:	Tom Hardy
	City Attorney:	Layne B. Forbes
	City Engineer:	Jack P. Balling
	City Recorder:	Arden F. Jenson
	City Treasurer:	Ira H. Todd
	Planning Director:	Jon Reed Boothe
	Dep. Recorder:	Kim Coleman
	Rec. Secretary:	Nancy T. Lawrence
	Dept. Heads:	Clifford Michaelis, Power Jerry Lemon, Fire

Official Notice of this meeting had been given by posting a written notice of same and an Agenda at the City Hall and providing copies to the following newspapers of general circulation: Davis County Clipper, Deseret News, and Salt Lake Tribune.

Mayor Linnell called the meeting to order, following which he led the pledge of allegiance to the flag. The invocation was given by Councilman Gramoll.

Minutes of the regular meeting of the City Council held August 22, 1990 were presented and unanimously approved as corrected on a motion made by Councilman Shafter and seconded by Councilman Foy.

#### EXPENDITURES AND EXPENSES APPROVED FOR PERIOD AUGUST 1-23, 1990 AND AUGUST 24-29, 1990

Mr. Jenson presented the Expenditure and Expense Reports for the period August 1-23, 1990 in the amount of \$293,274.26 and August 24-29, 1990 in the amount of \$247,229.04. Following discussion of these expenditures, Councilman Foy made a motion for approval, Councilwoman Coon seconded the motion and voting was unanimous.

#### PRESENTATION OF FINAL PLANS AND ESTIMATE FOR CITY MAINTENANCE FACILITY--MHT ARCHITECTS

Greg Allen, architect with MHT, presented the finalized drawings for the City maintenance facility at 900 South 200 West. He reviewed the overall site plan, site grading and elevations, floor plan, elevations of the building which features face brick on the east side and concrete masonry on other exposures, building sections, and the landscape plan. He indicated that the landscaping and irrigation system is included in the bid documents as "Alternate 1" and could be done by either the contractor or the Parks Department. Mr. Allen responded to questions from the Council, following which Councilman Gramoll requested that the drawings be left on display so that the citizens in attendance at the meeting could have the opportunity to

look at them. Mr. Balling stated that bids on this project will be opened September 18th.

#### ANNEXATION ORDINANCE TABLED (LEON BROWN PROPERTY)

Mr. Forbes referred to previous discussion regarding the proposed annexation of the Leon Brown property (see City Council minutes of July 11, 1990, page 2) and explained that at the time the annexation petition was presented, the petitioners voluntarily offered to convey 640 acres of property to Bountiful. That conveyance has not been made, and it was Mr. Forbes' recommendation that if the Council was inclined to adopt the ordinance approving the annexation, that the ordinance not be signed until the 640 acres has been deeded to the City.

Councilwoman Coon asked if further investigation had been done regarding the watershed laws which might influence development of the hillside areas and she requested that action on this ordinance be tabled until these laws have been reviewed. Councilwoman Holt concurred with this request and asked if a memo could be included in the Council packet regarding watershed areas and the laws which govern them. Councilwoman Coon also expressed a concern that, through annexation of additional property, the City might grow faster than services can be provided. Mr. Hardy said that the staff would generate information regarding the financial affect of annexation on the City, as well as gather information on the watershed laws. Councilwoman Coon made a motion to table this matter until the requested information has been provided and discussed. Councilwoman Holt seconded the motion and voting was unanimous.

Walter Plumb, representing the petitioners of the annexation proposal, asked what the City's intention was regarding the use of the 640 acres. He mentioned that consideration has been given to retaining a portion of the 640 acres previously earmarked for conveyance to the City (known as the Brown tree farm) , for the purpose of enhancing the lots which will be sold. Mayor Linnell requested that Mr. Plumb work with staff to resolve this matter.

#### FINAL APPROVAL GRANTED TO TEMPLE HILL ESTATES, PLAT A--1400 E 500 SO

Mr. Boothe presented the site plan for Temple Hill Estates, Plat "All (1400 East 500 South) , Dean Hill, developer, and-he reported that it is the recommendation of staff and the Planning Commission that final approval be granted, subject to the following conditions:

1. Payment of all required fees.
2. Posting of a 100% bond to guarantee the proper installation of all required improvements.
3. Final review and correction of plans to the requirements of the City Engineer.
4. The presentation of a current title report to verify that the proper owners of record have signed said plat and that there are no liens or encumbrances affecting the property being subdivided.

Councilman Foy made a motion for final approval, as outlined by Mr. Boothe, Councilman Shafter seconded the motion and voting was unanimous.

PRELIMINARY APPROVAL GRANTED TO BIG "All AUTO PARTS STORE, 1405 SOUTH 500 WEST

Mr. Boothe presented the site plan for the proposed Big "All Auto Parts Store, 1405 South 500 West and stated that it is the recommendation of the Planning Commission that preliminary approval be granted subject to the following conditions:

1. Extension of the sanitary sewer 189 feet south along 500 West to serve this development. Since 500 West is a State highway, UDOT approval must be obtained;
2. Payment of \$1,385.00 culinary water hookup fee;
3. Storm water detention plans to be modified to the approval of the City Engineer;
4. Perimeter of all asphalt areas to be constructed with either 611 high concrete curb or concrete curb and gutter;
5. Landscape plan to be modified to the satisfaction of the Planning Director to make up the deficiency and comply with the required 10 percent. (Mr. Boothe indicated that this has already been accomplished).  
Posting of a landscape bond in the amount of 5% of the building valuation, or \$5,000, whichever is greater;
6. Deeding a 7-ft. wide easement along the front property line to the City, and other easements as may be required by the Power Department.

Councilman Gramoll made a motion for approval as recommended, Councilman Foy seconded the motion and voting was unanimous.

PROFESSIONAL SALES AWARDED BID FOR FIRE DEPARTMENT AMBULANCE

Chief Lemon reported that bids were picked up by seven vendors for a new ambulance for the Fire Department and two bidders responded. He said it is staff recommendation that the bid be awarded to low bidder, Professional Sales, for a Horton ambulance in the amount of \$51,475.00. The budget for this item is \$63,000.00. Mayor Linnell reported that this comes to the Council with a positive recommendation from the Finance Committee. Councilman Shafter made a motion for approval, Councilman Gramoll seconded the motion and voting was unanimous.

REPORT AND DISCUSSION OF COUNCIL MOTION TO ABOLISH THE BOUNTIFUL REDEVELOPMENT AGENCY

Mayor Linnell reviewed that in the August 22nd meeting of the Council, a motion was made to abolish the Bountiful Redevelopment Agency as of September 6, 1990, following discussion in this evening's meeting. Mr. Hardy reported that, in compliance with the charge from the Council to research the issues relative to abolishing the RDA, he has met with bond counsel, Mr. Forbes and the RDA attorney and has provided the Council with sufficient information for them to make an informed decision. He said that Blake Wade (bond counsel) and William Oswald (RDA attorney) were in attendance to briefly review their reports, following which Mr. Forbes and he (Mr. Hardy) would summarize the position of the City and respond to questions from the Council.

-4- (C.C. minutes September 5, 1990)

Mr. Wade (who served as legal counsel when the RDA issued bonds in 1987) stated that

the \$1,200,000 bond issue is not callable at this time. However, if the Council desired, funds could be placed in an escrow account (subject to proper legal procedure) for the purpose of defeasing the bonds. He said that if the RDA is dissolved, there will not be an agency authorized to collect the tax increment and this revenue stream which is in place to repay the bonds will be lost. He noted that, with bondholder consent and other permissions, it would be possible to redeem the bonds earlier than scheduled. (The South Davis Sewer District has just completed this process and it took almost a year to resolve the issue with the IRS). In response to a question from Councilman Gramoll, Mr. Wade stated that it would be possible to properly retire the bonds subject to the City securing financing for this purpose. He made the observation that if the City loaned the RDA money to pay of f the bonds, and then dissolved the RDA, there would be no agency in place to repay the loan made by Bountiful. If this direction were followed, the money given to the Agency by Bountiful would be considered a grant.

Walt Gasser, commercial real estate developer and Bountiful citizen, stated that tax exempt bonds are very important to commercial developers and if the RDA bonds are paid off early, it could have a negative affect on the bond rating of the City. He also recommended that the tax increment stream not be disturbed so that this source of revenue can be used for bond repayment. He suggested that instead of dissolving the RDA, future action or projects of the RDA could be limited without jeopardizing the projects and revenue stream which is in place.

Councilwoman Coon stated that the Council has no intention of destroying the bond rating or credit of the City. She also commented that the County loses tax revenue due to RDA projects and therefore, citizens are penalized by higher taxes levied by the County.

William Oswald, RDA attorney, reviewed the written opinion which he had prepared for members of the Council in answer to the following questions:

- (1) Does the City Council have legal authority to dissolve the Redevelopment Agency of Bountiful City?
- (2) If the City Council has the legal authority to dissolve the RDA, what procedures must be followed to comply with the provisions of State law or due process?
- (3) If the City Council does not follow proper dissolution procedures or due process, may Bountiful City be subject to potential liability?

In answer to question No. 1, Mr. Oswald stated that the Council does have the authority to dissolve the RDA, subject to the following conditions: (a) compliance with the provisions of the Utah Open and Public Meetings Act; (b) the dissolution must be accomplished by the adoption of an ordinance; (c) making provisions for meeting with the outstanding obligations of the RDA, including the common elements of (1) notice to interested parties, (2) formal procedures requiring the winding up of business, and (3) satisfaction of all financial and other obligations of the district. He said that he felt the item which would be most difficult to accomplish would be payment of all outstanding indebtedness and the performance of all of the contractual obligations (especially since Bountiful City cannot be the successor agency to receive future tax increment monies due the RDA).

Mr. Oswald stated that if proper dissolution procedures and due process were not

followed, Bountiful City may be subject to liability under one or more of the following causes of action: (a) breach of contract; (b) intentional interference with contract; (c) conversion; (d) breach of contract of good faith and fair dealing; (e) unjust enrichment; (f) intentional harm; (g) breach of fiduciary duties; (h) wrongful use of office; (i) and/or wrongful collusion. He recommended that the Council seek the advice of its legal counsel in respect to potential liability since the payment of punitive damages is not covered under its policy of liability insurance and acts and omissions of its officers.

He stated that he admired the courage of those wishing to pursue dissolution of the RDA and said that he would like to meet with them to determine the legal requirements which are necessary to properly accomplish this purpose in an effort to avoid negative consequences. Councilman Gramoll thanked Mr. Oswald for his opinion, then commented that, as the attorney for the RDA, Mr. Oswald is not an uninterested party and he inquired as to the amount of money which the RDA has paid to Mr. Oswald this past year. Mr. Hardy stated that as the consulting attorney for the RDA, Mr. Oswald has been paid between \$5,000 and \$6,000. Mr. Oswald indicated that this amount is not a major portion of his salary and he offered to terminate his services as legal counsel tonight if the Council feels there is a conflict of interest. Councilman Gramoll said that he felt scare tactics were being used with the Council and that he was not comfortable with that.

In the discussion which followed, it was noted by Mr. Hardy that the information presented by Mr. Oswald and Mr. Wade was requested in response to the direction of the Council at the August 22nd meeting and is intended to be informational to the Council as they deliberate the possible dissolution of the RDA. Councilman Gramoll acknowledged that in order to meet the financial obligations of the RDA it might cost Bountiful taxpayers additional money; however, he stated that he felt it was better to "bite the bullet" now than to continue with Block 29 and prolong additional problems with the RDA. Mayor Linnell pointed out that Mr. Oswald has presented his legal opinion to the best of his ability and, as in any business decision which must be made, Mr. Oswald has made the risks known.

Councilwoman Holt stated that she did not know what the ramifications of the bonds were and that she has no interest in causing any problems for the City. She then requested a summary of the minimum elements required for dissolution of the RDA and Mr. Oswald referred her to his Opinion letter, page 6 (see page 4 above).

Gary Smith, representing the Bountiful Area Chamber of Commerce, stated that the Chamber has not taken a position of favor or opposition to the RDA. However, he plead with the Council to explore all ramifications of the proposed dissolution, withdraw the motion made in the August 22nd meeting to dissolve the RDA as of September 6, 1990, and work with staff and legal counsel in a proper and businesslike way. In response to a question from Doug Stout, citizen, Mr. Hardy summarized the financial obligations and outstanding litigation of the RDA.

Mr. Oswald pointed out that since a majority of the Council has voted in favor of dissolution of the RDA and has control of this issue, it would be more prudent to keep the Agency intact, benefitting from the tax increment revenue, and limit future financial commitments.

Mr. Hardy stated that dissolution of the Agency would require the City to raise \$2 million immediately and that amount is not in the general fund and it is not recommended that the reserve and replacement funds be depleted. He re-emphasized that the tax increment funds which will be collected in the future will pay the financial obligations of the RDA, without a burden to citizens; loss of the tax increment would create a debt that the citizens of Bountiful would have to pay.

Scott Kjar, representing SKY Property and a co-owner of the Gateway project and the ShopKo project, reviewed his financial position as it relates to the RDA and the tax exempt bonds which he holds. He said that the tax exempt bonds issued by the RDA are a material part of the financing package of these two projects and the loss of these bonds would result in default with his lending institution. He said he did not feel that abolishing of the RDA was the proper solution and requested that the Council leave it in place.

Councilwoman Holt stated that her action was not brought about due to displeasure with the Gateway project; however, she did not want what has happened downtown to happen again. She then made a motion to reconsider the motion of August 22nd (to dissolve the RDA) for the purpose of making an amendment to the motion. Councilwoman Coon seconded the motion which carried by a majority. Councilmen Shafter and Foy voted nay. Councilwoman Coon stated that it is her intent that the City meet all financial obligations of the RDA. She further stated that she would rather dissolve the RDA than to go into a "gear-down" mode.

Considerable discussion followed, with Earl Thomas (citizen) and Randy Sant (former RDA director) encouraging the Council to maintain the existence of the RDA for the benefit of the receipt of tax increment revenues and to honor contracts with other cities.

Councilwoman Holt then made the following amendment to her motion of August 22, 1990: "The intent of the amendment is to ensure the Redevelopment Agency is dissolved in both a timely and legal manner.

Whereas the mill levy for the fiscal year 1990-91 has been set and the burden of closure should not fall any heavier upon the taxpayers who have in good faith shouldered the responsibility of the Redevelopment Agency through the expenditures of tax increment and whereas a one and one-half million dollar bond has been incurred without benefit of a bond election, as this is not a requirement of the Agency, it is therefore moved that the City budget for the fiscal year 1990-91 be reopened and reserved funds from the City department be used to close out existing contracts of the Agency. These funds are taxpayers dollars already assessed and set aside in reserve accounts, and decisions by elected officials, not a lack of taxes collected, has brought the Agency to this failed point.

-7- (C.C. minutes September 5, 1990)

"It is further moved that a four month period ending January 2, 1991 be imposed for completion of all legal and financial work and negotiations necessary for closure and to ensure the collection of tax increment due the Agency for the year 1990.

"It is also moved that an ordinance be drawn by legal staff whereby the Agency can be dissolved by said ordinance and that this ordinance be ready for approval as to both form and content by the Bountiful City Council no later than October 3, 1990 at a regularly scheduled Council meeting.

"It is further moved that final action to dissolve the Redevelopment Agency be placed on the agenda to be duly posted and notice pursuant to the Utah Open and Public Meetings Act for Council action as soon after October 3, 1990 as possible, but no later than November 7, 1990 with the effective date of the ordinance occurring on January 2, 1991.

"Also as part of this motion weekly reports by both the City Manager and City Attorney updating the progress are requested.

"This is the amendment and I so move that we adopt it. Councilman Gramoll seconded the motion.

Mayor Linnell asked Councilwoman Holt if she was making this motion with full recognition that legal counsel (the City Attorney, the RDA counsel, and the bond attorney) suggests that it not be done and that the staff recommends that the RDA not be abolished? Councilwoman Holt replied that both bond counsel and the RDA counsel stated that the major hurdle would be to meet the financial obligations, and if they are met and legal and proper procedure is followed, it is not a hurdle that cannot be done. Mayor Linnell questioned Councilwoman Holt again, asking if she recognized the significant impact to the City through loss of the sales tax revenue at ShopKo, put in place through a contract between the Redevelopment Agencies of Bountiful and West Bountiful. She replied that the sale of power and water rights would still provide for negotiation with West Bountiful. Discussion focused on the sale of the downtown property and the market value which might be expected.

Mayor Linnell then asked Mr. Forbes what possibilities might exist for himself and the Council to be included in litigation through dissolution of the RDA and he stated for the record that he is opposed to dissolving the RDA. Mr. Forbes indicated that all elected officials could be open to suit and he reiterated that the City does not have liability insurance which would cover them.

Councilwoman Holt asked that inasmuch as there was a cause for concern over the amendment, could Mr. Oswald provide assistance so that the City and individual elected officials would be protected, the City's debts and obligations are met, and the RDA still be dissolved. Mr. Oswald suggested that the amendment contain only the first two paragraphs (ending with ... has brought the Agency to this failed point). In this way, the budget can be opened and if it is determined that there are enough funds to clear the debts of the RDA, then the dissolution can take place. Councilwoman Holt then withdrew the amendment as she had presented it, with the understanding that only the first two paragraphs be included. Councilman Gramoll seconded the motion.

In further discussion, Councilwoman Holt reiterated that she did not want to hurt the City in any way, but is merely attempting to find a legal way to shut down the RDA. Reed Hellewell,

Berwyn Andrus, Dean Hill, and West Bountiful Mayor Carl Johnson spoke in favor of maintaining the RDA, with the opportunity for the majority of the Council to limit its activities. It was also pointed out that should the RDA be abolished by this Council, this does not preclude a new council from re-establishing it. Elmer Landsaw praised Councilwoman Holt for her efforts and her intent. Haven Burningham stated that he felt the RDA has caused personal injury to him and his wife and that he would have recourse to ask for damages. He requested that the Agency be left in tact.

Mayor Linnell asked for clarification of Councilwoman Holt's amendment, and inasmuch as there was confusion, at his suggestion the motion of August 22, 1990 (which would provide for dissolving the RDA as of September 6, 1990) was completely withdrawn (not to be amended) on a motion made by Councilman Gramoll and seconded by Councilman Foy. Voting was unanimous.

Councilwoman Holt then made a motion to open the 1990-91 budget with the intent to determine if funds are available to close out existing contracts of the Agency, with the intent that the Agency would be dissolved (as contained in the first two paragraphs of her original amendment--see page 7). Councilman Gramoll seconded this motion. Councilman Shafter questioned that the wording "be used" would dictate dissolution of the Agency. The motion carried by a majority with Councilmen Shafter and Foy voting nay.

#### REVIEW REQUEST FOR DRIVEWAY ACCESS TO PARKING - CLASSY CHASSIS, 20 NORTH MAIN STREET

Mr. Hardy reported that a request has come from the owner of Classy Chassis, 20 North Main Street, for the Council to consider providing a driveway access to parking which is being used by Classy Chassis, via access of Lakewood Furniture. It is the staff recommendation that the City not accept responsibility for granting access, inasmuch as the property as it presently exists does have access to Main Street. The loss of access will only occur if a portion of the property is sold and thereby becomes landlocked. Inasmuch as the hardship is being created by the sale, it is staff recommendation that the City does not have the obligation to grant access where it was previously non-existent.

Discussion between Del Holbrook, Lakewood Furniture, and the proprietor of Classy Chassis followed, and inasmuch as there appeared to be lack of understanding between these two individuals as to the issue and it was more of a civil matter, Councilman Foy made the motion that the request be denied. Councilman Gramoll seconded the motion which carried unanimously.

-9- (C.C. minutes September 5, 1990)

#### CONSIDER STREET CLOSURE AND DANCE - CUL-DE-SAC AT 750 EAST AND 200 SOUTH

Mr. Hardy reported that a request has come from a group of citizens for permission to hold a street dance at 750 East 200 South from 7:00 to 9:00 p.m. on September 14, 1990. This request has been researched by staff and given a positive recommendation. Councilman Shafter made a motion for approval, Councilwoman Holt seconded the motion and voting was

unanimous.

#### PAYMENT AGREEMENT WITH MORGAN COUNTY APPROVED

Mr. Forbes reviewed the proposed Payment Agreement with Morgan County as it relates to the sharing of revenues and impact fees associated with the East Canyon Hydroelectric Project and transmission line located in Morgan County. He said it is the staff recommendation that this Agreement be approved and that the Mayor be authorized to sign it. Councilwoman Holt made a motion to this effect, Councilman Foy seconded the motion and voting was unanimous. The meeting adjourned at 10:51 p.m. on a motion made by Councilman Foy and seconded by Councilwoman Holt.