

ELK RIDGE - 80 East Park DR - Elk Ridge, UT - 84651

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NOTICE & AGENDA – CITY COUNCIL

Notice is hereby given that the City Council of Elk Ridge will hold a regular **City Council Meeting on Tuesday, January 13, 2009, at 7:00 PM, to be preceded by a City Council Work Session at 6:00 PM.**

The meetings will be held at the Elk Ridge City Hall, 80 E. Park Drive, Elk Ridge, Utah.

6:00 PM - CITY COUNCIL WORK SESSION

1. Animal Rights/Horses on City Property – Mayor Dunn
2. Update/Future Growth & Potential City Center – Mayor Dunn
3. Impact Fees Study Update – Mayor Dunn
4. Boundary Line Adjustment (Elk Ridge & Payson) – Discussion – Mayor Dunn
5. Future Discussions with Woodland Hills and Payson City (Subject Matter) – Discussion
6. Training with City Attorney – Update – Mayor Dunn
7. Oak Hill Estates, Plat D – Re-vegetation – Mayor Dunn
8. Loafer Canyon Road – Future Repairs

7:00 PM - REGULAR COUNCIL MEETING AGENDA ITEMS:

- Opening Remarks and Pledge of Allegiance Invitation
Approval/Agenda Time Frame
- 7:05 Public Forum:
- 7:15 9. Ordinance - Durability Retainer & Inspection
- 7:30 10. Any Necessary Action on Work Session Items
- 7:40 11. Status Report from City Councilmembers and their Departments:
- A. Julie Haskell – Public Safety
 - B. Derrek Johnson – Parks, Recreation & Trails
 - C. Raymond Brown – Roads
 - D. Nelson Abbott – Water & Sewer
 - E. Sean Roylance – Planning Commission & City Web Site
 - F. Mayor Dunn - Administration
- 8:10 12. City Council Assignments – Mayor Dunn
- 8:15 13. Re-appointment of City Recorder and City Treasurer
- 8:20 14. Annual Schedule for City Council Meetings
- 8:25 15. Primary Well Concerns –Mayor Dunn
- 8:35 16. Water Line Replacement – Canyon View Drive - Mayor Dunn
- 8:45 17. Expenditures: (General)
- 8:55 18. City Council Minutes
- 9:00 19. Schedule Public Hearing for Mid-year Budget Amendment
- Adjournment

Handicap Access, Upon Request. (48 Hours Notice)

The times that appear on this agenda may be accelerated if time permits. All interested persons are invited to attend this meeting.

Dated this 9th day of January, 2009.


City Recorder

CERTIFICATION

I, the undersigned, duly appointed and acting City Recorder for the municipality of Elk Ridge, hereby certify that a copy of the Notice of Agenda was faxed to the Payson Chronicle, 145 E Utah Ave, Payson, Utah, as well as being posted on the City Web Site; and was provided to each member of the Governing Body on January 9, 2009.


City Recorder

ELK RIDGE
CITY COUNCIL MEETING
January 13, 2009

TIME & PLACE
OF MEETING

This Regularly Scheduled Meeting of the Elk Ridge City Council, was scheduled for Tuesday, January 13, 2009, at 7:00 PM; this was preceded by a City Council Work Session at 6:00 PM. The meetings were held at the Elk Ridge City Hall, 80 East Park Drive, Elk Ridge, Utah.

Notice of the time, place and Agenda of these Meetings were provided to the Payson Chronicle, 145 E Utah Ave, Payson, UT, and to the members of the Governing Body, on January 9, 2009.

6:00 PM –

CITY COUNCIL WORK SESSION

ROLL

Mayor: Dennis A. Dunn; *City Council:* Nelson Abbott, Raymond Brown, Julie Haskell & Sean Roylance & Derrek Johnson; *City Planner:* Shawn Eliot; *Public:* (Salem High School Students) Billy Fairbanks, Tyler Tarter, Micah Richins, Celeste Lee, Christy Pray, Drew Christensen, Melissa Merrill, Clive Jane Lawson, Britt Pratt, Katelyn Lambert, Linsey Johnson, Elisa Lewis, Brayden Ryan, Morgan Rugg, Kyle Shuler, Cody Towse, Karlin Adams; and the *City Recorder:* Janice H. Davis

ANIMAL RIGHTS –
HORSES ON CITY
PROPERTY

Mayor Dunn: (Brief History) The City purchases 6 acres of ground about a year ago; the property is in a zone that includes animal rights. There was a stall on the property and an individual boarding his horse in the stall. The previous owner of the property said the individual boarding his horse would be terminating the boarding arrangement in three months (March, 2008). The corral is still there and so is the horse. The individual came into the City Office and the Mayor asked if he is the one with the horse on the City property; he responded that he is. The Mayor commented that the issue needed to be addressed and the individual replied something like he had been waiting to see what would happen. The Council needs to decide whether or not his horses should remain on the property and if a fee should be charged for boarding his horses...there would also be an opportunity to extend the same option to another resident in the City who has a horse on his property without animal rights. This is a non-action item at this point in the Work Session; but discussion can take place.

Comments:

Raymond Brown: There seems to be a feeling within the City that it is easier to "ask for forgiveness than to ask permission"; and he is getting tired of this way of thinking. We have rules and regulations and in this case the owners of these animals should know that there is advantage being taken. The arrangement was with the previous owner.

(From a memo from Councilmember Brown to the Council)

"Once the property was sold, no attempt was made to make any type of arrangements with the City. Not only have they taken advantage of the situation, but placed the City in an uncomfortable and tenuous situation.

1. There is an appearance that these individuals are receiving special treatment by being allowed to use City property for their personal use.
2. They have not furnished any proof of insurance to cover any accident or injury to their livestock or persons that may interact with their livestock on City property, leaving the City liable for any claims or litigation.
3. Their actions set precedence for others who may try to take advantage of the City codes or ordinances. The question would be, the Jones' were allowed to keep their horses on City property without paying and nothing was said or done.

A quick review of the financial loss to the City if the violators were paying the going rate, which is between \$30 and \$40 a month per horse and using the time period of one year:

1. Four horses @ \$40 a month would have been \$160 a month or \$1,920 for a year.
2. Four horses @ \$35 a month would have been \$140 a month or \$1,680 for the year.
3. Four horses @ \$30 a month would have been \$120 a month or \$1,440 for the year.

These violators should pay the \$1,680 for the use of the land for the past year and starting January 2009, if the City is allowed to rent the land, the charge should be \$40 per horse per month on a month-to-month agreement. If the City is legally not able to rent this land, the owners of the livestock need to be given 48 hours from the notice to remove their property or be fined daily thereafter at a rate of \$50.00 a day."

(Councilmember Brown did check with other people who board horses to see what they charge.)

Derrek Johnson: He spoke with Kevin (Paxton) the previous week-end; Councilmember Johnson does not feel that he has taken advantage of the City...perhaps there has been miscommunication, but he does not feel Mr. Paxton was deliberately trying to take advantage of the City. He does not feel the City should go back and demand payment for past services (much like the past problem in accounting for garbage cans). The City was unaware of the situation and he feels in should simply be handled from this point forward.

Nelson Abbott: He feels the Council is heading "in the right direction with what Derrek (Councilmember Johnson) is saying"; however, he does feel that since now the City is aware of the situation, we can move forward and assess a reasonable fee to board his horses (from \$30 to \$60 per horse). The water he uses for his horses is from Goosenest Water System.

(Councilmember Johnson added that Mr. Paxton is more than willing to work something out with the Goosenest System.)

Another issue on the same property: there are several vehicles that either belong to the City or someone else...they are parked by the brick out-building on the property. It needs to be determined who those vehicles belong to and they should be moved. Perhaps the Sheriff could run the VIN numbers on the vehicles to identify the owners. He feels that the Council should decide on a set fee to board the horses.

Mayor Dunn: The green trailer belongs to the CERT Team.

Raymond Brown: He feels these animal owners knew or should have known that arrangements should be made with the City to continue the boarding of the horses. He was simple waiting until the City said something, as he indicated to the Mayor. *(Councilmember Johnson was unaware of this statement to the Mayor.)*

Mayor Dunn: This was indicated to the Mayor when the individual came into the City Office; and the previous owner had arranged that he would be gone from the property by March of 2008. The Mayor did ask him (Mr. Paxton) how much of the equipment is his; the answer was unclear and ownership must still be established and vehicles moved. Mr. Paxton seemed very open to an additional arrangement with the City; he understood that the Council would be discussing the issue.

Nelson Abbott: Before taking any action, there are some things that need to be determined:

1. Ownership of vehicles on the property
2. Proof of liability insurance for the horses to be boarded on the property
3. Explore the fee to be charged to board the horses *(*Councilmember Abbott will check on this.)...not feeding the horses, just boarding.*

Nelson Abbott: He asked if the City could legally charge for boarding horses; referring to the bond restrictions Regarding renting the house on the property; would the same restrictions apply to charging to board animals on the property? *(*Mayor Dunn will include this in the list of things he has to talk to David Church about.)*

Mayor Dunn: The second part of this Agenda Item: Does the Council want to create an opportunity for another individual to board a horse in the same area? *(This would be for Mike Brockbank and his horse.)*

Julie Haskell: She did not see why not; there is room for it.

**To be on the next Council Meeting Agenda.*

POTENTIAL CITY
CENTER & FUTURE
GROWTH –
UPDATE

Mayor Dunn: Deseret News published an article entitled, “Elk Ridge Mood is Changing on the use of Sales Tax Bond” (Rodger Hardy). He quotes a few of the Councilmembers (Mayor, Sean Roylance and Curtis Roberts). The article is about the intended use for the 6 acres that the City purchased about a year ago. The Council has touched on the issues a couple of times but the Council has not really officially had a public discussion on the Agenda. The only update is that he would like to dedicate a good portion of the February 24th Council Meeting to an in-depth discussion of the issues involved; the Mayor’s goal is to formulate some kind of a plan.

When the previous City Council discussed this issue, it was a good economy at the time. It took several months to make offers and negotiate with the previous land owner, Mr. Rasmussen; while the City was making offers on the land other offers were also being made. The City had earnest money down (\$10,000), so our offer was being considered first; the other offer was for one million dollars. The higher offer was being considered, if the deal did not proceed with the City.

Reasoning behind the purchase...the City was attempting to satisfy several things:

- Park space: The Planning Commission survey indicated that citizens were in favor of more park space within the City; and the City is behind on the expected ratio between parks space and population. At the time of negotiations for the land, the City was attempting to negotiate with Payson City to purchase Hole #7 (Payson was abandoning the hole). Closer consideration of Hole #7 resulted in the realization that the land would good for just open space, but would not be good for sports due to the uneven terrain.
- The Council was also looking at some of the growth opportunities and trying to assess the City’s future needs regarding the current City Hall, including the needs of the Public Works Dept., the Fire Dept., and the City Sheriff. There was a need of a building that would house the City’s needs. There was a great deal of discussion; which included creating surplus property and housing equipment.
- When the property came up for sale, it was an opportunity to join the land already owned by the City and to make it contiguous into one larger parcel; large enough to satisfy the open space needs being requested and the future needs of the City as growth continued. The Council did not know what that the economy would be in trouble later.

Economy dictates a lot of what government entities do. He does not want to encumber the tax payers with something that may not be presently needed; but he feels it is a wonderful piece of ground with great potential to not only meet the needs of the City; but there are some revenue opportunities, as well.

- The existing home is currently being rented from the City; there is the potential to move it, tear it down or to keep it for the nucleus of a potential building or to let the Fire Dept. utilize it for training purposes. The house was given to the City; it was not part of the sale. It would have been illegal to rent the house if bond money had been used to purchase it. (The City cannot go into debt to create rental properties.)

On 2-24-09, the Mayor would like for the Council to be prepared with input on potential uses for that property; “we do have to do something”...the City still has over \$600,000 of bond money that must be used or put back onto the loan. The Mayor said that he is not opposed to doing whatever is “right”. The previous Council felt that the decisions were in order and that the purchase was the proper thing to do.

He welcomes the thoughts and ideas of the Council in creating a good plan.

Raymond Brown: He had asked for an agenda item for 1-27-09 regarding storing road salt; he will postpone that until this discussion on 2/24. Currently, the road salt is stored out in the open...there are good reasons not to continue in this practice:

- Much time is spent on “snow days” inside the bed of the trucks breaking up clumps of salt; the clumps will not allow the salt to spread.
- We are losing a portion of the salt as it leaches off into the ground.

• The leaching is damaging property that is not the City's.
Councilmember Brown recommends building a storage facility on the City property to store the road salt in.
There are a couple of ways to approach this:

1. If a Public Works portion of a future City Center were to be built, we could start with a storage area as part of the Works area.
2. If this is not the direction we go, then a covered area is needed...with electricity and pavement; so the backhoe can get in there to load the trucks with salt...the cost would be about \$7,000 or \$8,000 just for the building.

City Recorder: If going forward with any part of a building, wouldn't that necessitate plans for the overall City Center, so we would know how the Public Works portion would fit in?

Raymond Brown: Yes; that is the reason he is willing to say that we would opt to build a portable type building...then by next winter we would at least have a covered building to store salt and a backhoe in.

Mayor Dunn: Much of the decision-making process regarding the price of the property was discussed in Closed Session; which is allowed by law. When it came time to actually do the bonding; that was all public. The Mayor reviewed the reasons a Closed Session can be held. He asked that the Council be prepared.

IMPACT FEE STUDY UPDATE

Mayor Dunn: Included in the Council Packets were copies of the current update to the Impact Fee Study; the Study included Water, Sewer and Roads. The Council has not adopted Impact Fees for roadways; these fees have never been collected. The Water & Sewer Impact Fees have not changed much. With the Road Impact Fee Study, the list of roads to be included has changed several times. He wanted the Council to review this current list and to be prepared to comment on the roads to be included in the Study.

- #1. Loafer Canyon Rd: This project is about 60% finished...the rest of it will be finished in the Spring of 2009. This will come off the list; but it was included in the Study because it is a road that benefits the entire Community.
- #2. East Salem Hills Drive: There will be a time when development will join the east and west portions of Salem Hills Drive...this will be considered an "east/west connector" to both sides of town and will need to be able to sustain traffic. There have been problems over time of getting emergency vehicles from one side to the other. (The connecting portion between the two sides came off the list due to development activity.)
- #3: The north side of east Goosenest Drive (beside Burke Cloward's driveway): This was installed when ½ plus 9' was required of developers when installing a roadway. The unfinished north side is on the current list.
- There are two #4's: two of the parcels owned by the City as accesses to the City property; those would have to be developed as access roads.

Raymond Brown: Suggested adding Goosenest Drive, west of the #4 access...it has been discussed to widen that section of Goosenest Drive by 4' to the south, to match the rest of the road.

*Mayor Dunn will mention this addition to Craig Neeley.

Nelson Abbott: (Concerns) Referring to #3 in the Study: If Burke Cloward develops the land north of this section of Goosenest Drive, will the City be able to collect Off-site Reimbursement? (*Councilmember Brown replied that yes, the City would be able to collect for 30 years.*)

He also asked about widening Salem Hills Drive: does the right-of-way need to be the standard 56' (or 66')?

Raymond Brown: He felt Councilmember Abbott made a good point; in that when he and others were working on Loafer Canyon Road, Corbett Stephens and he measured the width...there were many deviations in the width.

Nelson Abbott: He is not as concerned with the width of the easement as he is with the width of the pavement. The wider the road, more maintenance is required. If the added width is not needed to meet the needs of the residents, the less it will cost to maintain the road.

Another option could be to sell the easement to the adjoining property owners, to generate some revenue which could fund other road projects in the City.

Raymond Brown: He agrees that the internal roads could be decreased in width from the 66'.

Julie Haskell: She cautioned that any decrease in width would have to take into consideration the utility easements.

Mayor Dunn: The Mayor met with some of the Legislators and other Mayors from Utah County; and one of the issues discussed was "corridor preservation" and how important this is. The north end of Utah County is experiencing severe problems associated with not having the corridors necessary to build the roads needed to transport the kind of growing density in those areas. One of the biggest problems is transporting traffic from the Eagle Mountain and Saratoga Springs areas to I-15. Often it is hard to see the potential for growth.

Utah County told the Mayor some time ago that they wanted to maintain ownership of 11200 South (currently a 2-lane road) because its potential would be a five lane road. That is hard to believe now; but the potential for growth is there in the future. When considering the City roads, the City Planner has been very proactive in classifying the City's roads; perhaps a 66' right-of-way and 42' of asphalt seems wide, but if the potential is there to widen the road to accommodate growth, it is easier when the right-of-way is in tact.

Raymond Brown: Another example of future plans that seem difficult to imagine: the planned road across Utah Lake to access the Saratoga Springs area...this seemed impossible, yet is discussed as a reality now.

Mayor Dunn: He encouraged the Council to review the Study and to feel free to ask questions either of him or the engineers...perhaps the City Engineer could come to a meeting to answer any questions.

BOUNDARY LINE
ADJUSTMENT

Mayor Dunn: This is the same proposed adjustment discussed for the last year or so...located at the north side of the Gladstan Golf Course. The last time the Council discussed this item, it was decided that any approval be tabled until the Council has an opportunity to meet with Payson City to discuss possible inter-local arrangements. Councilmember Brown felt that Payson City should be willing to work with Elk Ridge.

FUTURE DISCUSSIONS
WITH PAYSON &
WOODLAND HILLS

The Mayor spoke with Mayor Bills (Payson) regarding getting the two Councils together; Mayor Bills suggested Mayor Dunn arrange with Jill Spencer for a time in February. The Mayor will call MS. Spencer and get some dates back to the Council.
The mayor has not been able to contact the Mayor of Woodland Hills; they will meet the following Thursday night at a meeting; he will speak to him about getting together with his Council.
Mayor Dunn asked if arranging both meetings in February met with their approval...they responded that it would be favorable.

TRAINING WITH
CITY ATTORNEY

Mayor Dunn: The Mayor has been corresponding with David Church and has suggested three possible dates to conduct some training and a question/answer period with the City Council; he is willing to do this. The dates had been narrowed to 1/27 & 2/10; the Council decided that 1/27 would be the best date, at 6:00 PM.
*Mayor Dunn will contact him to confirm the date and time.

OAK HILL ESTATES,
PLAT D –
RE-VEGETATION

Mayor Dunn: RL Yergensen sold a lot to an individual; the lot is in need of re-vegetation; as are the other lots in Plat D. Mr. Yergensen has taken care of re-vegetating all but some scrub oak on his lots; he also left some equipment on the lot that sold and that needs to be removed. Both individuals have agreed that re-vegetation will be done in the spring.

LOAFER CANYON RD.

Mayor Dunn: Councilmember Brown coordinated the in-house project in finishing the curb & gutter on Loafer Canyon Road; it has been a good project to save money. The only part that ran over budget was one driveway that needed to be re-done. It will be completed in the spring.

NON-AGENDA
ITEMS

Sean Roylance: He thought there would be an agenda item to discuss animal rights, in general; including what to do with them. He thought that was what Agenda Item #1 was; he wondered if there would be any further discussion about this.

Mayor Dunn: It was not scheduled due to the Planning Commission tabling the matter; and he was waiting to see what their recommendation will be. There has been nothing that has come forward from the Planning Commission.

Sean Roylance:

- He was at the Planning Commission Meeting where Shawn Eliot handed out a very useful chart listing other cities and how they handle animal control. At first, the focus was on chickens only...he (Councilmember Roylance) told the Planning Commission that, in his opinion, it might be good to address animals in general...then they would not have to keep coming back to the subject over and over. He said that he hoped that was the right direction to give them.
- There are different ways to enforce the animal rights issue; and that the type of enforcement used would dictate the type of code created. Most of the cities in the County enforce the animal code on a "nuisance basis"; they don't do anything unless there is a complaint. Another option would be to actively go out and enforce these types of code. If the City addresses the issues on a "nuisance basis", the code can be a bit more restrictive and then when there is a problem, the City can enforce the code. If enforcement is on a proactive basis, then it may be worth considering making the code looser than otherwise...many people could be "caught" that are "just fine, realistically". He felt it would be good for the Council to discuss the options before the Planning Commission comes forward with a recommendation...this would give them some input to guide the work the Planning Commission puts into this.

Mayor Dunn: Proactive enforcement can be accomplished in more than one way:

- Conditional Use
- Ration permits (Example: The first 10 residents to apply for chicken permits (fee included), would be granted permits, with conditions to be met. Under "Conditional Use", the City can be as strict as we want... not being strict is what got the City into this whole issue of animals & fowl. If the conditions are violated, the permit holder would be subject to losing the permit and it could be granted to someone else.)
- Another option would be to go back to the current code; and these animals/fowls are in violation. If the individual wants to raise chickens, they would have to go to a zone that permits them.
- Some cities allow chickens, but on an acre of ground.

Sean Roylance: (Question) Does the Council want to give any direction to the Planning Commission to indicate the direction they go with developing code? Do we want them to go in the direction of the Nuisance Code; or to figure out what we want to proactively enforce? These seem to be the two sets of parameters.

*Mayor Dunn: *He suggested placing this matter on the next Council Meeting Agenda.

Nelson Abbott: He feels that even a proactive approach to enforcement would still involve dealing with violations on a "nuisance basis". Example: Dogs are allowed as pets, but they still fall under the nuisance code.

Derrek Johnson: Councilmember Johnson brought up the matter of requiring that Mike Brockbank remove his pony from his lot by the end of January, 2009. He suggested allowing him to keep his pony while the Planning

Commission is working on code that would affect him. Since the Planning Commission is including more than chickens in their proposed code, it would affect other animals as well.

Raymond Brown: Mr. Brockbank has already "had a bite of the apple already"; is Councilmember Johnson proposing to allow a "second bite"?

Derrek Johnson: This is a "non-issue"...he feels this has been blown up out of proportion; "whether it's code or not, we're not here just to say it's black and white...we're citizens, we're neighbors...we're friends...let's take an objective view...let the Planning Commission work with this, and see if there is a situation out there that can work for everyone."

Raymond Brown: Councilmember Brown recalled the application that came before the Council (previous Council) wherein application was made to allow miniature horses in the residential zone Mr. Brockbank lives in; "it was denied"...he (Mr. Brockbank) ignored the decision and "kept his horse...so I don't know that that's a good thing". "If we all decide which laws we will obey and not obey..."

Derrek Johnson: "Is this really injuring anybody?"

Raymond Brown: "I don't know."

Derrek Johnson: "There hasn't been...there hasn't been a single complaint on it, Ray."

Raymond Brown: "I am saying...the law is the law."

Derrek Johnson: "Exactly; we don't have to be black and white...work with them."

Raymond Brown: "Unfortunately, in most cases, the law is black and white."

Derrek Johnson: "Is it hurting anybody, Ray?"

Sean Roylance: "Actually, if you look at people who study the law, they say that the law actually has several purposes: one of which is to teach, but has no intention whatsoever of enforcement. Then you have the other end of the spectrum, which is to enforce absolutely...and then you have everything in the middle."

"Most laws are going to fall somewhere in the middle; they're not going to be on one end of the spectrum or the other."

Raymond Brown: "I disagree, in that I spent most of my life training people to enforce the law."

Derrek Johnson: "They let people off on tickets."

Sean Roylance: "I got that information from a professor at BYU..."

Raymond Brown: "I've had a couple of professors come in to help with my classes, and I've not asked them to come back again because they misinterpret constitutional law, state law and local law...and sometimes they feel like you, 'Who's it hurtin'. What they say is this: 'If we have a law... (and some people do say this, and I think you said it)...and it serves no use, then let's do away with the law'." Councilmember Brown went on to make the point that there is some validity to this approach except that a law can seem to have no use unless a situation comes up, albeit seldom, where the law would then be applicable. "Laws are written because of the violations." Councilmember Brown again relayed the process on trying to get the text of the code changed to allow for miniature horses; the application was from two individuals who owned miniature horses at the time...in the end, the request to change the code was denied. One of the town individuals moved to a zone where horses are allowed and one ignored the edict of the City. "I don't think that's right, whether you're hurting anybody or not, I don't think you can do that."

Derrek Johnson: "Let's let the Planning Commission work through this and see if we can come to a solution."

Raymond Brown: "My point is, how many 'bites of the apple' do you give a violator? I just don't understand that."

Derrek Johnson: "Okay, then I am willing to give him another one; let's just let the Planning Commission work through this."

Sean Roylance: "If the first bite was for several years; then the second bite is a little, bitty nibble...if that's what we are going to compare it to...since we're talking about a month. The other thing, too...is it's not 'just a professor'; it was the person who was over the law school...and then later became the president of BYU...and now is pretty well-respected..."

Raymond Brown: "Sometimes people walk around with all these credentials and everything, and that makes them experts...in fact that's not true...the fact is that people, like our own President basically said, 'I made a mistake...I shouldn't have hung that banner that said VICTORY'...he didn't want to say that before, MISSION ACCOMPLISHED..."

Sean Roylance: "So, your opinion is that the law only has one use, and that is...it's black and white and that you enforce it absolutely. My opinion, and obviously someone who has a little bit more credentials than anyone in this room, disagrees with that...and I tend to agree with him."

Raymond Brown: He feels that our society has broken down with this way of thinking...he cited an example wherein leeway is found in the law that allows violators to get off from conviction. His point was that excuses can be found in the court system to justify even murder, but with law enforcement officers, you kill someone, and it's murder.

Sean Roylance: "I don't know Dallan Oaks' views on murder."

Raymond Brown: "The liberal thoughts of people, such as your judges, your professors and some of these other people...have changes society."

Sean Roylance: "His point was that sometimes the law is used to teach; that is one function of the law...it's used to teach. Then there is the other function...and like I said, there's a spectrum...and every law falls at some point on that spectrum."

Mayor Dunn: "What is he teaching by breaking the law? He's teaching his kids that it's okay to thumb your nose at a law you don't agree with."

Derrek Johnson: Maybe the law is so ridiculous that it needs to be worked out."

Mayor Dunn: "That's a matter of perspective...it's there for a reason..."

Raymond Brown: He went on to declare that flies and manure are a problem.

Derrek Johnson: He feels this is ridiculous and that the Council should work with these people.

Sean Roylance: "Does our whole society teach everybody to be criminals because everyone on the road is going over 65?"

Raymond Brown: Using an example of speeding, Councilmember Brown made the point that if the speed sign says '65 mph' and a person goes 68 mph, that could warrant a ticket.

Sean Roylance: He countered that this does not happen...or happens rarely.

Mayor Dunn: He relayed an experience where he was ticketed for going 56 mph in a 55 mph zone.

He remembers it, because his statement to Mayor Dunn was, "Did you know you were breaking the law?" The Mayor responded that he was aware that he had passed the officer.

Sean Roylance: "And you talk to any reasonable person and what is their reaction going to be?"

Derrek Johnson: "What a jerk." (Referring to an officer that would ticket someone under those circumstances)

Raymond Brown: "Most laws that are written...not all of them...are black and white."

Derrek Johnson: "Then that is a cop who is clogging up the court system."

Sean Roylance: "And to this case, who is the judge? The 'judge' generally is us. (Referring to the City Council)."

Mayor Dunn: "We've got to pay attention to our Code. We have an obligation to the Code that we have, and that is to make sure that it is properly enforced. I wrestle with this; in fact I wrestle with it enough that I call and email the attorney on a lot of issue that we discuss here because I want some professional opinion on things from someone who is presently active in municipal law."

The Mayor went on to make the point that if someone, through ignorance, had a marijuana plant growing in his yard, it would be against the law...even if it were not directly harming anyone. It would not matter what it was being used for, it is against the law. The example of knowingly violating the law sets a dangerous example. The situation with the miniature horse is a code violation, even if not a nuisance.

City Recorder: (Question) If the Council is considering allowing Mr. Brockbank to keep his miniature horse while the Planning Commission works through the code, will other animal/fowl owners be considered in the same way? Or, there are other code violations; will the code be enforced with all of the violations?

Raymond Brown: He does not agree with re-writing code for one individual; once that happens, then others expect the same treatment.

Sean Roylance: His point was not to attempt to come up with a direction now...but we need to discuss this in the next City Council Meeting. He feels that the Council should give the Planning Commission some general direction; or the Council can wait until a recommendation comes from the Planning Commission.

Mayor Dunn: One of his main concerns with this matter is that it started out with Lisa Denning coming before the Council to see if the code to be changed; it evolved to the Council, with a motion, giving direction to the Planning Commission to create a code for chickens, not other animals...not the Council is discussing other animals. The issue seems to be "getting bigger and bigger".

Shawn Eliot: What did it was the issues with cats, then chickens...after the public hearing and the survey, the Planning Commission realized that there is a bigger than what was in front of them at the time. That is when they (Planning Commission) asked to review the "Nuisance Ordinance".

In the City's Code, the nuisance section addressing animal control simply adopts the Utah County Code. The Utah County Code contradicts the City's Code in various places, even though we reference it as "our Code"; now that is being reviewed; but the Council will have to participate.

As he has gone through other city's codes, he has found that some cities are very restrictive with animals and other cities are rather lax...examples: Alpine & Lindon. Elk Ridge tends to be on the restrictive side. He feels that when they get through this, it will be good to present the findings to the Council.

Mayor Dunn: He felt to re-define "restrictive"...we are on the 'restrictive side' in our residential zones".

Nelson Abbott: He felt it is understood that "residential is being compared to residential".

Shawn Eliot: He agreed and went on to review what various cities allow in their residential zones; and what is allowed varies a great deal. Some cities allow residential "kennel permits" or "hobby permits"; the Planning Commission is saying that if you allow up to 6 dogs or up to a certain number of dogs, those people would have to meet more requirements and more regulations...but they would also be more responsible because they went through all these requirements and that "people would be watching them".

City Recorder: Kennels were placed in the Commercial Zone for reasons...if a dog owner gets beyond a litter of pups, then doesn't this get beyond "hobby breeding"?

Shawn Eliot: There are different types of "hobby breeding": 1) "The kind when you just do it yourself" and 2) a "Kennel in a commercial zone, in the cities that just do commercial zoning, they were businesses; whereas, the 'hobby breeders' was more someone who wanted 'extra pets'...so, it makes those people jump through more hoops.

The hard part about limiting 2 dogs & 2 cats, and that kind of thing...is, if you're going to go through every house in town and in every city in this County...there are many that have more than three. This gives responsible pet owners an avenue to at least make themselves legal. We are not going to go through every house and check how many dogs you have and every cat...unless it becomes a nuisance."

Sean Roylance: If something becomes a nuisance, and the permit is taken away, a person would have to get rid of all the extra animals.

Derrek Johnson: Made the point that there is "no avian bird flu" in any of those cities.

Mayor Dunn: He suggested that he close the Work Session with a further note: "We have an obligation as stewards of the code and the law to do our best with it. Leniency isn't always the best and maybe the 'black and white' isn't always the best in every circumstance; but we wouldn't have the problem we have now if we would have kept up with the code and just said, 'Sorry, it's against the law for you to do that...you can't do it'."

It's pretty simple...I think there would have been a little bit of offense, but we wouldn't be facing some of the issues we're facing now."

Derrek Johnson: "Mayor, do you think we have any obligation, as City Officials, to work with our citizens?"
(Mayor Dunn answered: "Oh, you bet.")

Raymond Brown: "Yes, within the law."

Derrek Johnson: That is what he would like to see...he would like to have the Planning Commission have the opportunity to come to some sort of recommendation.

Mayor Dunn: "We have been doing that." The Mayor said that as Mayor, he hears complaints on both sides of the issues...in this case, chickens. One citizen would like to place the issue of chickens on a ballot for the citizens to vote on. The Mayor was told that certain citizens do not want the Council to make a decision on the chickens, because certain citizens feel they "know where it's going to go. Than Mayor responded to this person that they may have an idea of where the issue will go, but they do not really "know".

Nelson Abbott: He commented that he would be more comfortable with that idea (referring to placing the issue on a ballot)...at that point, it would not fall on any of the Council.

Derrek Johnson: If there are complaints, people should be willing to claim responsibility and not complain anonymously.

Raymond Brown: He asked if any of the Council had read through the comments on the surveys that have come back in... (Councilmember Johnson said he had gone through a few of them, the Mayor had read them all, Councilmember Abbott said he had read them)...Councilmember Brown had read them all and felt that some make good points (pro & con); he felt all the Council should read through them.

Nelson Abbott: Reading the surveys gives the Council a feeling of how the residents feel.

Mayor Dunn: He felt there were a couple of things that the Council should convey to Mr. Brockbank (owner of the miniature horse):

- It still needs to be determined if the City can allow him to board his horse on City property.
- ?

Derrek Johnson: He asked again if the Council is going to enforce the code with all of the animal owners who are in violation, or allow them to keep their animals while the code is being reviewed.

Mayor Dunn: The code does not really allow violators to be "on hold" while changes are taking place in the code...there isn't an "allowance" in the code to remain in violation while the code is under review. He actually made a mistake by saying that owners in violation could keep their chickens while the code was being considered for change.

Sean Roylance: He felt the Mayor made the right choice; otherwise, Councilmember Roylance would be saying, "Let's have a public Meeting tomorrow and every single day this week, until we get it resolved."

Derrek Johnson: He again asked the Council to make a decision regarding what to do about enforcement while the code in being reviewed. Mr. Brockbank only has until the end of January before he has been asked to remove his horse from his property.

Mayor Dunn asked the Council what they wanted to do:

Polled opinions:

- Derrek Johnson: He is in favor of allowing the owners in violation to keep their animals while the code is being considered for change.
- Julie Haskell: She is in favor of adhering to the code, as it is written (which would require enforcement).
- Raymond Brown: Adhere to the code. (He feels we should "live and die" by our code; "if we're not going to do this, this none of our codes are any good."
- Nelson Abbott: He was unsure, and wants to know what it would take to get this on the ballot...this is not on the agenda tonight...
- Sean Roylance: "If we are going to tell everybody to get rid of their animals this month, then I want to have however many meeting it takes this month to get it resolved before the end of the month."

Mayor Dunn: He suggested telling Mr. Brockbank to "hold off until we get it at the Council level and make a decision".

Nelson Abbott: He feels that the Council should prepare Mr. Brockbank that one way or the other, action will be taken and he's going to have to live and abide by that.

Derrek Johnson: He cannot speak for Mr. Brockbank, "but If he has seen that this has gone through the Planning Commission...there's been a lot of debate about it...I think he'd feel more comfortable with that than saying, 'well, you're out'."

Raymond Brown: "But, that has happened once before for him."

Sean Roylance: But there was also the sentiment of; "Alright, we're not going to make this legal, but we're going to look the other way".

Raymond Brown: "Not with the Planning Commission or the City Council, it wasn't."

Sean Roylance: "The Planning Commission approved it; it was the City Council that rejected it; and the previous Mayor basically said as much...that he would look the other way."

Raymond Brown: He wanted to know if Councilmember Roylance had spoken to the previous Mayor (Vernon Fritz) regarding "looking the other way". Councilmember Brown said that he recently spoke to former Mayor Firtz and he further asked Mayor Dunn if he had spoken to former Mayor Fritz about "looking the other way" regarding the miniature horse.

Mayor Dunn: He was reminded what Mayor Fritz had said and perhaps that is what is being recalled..."we're not going to make a decision with this Council; we're going to leave it up to the new Mayor".

Raymond Brown: He spoke to former Mayor Fritz and asked him if he had "given the indication that it was okay, even though the Council voted it down, to keep the horse? He (Former Mayor Fritz) said 'no'..."

Sean Roylance: "Well either way, that's what's gotten back to people."

**(Note: Quote from the minutes of 12-13-2005...This was a non-agenda comment: "Mayor Fritz: The proposed 'Miniature Horse' Ordinance was not approved; this leaves Mr. Mike Brockbank in violation of the current Ordinance, which disallows miniature horses in residential zones. He will leave the enforcement of this violation to the next Administration." Since this was the last meeting for the Administration with Mayor Fritz as the Mayor, this only makes sense that any enforcement would come from the next Administration.)*

Councilmember Roylance continued: The point is that Mr. Brockbank can be "painted as a 'bad guy'; "but the fact of the matter is there was communication, whether it was right or wrong...there was an indication given that 'we're going to look the other way on it', so he thought he was okay...and I choose to view him as trying to do the best he can and I am not going to look down on him because he understood that communication...again right or wrong...and he acted on it; I'm not going to condemn him for that."

Raymond Brown: He does not know Mr. Brockbank; "he may be a wonderful man...all I know is that once the edict was delivered, he violated the code."

Sean Roylance: "All I know is 98% of people violate the speed limit every single day."

Raymond Brown: "Then, let's just take down speed limit signs."

Sean Roylance: "You did not understand my point."

Raymond Brown: "No, you did not understand my point; everybody violates speeding...so, let's take down the signs...now how safe are you going to be?"

Sean Roylance: "We don't take down the signs; what we do is...we have a standard, and then if something is close enough that people don't care...or that they are going to say that they are going to say that we're going to look the other way...then they allow it."

Raymond Brown: "My idea is; your educational part is...take down the signs; when the crash, you go up there and go...did you learn anything?!"

Sean Roylance: "You are putting words in my mouth; I never said to take down the signs."

Raymond Brown: "You said to ignore them; what's the difference ignoring them and taking them down?"

Mayor Dunn: Asked if the Council might move on. He commented that there were some good arguments and that they were getting into some ethical parts of the law."

Derrek Johnson: The main issue he brought up was what direction to give Mr. Brockbank and any other animal owner involved...he again came back to that point.

Raymond Brown: He asked if letters had gone out to get rid of goats.

Shawn Eliot: He responded that the letters had actually been written this past summer (a goat letter and a chicken letter); but it was at that time when the chicken issues came up; and Mr. Eliot asked what he should do with them...he said the Mayor told him to wait until things got cleared up...that is why the letters were not sent out.

Mayor Dunn: He recommended "sticking with that, then...let's wait until we get this cleared up."

Raymond Brown: He feels there is a danger is going back and forth continually. He feels the issues have been "beat to death".

Derrek Johnson: "Doesn't that happen with every new Council?"

Raymond Brown: "Not really...this is different."

Nelson Abbott: "This was beat to death pretty good back in the early 90's..."

It was brought up that Councilmember Johnson's question had not been addressed totally; and the response was that it had.

Mayor Dunn: He felt that it had been settled...he repeated: "Let it go...let's stick with the Counsel we've been going with since the middle of the summer."

Nelson Abbott: He was on the City's web site and was unable to find a place where he could print off a license for cats or dogs; he would like to take this a step further and come up with a single page, perhaps in the newsletter, to give people a chance to meet their obligation to license their animals. *(It was pointed out that it is not required to license cats.)*

Sean Roylance: The Planning Commission is looking at permits for dogs and cats.

City Recorder: Dog licenses could not be placed on the web site to print off since they are based off of the animals' rabies vaccination and they owner has to present the rabies certificate to obtain a license.

Shawn Eliot: At the Planning Commission Meeting, Dayna Hughes pointed out that from the surveys that have gone out, it seems like the predominant problems are with dogs. She asked why we are not doing anything about the problems. He did agree with Councilmember Abbott, that we need to encourage pet owners to license their animals.

Mayor Dunn: The Sheriff's Dept. did have a "dog fair" where they offered rabies shots and licensing, on the spot...only a few showed up.

Shawn Eliot: He suggested that we could have a "blitz" for a couple of weeks, where the focus is picking up stray dogs...owners would begin to "get the hint" and be more responsible with their pets.

Mayor Dunn: He was insistent on moving forward with the established Council Agenda.

ELK RIDGE
CITY COUNCIL MEETING
January 13, 2009

TIME & PLACE
OF MEETING

This Regularly Scheduled Meeting of the Elk Ridge City Council, was scheduled for **Tuesday, January 13, 2009, at 7:00 PM**; this was preceded by a **City Council Work Session at 6:00 PM**. The meetings were held at the Elk Ridge City Hall, 80 East Park Drive, Elk Ridge, Utah.

Notice of the time, place and Agenda of these Meetings were provided to the Payson Chronicle, 145 E Utah Ave, Payson, UT, and to the members of the Governing Body, on January 9, 2009.

7:40 PM -

CITY COUNCIL MEETING – REGULAR SESSION AGENDA ITEMS

ROLL

Mayor: Dennis A. Dunn; *City Council:* Nelson Abbott, Raymond Brown, Julie Haskell & Sean Roylance & Derrek Johnson; *City Planner:* Shawn Eliot; *Public:* (Salem High School Students) Billy Fairbanks, Tyler Tarter, Micah Richins, Celeste Lee, Christy Pray, Drew Christensen, Melissa Merrill, Clive Jane Lawson, Britt Pratt, Katelyn Lambert, Linsey Johnson, Elisa Lewis, Brayden Ryan, Morgan Rugg, Kyle Shuler, Cody Towse, Karlin Adams; and the *City Recorder:* Janice H. Davis

OPENING REMARKS
& PLEDGE OF
ALLEGIANCE

An invocation was offered by Nelson Abbott and Kyle Shuler led those present in the Pledge of Allegiance, for those willing to participate.

AGENDA TIME
FRAME

MOTION WAS MADE BY RAYMOND BROWN AND SECONDED BY NELSON ABBOTT TO APPROVE THE AGENDA TIME FRAME; ADJUSTING THE START TIME TO 7:40 PM
VOTE: YES (5) NO (0)

PUBLIC FORUM

Derrek Johnson: He questioned why the Ewell property was not on the agenda; he thought it would be. *(Mayor Dunn responded that it would be first on the agenda on January 27, 2009. The Mayor did contact Mr. Ewell to apologize for not placing the item on the Agenda, it was simply an oversight.)*
All the Councilmembers indicated that they had received the letter from the Mayor with the attorney's response regarding the portion of the code referenced by Councilmember Johnson concerned with granting extensions. Mayor Dunn also emailed the same letter and response to Brian Ewell.

ORDINANCE –
DURABILITY RETAINER
& INSPECTION

(Memo from City Planner to Council, dated 1-13-2009)

"Background

State law was changed last year allowing for one year instead of two the amount of time a municipality can require a durability retainer and engineering inspection bond. Basically, a durability retainer allows the city funding, if needed, to repair faulty construction of improvements such as roads, utilities, and other subdivision improvements. An engineering inspection bond insures the funding is there for city inspection fees.

Staff Findings

The current code required a two year durability and engineering inspection bond period; state law requires that cities change this requirement to one year.

Staff Recommendation for Council Motion

Motion: The city council agrees with the planning commission finding and approves the proposed code changes in the attached code changing the durability retainer and engineering inspection bond requirements from two years to one. The council finds that the proposed changes are required for the city to comply with state law."

This change reflects the new State law regarding a limit of one year for durability retainers.

Mayor Dunn: (Brief history of change in law) The Mayor went to a meeting with other mayors and part of the discussion was centered on this change, as well as immigration. The State law changed to one year and if there are failures after the one year, the City then takes responsibility to correct the failures. This was a "satellite bill" from another bill. Many real estate people were involved. The cities did not have the opportunity to defend the two-years. The law benefits the developers, not the cities.

This will force the inspections to be very precise and to not allow any variance from the code. This will affect things like compaction testing as well as other phases of the development process. If the code is not adhered to, they will not pass inspections...example: There will be no leeway on videoing the sewer lines.

The Attorney counsels that all Retainers would be affected, even existing ones. The engineer says that it does not apply to current agreements entered into. The developer must comply with the requirements as well; otherwise the durability time period does not begin.

Shawn Eliot: Suggestions: 1) To have the durability retainer begin after the one inch overlay, since the construction phase would still be going on. (This would need to be considered.)

2) Have two-part durability time period: one for the regular infrastructure and another on just the overlay

Mayor Dunn: He listed other options: Do all the construction, including the 1" overlay at the same time; or possibly the city could accept the money set aside for the overlay and use it in conjunction with a road project to improve that portion of the road.

Raymond Brown: It will take added effort on the part of the City (Planner, Planning Commission, Engineer, City Council, Public Works and Inspector) to make sure all requirements are met.

MOTION WAS MADE BY RAYMOND BROWN AND SECONDED BY NELSON ABBOTT AS FOLLOWS:
DUE TO CHANGES IN UTAH STATE LAW DEALING WITH DURABILITY RETAINERS, AND AGAINST
THE BETTER JUDGEMENT OF THE MEMBERS OF THE COUNCIL; THE CITY COUNCIL ADOPTS AN
ORDINANCE AMENDING THE ELK RIDGE CITY CODE PROVIDING FOR THE AMENDMENT TO THE
DEVELOPMENT CODE REGARDING DURABILITY RETAINER AND ENGINEERING INSPECTION BOND;
CODIFICATION, INCLUSION IN CODE, CORRECTION OF SCRIVENER'S ERRORS, SEVERABILITY AND
PROVIDING AN EFFECTIVE DATE

VOTE (POLL): SEAN ROYLANCE-AYE, NELSON ABBOTT-AYE, RAYMOND BROWN-AYE, JULIE
HASKELL-AYE & DERREK JOHNSON-AYE (5) NO (0)

Passes 5-0

Mayor Dunn: Various options should be discussed in the future regarding the application of this code.

ACTION ON WORK
SESSION ITEMS

There was no action on these items.

STATUS REPORT –
CITY COUNCIL-
MEMBERS ON
DEPTS.

Julie Haskell: (Public Safety)

- Fire Dept: FEMA has changed its requirements dealing with the instant command system; as part of this, they have created the National Instant Management System (NIMS)...this requires all emergency personnel to be certified with the NIMS System. Councilmember Haskell has completed her first certification and has a couple more to go.

- Today she had a Special Service District Board Meeting (911 Dispatch). All members were sworn in and it was decided that there would be 4-year terms...staggered so that members would not all be leaving at the same time. Councilmember Haskell will be serving a 2-year term. There will be another meeting on Thursday (Meetings are at 10:00 AM, every second Thursday.)

- Chief Waite will be back in town and she will meet with him on budget matter.

- Mayor Dunn wants to host an ATV Safety Course in the City; he will spearhead this project; but it falls under Public Safety.

Derrek Johnson:

- Trails: Councilmember Johnson will contact Shawn Eliot regarding grant applications for Trails.

(Raymond Brown said there is a grant under "Safe Routes to School"; there may be a possibility of a grant to build trails toward bus stops.) One of the issues with the last application was that there were not enough "safety" type issues...we only missed being awarded the grant by a few points.

The Planner was going to approach the grant from a different point of view...demographically looking at more local areas than the entire City.

- City Celebration: He is to evaluate the projected expenses for Celebration as compared to the upcoming budget amendments.

Suggestions for Celebration: Craft Fair and charge for places in the fair for individual booths; fund raisers/donations from each household in the City and renting a pop dispenser.

Raymond Brown:

Roads: (Handout from Councilmember Brown)

"Roadwork & Projects for City for 2008-2009

Expenditures to maintain & improve the City's Road System

1. We contracted with Staker-Parson to overlay the following roads
 - a. Canyon View Upper end - \$44,259.00
 - b. Park Drive 98,815.00
 - c. Hudson Ln 9,570.00
 - d. Oak Ridge Dr 32,940.00
 - e. *Salem Hills Dr 9,000.00

2. Hot Asphalt Services to Crack Seal roads within City limits, where needed; at a cost of approximately \$8,000.00; this was not accomplished in 2008-2009 due to budget restraints.

3. ASI to bid on four (4) streets to "fog seal"; put off til' fiscal year 2009-2010.

The City began & completed about ½ of the Loafer Canyon Rd. curb & gutter fall of 2008. There remains the cost of finish work, including curb & gutter for the west side of Loafer Canyon Rd. Completion of this project should be in the spring of 2009. The estimated cost at completion: \$50,000.00, dependent on cost of providing raw materials. This is a co-op program with the City workers participating as well as the City providing raw materials. This co-op will result in a cost savings, to be determined after the completion of project and billing for materials. It should be noted that there was one driveway that had to be re-designed and built with the cost being borne by the City.

Class B & C Road Funds have been updated as of December, 2008, to reflect the current roads under maintenance and service of the City (attached: letter to UDOT). July of 2008, there will be B & C Road Funds available to the City. It is the intent to use little of no general funds of the City to complete the following projects:

1. Overlay of:
 - a. Dugway (road leading from Park Dr to Loafer Canyon Rd)
 - b. Amerigo Wy (taken off the road program last year due to financial restraints)
 - c. Bottom & top of Magellan Ln (dependent on overlay of builders of 1" on new road)
 - d. \$8,000 to \$12,000 of crack seal throughout the City
 - e. Completion of curb & gutter on Loafer Canyon Rd
2. Fog seal selected roads ASI (cost & amount of roads not available at the time of this writing)
3. Determine the amount of salt and cost (after this winter season) needed to budget for 2009/10
4. Widening of Goosenest (west City boundary up to 3-way intersection) approximately 3 to 4 feet on the south side of Goosenest

5. Striping of road from City boundary on W. Gooseneck up to end of widening of Park, south. The striping of Park to Escalante will depend on the overlay (by developer) of failed road on Park. Finally, the limitation of using only B & C funds to maintain the roads will depend on the safety and necessity of work to maintain the integrity of our transportation system. This will require the prioritizing of projects as well as needs of the Community."

Sean Roylance: He commented on how well the roads in Elk Ridge are plowed and maintained through the winter; he said he felt they are the best kept roads around, compared to surrounding cities.

Mayor Dunn: Cities are cutting their budgets and leaving snowplowing on the flat surfaces to conserve money.

Nelson Abbott: Water & Sewer:

(Water) - This past year the water tank well upgrade project was completed; he is anxious to see how things look around the tank in the spring.

- SUVMWA is in the process of getting the land they purchased for the Regional Sewer Plant re-zoned; he thinks this is nearly completed. There has been fair amounts of public out-cry from people in the area; not over the Sewer Plant, but over the garbage that the waste transfer station generates.

- The water rights that were authorized for purchase were actually paid for. There are also other shares that Tony Fuller is working on an exchange with the LDS Church.

(Sewer) He feels the Sewer Dept. is headed in the right direction. *(There was an increase in the sewer rates this past year.)*

Sean Roylance:

Planning Commission:

- This year the Planning Commission has done a good job this past year: one of the bigger projects was to re-write the HR-1.

- There will be a new Chairperson appointed this coming year; with the resignation of Russ Adamson; the Commission will vote on this. He has handled the Commission well.

- There will be an opening (possible 2) on the Planning Commission.

- This coming year the Planning Commission hopes to review some of the other codes in the other zones; at the very least, there are inconsistencies that continually come up...example: the Annexation Code, the PUD Code, etc. There will be some months where the Commission only meets once, to take a break with the lull in development.

Web Site:

Councilmember Roylance demonstrated what he has been working on to make the City Web Site more useful and "user friendly". He is reorganizing the site to allow easier access; he also showed the Council future changes and additions he is working on.

The changes will have more links and will allow the Dept. Heads to change and modify their own pages; with passwords for proper log-in to the site they are authorized to modify...there will be restrictions.

He would like to come up with a great slide show on the main web page.

The work he has done is close to being ready for use.

Future Improvements: He would like to create a feature that is "ask a question": Someone would put in the name and email address and pick from a "drop down list" of who they want to ask the question of (Mayor, City Council, Planner, Planning Commission, staff member, etc)...the question goes to that person or group; when that party responds, they can email back to the original party. If there were a common question, that could be added to a list of public questions or frequently-asked questions.

He read a list of features he would like to address over the next year:

(Administrative tools, archive center with agendas and minutes, document center, events calendar, frequently-asked questions, job postings, business directory, site search, "notify me", RSS ["real simple syndication"], history logs, job application system, photo gallery, slide show, "blog" [each Councilmember could have their own web page], facilities reservation system [pay online], potentially pay for other things online)

Councilmember Roylance informed the Council that he is using this work on the City's site as a model for contracting with other cities. If the City were to contract for the work he has done on the web site, it could run up around \$30,000.

Nelson Abbott: Suggestion: When business owners apply or renew their business licenses, they could pay an additional amount and have their business listed on the web site...this would be a way to generate revenue for the City.

Sean Roylance: He feels much of the changes are no more than a couple of weeks away from being a reality; all of the features discussed will not be available at first; but will be added to in stages.

Mayor Dunn: Asked that Councilmember Roylance contact Marissa Bassir (staff) to work with him in this project.

Mayor Dunn:

Administration:

Being Mayor can be complicated, though exciting. In the time coming up, the City faces some challenges.

He finds that working with people and creating relationships is worth the effort of being involved with City government.

He looks at his "available resources" as the people around him, including the Council and the City staff; he depends on those the serve with him. He expressed his appreciation for all he serves with.

Raymond Brown: He has informed people that tend to complain that they really do not have a clue as to what the Council and the Mayor do. The Council has been elected and should be respected because of the work they do in behalf of the citizens of Elk Ridge. The Council can disagree, but should respect one another as being "on the same team". The Mayor puts a lot of effort into serving the City and he appreciates that.

*Councilmember Brown has agreed to assist in re-doing the Administrative Policy for the City.

CITY COUNCIL
ASSIGNMENTS

Mayor Dunn: The Council assignments will stay the same for 2009.

RE-APPOINT CITY
RECORDER &
TREASURER

Annual Appointment:

MOTION WAS MADE BY SEAN ROYLANCE AND SECONDED BY JULIE HASKELL TO RE-APPOINT JANICE DAVIS AS THE CITY RECORDER AND LINDA COOPER AS THE CITY TREASURER
VOTE: YES (5) NO (0)

ANNUAL SCHEDULE
FOR CITY COUNCIL
MEETINGS

Discussion of any possible Meetings to be cancelled.

MOTION WAS MADE BY RAYMOND BROWN AND SECONDED BY NELSON ABBOTT TO CONTINUE TO HOLD CITY COUNCIL MEETINGS ON THE SECOND AND FOURTH TUESDAYS OF EACH MONTH FOR THE YEAR 2009; WITH EXCEPTIONS NOVEMBER 24TH AND DECEMBER 22ND SHALL BE CANCELLED DUE TO HOLIDAYS
VOTE: YES (5) NO (0)

PRIMARY WELL
CONCERNS

Mayor Dunn: In the past the City's primary well was the Loafer Well because of the ability to gravity feed" the water system. All the new improvements installed this past year have taken a toll on the Water Fund finances. The Mayor proposes to switch back to having the Loafer Well as the Primary Well again; and perhaps use the Cloward Well as back-up during the summer months or whenever needed. We do not have the need right now for all the new capacity in the Cloward Well since much of the purpose for upgrading the system was for growth in the northern sections of the City; impact fees and up-front money from developers of the Elk Ridge Meadows PUD paid for a good portion of the project. During the process of getting the tank and new upgrades to the system online, the focus was switched to the Cloward Well...this focus needs to go back to the Loafer well.

*The Mayor will present calculations showing pumping costs at the next Council Meeting.

Derrek Johnson: Asked if the return on assets dropped from 6% to 2% in the Water Fund due to pumping costs, or due to the amount of water people used.

City Recorder: The Finance Director mentioned in the Audit Presentation that higher depreciation on more assets has contributed to the drop, as well as increased pumping costs.

WATER LINE
REPLACEMENT

Mayor Dunn: He wanted to remind the Council that the old cast iron water line on Canyon View Drive needs to be budgeted for; the cost will be approximately \$105,000. It has broken three times in the past year. The suggestion from both Kent Haskell and Corbett Stephens (both certified water operators) is to place the new line in the shoulder of the road so we do not dig the road up; then bring each service into the line and abandon the old one. The new line will be from Alpine Drive to Park Drive.

**Place in the Amended Budget.*

EXPENDITURES:

General:

Sean Roylance: Asked where the garbage collection and the discrepancies in the inventory of containers are at, in considering reimbursements.

Mayor Dunn: The City Treasurer, Linda Cooper, and the Mayor met with the Director from Allied Waste. The Mayor explained about the problem exemplified by the Neria Family and what had happened with them; as well as what the City Attorney has advised about only going back to the beginning of the current fiscal year for any reimbursement. The Mayor informed the Director that really the City is only making about \$.56 per can on the 1st can, and about \$.26 on the 2nd can. He explained that when the City has this problem in inventory, that he (the Mayor) would just send the resident on the Allied with any claim, because Allied is who receives the money. Next week the Director said he would send a team down to do a "hard count" inventory of containers; Mrs. Cooper will provide him with the same list that Kent Haskell, Corbett Stephens and the Mayor used to get a count on cans. The team from Allied will even knock on doors to make sure the cans can be accounted for. *(Allied has relied totally on the City's count of extra containers; but there is an ongoing problem with residents calling Allied directly with requests to add or remove cans...without notifying the City so the charges can be updated. The staff at Allied is supposed to direct those calls to the City; but many times they do not; so the inventory has been faulty.)*

The Mayor informed the Director of another issue: there are times when residents would like extra dumps on the can or cans they have; he asked if there is some way to accommodate these times.

The Director explained that each time the truck picks up a can to dump it, it is considered a separate "pick up" so Allied wants a second charge for the second pick up. He said that if residents want this service, that they can call Allied's Office and supply them with a credit card number...pre-pay for the extra pick up...then they will contact the driver and accommodate them. It would be a direct pay to Allied, not through the City.

There will be a dumpster for Christmas trees.

Raymond Brown: He made the point that he is still bothers him...if a resident has two cans and is only paying for one; why not correct the matter rather than being dishonest?

CITY COUNCIL
MINUTES

A. City Council Meeting 11-25-08:

MOTION WAS MADE BY SEAN ROYLANCE AND SECONDED BY RAYMOND BROWN TO APPROVE THE CITY COUNCIL MINUTES OF 11-25-08
VOTE: YES (5) NO (0)

SCHEDULE PUBLIC
HEARING –
AMENDED BUDGET
FOR 2008/2009

**MOTION WAS MADE BY NELSON ABBOTT AND SECONDED BY JULIE HASKELL TO SCHEDULE A
PUBLIC HEARING TO CONSIDER AMENDING THE 2008/2009 FISCAL YEAR BUDGET FOR THE
OPERATION OF ELK RIDGE CITY; FOR FEBRUARY 24, 2009; AT 6:00 PM**
VOTE: YES (5) NO (0)

The City Recorder reviewed the areas to consider amending with the Council and provided a rough copy of the Budget to the Councilmembers. They are to contact her with suggestions for amending the original figures in time for her to combine those amended figures into the Budget to be presented.

Conferences:

The Council discussed the need to cut back on any unnecessary expenses; and in conjunction with that, decided that attendance at most of the usual conferences would be held to only those necessary for water certification, or the Roads School, Fire Dept. training, Planning certification training, etc.

Fire Dept.

Fire Dept. Grant: Councilmember Haskell said the equipment had been purchased, but they had not submitted the bills for reimbursement at that point.

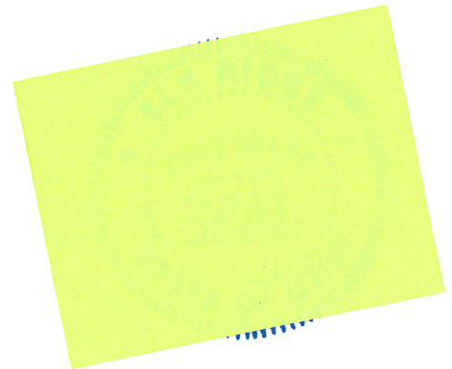
Nelson Abbott: Suggestion: ATV speed signs at the entrances to the City and throughout in certain places.

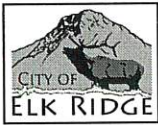
ADJOURNMENT

At 10:02 PM, the Mayor adjourned the Meeting.



City Recorder





ELK RIDGE - 80 East Park DR - Elk Ridge, UT - 84651

t.801/423-2300 - f.801/423-1443 - email staff@elkridgecity.org - web www.elkridgecity.org

AMENDED NOTICE & AGENDA – CITY COUNCIL

Notice is hereby given that the City Council of Elk Ridge will hold a regular **City Council Meeting on Tuesday, January 27, 2009, at 7:00 PM, to be preceded by a City Council Work Session at 5:00 PM.**

The meetings will be held at the Elk Ridge City Hall, 80 E. Park Drive, Elk Ridge, Utah.

5:00 PM - CITY COUNCIL WORK SESSION – AGENDA ITEMS

1. Training with City Attorney, David Church
 - A. PUD Discussion

- 6:00 PM -** 2. B. General Question & Discussion

7:00 PM - REGULAR COUNCIL MEETING AGENDA ITEMS:

Opening Remarks and Pledge of Allegiance Invitation

Approval/Agenda Time Frame

7:05 Public Forum:

7:15 3. Fairway Heights Subdivision, Plat C – Extension Request – Brian Ewell

7:45 4. Consideration of Household Pets – Shawn Eliot

8:00 5. Rocky Mountain Subdivision, Plat B – Release of Construction Phase and Begin Durability Retainer Time Period

8:10 6. Impact Fee Studies (Aqua Engineering) – Discussion & Schedule Public Hearing

8:40 7. Boarding Horses on City Property – Mayor Dunn

8:50 8. Sierra Letter / City Council Opinion – Mayor Dunn

9:00 9. Expenditures:

A. General (Check Registers & Payroll for November & December, 2008)

B. Media Player – Planning Commission Projector ?

9:10 10. City Council Minutes

Adjournment

Handicap Access, Upon Request. (48 Hours Notice)

The times that appear on this agenda may be accelerated if time permits. All interested persons are invited to attend this meeting.

Dated this 26th day of January, 2009.



City Recorder

CERTIFICATION

I, the undersigned, duly appointed and acting City Recorder for the municipality of Elk Ridge, hereby certify that a copy of the Notice of Agenda was faxed to the Payson Chronicle, 145 E Utah Ave, Payson, Utah, as well as being posted on the City Web Site; and was provided to each member of the Governing Body on January 23, 2009; & an Amended Agenda on 1-26-09.



City Recorder

ELK RIDGE
CITY COUNCIL MEETING
January 27, 2009

TIME & PLACE
OF MEETING

This Regularly Scheduled Meeting of the Elk Ridge City Council, was scheduled for Tuesday, January 13, 2009, at 7:00 PM; this was preceded by a City Council Work Session at 5:00 PM. The meetings were held at the Elk Ridge City Hall, 80 East Park Drive, Elk Ridge, Utah.

Notice of the time, place and Agenda of these Meetings were provided to the Payson Chronicle, 145 E Utah Ave, Payson, UT, and to the members of the Governing Body, on January 23, 2009; and an Amended Agenda on 1-25-09.

6:00 PM –

CITY COUNCIL WORK SESSION

ROLL

Mayor: Dennis A. Dunn; *City Council:* Nelson Abbott, Raymond Brown, Julie Haskell & Sean Roylance & Derrek Johnson; *City Attorney:* David Church; *City Planner:* Shawn Eliot; *Planning Commission Vice-Chair:* Dayna Hughes; *Building Official:* Corbett Stephens; and the *City Recorder:* Janice H. Davis

TRAINING WITH
CITY ATTORNEY

1. PUD Discussion:

Mayor Dunn: There are some interesting concerns regarding the PUD (referring to Elk Ridge Meadows); Not only has the bank taken over one Phase (Phase 2), but there are some issues with expiration dates on approvals for another Phase (Phase 4). It was the Council's desire to have the City Attorney (David Church) present for some discussion, questions and answers. With that brief introduction, the Mayor turned the time over to the City Planner, Shawn Eliot.

Shawn Eliot: Part of what has brought about this meeting with Mr. Church is the issues associated with the Town Home Project (Horizon View Farms...or Phase 4 of the PUD). The Project has been approved twice, if not three times; the last time it came into the Planning Commission, the developer wanted to make more changes to the Project. (Mr. Eliot presented a Concept Map of the entire PUD, which has changed over time.) When the Town Home Project was part of the overall Concept, the only information the City had was that there would be 74 town homes; the understanding was that at Preliminary Approval, the details would be available. A note that no one caught back then: They were required to have 25% open space in the Development (pointing the "hashed areas on the map). The open space requirement for Phase 4 was taken care of from Phases 1 & 2...with Phase 3 being on its own. (Mr. Eliot was on the Planning Commission at that time.) There were discussions with the original developer, Randy Young, about landscaping, playground equipment, etc.; and his response was that these things would all come in with part of the Town Home Development. The Planning Commission was led to believe that there would be these amenities; but the note on the Plat says otherwise.

The Planning Commission met with Rick Salisbury (new developer of the Project) last November (2008) and turned down his latest request; which was changing from 74 town homes to a mixture of single family homes and town homes. The Planning Commission's concern was that the open space in Phase 4 went down to 16%.

He was proposing single family units; many of them with 10' back yards...the Planning Commission did not like the new plan and brought up that the Development had been approved on the basis of town homes. Since that time, Mr. Salisbury found the note on the Plat referred to above that says he does not have to give open space and this has placed the Planning Commission in a bit of a bind. The Planning Commission told Mr. Salisbury that they and the Planner want to work with him, and they gave him some suggestions...but he replied that he was going to talk to the Bank and look at actually purchasing the rest of the PUD and doing all of the Development. The City needs to figure out where we are with this whole Development; is the original Development Agreement still in tact? If so, who receives the impact fees for the up-front water project money? Who is responsible for fixing up the open space, so it doesn't die? Who is responsible for the road overlays, etc? Does the City have any leverage? It would not be prudent to continue to approve developments in this Subdivision when it is "up in the air", like it is currently. This is most of why Mr. Church was asked to come and meet with those present. Perhaps the Bank (Centennial Bank) should be included in further talks; there have been phone calls to the Bank, but not much progress has been made so far.

Mayor Dunn: Nebo School District has control of Phase 3 of the PUD; the Phases that Randy Young still has control over would be Phases 4 & 5.

Important issue to consider:

1. Since the Bank has taken over there has been no amendment to the Impact Fee Reimbursement Agreement the City has with Elk Ridge Managers; Corbett Stephens had addressed the issue with them but they have yet to supply any documentation that there should be any change in who is the beneficiary of those reimbursements.

- It needs to be decided who the water impact fee reimbursements go to: the Bank or Elk Ridge Managers?
- The Park, as an amenity for the HOA, was to be cared for...this has been neglected; who is responsible and how do we protect the open space?

Shawn Eliot: Page 2-B of the Development Agreement refers to the water reimbursement and it is non-specific with wording that would encourage a separate Reimbursement Agreement to be made with each Phase responsible for payment of the up-front water system money.

Recorder: The Bank claims they should be reimbursed; but, in speaking to Bob Peavley, he feels it is Elk Ridge Managers who should still receive the money. Mr. Peavley says they still owe the Bank money.

David Church: The Bank could have foreclosed only on the property and it may not have a security interest in the City's obligation to them; "but that shouldn't change our obligation...we will owe it to somebody...there's no way that will just disappear...so if there's a question, what people would normally do (prudently) is if you couldn't decide between two claimants, you do what they call "interplead it" and just pay the money to the district court...and give notice to both sides and say, you are both claiming this money, you guys go to a judge and have it determined". When they foreclosed on the property, whatever portion they acquired, they may or may not have acquired the rights to the reimbursement, depending on what their agreements we are not privy to, were. They may have a security interest in the property itself, or they may have a security interest in the property and of the contracts, the right to receive reimbursement...we don't know what their contracts are with the Bank. Unless we are convinced, we would not pay it to the Bank or to them and run the risk of being wrong." He does not feel this is a problem; we would pay the same as we would otherwise have paid, but in the absence of any proof of who is to be paid, we would pay to a neutral third party (the court).

Shawn Eliot: He still has a question on 2-B...the wording leads one to think that the reimbursement is to come from "future users of the water system improvements"...or every future development; is this what is meant?

Mayor Dunn: Every Phase involved in the payment of the up-front water system money, has a separate agreement, based on the number of lots in each Phase...leaving Phase 4 out of the agreements. Each agreement states that the reimbursement will come only from that particular phase of the Development.

David Church: This Agreement is "an Agreement to agree"; so you would anticipate that there would be other reimbursement agreements that come out of this; but he agreed that the wording is a bit confusing.

Shawn Eliot: RE "Defaults"...When can the City declare the development to be "in default"?

David Church: "Anytime they have defaulted...when I read through this, I can't see any provision in this where we could say the developer has defaulted on their obligations...of this Agreement. Their obligations are:

- 1-A: They are bound by the ordinances
- They are paying the \$700,000
- They are going to pay the normal Project Fees
- They are going to install a dry secondary system
- The entry-way corridor (I guess that has been done)"

(Mayor Dunn added that, *no it hadn't because it is attached to Phase 3.*)

Mr. Church continued that they could be considered "in default" on that...but he could not see that there is a time line attached to that.

Shawn Eliot: The Agreement just states that they will do it.

David Church: (Referring to the City's obligations to the developer) "Our obligation is just to allow base density of 3.6 dwelling units and then give them the bonus, according to the open space. If they are not entitled to the bonus because of the open space, that affects your question on what is due of Salisbury when he buys Phase 4."

Shawn Eliot: "If he is claiming their (the other Phases) open space, do we have some leverage because the open space is all one?"

David Church: To see what is required for their open space, you need to look at your zone...I don't know what that code for the R-1-PUD Code Zone for that date required of the open space and what we required...whether it is just open or if it's improved and watered."

Shawn Eliot: (Read a prepared question) "Our code does say, 'Each planned unit development is required to contain at least 25% open space, which may contain recreation area, activity areas (picnic pavilions, gazebos, water features, playgrounds, parks, trails, steep slopes, stream or canal corridors, wetlands, open fields or landscaped areas). The Planning Commission and/or City Council shall ultimately determine what qualifies as open space.' That's all we say. So, when we went through that whole process, the issue was...do they have to landscape it or not, by those words. So, they landscaped the Park and they put in some trees; but the rest of it was 'natural grasses and flowers' and stuff."

David Church: The question you asked me on the 25%...are we treating the whole thing as the PUD, or (because it has been so long) whether we have the right to say that Phase 4 is to be treated as its own separate piece...whether the approval was done before, or whether this is a new application. "If there are people to ensure that the whole plat (PUD) is done, then we treat it as a whole plat; if we don't have someone responsible to see that the whole plat is done, then I don't know why we would say that Phase 4 gets a 'free ride'."

Raymond Brown: We did have discussions when they sold off the school property...because they wanted to claim the parking lots and driveways, etc. as "open space"; they were told they could not do that. The consideration was taking the PUD as a whole for the open space.

David Church: "We have to be internally consistent is all I am saying...if we are looking at it as a 'whole', we have to be consistent. If we are looking at it by Phases, then we need to be consistent on that...we can't pick and choose which way we're going to look at it."

Raymond Brown: "They did try to push the open space onto the school, using all the parking lot, basketball courts and so on...and we said absolutely not; that's not the intent and that's not the way we want it. We did argue at that point...because they were going to try to gain all that open space with the school, and put in...I think 13 more houses in the other open space."

David Church: "So, what is our conclusion? Are we treating it as a 'whole' or 'by phase'?"

Raymond Brown: "We told them that we are treating it as 'phases', because they were trying to gain a lot of the open space from that school...meaning part asphalt; and we said absolutely not...that was never the intent...that we had this 'scattered' throughout the whole 122 acres."

David Church: "So, if we are consistent with that, we'd be telling the Phase 4 people, whoever they are...you have to have 25% open space."

Shawn Eliot: The Concept came in as a 'whole'...and the open space was divided up as a 'whole'; but then as each Phase has come in...the first few Phases went by that plan; then the third Phase, we did a lot of rearranging...the 4th Phase came in, and the first two developments required 25% open space...nobody knew there was that 'little note' in the Concept that said otherwise.

Raymond Brown: But, they approached us, and said that they had this 'deal' where they had the opportunity to sell the property to the School District...we had some concerns about the open space and we ended up having to get a separate agreement with the School District to address this and not allow them to put 13 or 14 more homes in the rest of the plat...it was negotiated down to 9 new lots. But, the point Councilmember Brown made was that they came to the City; we did not seek to change the Agreement...they asked us to. With this agreement to change the terms, he feels that we are now addressing the PUD in phases.

Shawn Eliot: The question he had asked Mr. Church was, at what point is the Concept null and void...because their Preliminaries have expired?

David Church: "The Agreement is 'open ended', so we have to live by the Annexation & Development Agreement; we don't have to live by the plats and concepts...those are going to lapse under your ordinances...just the way they have lapsed. But, you give them certain rights under this ordinance, even if you lapse those plats...the new people could come back in and say, 'Alright, those plats are lapsed; I'm going to develop and I get my 3.63 dwelling units per acre base, and I get to develop under those ordinances that are listed.' So, my question would be...What benefit to we get by having the plats lapse and making them start over on the plat? They don't have to develop under the current ordinances...they get to develop under those ordinances that were in existence at the time you signed the Development Agreement."

Mr. Church said that these Agreements usually will have a time limit saying you are "vested" for a period of time; he could not find that in this Agreement. He said that it is "pretty open-ended".

He feels that the only solution on this is that we have to get the owners of all four phases in one room and sit down and say, "Look, we have to sort out who's doing what...who's responsible for what...whether you are going to follow through with the Development Agreement or not?"...and if they say they are not, then we have to say, "Alright, let's work out the default and bring it to a head and see who has to do what". The banks will be reluctant to do that because they don't want to be the "developer", they want to sell it to somebody...so they will not want to be in the room to make the decision. They will be looking for a buyer; and when they get a buyer, we'll have people who can sit down and make these decisions with us. "I think it is beneficial to all the owners of all the Phases, if they come in are able to complete the development the way it was originally agreed on...but if they can't..."

Raymond Brown: He pointed out that someone has a sign up selling lots at so much per lot...it says it is a "foreclosure" type company selling these.

David Church: So, the Bank is selling off the lots...are the lots platted? They can't sell them if they are not.

Mayor Dunn: He believes it is attached to Phase 2, but they have posted in the corner of 1600 West (entrance to Elk Ridge)...not on their own property for Phase 2. Phase 2 has been platted and lots sold.

David Church: Asked if there is still a bond left on that plat... (Phase 2...and yes there is.)

Mayor Dunn: He said he was sensing a bit of confusion; he tried to recount the events of the development process for the PUD: When Phases 1 & 2 finalized their plans, Phase 2 came first...the open space calculation was based on the sum of the two Phases. As he recalls, in the beginning, Phases 1, 2, 3 combined the open space, leaving Phase 4 without much open space obligation (the "note" referred to by Mr. Eliot). When Phases 1 & 2 were constructed, the open space was combined; and Phase 3 stood alone. When there was an addendum to the Development Agreement to consider the School District; 5.5 acres remains open space.

David Church: Phase 4, if it only takes the 74 units shown, is fine; but if Mr. Salisbury wants to build more than 74 units...well, he has cut the number of units, but the open space is in backyards by going to single family dwellings instead of twin homes.

Corbett Stephens: He does have a sports court and other amenities in the middle; with a road going around...and houses fronting the road...in the backyards, he has an area for certain amenities.

(Derrek Johnson: Does he meet the opens space requirement?) But does he have to?

David Church: If we go by the whole plan, he meets the requirement; if we treat him separate as a new developer, he is short.

Raymond Brown: We changed to go by phases, but in the beginning, it was one whole piece.

Julie Haskell: wasn't that brought to us with the School District needing re-approval? Doesn't that change everything?

David Church: We need to pick a position and stick to it.

Raymond Brown: He feels it needs to be by phases; that is how we ended the last negotiations with the School District...the Amended Agreement with the School District followed, with the 5.5 acres of open space.

David Church: Because Phase 4 was still owned by the same developers back then.

Nelson Abbott: He feels it should be handled in phases. (Councilmember Brown replied that it does now.)

Raymond Brown: We have these separate Agreements with each Phase; now there are another 2 Phases and they need to follow the same guidelines.

David Church: If Phases 1, 2 & 4 had the same owner and he came to you and said he was ready to do Phase 4, would you be saying the same thing?

Raymond Brown: He feels that the City would be saying the same thing; both the Mayor and Councilmember Brown were on the Planning Commission when this Project annexed into the City.

David Church: It reads like he could have done it in one phase, two phases, three phases or four phases.

Raymond Brown: It may seem to read that way, but there were many meetings with the original developer, Randy Young, and the whole idea was that it would be going through the phases; in other words, to be shared.

David Church: "If Randy Young had come it and said, 'I'm doing one phase...put all my open space right here'..."

Raymond Brown: Perhaps, if he had given the City a Ballpark and other amenities...but he didn't.

David Church: But the difference is now...Randy Young is gone, the Bank's got a piece of it, Salisbury may have a piece of it, and Wentworth still has a piece of it...the question is: Now that it is split up the way it is, do we treat it differently than if one guy had come in? There is logic in going both ways; we just have to decide and stick to an approach.

Raymond Brown: H feels that the plan is, and has been to have it spread out; with each section having an open space commitment.

David Church: Asked Shawn Eliot what open space is left and what is Mr. Salisbury's contribution to it?

Shawn Eliot: His development would dedicate 16%.

Mayor Dunn: The School is in the old Phase 3, and it had 25%.

David Church: So, we are saying we are short in Mr. Salisbury's Phase.

Shawn Eliot: Except that the original Concept said that his 25% was taken care of by all of the other Phases. This was in "concept"; it was never discussed that way.

Raymond Brown: All the negotiations since then and current, have been with 25% open space.

David Church: 25% is what gives him the bonus density. He does not have to have 25% if he doesn't want the density.

Corbett Stephens: He only has 10 acres. He was approved at 74 units.

David Church: If he come in and demands 3.63 dwelling units per acre and 16% open space; what bonus would he get beyond that?

Raymond Brown: There has to be something for the bonus density...perhaps streetlights and sidewalks.

David Church: If this is treated as a new phase, under the old Development Agreement, he gets 3.63 dwelling units per acre base...so with 10 acres, it would give him 1/2 what he is asking for. Then if he says he will try to meet the bonus requirements by giving a sports court and a "tot lot", the open space...could he get up to what he wants with the City's bonus system? That would be his question.

Corbett Stephens: With all the bonuses, the most you can only get up to 5 units per acre.

Nelson Abbott: He would only hit 50 if it was just that one phase.

David Church: You have to make sure you are using the ordinance (code) when the Agreement was signed.

Shawn Eliot: The ordinance allowed more than the 3.63 units; but that was the agreement.

David Church: The Agreement sets the base density, then. So we get up to 50....

Nelson Abbott: Right, if we do this by phase...if he owns both of them, then it could change things; but if we have two separate owners and one want to put in 100 units on this property and takes away all the open space on the other guy's property...you can't do that. (*David Church: That's exactly right.*)

Raymond Brown: It would be foolish to turn down a 5-acre park.

Shawn Eliot: When we talked to him the other day, he did allude to the fact that if he (Mr. Salisbury) does take this over, he is going to try to get it all back to where it needs to be.

David Church: "That's the leverage; we've got to say that we want it all done as one, so that we don't have the parts that are left abandoned. You hope the Bank can sell off those lots so you can get an active homeowner's association going in there. The park is left in private ownership and it's going to be an eye-sore. When it is not maintained, it can become a "terrible thing".

Shawn Eliot: So, two questions:

1. (Back to the "default") Does the Agreement keep the developer from being considered "in default"?

David Church: We can certainly put somebody in default, but whom? The developers built a park and turned it over to a HOA...it was run by the developers because they owned all the lots and as they are sold off, you reached a point where a certain percentage of the lots are owned by private people and then eventually it "kicks it over".

Corbett Stephens: You have to own a "home" to be in a HOA. The Bank only owns about 17 lots...Alpine Homes owns some of the lots.

Raymond Brown: Most of the lots are not owned by individuals; they are owned by the banks and other entities; so the HOA cannot be run by them.

Shawn Eliot: None of the Phases have been signed off as completed.

David Church: Always, in City business, you have to remember, that the sign-off is just the acceptance of their improvements; the day you allow that plat to be recorded, those are legal lots than can be sold to third parties...it is a subdivision and those will end up public improvements, where there are public roads. The bond is just a guarantee that we get the improvements done.

Shawn Eliot: I am just talking about the park...it was never signed off and it has gone "to pot", basically.

David Church: It was to be a private park...was there a bond?

Recorder: Not for the park...it was to be the responsibility of the HOA.

Shawn Eliot: If we start to negotiate with Rick Salisbury, and he does take THIS ALLOVER...WHAT IS THE City's stance on negotiating the park?

David Church: The first thing you have to do is just dealing with actual owners.

Raymond Brown: The City has really not had a desire to own the park and maintain it.

Shawn Eliot: But, we have said that eventually the HOA will likely dissolve...then the City would inherit the park...

David Church: Just because an HOA dissolves, it doesn't necessarily mean the City gets the park. It means you get an argument...they always want to give you the roads; they don't necessarily want to give you the park; they usually want to sell the land off and put in new houses.

Mayor Dunn: How much attention should be shown to the consideration of the possible sale of that park land for added lots?

David Church: As far as we are concerned, there are no development rights for that park; it can only be used as a park. We need to make sure we are consistent on that; but there will be an argument with somebody who will come in and say that the only way they will be able to get enough money to fix up the development would be to sell off part of it...that is very common.

Mayor Dunn: He still expressed some concerns/confusion:

- Throughout the Concept and Preliminary on this PUD, Phase 4 was always identified as 74 units. That is not in the Development Agreement. He knows that as Pangea (developers of Phase 4) was involved, they used the number of 74 units. Rick Salisbury has used that number and it has been back and forth with the Planning Commission level with the 1st two project designs Pangea came in with. The reason he (the Mayor) brings it up is that he thinks it has been used as a "selling point" for someone to invest in that property, that it has that potential.

David Church: Shawn Eliot and Mr. Church have discussed this...and that sometime there was Concept approval, if not Preliminary approval of 74 units.

Shawn Eliot: They had Preliminary twice...they had Final approval last March (*It was actually May 27, 2008 that Final was granted by the Council*) and then they came in about August and re-did it and it was denied...November would have been the time the Final would have lapsed. They (Mr. Salisbury) are saying that they had Preliminary in May, 2008 as well and that even though the Final lapsed, the Preliminary is still good.

David Church: If this ended up in a legal battle, the City would be asked the following: If they developed according to what was approved at Preliminary and Final...the 74 units...would the City say no new? And if so, why? Why was it approved then and not now...what is the change? If he came back in with the same, exact thing and said, 'I know the last one lapsed...I am re-filing with the identical plat...'

If the code changed, we normally would deny him...but in this case, we have an agreement that says the requirement will be what the code was when the Agreement was signed.

Shawn Eliot: But if the plat has lapsed, then the concept is not valid anymore...and we go back to the 3.63 units per acre + bonus amenities. *Councilmember Abbott said, that is what Mr. Church is saying*

David Church: He reiterated...if it was legal at 74 units under the all the codes why isn't it still legal now...with the same thing.

Corbett Stephens: It was only legal looking at the whole development.

David Church: That is what he meant when he says, if we appear to be inconsistent because we approved it for Preliminary twice, then why not now?

Shawn Eliot: It was approved twice for town-home units...because it was town-home units that was part of the approval...it is when it changed to ½ of the development as single-family and it ate up more of the open space...that was why it was denied.

Raymond Brown: The reason he got 74 units was due to the "give-backs" in the other sections.

David Church: He just feels the City had best be prepared to answer this question if he comes in with the same exact plan...but he doesn't want the same plan.

David Church: That is part of his argument...we allowed 74 town-homes...he suggests his plan is better than that...he proposed single-family because the City typically does not like town-homes...then we say "no".

Shawn Eliot: That is the hard part; because the reason it was not better was because the open space went away; but now we find out that the open space is not an issue anyway.

Mayor Dunn: That is an important point to remember...Phase 4 open space was included in Phases 1 & 2...Phase 3 had its own.

David Church: In this economy, the way things are going...speaking generally, it is better for cities to have people building and to finish these developments up. You can't let them sit; even if they are not building the big, nice homes people were building when things were "rolling"...it is important to get lots sold...people building and families in them or else it just falls apart. The roads will fall apart; the water lines will have to be re-done...it is just a mess when subdivisions sit for 5 and 10 years without anybody living in them. It is even worse having two or three homes with people in them...then the city has to maintain things for 2 or 3, when there might be 30, 40 or 50 lots.

Corbett Stephens: Is there an advantage to declare them "in default"?

David Church: Only if it helps gets someone else building...people build as big as they can afford. From a city stand-point, we need people in to help with expenses in the city. We want to encourage the building of homes that people will buy and move into.

Mayor Dunn: In a meeting held with Mr. Salisbury, he made a comment that he is interested in "buying it all"; he wanted to talk to Centennial Bank (the Bank that took over most of the lots in Phase 2) about taking over those lots. When Mr. Salisbury was building his homes, he sold off the single family part of his business, with a 5-year non-compete clause...that clause has run out now. That is one of the reason his proposal has come to the City with single-family units... he is now in competition again. He stated at that meeting that he would love to take everything over and use this single-family opportunity as the catalyst for people to enter into the market and then roll over to one of the finer properties...meaning Phases 1 & 2.

Derrek Johnson: He said that he sees the argument in the short-term; but long-term for the City...he feels that Rick Salisbury may not be the right builder to have for this Community.

David Church: It will be more "affordable" housing...and that is the dilemma; because no one knows how long the economy will be like it is. People will build as big as they can afford.

Shawn Eliot: The question he had in trying to move forward: they left the meeting with Mr. Salisbury with the feeling that the City is willing to "work with him"...Mr. Salisbury said he wanted to feel that the City wants what he has to offer. Question: Does the City have any leverage point with which to negotiate?

David Church: Yes, we do...but how does the City solve the issues without all of the property owners involved? Unless he wants to build exactly what has already been approved; which he does not.

Raymond Brown: There must be some "common ground" for what he and the other property owners want and what we want, without having to give away too many amenities. We can still get things that are important to the City, even with more affordable housing.

David Church: The obligation to pay on impact fees must be looked at; are there rate issues?

Nelson Abbott: Indirectly, yes...because money is budgeted for the depreciation of assets that have been put in place for development that is not occurring.

David Church: Depending on the city, generally the tax revenue is insufficient without the growth to pay for the services provided. Cities are experiencing these problems all across the Valley.

These are the tough decisions. The reimbursements through impact fees have to be paid, regardless of who finally collects the money.

Shawn Eliot: So, the next step...

David Church: We want to try to get a meeting with everybody involved, if we can...and sit down and figure out how to make this successful, before it gets worse. The economy is just not bringing in the taxes for revenue; sales tax has dropped.

Shawn Eliot: Is that something that you (David Church) would be willing to assist the City in? (Yes.)

Discussion on property taxes with regard to development:

Julie Haskell: She asked if Mr. Church would explain.

David Church: The big risk is with these big land owners...if they don't pay their property tax, it is like a "free loan" for 5 years. You can start to see a drop in property tax revenues from big land owners.

When you don't pay your property tax, the County does not put the land up for sale for 5 years...you have to be five years in arrears before it goes. So, for example...when Geneva Steel went into bankruptcy; they went five years without paying that big property tax to the County and the school districts. Some of these bigger land owners and developers...in tough times... that is the first thing they don't pay. So you figure, in five years, the money would be available to then pay the property taxes. Interest and penalties would also be applicable, but it is 5% interest. There are many big businesses that simply decide not to pay.

There are a lot of people that need homes; just there are not a lot of people that can afford the homes that people are selling.

Derrek Johnson: He asked how much the homes Mr. Salisbury proposes would sell for. There are lots going for about \$50,000 and they are not selling.

Mayor Dunn: He thinks Mr. Salisbury said around \$160,000 - \$190,000.

David Church: People from out of State are waiting for the economy to bottom-out...to purchase for investment, not to build. The people in the construction trades are really looking for work.

Summarizing: The next step would be to get all parties together to work out the issues. Mr. Church feels that the best thing for the city would be to do it all as one big Project and get it completed the way it was approved.

Dayna Hughes (Planning Commission): The Planning Commission had no problem with him coming in and finishing it under what had been approved (with the 74 units); but he wanted to come in with very small houses with zero lot lines and no back yards and we had a problem with that. Perhaps things have to be re-considered. She feels they are worse than a town-home...a person could not be on his property to wash the windows of his own house due to the zero-lot lines.

David Church: He related that he used to live in a big house in the "Avenues" (Salt Lake City) and he had a similar situation...people pay big money for those. It is the attitude of the neighborhood that makes the difference.

Dayna Hughes: They do not fit with the General Plan.

2. General Questions & Discussion:

Mayor Dunn: As the Mayor opened the Meeting up to questions for Mr. Church from the Council and the Planning Commission, he introduced him with a bit of background: Mr. Church is an authority on ethics and values...in fact teaches these things to various organizations in the State. He has written the manual that goes out to all municipalities on these issues.

Discussion and Comments:

Raymond Brown: (re: Codes) When dealing with developers, he feels the Council is good about requiring that they stay with the Code; but when it comes to some Codes in the City, he feels the Council is pretty lax in enforcement. That bothers him. When enforcement does occur, then citizens think the Council is "being selective" because there has been little or no enforcement in the past. The Council has to make decisions and they should be consistent...someone could challenge the Council for being selective. Where does the Council stand legally?

David Church: He would not worry about enforcement of development codes while not enforcing say an animal control code...that is not a valid argument. However, he felt that Councilmember Brown did make a good point: One of the things we do in cities is that we are invested with what is referred to as "police powers"...or the power consistent with State law to make laws and ordinances for the health, safety and welfare of the community. Every community has a bunch of ordinances. The question comes up as to how aggressive to be in enforcement? It is going to be up to the Council to choose an "enforcement philosophy".

There is nothing inherently wrong with what people identify as "selective enforcement". The purpose for enforcement is to get compliance...and you get compliance in two ways:

1. Compliance of the person that you are enforcing a law against.

You have a problem person...the problem comes to your attention in some way and you feel it is necessary to comply. The person in violation is identified and the "hammer of the law" is brought down on that person; and you get compliance.

2. You also get compliance by example: You selectively enforce to serve as an example to everyone else; that doesn't mean that you have to go after everybody; it means that you have the right to pick and choose who you go after to get other people to comply.

Example: The Highway Patrol sees thousands of cars, many of which are going over 75 mph. They get to "select" one or two of those that they think are worse for whatever reason and give them tickets...and by doing that, everybody else slows down. But, it is not a defense to say: "everyone else was doing it and you only picked me". It is not wrong that they make a "selective choice"...it could be everyone going over 85 mph...everybody believes they have the "right" to go 10 mph over the speed limit because most troopers pick the speeders that go over 85 mph. Well, you don't have the "right" to go 10 mph over the speed limit...if they wanted to pick the people going two mph over, they could.

Advice: You have to have some enforcement. When you pass a law and you announce it out...like a dog ordinance or a nuisance ordinance. Or a yard-cleaning ordinance...you announce that out to everyone and you are going to get:

- 80% of the people that will read it and comply
- 5% of the people will read it and say, "It is my dog and I will do what I want and let it run wherever I want"
- 15% will be in between those that say, "I really like to let my dog run, but I will see what they do"

If you don't go after somebody, that 5% "bleeds" into the 15%...and then you get 20% that let their dogs run loose...then you start to lose the 80% that were willing to comply in the first place. You have to have some level of enforcement and it is alright to "pick" those 5% that are just thumbing their noses at the law and the Council to get to be the example to everyone else.

Now, if you want, you can have very aggressive enforcement. You can say, "Our policy is that we are not just going after the 5%, we are going after everybody". The trouble with that is that it costs more money; and the cost may not be worth the benefit. You get the 80% for free that will comply; the other 20% costs you, if you what to get them to comply. But if you don't do something, you start to lose the 80%.

That is the dilemma; if your ordinances are important enough, some minimum level of enforcement has to happen and it is alright to pick the loudest, most obnoxious person in violation and use them as an example.

Just remember, if you don't want to enforce the laws, you will get the 80% compliance; but if you ignore the 20%, the 80% will go down to nothing...then it is hard to bring it back.

Derrek Johnson: You brought up in your example if that person is a "nuisance" or has been reported to be a "nuisance"...If a decision is made to go after a person that has never been called in as a nuisance, is it ethically right to go after this person? Councilmember Johnson said he would use as an example the issue of the miniature horse in a zone without animal rights.

David Church: If you are using the enforcement power for some other purpose... (*Councilmember Johnson interjected the word, "vendetta"*)...like a vendetta, then that is not right. It may be legally right; but you should not use your position on the Council for personal vendettas. For example, it is perfectly alright to say, "Our policy is that we enforce on complaint".

Raymond Brown: Using that same example: (Councilmember Brown gave a brief history of the miniature horse issue) A few years ago the issue of miniature horses in a residential zone without animal rights came before the Council in the form of a proposed change in the code to allow it; the proposal was denied. One pony-owner moved to a zone that had animal rights; the other owner refused to comply. Is this "selective" enforcement or a "vendetta" to say, "Wait a minute, you took your shot"...

David Church: (Interjected)...in other words, "You asked us specifically, we told you no, and now you are ignoring us...and now we feel that we really have to enforce it". That is a very common thing for cities to do.

Mayor Dunn: It boils down to the principle of the code...it is a code violation...it doesn't have to be a "nuisance".

Raymond Brown: It says to the 80%, you don't have to obey the code.

David Church: That is the dilemma you have. Animal rights are a good issue...most cities have an ordinance that says a person can have no more than two dogs. We all know that there are a lot of people that have more than two dogs; eventually, if you don't enforce that 2-dog limit sometime...you are never going to be able to enforce it, if you every want to...with a complaint or without a complaint.

(Comments were made regarding how people think about their pets and how attached they get to them.)

Continuing, Mr. Church said, If you were starting fresh on pets...and you said, "Alright, nobody has a pet, let's decide which pets we will allow...dogs would be the last on the list that anyone would approve...they go wild, they are messy, they make noise, they bite, there are dangerous breeds...perhaps a little horse or a goat would be way ahead of dogs...but, in fact we are not starting from that point. Dogs and cats are traditional pets and people are used to them and the "untraditional ones" have been written out of our codes. It is hard now to say that you will start adding to those...but, some cities are. The rule of law is important; if a city actually considers the issue and says, "Are we going to allow it or not?" and the city make the decision to not allow it...and then the people say that they will ignore the law, then that is a problem.

Derrek Johnson: "Don't you think, in city government (I know the Mayor doesn't because he like black & white) (*Mayor Dunn: "Thanks for speaking for me."*) Your welcome...You say it yourself...Anyway, aren't there some "gray areas" in government?

Frankly, we should not be concentrating so much energy on this since there are more worries like finances...aren't there some gray areas?" He made the point that the horse is not bothering the neighbors in any way...isn't there a point where government can say that it is really not worth our time?

David Church: Well, yes...but the other side of that is; if in fact all of that is true, why did the Council say; no you can't have small horses?

Raymond Brown: Another problem associated with this: Some time ago, Councilmember Abbott came before the City Council wanting to amend to code to allow pigeons. That went through the whole process and was approved. Will that decision now be endangered and will allowing pigeons be questioned?

David Church: He is not sure why the Council went one way or the other on miniature horses; some cities feel that a miniature horse is more like a dog than it is like "livestock"...but, if the process is gone through and a decision made to deny it; and the person doesn't care what eh Council says...that is a different issue. The question is how to respond to that...it becomes a public thing. If they had not come before the Council and it had never come up and there are no complaints...then he feels some leniency is understandable...but once they come in...it becomes a big issue to him...why else do we hold elections and vote for people, etc.?

Derrek Johnson: A survey has gone out and more people are in favor of it.

David Church: If you get three votes on the Council, then you can change it. That is the beautiful thing. But, ordinance enforcement is a tough issue. So, he is in violation...now what are we going to do?

Derrek Johnson: Doesn't the Planning Commission have the right to take this on if they want to address it?

(Mr. Church: "No.") We don't have to tell them...

David Church: "No. You can let your Planning Commission do as much as they want; but what the Planning Commission has the 'right' to do has nothing to do with animal ordinances or nuisance ordinances. They are land-use ordinances...planning and zoning...and animal, nuisance and police matters and things like that are technically an ultimate City Council kind of issue."

Raymond Brown: (Concern) If you have a violation and you do nothing, then there are really no ordinances you can enforce. Another Council...they could get upset about something like "pigeons" and go back and re-consider it and end up taking away a right that has been granted...and Nelson's pigeons don't even fly."

Derrek Johnson: You could go to any house and find a code violation.

David Church: Yes, and if you want to, that is alright...some cities do that; but it gets very aggressive. One of the things you will notice is that HOA's will do that...they get very aggressive in enforcement. There are many more complaints in cities about non-enforcement than there about enforcement. (Mayor Dunn agreed that the majority of the complaints that come through his office are regarding non-enforcement issues.)

Raymond Brown: (Question) We have a problem with home that are not maintained and turn into junk-yards. About two years ago, and ordinance was passed that required residents to have their front and side yards in...but about four years ago, it was asked if the Council could require that same thing for existing homes and they were told no because they are "grandfathered" in under the old code. Now the Planning Commission seems to have gotten the okay to require this of existing homes. What has changed?

David Church: It is the difference between having a zoning control and a nuisance ordinance. We zone out nuisances; but not every zoning control is for the purpose of nuisances. You have a separate right outside zoning to define and control nuisances...public safety and health kind of issues. People are grandfathered in on zoning. For example: A messy yard...that is not a zoning ordinance kind of thing...so the day you pass it, you can start to enforce it. You are not "zoning out" junk cars...you are saying junk cars create a nuisance...they are a hazard...they're rat infested, they attract vermin, they are bad for little kids to play in...so that is a whole different body of law...people can't be "grandfathered in" with their junk.

Raymond Brown: But, can we make them put in their front and side yards?

Raymond Brown: You can if you can justify it under the nuisance laws; which probably you can. The other thing you can do under the zoning ordinances is that you can say that the zoning ordinance requires everyone to have it in within so much time...that is not grandfathering anyone in...they have as much time as anyone else.

Raymond Brown: (To clarify) So, if I have been up here 20 years, and I have weeds in my front yard...not hazardous...just weeds...the City could now say that I have to put in a yard?

David Church: Depending on how you define "yard" and how much detail you have.

Raymond Brown: So I would have to put in a front and side yard, like all the new residents...within 18 months.

David Church: I do not know how that is defined.

Dayna Hughes: It is well defined in the ordinance...it does not define what you can put in.

David Church: As long as it is reasonable, you can do that and you can give them plenty of time. It doesn't matter how long a person has been here. You are not grandfathering in a use.

Dayna Hughes: (This is referring to another topic that will be brought up later in the meeting) In regards to what was said by Councilmember Johnson about the Planning Commission having the "right" or the "responsibility" or "in the interest of the City"...because the Planning Commission doesn't have a "constituency"; but we are to represent the City...

David Church: "No, you're not."

Dayna Hughes: That is what is says in the Handbook...

David Church: "I don't care...where does it say that? (Mrs. Hughes was referring to the Handbook for officials written by David Church) This keeps coming up and we keep going back and forth on this issue and she is tired of it. She felt that, with everyone here, it could be resolved. In the minutes of the May 22, 2008, Planning Commission Meeting...the Mayor did not feel that the Planning Commission should have looked into building heights...there was a big issue over building heights. Councilmember Roylance, who is the Planning Commission representative that comes to all the Commission's Meetings, reported that the City Council had

not officially asked the Planning Commission to review the building height code. (Mrs. Hughes read from the minutes) The minutes said that the City Attorney was consulted and that the code does imply that the Planning Commission can bring forward changes. She felt that what Mr. Church had told Councilmember Johnson earlier in the Meeting was the exact opposite of that.

David Church: No, I told the Mayor that if it is building heights, it is within the purview of the Planning Commission; but if it the number of dogs...it isn't. Land use control is the Planning Commission's purview; which means: subdivision ordinance, zoning map...uses of land.

Recorder: When one considers "permitted uses"...like the consideration of "household pets" and defining "household pets"...

David Church: A lot of people put those in their land-use ordinance...I am just saying that those should be over in the criminal code...the nuisance ordinance. You don't want to make those zoning issues for the reasons we talked about before...just like you would not want to put into your land-use ordinance...speed limits; those go in the traffic code. There are certain bodies of things that are just "crimes"...if you have too many dogs; it is a "crime".

Dayna Hughes: So why is the "chicken code" coming through the Planning Commission?

David Church: Because you wanted to make that a land-use ordinance; and you will have things in your land-use ordinance that say you can have animal rights in this section...they will overlap somewhat; but you will have something in your criminal code that says...

Shawn Eliot: Our criminal code section has the whole nuisance, rabies and licensing, etc. The actual land-use is what is permitted, the numbers the types, etc.

David Church: Your animal control ordinance is under your criminal code...dogs running at large, etc. If the Planning Commission want to "jump into any kind of land-use thing and the Planning Commission wants to do it on their own...feel free; make your recommendations. But, please don't think you have a constituency. You are not the Community Council. You are not there to protect the City from the City Council.

Julie Haskell: (ATV's) She asked that Mr. Church clarify the subject of "constitutional rights"...referring to the fact that the Council was advised that they could not be more restrictive than the State law in some things...like the age limit for an ATV operator.

David Church: There is not "constitutional right" The State Code says that a city can have an ordinance identical to the State law...and you cannot make it tougher. The Off-road Vehicle people have a big lobby and there are a huge number of people in the State that are in favor of ATV's. The State Legislature last year said that with a population of less than 7,500, street legal ATV's are legal on all of your roads; whether you want them or not. On the rest of your roads, you can make non-street legal ATV's legal if you want to...but you don't have to. You may not make it illegal to use ATV's on any private property...then the nuisance ordinance becomes involved.

Derrek Johnson: Since the State Code says 8 years old; we have to stay with 8 years old? (*David Church: yes.*)

David Church: There are sections in the State Code that says you may have an ordinance, but it has to be identical to the State law.

Nelson Abbott: (Regarding "extensions" on approvals for a development) He understood this that the code allows the Council to deny the extension based on substantial change in the code...we are fully within our rights to do that?

David Church: Yes. Everyone has ordinances similar to that. If you have changed the code and they have had their shot to develop...

Mayor Dunn: The code also states that if we do grant an extension, that it needs to be on the basis of the code they are vested under. (*Mr. Church: Yes.*) Questions:

1. (Directed to Shawn Eliot) Do you know what the differences would be between the old code and the new code, regarding Fairway Heights? How would that development change?

Shawn Eliot:

- Right now they could just do one-acre lots; the code states that you have to have 20 acres or more to fit into the cluster over-lay zone...they have 19.7 or something...assuming 20 acres is 20 acres. If they would be allowed to cluster, they would have to have an adjustment. Or they would need to have a bit more land.

- If they qualified for ½ acre lots, the Fitzgerald part of the development has 16 1/3 acre lots...it would lose 4 lots.

- The other portion (Ewell's): the issue would be the top of the hill...the ridge line. They would lose those lots (top of the hill) and gain one at the bottom of the hill if they did ½ acre lots. They have 8 lots now and they would drop to 5.

Mayor Dunn:

2. Could that be challenged as a "takings by restriction"?

David Church: Not if you give them time to record and that has lapsed...have they lapsed?

Recorder: They have Preliminary until May, 2009.

David Church: They probably came in early so they could plat if they are not granted the extension.

Sean Roylance: (Back to what the Planning Commission can and cannot do) The nuisance laws, in times when development is slow, could the Council authorize the Planning Commission to address this?

David Church: You can ask them to do what ever you want. There are certain things you must involve them in (Zoning Ordinances, Subdivision Ordinances, Zoning maps, General Plan) and anything else you want to delegate to them.

Derrek Johnson: How many Councilmember does it take to authorize this?

David Church: Three yes votes wins.

Dayna Hughes: We can also respond to a petition from a citizen.

Sean Roylance: Another question he has is about way the Council can make money and charging fees for boarding horses on city property.

David Church: There is nothing wrong with charging rent on your property.

Nelson Abbott: The concern had been whether the bond would allow it.

David Church: He does not think that matters as long as it is short-term and the ultimate purpose of the property is still going to be used...it's just a "holding period".

Raymond Brown: What should be done with people that have horses on the City property without paying and have a "homestead" attitude...they feel they will not pay until they are caught.

David Church: There is something in the State Code called an "adjister's" lien, which addresses feeding other people's livestock...a lien can be put on them, if you want to go through all this.

Raymond Brown: He is simply opposed to people "asking for forgiveness instead of asking for permission". Councilmember Brown asked if the City could back-charge for fees not collected.

David Church: You are just like any other land-owner and you have the right to control your property, and you can negotiate for the use...or you can give the use away, if you want.

Sean Roylance: In general, what kind s of restrictions do we have on being able to make money? We are re-doing the City's web site and we talked about having a business directory with ads on it...

David Church: You can theoretically do that; but you run a risk whenever you create a forum like that. You would want to avoid any censorship; what happens if you get an ad you don't like, that qualifies...you would have to accept it...you don't get to edit it out...so that can be risky. There are those that finance their web site with ads or make the ads part of the business license fees.

Raymond Brown: The Fire Dept. wants a fire engine and they had to come up with a matching grant... (perhaps 10%); are they allowed to have fund raisers on City property?

David Church: if you allow them, they can. It is very common for volunteer fire depts. to create a "foundation" or auxiliary that they raise funds for things outside the fire dept. If they want to create that, there is no problem. To do it right, they would have to have a separate bank account that they could have some control of. It would be considered "off books" and there would be separate kinds of accounting; but it is fairly common. It may or may not be worth the effort.

Shawn Eliot: (Public Hearings) It required that for subdivisions, a public hearing should be done at the Planning Commission level; but the City Council can still hold a public hearing?

David Church: You can hold as many public hearings as you want; in the code or out of the code.

Shawn Eliot: How is that different than what we talked about regarding the ATV's? What code can you add to and what code can you not add to?

David Church: There is a specific section in the State law on ATV's that says the City cannot alter the code. The code will say...for example, there is a section that deals with tobacco section that says that cities may not regulate tobacco sales any greater than the State regulates them. Fireworks: there is a State code that says that cities may no longer pass ordinances to regulate the sale of fireworks...these are the laws. There are a bunch of those types of laws.

**ELK RIDGE
CITY COUNCIL MEETING
January 27, 2009**

**TIME & PLACE
OF MEETING**

This Regularly Scheduled Meeting of the Elk Ridge City Council, was scheduled for **Tuesday, January 13, 2009, at 7:00 PM**; this was preceded by a **City Council Work Session at 5:00 PM**. The meetings were held at the Elk Ridge City Hall, 80 East Park Drive, Elk Ridge, Utah.

Notice of the time, place and Agenda of these Meetings were provided to the Payson Chronicle, 145 E Utah Ave, Payson, UT, and to the members of the Governing Body, on January 23, 2009; and an Amended Agenda on 1-25-09.

7:10 PM -

CITY COUNCIL MEETING – REGULAR SESSION AGENDA ITEMS

ROLL

Mayor: Dennis A. Dunn; *City Council*: Nelson Abbott, Raymond Brown, Julie Haskell & Sean Roylance & Derrek Johnson; *City Planner*: Shawn Eliot; *Planning Commission Vice-Chair*: Dayna Hughes; *Building Official*: Corbett Stephens; *Public*: David & Brian Ewell, Lee Pope, Rodger Hardy; and the *City Recorder*: Janice H. Davis

**OPENING REMARKS
& PLEDGE OF
ALLEGIANCE**

An invocation was offered by Julie Haskell and Raymond Brown led those present in the Pledge of Allegiance, for those willing to participate.

**AGENDA TIME
FRAME**

MOTION WAS MADE BY SEAN ROYLANCE AND SECONDED BY JULIE HASKELL TO APPROVE THE AGENDA TIME FRAME; ADJUSTING THE START TIME TO 7:10 PM
VOTE: YES (5) NO (0)

PUBLIC FORUM

No Public Comments.

FAIRWAY HEIGHTS,
PLAT C –
EXTENSION REQUEST

Brian Ewell: He submitted a written request for an extension (included in Council packets):

"Elk Ridge City Council Members:

"The Fairway Heights Plat C & D was pre-approved by you on April 9, 2008. Since that time the United States economy has Entered into a recession causing an undesirable environment to develop and sell lots for the city and the developer.

As developers of the Fairway Heights plat, we request an extension of one year from the original final approval date resulting in a deadline of April 9, 2010.

The extension request is for the following reasons:

1. Current economy has decreased the interest of potential buyers
2. New lots sitting empty is less desirable than pristine raw land
3. Decreased land values have caused an unsuitable economic environment to develop land
4. Empty building lots are not aesthetically pleasing to the residents, city or developer

We feel it would be in the best interest of Elk Ridge City and its residents to consider and approve this extension.

Regards,

(Names listed: RL Yergensen, Brian Ewell, David Ewell, and Rob Fitzgerald & Lari Fitzgerald)

There were, however, no signatures on the request.

Mr. Ewell introduced his brother, David Ewell to address the Council first:

David Ewell: Though Brian Ewell has been the "voice" during the development process since he (David) lives much further north. We have been working with the City and the Planning Commission for the past approximately three years. They feel the process has had good "synergy" with Shawn Eliot assisting them to create a development that would be suitable for the City, not only meeting code but also the intent of that code. Through the process, they have reduced the number of lots from 13 lots down to 8 lots. They, as developers feel this subdivision will be a benefit to the City in that it will not only connect two major portions of the City as Salem Hills Drive is paved; but they also feel they are "treading lightly" in the CE-1 Zone, according to the Code. They also feel they are benefiting the City by deeding some property that is not necessarily a requirement, to assist in the wild life corridor and trails system. Because of these benefits and the current state of the economy, they feel this request is appropriate, to give them the opportunity to then put in a viable development that would benefit both parties (as stated in the letter)."

Brian Ewell: He appreciates the time to address the Council at this time. He feels there have been some good discussions and good meetings. He has contemplated the best way to address the Council and he has thought back on the events, as they have occurred during this development process. As a result of these thought and so he can better portray his thought; he wrote his thoughts down...which he proceeded to read:

"We feel we have been treated unfairly throughout our approval process. It has been driven by certain individuals' selfish wants and desires. It all started three years ago, when we first approached the Planning Commission with a development plan. Since then, I have heard comments from City representatives such as, and I quote, 'I don't want a house behind me' or, 'That's not going to work, I don't want a house staring down in my back yard' or, 'A group of us residents have talked; and we don't want houses on that hill. We are prepared to pool our money together and if you go to the City for approval on your development, we will sue and tie it up on litigation for years and cost you a lot of money'. I have heard all of these comments more than once. We feel this is very out-of-line for a City representative to say.

Elk Haven is very similar to our development; in fact Plat C is on a ridge line; it is long and very narrow; and it was granted an extension. When we first approached the Planning Commission three years ago about developing, we did not feel they gave us much direction...we were tabled many times, we heard a lot that they didn't like our development...we did not feel we were given much direction on what they would like. As a result and out of some frustration, I approached Shawn and asked him, 'What direction do you think we should take?' We wanted to know what would make the City happy and what would make the residents happy. As many of you know...Dayna knows, I'm sure...she remembers all the residents that would come and express their feelings...and we wanted to do something that would be a little more pleasing to them. So, we went back and I discussed things with Shawn and we came up with our current plan; in fact Shawn basically designed our current plan...he penciled it in...and he was the one that came up with it and said, 'Brian, this is something that I think will work'. So, as you can see, the City Planner has been a big part in the design of our development.

After that, we had it drawn up again...I actually went to all the neighbors in the area; I first went to Derrek's house and I presented it to him...I showed him the old plans and then this new plan that we've got...and Derrek was very much more in favor of this one. He expressed that he liked it much more. All of the neighbors were thrilled that I was able to meet with...there wasn't a one of them that told me they did not like it.

At the request of the City, we were asked to work with and include the Peterson's on the development. As you know, we set up many meetings with them to try and get them on board. Even though it cost us a lot of money to have new plans drawn up to include the Peterson's, we felt assured that we were doing a good thing for the City. One day they would be on board and, as you know, the next day they wouldn't be on board with us...it was something that continued to delay us.

We feel that we did our due-diligence and at times, went the extra mile to do as the City requested of us. We have been told by more than one City official that we have been held to a higher standard than other developers have. A Planning Commission member told me, 'In all the years I have been on the Planning Commission, I have never seen a development treated more poorly'. We feel that this is a result of selfish individuals that want to push their own agenda. Even though we are developers, we have families that are important to us. Just like the rest of you, we are trying to support them and get through this terrible recession.

Just in closing, hopefully you have been able to get a glimpse of the work that we have done and what we have been through to make this a successful project for not only us, but the City. We have been reasonable and have followed your guidance. We are not asking for any special treatment, just an extension to allow us to weather this recession the Country and the world are in.

So, with that, on behalf of the Fitzgerald Family, the RL Yergensen Family, Dave's family and mine; we ask that you please grant us this extension."

(Brian Ewell asked that the Planner also address the Council.)

Shawn Eliot: The Planner said that he had gone over the comparison of changes that would be applied with the new code (HR-1 Code) for their development. Taking the ridgeline off...obviously, that is a bit issue with the hilltop...the Ewell's portion of the subdivision is pretty close to fitting what the new code is, were it applied, if the ridgeline was not there...one-acre lots; there is the one lot we went back and forth on, on the west side. It is the Fitzgerald's 1/2 with the 1/3-acre lots that hits hard against the new code.

One clarification with Elk Haven, Plat C: It is on a ridgeline, but their extension was approved before the

"Ridgeline ordinance" was completed. That was not even part of the discussion when the extension for Elk Haven was approved. Plat E (bottom area) has never had their Preliminary ...we are working with them currently; but one of the things those developers were told was that they need to be looking at the new code. The new HR-1 Code would preclude the lots on the hilltop of Ewell's development, if the ridgeline is considered. So the issue is, do you agree that the ridgeline should be there? (because we did go back and forth a great deal on the ridgeline ordinance). Other than that, the one-acre lots on the hill are pretty close to adhering to the new code, other than that one lot, which would have too steep a slope for the building envelope. Under the new code, with the ridgeline, they would go from 8 lots to 5 lots...Mr. Yergensen's original proposal included 16 lots, if he recall correctly...with a road that started at Mr. Eliot's house and went up from there; meaning the whole ravine was filled in to the point that it was straight up to get to there. So, with the new code (with the ridgeline in force) and an exception to the 20-acre requirement, the Fitzgerald portion would lose about 4 lots and the Ewell's portion would lose 3 lots. The 13 lots that they started with; they did argue that it (the plan) did not fit that current code; that is why it went to what is there now (8 lots).

So, when he worked with the Ewell's on this plan, we were working under the code that was current at the time...Mr. Yergensen's first proposal was way off.

Brian Ewell: We had other plans that met the code; for example, we had a road that was going on the east side of the hill, and that was a big issue for residents...and he agreed...it had a road that was right in the backs of their yards, even though we were meeting code, it was redrawn again to accommodate the City and the residents. This has delayed us; in reality, we could have been done with our development close to a couple of years ago.

Raymond Brown: (Directed to the Ewell's) How many of the neighbors were missed?

Brian Ewell: I missed one...I think it was Kelly Liddiard.

Derrek Johnson: (Sought to clarify) "You mentioned we were all happy with the plan; none of us were happy with home being built up there. Since I was the target of the first 1/3 of your talk...I am a resident first; and I have every right to disapprove of this. I declared my "conflict of interest"...so; I don't appreciate that, to be frank with you. Secondly, you came to us with this plan...we liked it because we felt like we had our backs up against the wall. So, we liked that better than what had been proposed; none of us were happy that, period...none of us. That is why we got together as residents and were talking about litigation...and I have every right to do that, with the citizens. So, just to clarify...the citizens weren't happy with that...the residents weren't...it looked better; but we felt we had our back up against the wall."

Brian Ewell: (Clarifying) The residents were happier with the current plan than they were with the old plan.

Raymond Brown: (Questions) Were there were some things that needed to be done that have not been done...and why? (*He asked the Recorder to explain.*)

Recorder: There were many delays; Fitzgerald's do not have water rights.

Brian Ewell: "Right; but we are in two different phases, so we are prepared to move on without the Fitzgerald's. We are ready.

Raymond Brown: "So, you have done everything that you can do to get ready...

Brian Ewell: "Absolutely. We have contacted utilities: phone, power...we bought our water shares...the day they were available.

Raymond Brown: The Fitzgerald's didn't; but they are not connected to you?

Brian Ewell: They don't *need* to be.

Derrek Johnson: "Was the Planning Commission and City Council serious when they passed this new code? When they went to all this work and diligence...were they serious in passing that? Of was it just a game?"

Mayor Dunn: Asked what was meant.

Derrek Johnson: They were serious; that is why they passed that code with the new hillside development.

So, if we allow this to go on...as it states clearly in our code, if the code has been dramatically changed, then we shouldn't pass it, under that code.

Sean Roylance: (Seeking to perhaps further clarify what Councilmember is referring to) "In our code, where it talks about extensions, it says, 'The approval may be extended or reaffirmed by the City Council, for a period not to exceed one year, following receipt of a written request...' (which we have) 'submitted in accordance with the rules of operation of the City Council *and* (emphasis added) upon finding that the conditions applicable to the project and the vicinity are substantially the same as at the time of initial approval.'

I understand your arguments, your point of view as far as saying that the City is partly responsible for the delay and so now you are wanting us to extend because of that...to be honest, I think you have a bit of a point there. But as far as the... 'approval *may* (emphasis added) be extended'...if we are looking at should we or should we not? However, there is this caveat that says, we may extend it upon finding that conditions are substantial the same as at the time of the initial approval. That is where I don't know that I can find that they're the same; whether we want them to be the same or not, I don't know that we can find that...and it is very clear what the outcome should be in that case."

Brian Ewell: "I and many others interpret that very differently. You are interpreting that as the code conditions changing; I interpret that as our conditions of our development...if we were to come back to you now and had changed many things...say now we had 14 lots...that is what I consider 'conditions of our project'..."

Sean Roylance: "Actually, if you were going to change like that, you would have to go back to get re-approval...so, that is something completely different. We were concerned about that, so we actually talked to our lawyer to say, 'okay, is this something that is substantially different?' His response was pretty straight forward that, 'Yes, it is'.

Brian Ewell: "His response was that you may have reason not to extend...as I recall reading it."

Sean Roylance: "I felt it was pretty straight forward, but maybe it wasn't."

Mayor Dunn: "The first part of it said if an extension is granted, it has to be under the conditions that it exists in now...then he went on to say that change in the code can be considered one of those 'substantial changes'. (Brian and I talked about this back in December.)

Sean Roylance: "I guess if that can be considered a 'substantial change', then I don't see how I can find that the conditions aren't substantially different. We have to find that they are the same, and then if we find that...then we can consider whether or not to do an extension. As for point number 1, I can't find that."

Derrek Johnson: "This is the development; keep in mind...that the Planning Commission re-did all the hillside development...because people were not happy with homes on top of that hill."

Sean Roylance: "I would say it is a lot more than just theirs."

Shawn Eliot: "Yes, it was RL's 'rock wall'..."

Sean Roylance: "The 'rock wall' and Plats a through E..." (referring to Elk Haven Development)

Shawn Eliot: The Planner pointed out that the first time this plan came before the City...there was a meeting in the Council room to review the plan and it was said that the plan was not adhering to the code...that was when RL had 16 lots...at that time, they were told to go back and fix it and that the Planner (then on the Planning Commission) would help them. What RL chose to do was to come to the Planning Commission with the exact same plan...that was when Mr. Yergensen got upset. It was not until the developers and the City started working to bring it closer to the code that things started to work out. He felt that from that time forward, the Planning Commission did pretty good with the process. It is a hard thing; particularly when their development comes right after the issues with the 'rock wall'...at that point, the Planning Commission did not feel the code met the needs of the Community...but, they were given the guidance to pass it through. But the Planning Commission initiated changing the code, so certain issues would be taken care of for future development. It was a lengthy process, but it was also a "two-way street". "It wasn't just the City or the Planning Commission that made it a lengthy process."

Brian Ewell: "I'm not saying it was...but, we would come in with a plan that we felt we were 'treading lightly' and that we were meeting the intent of the code, and because we thought we were meeting the intent of the code didn't mean that you guys felt that we were meeting the intent of the code. That is what we and the City kept getting held up on, was, 'what does it mean...the intent? As far as everything else, we were meeting code...it was just that one little word...the 'intent'...what was the 'intent'? That is why we felt that we kept getting tabled and required to re-draw it."

Sean Roylance: (Referring to Mr. Eliot's point) "It was roughly a year and ½ ago that we still had a whole ton of lots that were not even close; so this two or three year window...the first ½ of it, I wouldn't say it was the Planning Commission or the City Council. The first year and 1/2 was not even in the right ballpark."

Shawn Eliot: He admitted that they did try to use the 'intent' to try to clarify the code in places; but there were other issues...like the road in the backyards, there was another part of the code that said you cannot have roads with dual-lot frontage; which means having roads on both sides of it. It also said that the Planning Commission is to use geographic calculations; which, in this case was true...but there was another way to put the road up...and the developers did re-draw this...but it was better and it made it so that those neighbors did not have a road in their backyards...which is what the code was trying to prevent. Everyone had to work through all this.

Nelson Abbott: "Economy aside, is there any reason you would not be able to go forward now?"

Brian Ewell: "Absolutely not."

Nelson Abbott: "So, if we denied you the extension, you would 'go get your tools and go to work'...so to speak? Am I understanding that?"

Brian Ewell: "That is something that we will have to analyze and figure if that is the best way for us...but, yes."

Nelson Abbott: "I don't want to feel like we have put you in a position where we have 'short-changed' you; but at the same point in time, if you have the tools, the means and the ability to make it happen...then whether you do it now or in a year, I honestly don't think it's going to make any difference...in terms of marketability or anything else."

Brian Ewell: He felt that it does make a difference; it would give them another year to see what the economy does. They are "ready" from the aspect that they have met requirements, purchased water rights, they have done the required work with the utility companies; but, they just do not feel it is feasible to break ground right now and invest any more money into a development that may have to wait some time to sell any lots; they do not want to place either themselves or the City in a situation where there are lots sitting, not being fully developed or sold.

City recorder: She reviewed the time line, if an extension was not granted and the developers had to stay within the approval times allotted for their current status:

- Preliminary: good until May 9, 2009
- Final would be granted and would be good until October 9, 2009 (Bonding and recording the plat must be done within that 6 months)
- After that, they would have until the following October, 2010

Ground would not have to be broken now.

Brian Ewell: That is a good point and they have thought through these time lines, as well; but the extra time would allow everyone to weather this economic "storm" we are all in.

City Recorder: An example of what the Ewell's are talking about is Elk Ridge Meadows, Phase 2; a bank has taken over most of their lots.

Brian Ewell: "That is the last thing we want to happen."

Sean Roylance: (Also seeking to clarify timelines) It was about a year and ½ ago when the Planning Commission started to see a serious plan that was "in the right ballpark"; and was last April when it got Preliminary approval...really we are only talking about a 9-month window from when we first saw a serious

plan until the approval was granted. That is not three years.

Brian Ewell: "You keep referring to a 'serious plan'...all along we felt that what we had was a 'serious plan'. Before we could even approach the Planning Commission, we had to give them a 'serious plan'. We had to meet with the City Planner, he had to approve us to go to the Planning Commission...so, in essence, we were told that what we had was a 'serious plan', as you say. Because of what you would tell us, we felt it was a 'serious plan'."

Sean Roylance: "The bottom line is...I was on the Planning Commission a year and ½ ago and at that point, we had a whole list of things wrong with it; it wasn't even close. That was consistent until we got approximately to the plan we have now...and I don't remember there ever being a deviation on that from the Planning Commission's stand-point. Then, once we saw one that even came close to addressing a whole 'laundry list' of issues, then it took about 9 months or even less than 9 months (to get Preliminary). I don't know...the whole argument that the City is at fault; I don't know if we really were...so much. With that said, I think that the economic argument...everyone knows where we're at economically...and so the question would be, does it warrant ignoring the code?" They felt like it was a joint effort to come up with a good plan.

He referenced how difficult it had been in trying to deal with the Peterson's; they were very unpredictable and "on again, off again". Even though they were difficult to deal with, they knew that the City preferred having them as part of the development, if possible.

Lee Pope: "Given that the consensus seems to be that they are very close to meeting code and whatever requirements you have had or have for them now...unless the Council just doesn't want development...what possible reason would there be, or sense would there be in not extending their plan?"

Sean Roylance: "The reason is because our code clearly states that we can grant them an extension upon our finding that conditions applicable to the project are substantially the same; and so the problem is that the code has completely changed, and so as a result, conditions are not substantially the same...and so, in order for us to grant this extension (at least from my view) I would basically have to say...I would have to turn a 'blind eye' to the fact that they are not substantially the same...which, according to our code, especially when it comes to development, that is not something that you typically want to do...is to start just ignoring pieces of the code."

Derrek Johnson: "It was stated in our last meeting, that if we are going to crack down on development...that it is going to be 'by the code'."

Lee Pope: (Question) Mr. Pope commented that restrictions have continually increased on development, He mentioned a meeting on another development he was involved with wherein it was discussed whether it was possible to get 100 lots (one per acre) on 100 acres...with the new code. They had looked at the new code and could not see how a person could possibly do that. The restrictions were going to restrict them to maybe a 1/3 of the lots they thought they could get, which would require perhaps \$400,000 per lot to develop...this would potentially "kill" any development in the area south of the City. When he brought this up to the Planning Commission and to the Council, he asked if they believed, with the new code, that one could still get 100 building lots in that 100 acres? He said that the "definite answer" was "yes".

Referring to restrictions, they also brought up that they had carefully looked through all the other codes of surrounding communities...and collectively, the development codes in Elk Ridge are more difficult than any other community they found, which they feel is very prohibitive to development. The consensus was that they want really "harsh" restrictions, but that developers can come back to the City and ask for a variance or an allowance or a "favor"...and that the City will listen; but it was felt that it was better to have a strict code and then make allowances. He went on to say, "Now I am hearing there is nothing like that."

Sean Roylance: He disagreed that they never said a "variance".

Nelson Abbott: (To clarify) They (Ewell's) have 19.77 acres? Under our new code, we would have to grant him some leeway there...we *could* grant some leeway..." He felt that what was being said was the fact that conditions have changed substantially and based on our legal counsel, the Council has reason to deny this request.

Sean Roylance: To answer his (Mr. Pope's) question: "Once a code is in place, we can't go in to make it tighter after somebody has come to propose a development. We can come in and make it 'loser' through a process. That's the point that was made; that is different than a 'variance'...it's different from starting to say we're going to ignore the code. There is a process, though, for modifying it and making so that will work."

Lee Pope: "You would rather have a hillside scarred for a year or more in order for him to comply right now; than to come up with some way to give him time that he needs to see what this economy is going to do?"

Sean Roylance: "No one knows how long we are talking...it could be 10 years...we could give him a one year extension and still have it scarred for nine years...so, I am not going to speculate on the future. But I am saying that if you start just ignoring pieces of the code in development, then that is a "slippery slope". In fact, we just talked about that with our lawyer before we came in here and he distinguished...he said that there is development and there is the other side."

Mr. Ewell: "The reason we are here is to remind you of the things that we have tried to do to work with the City Council and the Planning Commission...and in turn, see if you would be willing to work with us."

Raymond Brown: He also recalls, in talking to the City attorney, that he said that the City needs to find some common ground, even if we would prefer another type of development (referring to Horizon View Farms); otherwise, we lessen our tax base...he felt that should also be taken into consideration as well.

Derrek Johnson: He felt the City recorder brought up a good point in that the Ewell's still have over a year and ½ to develop under their current approvals.

Raymond Brown: He realizes that, but the attorney's comments were influenced by the proposed homes that the Council is not too in favor of...that sometimes we have to modify a bit; otherwise we could be putting ourselves in a bind. He further made the point that "some of our developers don't really care...they don't live here...they don't care, so they just do whatever...if you don't like it, tough!"

It seems like they have been working closer to what we want (referring to the Ewell's). I look at 13 homes to 8 and I don't know that the new code taking them down to 5 is fair."

Brian Ewell: "We have nine acres... 8 lots is less than one lot per acre."

Raymond Brown: He had also talked about the Fitzgerald's...he asked that if they cannot go on, can the Ewell's go on? Do they have to stay tied to this portion of the development, if they continually cause delays? Whether it is RL Yergensen or the Fitzgerald's, "if you see a way to go forward, can you go forward without them?"

Brian Ewell: "Yes we can."

Raymond Brown: "That is what was behind my questions about the water rights and filing for Preliminaries and so forth...if you are serious about this, and this extension gets you moving, and the other folks just don't want to move...then can you move without them?"

Brian Ewell: Councilmember Abbott brought up a good point regarding the number of lots..."On our property, we have nine acres and we are only asking for 8 lots...that is basically more than an acre per lot.

Another thing is that the City has in their plans, a trails system and a corridor that goes right down the ravine. If we were to put a lot up against the Peterson's property; that would eliminate that trail and it would eliminate access to that park that we have dedicated to the City as part of our plan."

They feel that they have been reasonable...so if they could move forward now, why not just grant them the extension for a year? Why put them in the uncertain position of scaring the land up and perhaps having lots sitting there?

Sean Roylance: Granting this extension would mean that any other developer could come back in and say that the code was substantially changed, but there was an extension granted anyway...so as a result, they could claim that the Council should grant an extension for them, as well.

Brian Ewell: "In our last meeting in December, you (referring to Councilmember Roylance) brought that exact point up; and you said will we be held...since we extended...to other developers? And it was unanimously said, 'no. (Councilmember Roylance questioned if the Council said, no.)

Shawn Eliot: He felt that it was Elk Haven Development that was being discussed.

Raymond Brown: "We have always said that what we do, like for this one...we don't have to do for the next one...we have always said that."

Sean Roylance: "Certainly we don't have to, but will it be brought up every single time? Absolutely."

Raymond Brown: He maintained that an action taken regarding one development does not set precedence for another development.

Sean Roylance: "There's precedence and there is actually following precedence...it definitely sets a precedence, it doesn't mean you have to follow it. So, no it is not like we are actually changing the actual code, but it does set precedence, and you have to explain that every time in the future."

Raymond Brown: He pointed out that the code does state that we "may" or we "may not"...

Sean Roylance: He continued that the code states that we "may upon finding...", and so you don't even get to the "may"...you have to "find" first that the code is the same. Once you get to the "finding", then you can do the "may or the "may not".

Mr. Ewell: The additions to the new code are tighter, so there may not have as many issues.

Nelson Abbott: "I have one final thing to say and that is, be careful what you ask for, because you might just get it...one way or the other. We don't have a crystal ball...none of us do...none of us know...we have to make a decision based on the information and the facts we have presented for this one time. With this in mind, I think we need to make a decision...one way or the other."

Brian Ewell: "Nelson, why would you not grant us an extension?"

Nelson Abbott: "I will be very honest with you...I have wrestled with this since that time you came in December. I did not have any peace with this issue until I got that email from our attorney. I did not feel like I had the expertise or the knowledge to make a decision on something like that without input from somebody who does that full time. Since that time I have looked at it...and I appreciate where you are coming from...one of the thoughts I've had is that you are a developer; that's part of the risk vs. reward...that is part of what you do. You have an opportunity to buy the ground for this much...you hope to develop it and make some money. That is why you did it...that's your business...that's your risk that you took to do this. Everybody takes risks...different types of risks on different types of things. I look at it and I feel like, honestly, if you meet the code now...you've got a year and 1/2...we did give a one month extension to allow for our tires spinning. I don't feel like we are in a position where we should have to give you an extension, when you can meet those requirements."

Brian Ewell: "You're right, you don't have to...but with the economy...like we have talked about...it is not feasible."

Nelson Abbott: He pointed out that he realizes that the risk in not granting the extension...he would have to look at a road with no houses on it, if the lots do not sell...and he has had a hard time with that. The idea of a "road to nowhere...which is what it will be until there are houses up there...he does not like that idea; but the code is fairly black and white to him and he just does not see the other side.

Brian Ewell: The attorney's comments were that the Council would have good reason to deny the request, but also he was specific in his email that the Council could grant the extension for a year. That is why he does not understand why it is so "cut and clear" that an extension cannot be granted.

Nelson Abbott: "That is part of it; but Derrek (Councilmember Johnson) brought up the other part...we have a Planning Commission...they re-wrote the code. Why did they re-write the code in the CE-1 Zone? Why did they do that...because we asked them to? Why did we ask them to? Because we felt it needed to be done."

Councilmember Abbott felt that the Council cannot simply turn a blind eye to that fact and then grant an extension, which would allow the process to be circumvented. He was not comfortable with the message the Council would be sending.

Brian Ewell: "I am not sure you are sending any sort of message..." unless it would be that the Council understands what the developers are saying and that the economy is not suitable for development at this time. (Mayor Dunn asked if Councilmember Haskell had any comments.)

Julie Haskell: "I'm stuck...because I do sympathize; but the code has been totally re-written."

Raymond Brown: "I have said what I needed to say. I know that we have the right to approve or not approve and in this particular economic environment, I feel like what Dave (Davis Church) told us about the other folks (referring to Horizon View Farms); I don't like the idea of having town houses where you can reach out and touch both sides; but for our economic base and for the things that are going on...I don't think we can just shut out developers." He was not sure if this would "shut them out: or not because they have time to complete their approvals without an extension. He does feel that the Council should be working with them. He knows the Council has the right to deny the request; but he also knows they have the right to approve it.

Mayor Dunn: We have been working with them. He expressed that he also has some of the same concerns as expressed by Mr. Ewell. He has talked to the City attorney regarding the "lines of ethics and if they have been crossed...and if so, what should be done. He is concerned about the some of the actions of this Council, privately and publically. He did learn something: things said in private...holding a civic position...can be treated expressly in courts. You have to be very careful what you say.

(Referring to the Ewell's) "I think you have done a very good job with bringing things back and working with the Planning Commission...and you have spent an enormous amount of time...from concept up through to the plans you have now...it has taken a lot of work. I would hate to see all that work just be discarded." The Mayor gave direction that if an extension were not granted would be to move forward as best they can to look at the time line. An extension can only be given under the conditions in effect when the plat was submitted...that was part of what the attorney said. When a submittal is made by a developer, and there is "vesting"...it makes it difficult when there are code changes taking place that could affect the development. He feels that the Ewell's have shown "every intent" in integrity and honesty to do the best job you can. I think that is commendable."

"I think that our Planning Commission and our City Council, in addressing some of the issues with growth in that type of zoning, which created a new code...is also commendable, because it has shut some doors on some issues that we saw as a problem. It used to be that all you needed was an excavation permit in the most critical parts of town and you could cut it up..." The Mayor pointed out that this is no longer possible.

The Mayor felt that the Planner exercised wisdom separating the plats, in case one or the other of the parties were to slow down the process by indecision. When Mr. Peterson was involved, though he is a wonderful man, his desires were not really with the proposed development and there had been some offense in the past.

"In fairness, I do not see a problem with granting the extension." He feels the Ewells have worked hard and he also feels that they have "suffered some injustices" along the way. Usually, in development, things do not always go smoothly...things happen, things are overlooked...we want to make sure the outcome is good.

Part of the law says we can grant the extension; part of the law says we don't have to. The Mayor feels the City would benefit from someone who has shown the integrity that the Ewells have.

Derrek Johnson: Councilmember Johnson felt as if he was being thought of as the "fall guy" in the discussion that had taken place. He expressed that, "Three years ago you started this project. I have been on the Council for a year...so for two years I was a resident. I do not think there is a boundary crowed on ethics or anything like that...I just want to make that perfectly clear for the record. I said my piece, that I had a conflict of interest. I was a resident for two years before."

Brian Ewell: "I want to make it clear...on the record...that Derrek Johnson, as a City Councilmember...after he had been elected...it was the following January, so he was in office...called me on my cell phone and said, and I will read it again, 'we are prepared to pool our money together and if you go to the City for approval on your development, we will sue you and tie it up in litigation for years that will cost you a lot of money.'"

Derek Johnson: "I said litigation...but I never said 'the City'...but I did say litigation as residents and we did get together. And that is my right as a resident. If you don't like it, I make no apologies...none."

Brian Ewell: "But, as a City representative..."

Derrek Johnson: "I made my disclosure...did I not, Jan (referring to the City recorder)? (He did disclose his conflict of interest on this matter.)"

Sean Roylance: "As a City representative, we are residents in a City; and we are supposed to represent the people that we live with. He may represent a very small minority, but he still represents them. To criticize him for having an opinion...that is why we are elected...is to have opinions."

Brian Ewell: "What kind of City representative threatens a developer?"

Derrek Johnson: "I didn't threaten... that was collectively as our residents."

Mayor Dunn: (Called the meeting to order with his gavel) "Actually, it was a threat...it could be taken as a threat and that is part of the discussion I had with Dave (David Church) a year ago. I don't want to dwell on that point...all I am saying is, as Councilmembers...as anybody working with the City...you've got to be careful of what you say, because you do represent the City and if, for instance, this makes it into the newspaper...and the term is used...'a member of the City Council threatened'...then we are all in that boat. I do not want to be in that boat. And I don't think that some of these other..."

Derrek Johnson: "Then, if he puts it in; then he needs to make sure he puts the whole discussion in..."

Mayor Dunn: "He will make sure the person that made the comments gets the credit for those comments."

Raymond Brown: "Being a public official for many years and having to go before cameras and newspapers, they aren't going to put the whole story in..."

Derrek Johnson: "That's fine, but I'm not going to back down as a resident."

Mayor Dunn: "You shouldn't...you being a resident is fine...but we have to be careful." He pointed out that City officials can be quoted when they least expect it...even from a casual comment made to a resident. Things can be taken out of context.

Sean Roylance: "I agree that we need to watch what we say...with that said, I don't appreciate that this has been 'harped on' every single time these guys have come in...because this has been addressed...it was addressed a year ago and we don't need to be continuing to talk about it. But, yes, I think we have definitely learned a lesson."

Mayor Dunn: "I think we have and hopefully the lesson can be applied to what we do." He then called for a vote on this topic.

Brian Ewell: "I just want to say one last thing...that is, we don't think that we should have been treated this way. By a ...it was a flat out threat to instill fear in us to get us to stop our development...that was the sole purpose. With that said, we have contemplated and have talked about approaching the Attorney General's Office and reporting this to the Attorney General's Office, You laugh about it but this is a serious issue..."

Derrek Johnson: "This is ridiculous."

Brian Ewell: "It is ridiculous that you said that."

Mayor Dunn: "And it is a serious issue..."

Brian Ewell: "We shouldn't have to put up with threats from a City Council Member because he doesn't want a house built behind his house."

Mayor Dunn: In fairness to Derrek (Councilmember Johnson), he stated he said that as a resident...please know that the rest of us don't share those same anxious desires...and he can say certain things...but in fairness to Derrek, he didn't represent me and I don't think he represented other people on this Council...so he's in that boat with a single oar..."

Derrek Johnson: "...And you comment is not entirely correct..."

Brian Ewell: "Correct me then."

Derrek Johnson: "I just told you, I didn't say anything about the City Council...I said, 'we will do litigation and you knew we had met as residents..."

Brian Ewell: "Yes, you would do litigation...as a City Council..."

Derrek Johnson: "But, I did not say...if you go to the City Council..."

Brian Ewell: "Yes, if we proceed with our development..."

Mayor Dunn: "Let's move on...that is a sensitive argument."

Shawn Eliot: "One thing to add...I will say that I was sort of shocked...watching this whole development of this project...and in the end, I think all of you voted yes for it for Preliminary..."

Sean Roylance: "Actually, I didn't...because I didn't feel that it met a particular requirement..."

Shawn Eliot: "But, Derrek voted yes...so that is quite shocking to me after everything we went through."

Again, Mayor Dunn called for a motion...

MOTION WAS MADE BY RAYMOND BROWN THAT THE CITY COUNCIL APPROVE THE REQUEST FOR A ONE YEAR EXTENSION ON THE PRELIMINARY APPROVAL FOR THE FAIRWAY HEIGHTS, PLAT C; FOR THE EWELL'S SPECIFICALLY

Discussion:

Sean Roylance: He questioned if that is correct, since the request had other names listed.

(It was not signed by anyone...just the Ewell's present themselves.)

Raymond Brown: "This is only for you guys...right?"

Brian Ewell: "Yes, they apparently don't care about the extension, or they would probably be here."

Shawn Eliot: "You can deny one and approve the other."

Raymond Brown: Councilmember Brown decided to re-word his motion:

Brian Ewell: Their plat was referred to as Phase 2.

Shawn Eliot: The concern was that one would not pass without the other; but the recommendation was for Plats C & D. The letter said Plats C & D.

(This was checked on at this time.)

Nelson Abbott: "If we grant them a year extension, does that mean they will take a year longer to move the dirt and put the roads in; from start to finish...or does that mean that you will hold off and not do anything else for an additional year?"

Brian Ewell: "Yes."

City Recorder: asked: Do RL Yergensen and Rob Lari Fitzgerald think that because of this request, that they are also included?

Raymond Brown: "Not if the motion doesn't say that..."

Brian Ewell: "Here is the thing...I tried to call and contact them and invite them to the meetings...and I don't know what else I can do...I explained to them that they need to show support for this if they want it to be extended."

Raymond Brown: Their names are on the request...but no signatures at all are on it.

(There was not original with signatures.)

Shawn Eliot: "The Plat says C & D at the bottom and on the map, it says Phases 1 & 2...so, it should have been C & D...so if you want to say Phase 2 is the hillside...Ewell's..."

(Further discussion and review of the map)

MOTION WAS MADE BY RAYMOND BROWN AND SECONDED BY JULIE HASKELL TO APPROVE THE REQUESTED ONE YEAR EXTENSION FOR THE FAIRWAY HEIGHTS SUBDIVISION, PLAT D; PHASE RWO (2); SPECIFICALLY THE BRIAN EWELL AND DAVID EWELL PROJECT; FROM APRIL 9, 2009 TO APRIL 9, 2010

VOTE (POLLED): DERREK JOHNSON-NAY, JULIE HASKELL-AYE, RAYMOND BROWN-AYE, NELSON ABBOTT-AYE & SEAN ROYLANCE-NAY

Passed 3-2

Reasons for votes for Councilmembers Abbott and Roylance:

Nelson Abbott: (Directed to Ewell's) "You are going to do what's right."

Sean Roylance: (This was a difficult decision for him to weigh) "On the one hand, I totally see the economic argument and I don't think you can factor that completely out of the equation. On the other hand, when I ran for City Council, nearly everyone I talked to and I talked to literally ½ the residents face-to-face...and the one consistent thing was complaints about development...and that we were not holding people to our code. I felt that was a very clear direction...that was important to me at the time...so, that is the other hand. I have been consistent the entire time I have been on the City Council...and I have to stay with that."

Raymond Brown: "I wouldn't come in and ask for another extension."

Mayor Dunn: He thanked the Council for a lively discussion. I think this was thorough and I understand both side of this issue.

Brian Ewell: "I just want to say, thank you. We want to continue to work with you as the City Council...and really implement a plan that will beautify the City and make it better. We appreciate it."

Mayor Dunn suggested moving to the next agenda item.

Sean Roylance: He suggested that someone get in touch with the Fitzgerald's to see if they wanted to be included with this request. He was concerned that they may have been under the impression that they were part of it, since their names were on the written request.

Raymond Brown: He felt they are on their own; they were contacted by Ewell's and the Fitzgerald's did not contact them back.

Sean Roylance: "Why is their name on this, then?"

Shawn Eliot: "They came to the last meeting."

Sean Roylance: "There has been no indication that they are not interested, and their name is here...so that leads me to believe that there might be a misunderstanding...perhaps Lari is out of town and Rob is off on an emergency."

Mayor Dunn: The Mayor asked that Shawn Eliot contact the Fitzgerald's and let them know what went on this evening.

Shawn Eliot: "You didn't deny theirs...they have until May." Mr. Yergensen has his land tied up with the other land; they have pooled all their land together.

Raymond Brown: He felt the best thing for them to do is to separate and move on, if they are going to; otherwise they are just going to get jammed up...Fitzgerald's do not have the water rights. If RL had been included in this, perhaps my vote would have been different."

Mayor Dunn: He pointed out that the Fitzgerald's were offered water rights with the same opportunity that Ewell's took advantage of. The do have some surface water that is located out be Genola of Goshen...somewhere out there. It has not been transferred to Elk Ridge.

Nelson Abbott: He asked if Fitzgerald's had gotten their water rights from Forrest Darling... (Yes) Councilmember Abbott was told that Mr. Darling could not get those transferred.

Shawn Eliot: When we worked on the hillside code and we had mostly the Shuler's coming in...and they would say that we are "the most restrictive"...they would pull one part of the code, but they would not look to see how that one part worked with all the other parts. Park City was brought up as an example...he has a problem with parts of the code being taken out of context and compared with other communities (like Park City); then the claim is made that we are "more restrictive than they are"...but they don't look at other parts of Park City's code that are more restrictive than our code. The Planning Commission felt that, in the end, our code was a 'balance'...it wasn't that we are the most restrictive in the entire State. He said they would feel pretty uncomfortable, if that were the case. Every time those arguments were brought up, they were able to suggest looking at the whole code.

Example: When Mr. Pope spoke of getting 100 lots on 100 acres; he could get 100 lots due to the variations in the steepness of his property. This property (Ewell's) is surrounded be 30% slope...it's a unique piece of land. "Some lands aren't going to fair as easy as others in this zone."

Raymond Brown: Referring to residents not wanting development and the City not following code...That is about 99% of the people up here. Many people just do not want others to move in.

Sean Roylance: He feels most people are more reasonable than that and they had reasons.

Raymond Brown: There are rights that allow people to develop their land, as long as they follow code. People still get angry.

Sean Roylance: He feels the catalyst for many people being upset was the "rock wall".

Mayor Dunn: "Actually, he did get permission; it was a backwards process."

Let's move on.

CONSIDERATION OF HOUSEHOLD PETS

Mayor Dunn asked Shawn Eliot to review and explain where the direction came from to allow more animals than chickens to be included in the Planning Commission's consideration of "household pets". The motion from the Council only included chickens...nothing else was involved. Now we are looking at many different things. He wanted to understand where that came from.

Shawn Eliot: (He read from notes he wrote down) First of all we started reviewing the "cat code" in October. There was a public hearing in November and there was some constructive input taken in and it did seem to sway the Planning Commission, who then tabled the issue to give them a month or so to think about it. During that time, we also started to review the chicken code (October); the survey went out in November and they had a public hearing in December...with a large turn-out...with much comment on both sides of the issue. At that meeting, the Planning Commission decided that due to the input from the public and from the surveys, they felt there was a much larger issue than just cats and chickens...they wanted to look more as nuisance code and find out if the issues could be fixed through that code. That is when they asked Mr. Eliot to look at what other cities do. (He submitted a handout that he provided to the Planning Commission that is a summary and comparison of various cities in Utah County and what they allow in the way of animals.) Someone at the public hearing said that "you cannot just look at other cities; you have to do what is right for your city". My opinion is that we can look at other cities and learn from their experience. The Planning Commission reviewed all 15 cities over Christmas vacation. Mr. Eliot reviewed the findings of the comparisons with the Council. His research was to look at the regular residential zones; not agricultural type lots.

He contacted the enforcement officers of these various cities and found that they generally did not have a problem with chickens or most of the animals...it was dogs that create most of the problems.

They do have some animal issues; but they are usually like our other nuisance issues...based on complaints. The feeling he got from them was that usually people would comply, once they started getting notified of complaints...not always. Very few cases got into the legal process. All inspectors that he interviewed stated that they do not go after animal violators unless there is a complaint filed.

To answer the question of why the Planning Commission working on this, or what their goal is...they wanted to look at the nuisance code, as stated; feeling like that may be more important than worrying about numbers. Many of the cities number dogs; probably 1/2 of them number cats; but some, like Eagle Mountain allow any number...and according to the Inspector, he has not had any problems...the nuisance code would handle them, should they arise.

He reviewed the Elk Ridge's nuisance code and it is actually Utah County's nuisance code, and our animal control code simply references that we have Utah County's code on file. He got a copy of Utah County's animal control code and found that there are things that do not apply to Elk Ridge at all. The contradictions should be fixed and we should have in our code what the regulations should be. The thinking was that they (Planning Commission) would review it and send the recommendation on to the Council.

Household pets: what should be considered and the numbers allowed; again, cats are part of that...but other cities define other types of animals as "household pets".

The County code allows for "hobby breeder permits"; most of the cities on the chart allow for some type of "hobby breeding"...which is defined as someone having registered dogs, with some to sell. There are many people that do that.

Nelson Abbott: Spanish Fork just adopted their code last year that allows for kennel permits.

Shawn Eliot: Kennels in Elk Ridge are only permitted in the Commercial Zone and it refers to a "commercial kennel". Many cities have kennels and hobby breeders and they are different. When I think of a kennel, I think of a business where I board my dog; but a hobby breeder permit could either be a hobby or a business.

City Recorder: How would that fit with the City's "home occupation" code, if these are businesses...since those businesses must be contained within the house?

Shawn Eliot: That is an issue. Under the Utah County Code, it talks about the kinds of living facilities must be provided; but if our business license says in cannot be outside the house...there may be some things to review regarding our home occupation code, as well.

City Recorder: One of the reasons "kennels" were placed in the commercial zone was due to the home occupation regulations...since kennels are generally businesses.

Shawn Eliot: The difference is when you only allow 5 or 6 "hobby breeder" type poets; it is still a home-based, "mom & pop" type business compared to a kennel in a commercial area. The fact that our code does not allow home occupation type businesses, except within the main dwelling...is perhaps unique.

Our two current animal rights zones are confusing regarding the numbers of animals allowed etc. It took him and Bob Allen (at Mountainland) a few times through the code to figure out what is meant. One concern is that if we have a difficult time understanding our own code, then perhaps it should be a bit cleaner. After reviewing the other cities, there are cleaner ways to present the material.

Mr. Eliot explained some of the confusing parts of the animal zone.

It was quite "telling" that Spanish Fork, throughout their city, allows animal rights on 1/2 acre lots...the entire city.

Nelson Abbott: They do allow it, but they are fairly restrictive with regards to numbers...like they only allow 6 or 8 pigeons; unless a variance is granted.

Shawn Eliot: Many of the cities, like Springville...in their 1/3 acre zone...you still have to have a 1/2 acre or larger for these animal rights. Lindon and Alpine allow smaller lots. If these cities that allow animal rights on their 1/2 acre lots, are they telling us that, by their experience...that it is not as big of an issue in those areas? Whatever we end up doing, other than with the nuisance code, you would still have to hold more public hearings.

Councilmember Brown asked for clarification on some of the numbers of animals, as brought forward in the summary chart that Mr. Eliot provided.

Shawn Eliot: It is interesting that Provo does not allow chickens, other than in their "ag" zones; but they do have a process that allows ponies.

Dayna Hughes: (She was asked to attend the meeting by Shawn Eliot) This is a complicated issue. She had some minutes from June 26th, where Councilmember Roylance was giving his City Council report...she read

from those minutes: "It looks like there might be a proposal for code in the City which would allow for chickens; since we have code for pigeons, it should not be a problem". That is how it was started.

Once the Commission got into it, they were surprised that the "Cat" people came in and were adamant and concerned about the limits on cats. So, after listening to these people, they realized they were faced with looking into changing the zoning ordinance. That was the initial question, "Do we change the ordinance to allow for chickens?" No one was comfortable with a zoning change.

It is very complicated when considering how many animals should make up an "animal unit"; it is not as "cut & dried" as it appeared at the beginning.

The Planning Commission felt that it would be best approached through the nuisance ordinance because they did not want to get into limiting other types of animals...where would it stop? So, rather than a code change, after the Planner did all this "exhaustive" work that was very beneficial to them...they felt it would be better to take the Code and write a specific code that would be "more than initially presented" and be more clear. They did not want to open a "hornet's nest" with individual animals.

A proposed ordinance will be discussed at the next Planning Commission meeting, make whatever changes they find necessary; then they will schedule a public hearing.

Raymond Brown: When he was on the Planning Commission, they went through some of the same arguments and aggravation of animal rights and the definition of a "unit", etc., so he appreciates what the Commission is facing; however he has concerns:

- We have a big issue with chickens and he feels if we mix it up, we may not be doing serving the people in the best way. The other animals need to be dealt with, but perhaps as a separate issue. He feels the chicken issues should be dealt with first; then consider the others later.

Dayna Hughes: "But how can we look at chickens specifically...there is just no possible way, realistically..."

Raymond Brown: "But you were given a direction to look at the chickens...not saying that this not a good direction to go on further with; but we've got this issue on the table...we've got people violating our code and we need to give them an answer." He feels if the issues get clouded up, it could affect the vote.

Dayna Hughes: (Continuing) "we felt like we couldn't address chickens and ordinances being broken without addressing the number one complaint in the City, which is "dogs". They felt that these other issue must be addressed as well. She knows they were only directed to address chickens; but realistically, they felt it should be broadened out.

Raymond Brown: He agreed that "dogs" are the number one complaint and options have been discussed that would increase penalties for dogs "at large"...but, he feels we need to get the chicken issues off dead center.

Mayor Dunn: What makes a code "good" is balanced enforcement. The chicken issues came about due to two codes being violated...one was a loose dog and one involved the keeping of chickens. The "nuisance" was that the dog got into the chickens (which were in violation). Oddly enough, the dog has been gotten rid of and the chickens kept.

Sean Roylance: He pointed out that the dog was the nuisance...if the dog had gone in and killed cats, it would still be the dog that was the nuisance.

Further discussion regarding dog problems in town:

Mayor Dunn: The reason some dogs are considered nuisances is due to irresponsibility on the part of their owners.

City Recorder: Initially, the issues concerning chickens were involved with zoning regulations in residential zones. Since our animal control regulations are located outside of the zoning ordinance and cover the "control" and numbers of animals allowed, how does the Planning Commission separate chickens off from other animals?

Mayor Dunn: (Definition of a "Nuisance": That can be defined by sight and sound, as well as smell and health factors...theses qualify as nuisances.

Recorder: Neighbors typically will not file claims against their neighbors; then how does the City handle enforcement?

Mayor Dunn: Councilmember Brown has even set up a forum wherein citizens could come in and have their issues (complaints) arbitrated, but the citizens would not come in and even commit to this.

Shawn Eliot: After the proposed "chicken code" was written, the Planning Commission then looked at the other cities and what their codes are...and that proposed code would be the most restrictive of any of the other cities. Most cities have their animal control regulations under the nuisance code.

Mayor Dunn: There has been a lot of great information submitted and he has read over the guidelines that accompany the various codes...some are very strict. The question is whether the codes that are in place in these various cities are, in reality, working? For example, are there complaints in Alpine where they allow chickens on a ¼ acre lot?

Shawn Eliot: He spoke with Alpine's City Manager about it and he said there is like a "tale or two cities" going on: 1) There are people that have lived there for ever; they moved there moved there when it was the "country" and they want their animals & 2) There is another group that is all the Californians that have moved it and don't want a horse in their backyard, then 3) There are all those in the middle, who don't care.

Lindon is the other City that is quite liberal about animal issues, in that their City motto is "A little bit of country". Mr. Eliot mostly spoke to enforcement officers of these cities; and they typically "go after complaints". It is true that many do not actually file a formal complaint...either the situation does not escalate to that point, or they just do not want to give their names and be identified.

Dayna Hughes: She respectfully requested that the City Council allow the Planning Commission to continue the process they are in the middle of currently of reviewing the nuisance code and to bring forth a recommendation to the Council for review and consideration, even though that was not the original order and

intent of the Council. She asked for the Council's full support in allowing the Planning Commission to try to find some "common ground" in these issues. The Planner is writing code according to the suggestions made. They would like the opportunity to review this code, schedule a public hearing and then to forward a proposed code with recommendations on to the Council. She feels debating the various issues at this point is premature.

Mayor Dunn wanted to know the feelings of the Council:

Raymond Brown: He had stated his feelings. He feels this is all good and that the Commission should continue forward with what they are doing; however, he still feels the issue with the chickens and zoning should be handled and be handled separately.

Dayna Hughes: She feels the Planning Commission's willingness to take the time to look at all the issues has actually calmed people in town down.

Sean Roylance: Two weeks ago, the Council already discussed allowing those with the various animals under consideration to keep their animals while the Planning Commission reviewed the code; and within this decision was the understanding that the Planning Commission is looking at the issues in a comprehensive manner.

Nelson Abbott: In the process of working through the nuisance code, he asked that certain considerations be given to a portion of the pigeon code that deals with nuisances, saying that it must be a "valid" complaint in order for action to be taken against the owner. Whatever the case may be, there should be a "valid" complaint.

Shawn Eliot: Most of the enforcers (Inspectors) say they almost always work it out with the assistance of the Inspector as a sort of "mediator".

MOTION WAS MADE BY SEAN ROYLANCE AND SECONDED BY NELSON ABBOTT

THAT THE CITY COUNCIL INSTRUCTS THE PLANNING COMMISSION TO CONTINUE ON THE PATH THAT THEY ARE ON IN TAKING A MORE COMPREHENSIVE LOOK AT THE ANIMAL ISSUES THAT ELK RIDGE CITY IS CURRENTLY FACING, THAT INCLUDES CHICKENS, CATS, DOGS, MINIATURE HORSES AND GOATS AND ANYTHING ELSE THAT SHOULD BE APPROPRIATELY BE ADDRESSED; AND THAT THE NUISANCE CODE IS CONSIDERED AS A POTENTIAL PART OF THE SOLUTION

VOTE: (3)

NO (2) RAYMOND BROWN & JULIE HASKELL

Passes 3-2

(The Mayor also thanked Mrs. Hughes for filling in as Chairperson until a permanent appointment is made.)

ROCKY MOUNTAIN
SUBDIVISION, PLAT B –
RELEASE OF
CONSTRUCTION PHASE
& START DURABILITY
RETAINER

According to the Aqua Engineering letter dated January 23, 2009 (Craig G. Neeley):

"All of the punch list items have been addressed per our letter dated November 4, 2008. The project is recommended for final acceptance and the start of the one-year warranty period for this project is November 1, 2008. The temporary asphalt patch where differential settling had occurred will have to be replaced before the end of the durability period, along with any additional warranty issues."

Mr. Neeley, Corbett Stephens and the developer (Mike Dubois) thought this development had gone into the durability time period last fall; however, the letter was not written until now. There was a letter written by Aqua in November, but it still had some things on the list...but those things had actually been completed.

Nelson Abbott: Asked if the Council was locked into the one-year time period. *(That is what was recommended by Aqua Engineering and the Attorney also said we have to comply with the State.)*

City Recorder: Mr. Dubois agreed to provide a bid for the 1" overlay and to leave that money attached to the bond in place to cover that expense.

MOTION WAS MADE BY NELSON ABBOTT AND SECONDED BY JULIE HASKELL TO ACCEPT THE IMPROVEMENTS FOR ROCKY MOUNTAIN SUBDIVISION, PLAT B, AS COMPLETE AND TO BEGIN THE DURABILITY TIME PERIOD AS OF NOVEMBER 1, 2008; AS PER AQUA ENGINEERING RECOMMENDATION

VOTE: YES (5)

NO (0)

Passes 5-0

IMPACT FEE STUDIES

Tabled for this meeting.

BOARDING HORSES
ON CITY PROPERTY

Mayor Dunn: We found out from the City Attorney that the City can charge a fee for the boarding of horses. The Mayor also spoke to Curtis Roberts about the banking end of the rules; and he does not see a problem with charging a fee, but he gave the advice to consult with the City Attorney. The amount of the fee needs to be decided. Mr. Paxton is aware that the issue is being discussed.

Raymond Brown: He suggested that the current rate for boarding horses without feed and without care is \$40/month per horse; and that a certificate of liability insurance needs to be provided to the City.

MOTION WAS MADE BY RAYMOND BROWN AND SECONDED BY JULIE HASKELL TO GO WITH \$40 PER HORSE PER MONTH; AND THAT THE OWNER MUST PROVIDE A CERTIFICATE OF INSURANCE TO THE CITY, SHOWING THAT EQUINE LIABILITY INSURANCE HAS BEEN PROVIDED...AND UPON PROVIDING THE SAID CERTIFICATE OF INSURANCE, IT SHALL BE REVIEWED BY COUNCILMEMBER NELSON ABBOTT

VOTE: YES (5)

NO (0)

NON-AGENDA ITEM

Sean Roylance: He asked for authorization to pursue ways to make money for the City from the City Web site. All the Council was in agreement; as long as the advice of the Attorney regarding "censorship" is taken into consideration.

SIERRA CLUB
LETTER

Mayor Dunn: The City received a letter from the Sierra Club (Utah Valley Sierra Forum) asking municipalities establish "offices of sustainability" within the individual communities. The benefits were listed. (Copies of the letter were provided to the Council in their packets to review.)

It is the Mayor's opinion that Elk Ridge is not big enough to establish an office and provide staff. In a time of economic discipline, the Council agreed that we cannot take advantage of this opportunity at this time.

EXPENDITURES:

General:

Check Registers & Payroll for November & December, 2008:

Discussion.

- Use of Mr. Haskell's backhoe when the City's was broken down.
 - Money saved on the Loafer Canyon Project
 - Reimbursement to Neria's for garbage containers
- Mayor Dunn said that they were reimbursed for two years of over payment of an extra container. The Mayor told Mr. Neria about David Church's advice that the City only go back to the beginning of the current fiscal year for any reimbursement. The Mayor felt that two years would be better. He further explained to Mr. Neria that the City is a collection agency for Allied Waste and that money would come from tax-payers rather than money collected for that purpose, since it goes to Allied. Allied has been informed that they must clean up their record-keeping regarding their count of containers. Allied responded that they would send some supervisors to town to conduct an audit of the numbers of cans. (Have they shown up?)

MOTION WAS MADE BY RAYMOND BROWN AND SECONDED BY NELSON ABBOTT TO APPROVE THE CHECK REGISTERS AND PAYROLL REGISTERS FOR NOVEMBER & DECEMBER, 2008

VOTE: YES (5)

NO (0)

NON-AGENDA ITEMS

Mayor Dunn:

- He met with Jill Spencer (Payson City) to arrange a meeting between the two Councils to discuss possible joint ventures and an amendment to the Annexation Boundary Agreement. He will keep the Council informed of dates.
- He will meet with a group of other mayors the following day (at the Capitol Building) with some of our Legislators; specifically on issues that would benefit South Utah County.

Media Player for Council Room:

Raymond Brown: He found a good deal on a media projector (Epson EX 70 Projector) at a discount of \$20 off and to include a screen. The total cost was \$679 and the CERT Team will pay for \$200 toward the purchase. It will be mounted on the ceiling.

MINUTES

City Council Minutes of 12-9-08:

Corrections: Pg 11 (line 22) Change "he went out with Chief Waite" ...to "he accompanied Bob Van Parys..."

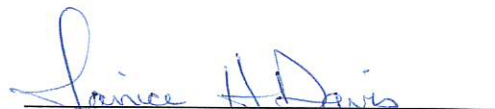
MOTION WAS MADE BY SEAN ROYLANCE AND SECONDED BY RAYMOND BROWN TO APPROVE THE CITY COUNCIL MINUTES OF 12-9-08, WITH CORRECTION

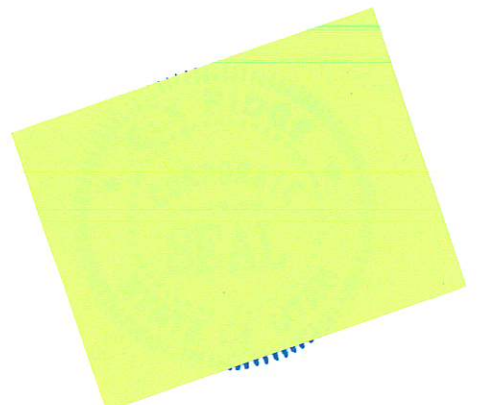
VOTE: YES (5)

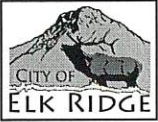
NO (0)

ADJOURNMENT

Mayor Dunn adjourned the Meeting at 9:35 PM.


City Recorder





ELK RIDGE - 80 East Park DR - Elk Ridge, UT - 84651

t.801/423-2300 - f.801/423-1443 - email staff@elkridgecity.org - web www.elkridgecity.org

NOTICE & AGENDA – CITY COUNCIL

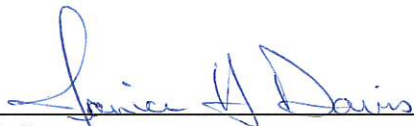
Notice is hereby given that the City Council of Elk Ridge will cancel the regularly scheduled **City Council Meeting on Tuesday, February 10, 2009, at 7:00 PM**, due to a lack of business.

The meetings are usually held at the Elk Ridge City Hall, 80 E. Park Drive, Elk Ridge, Utah.

7:00 PM - REGULAR COUNCIL MEETING AGENDA ITEMS:

CANCELLED

Dated this 6th day of February, 2009.



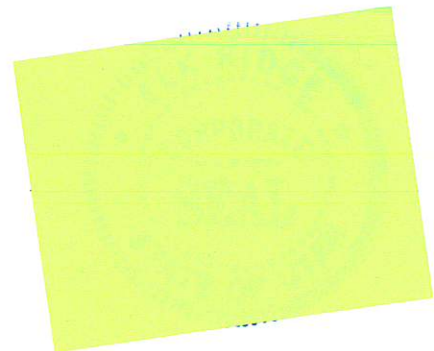
City Recorder

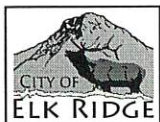
CERTIFICATION

I, the undersigned, duly appointed and acting City Recorder for the municipality of Elk Ridge, hereby certify that a copy of the Notice of Cancellation of the Scheduled Meeting was faxed to the Payson Chronicle, 145 E Utah Ave, Payson, Utah, as well as being posted on the City Web Site; and was provided to each member of the Governing Body on February 6, 2009.



City Recorder





ELK RIDGE - 80 East Park DR - Elk Ridge, UT - 84651

t.801/423-2300 - f.801/423-1443 - email staff@elkridgecity.org - web www.elkridgecity.org

NOTICE & AGENDA – CITY COUNCIL

Notice is hereby given that the City Council of Elk Ridge will hold a regular **City Council Meeting on Tuesday, February 24, 2009, at 7:00 PM, to be preceded by a Public Hearing at 6:00 PM**, to consider an Amendment to the 2008/2009 Fiscal Year Budget; as well as a **City Council Work Session at 6:45 PM**.

The meetings will be held at the Elk Ridge City Hall, 80 E. Park Drive, Elk Ridge, Utah.

6:00 PM - PUBLIC HEARING – PROPOSED AMENDMENT TO THE 2008/2009 FISCAL YEAR BUDGET

1. Public Hearing/ To consider a proposed amendment to the 2008/2009 Fiscal Year Budget for the Operation of Elk Ridge City

6:45 PM CITY COUNCIL WORK SESSION AGENDA ITEMS

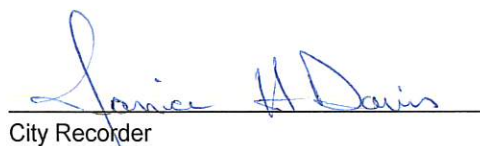
2. Primary Well Presentation – Mayor Dunn
3. Address Update – Mayor Dunn

7:00 PM - REGULAR COUNCIL MEETING AGENDA ITEMS:

- Opening Remarks and Pledge of Allegiance Invitation
Approval/Agenda Time Frame
4. Fairway Heights, Plat C – Extension Request – Rob & Lari Fitzgerald
 5. Platting Fees for Horizon View Farms
 6. Adopt Amended Budget for 2008/2009 for the Operation of Elk Ridge City
 7. Ratify Polled Vote to Schedule Public Hearing for Impact Fees – Mayor Dunn
 8. Schedule Public Hearing to Consider the Developers of the Elk Ridge Meadows PUD, Phase 2, in Default
 9. Future of City-owned Properties
 10. Expenditures: General
 11. Approval of Minutes of Previous City Council Meetings
- Adjournment

Handicap Access, Upon Request. (48 Hours Notice)

The times that appear on this agenda may be accelerated if time permits. All interested persons are invited to attend this meeting.
Dated this 20th day of February, 2009.



City Recorder

CERTIFICATION

I, the undersigned, duly appointed and acting City Recorder for the municipality of Elk Ridge, hereby certify that a copy of the Notice of Agenda was faxed to the Payson Chronicle, 145 E Utah Ave, Payson, Utah, and provided to each member of the Governing Body on February 20, 2009.



City Recorder

ELK RIDGE
CITY COUNCIL MEETING
February 24, 2009

TIME & PLACE
OF MEETING

This Regularly Scheduled Meeting of the Elk Ridge City Council, was scheduled for Tuesday, February 24, 2009, at 7:00 PM; this was preceded by a Public Hearing at 6:00 PM, on a proposed amendment to the 2008/2009 fiscal year Budget; and City Council Work Session items. The meetings were held at the Elk Ridge City Hall, 80 East Park Drive, Elk Ridge, Utah.

Notice of the time, place and Agenda of these Meetings were provided to the Payson Chronicle, 145 E Utah Ave, Payson, UT, and to the members of the Governing Body, on February 20, 2009.

6:00 PM –

PUBLIC HEARING – PROPOSED AMENDMENT TO THE 2008/2009 FISCAL YEAR BUDGET

Public Hearing/To consider a proposed amendment to the 2008/2009 Fiscal Year Budget for the Operation of Elk Ridge City

ROLL

Mayor: Dennis A. Dunn; *City Council:* Nelson Abbott, Raymond Brown, Julie Haskell & Sean Roylance & Derrek Johnson; *City Planner:* Shawn Eliot; *Public:* Scouts: Tyrel Carter, Tyler Christensen, Ryan & Garrett May; Rodger Hardy (Deseret News), Rob & Lari Fitzgerald, Ed Christensen; and the *City Recorder:* Janice H. Davis

Discussion:

Nelson Abbott: (Regarding availability of water rights from SUVMWA) He attended a meeting at SUVMWA; the money collected from the sale of water rights will be disbursed to the individual cities and Elk Ridge actually has a portion of that money coming back. We can either have it literally come back to us or we can leave it at SUVMWA and apply it to the annual assessment for the Regional Sewer Plant (about \$6,468 credit).

(Mayor Dunn recommended leaving the money at SUVMWA, rather than have it returned to the City; and Councilmember Brown agreed.)

The money will not earn any interest; but SUVMWA will apply it to the assessment if they are told to do so. The Change Order has been processed for the 6 shares of water rights that the City will now sell to the LDS Church. Tony Fuller is coordinating efforts toward this sale. The shares will transfer out to about 19 acre feet. These have been paid for and the certificate transferred into the City's name.

City Recorder: The City Recorder had written a memo summarizing some of the major changes in the Budget. The main area of concern and focus was the General Fund, with revenues dropping from \$1,115,674 to \$964,136, a difference of \$151,538. The proposal is to transfer \$124,190 back into the General Fund from Capital Projects (Town Hall/Fire Station) & \$109,287 from the (Capital Projects Fund / Future Improvements). Ms. Davis said in the memo that she had presented some ideas to the City Finance Director, Curtis Roberts, regarding balancing the General Fund through bringing back in some of the fund balances from some of the Capital Projects' Funds; he recommended only transferring back into the General Fund the Fund Balance from the Town Hall/Fire Station Capital Projects Fund and applying that to assist in off-setting the Sales Tax Revenue Bond payment for this year. He agreed with Ms. Davis about canceling all transfers out of the General Fund...using the analogy that if one's checking account runs low, one does not place money into "savings" when there is no extra money. Mr. Roberts had expressed concern about "reaching the Council" regarding looking to the future and making proactive decisions now to affect a better future for the City. His recommendations for the budget were based on the fact that this is a mid-year amendment and there would be time to better assess the revenues and final expenditures before the final amendment in June and the Audit of this fiscal year.

Mayor Dunn began the discussion by looking back to the decision made by the majority of the Council against raising property taxes last summer. Councilmembers Roylance and Johnson reacted to the comment and referred to what they feel was a "bad" decision to purchase six acres of land through a Sales Tax Revenue Bond, for \$900,000. Councilmember Johnson feels the City paid too much for the land and that there were "warning signs" at the time to indicate the failing economy.

Tempers flared as the attempt was continued to place blame for the present economic problems the City is experiencing on past decisions.

The Mayor called a "point of order" with the gavel, in an attempt to bring order to the heated discussion.

City Recorder: She asked if she might relay the conversation she had with the City Finance Director. She reiterated some of the points made in the memo written to the Council...she said that the memo was to inform and to express opinion to them (not necessarily to the public) of the options available to address the financial issues facing the City at this time.

(There was a brief explanation about the "fund balances" for the various Funds.)

Mayor Dunn: The Mayor spoke to one of the County Commissioner and he commented that property taxes have "gone down" and the recession has caused an increase in the percentage of those not paying their property taxes. Sales Tax: (Explanation of how sales tax is collected) A portion (50%) of the return is determined by "point of sale" and the rest is placed in a "big pot" and disbursed by population...that second "pot" is mostly what comes to Elk Ridge. The deadline for that disbursement is 2/25; so we won't really know what that amount will be until that comes in (this will show up on the statement that comes from the PTIF or the State Treasury...and those statements are a month behind).

City Recorder: The Council was encouraged to not look back to past decisions, but to look at the options available now. Part of the decision to adopt the suggested tax rate from the County was based on some action that was to take place on the part of the Council with regards to developing some of the City-owned property to sell it. Decisions are generally made using the best information available at the time.

Derrek Johnson: 1) He reiterated that there were warning signs regarding the purchase of the land for a possible City Center...so he did not agree that it was a decision made with the "best information available"...he feels there was "plenty information available and the decision was made hastily and, I think, in ignorance".

2) He felt the conversation was leading toward a proposed increase in property taxes. He said he would "not vote to raise anything" (referring to any increase to fees and/or taxes), while citizens are struggling with their own financial problems. He feels that government has to take the same responsibility as homeowners do when poor choices are made; the government cannot simply raise revenue by raising fees; he feels that is irresponsible.

Mayor Dunn: He agrees with those thoughts that many are suffering financially; but so are the cities. He added that Elk Ridge is not alone in the struggle between plans for future improvements and the failing economy...all the Mayors in the County have said they are struggling. The motivation for holding the Truth in Taxation Hearing in August came from about this time last year when Councilmember Abbott brought to the Council's attention that the City had not really been maintaining property taxes for some time and suggested a serious review of that policy. The suggestion to consider raising the percentage rate for property taxes was not generated by recession, it was more of a "house maintenance" project...meaning that the Council should take on the duty of making sure that the property taxes collected for the City is in line with keeping the General Fund balanced. There were no "course corrections" through the gathering of property taxes; and there should have been.

Many cities also had the Truth in Taxation Hearings and did increase their taxes. Some times Councils have to make choices for the good of the City that may bring some unpleasantness to the Council. He feels that planning requires the Council to review all aspects of the City's finances, even property taxes and the possibility of an increase...as well as other option available.

Raymond Brown: (Addressing the purchase of the City property) He and Councilmember Abbott were on the City Council when that land was purchased and he found the comments regarding that decision made by Councilmember Johnson offensive. He does not agree that the Council should attack the intelligence of other Councilmembers when there is a difference of opinion. He has withheld reacting when disparaging comments have been made in the past, even to the newspaper. He felt that if such information had been available, that it should have been made known to the Council at the time.

Derrek Johnson: Councilmember Johnson disagreed in that he said he did meet with Mayor Dunn re: the water tank & future of the economy, before the purchase of the property and expressed his concerns at that time...yet he felt he was ignored.

Raymond Brown: He still felt he should have come to the public hearing and informed the rest of the Council. He prompted Councilmember Abbott to disagree if he felt there was anything being misrepresented. He still maintains that the decisions made on that purchase were good decision; and he resents being accused otherwise in a demeaning way. (Reasons for the purchase were reviewed.)

Derrek Johnson: He quoted the price that the previous owners paid for the land as \$550,000...and he felt nearly doubling it in about a year's time period and the City agreeing to it was not a wise choice. He doubted that sharing that information with the Council at the time would have made any difference.

Sean Roylance: He agrees that sharing information would not have made a difference; he referred to the address change issues and that people expressed their disfavor and it was passed anyway. (He was asked to stay on the topic.) Councilmember Roylance also referred to the survey that went out to citizens and that 82% of those that responded said they did not want to have their taxes raised to pay for a City Center; he feels this was not taken into consideration in the decision-making process.

Mayor Dunn: He felt it is important to understand that the four parcels of land the City owned in that area were not contiguous; the land was arranged in "pairs" (the map on the wall was referred to). One of the main points in favor of purchasing that ground was the ability to connect these other parcels of land and tie them together; it would also satisfy another aspect of that same survey...the desire of the citizens for more open space and parks. The land is flat and good for park space; not just for a City Center. There were many opportunities attached to that land; all to be accomplished as possible...in sections. It was never even talked about that it would happen "overnight" or all at once. One of the steps in getting there was to acquire the ground. The Council was also discussing Hole #7 and the possibility of purchasing that from Payson City; however, negotiations did not work out financially nor would it for a park where sports could be played due to the topography of the land.

Sean Roylance: He does not wish to debate what has been done in the past; he has an opinion and that will not change...if the Council wishes to discuss this further, at some point that could be arranged; but he does also believe that the previous Council acted according to their best judgment...just because he has a different opinion does not mean the Councilmembers involved were not doing their best. He does agree with what has been stated that regardless of what happened, "we are here".

Raymond Brown: Although he agrees with this perspective, he further expressed his offense at being referred to "as an idiot"; the decisions were not made in a "vacuum" or to go against the citizens of the Community. He feels that there are not pieces of property available in the area that would meet the needs of the City as well as this particular piece.

Derrek Johnson: There have also been ill feelings expressed regarding the Council's vote to not increase the tax rate and negative comments made about that; how should that be taken? He finds that attitude offensive, as well.

(Councilmember Brown felt the discussion should stay focused on the land purchase.)

Nelson Abbott: (RE: Tax Rate) He was the one that brought up the possibility of an increase and encouraged the Council to hold a public hearing...he was the "driving force" behind it;

but when it got down to "crunching the numbers", he felt that an increase beyond that which the County was planning, was not necessary. "If everybody paid their taxes, some of this discussion wouldn't even be happening tonight. The bottom line is, we have people who don't pay taxes; that's part of the frustration. I wish we could get our legislators to 'put more teeth in that' because a zero percent loan for 5 years...it's ridiculous!" Everyone else that "do things right" bare the burdens of those who won't pay their way. "This is what we've got; we've got to work through it together...and if we don't work together, we will not come up with a solution."

Raymond Brown: He feels strongly that the Council should not "throw rocks"...he was the only one who voted for the tax increase; but name calling was not a part of it. "Now we are in a bind; hindsight is 20X20".

Sean Roylance: He pointed out that there would be another opportunity to discuss property taxes in August; but he would still vote the same way.

There was further discussion on the public hearing that took place in August, 2008...Councilmember Brown felt that the majority of the public in attendance were not opposed to some kind of tax increase...Councilmembers Johnson and Roylance felt that the "majority" of the public were not represented at the public hearing. The point was made by Councilmember Brown that opinions may differ but, again name-calling should not be a part of the public meeting.

Sean Roylance: He felt that any debate on the issues at hand could be arranged at another time and place; he did not feel it was useful to continue the debate in the meeting.

Raymond Brown: He agreed to meet at any time to continue the discussion at a "neutral" place where he and Councilmember Roylance can "talk plainly" (not on a recording) and he would tell Councilmember Roylance exactly what he thinks.

Sean Roylance: He came to the meeting prepared not to get into these differing opinions about the past; but he felt that the meeting started out with accusations regarding the property tax issue. He had the attitude of "looking forward".

Discussion: Regarding the newspaper article that came out regarding the purchase of the land; there were comments about the past decision that were offensive to Councilmember Brown.

Raymond Brown: "We've got to work together, or we can't work at all."

Verbal challenges were issued between Councilmember Brown and Councilmembers Johnson and Roylance; with tempers flaring.

Councilmember Haskell called for a "point of order" to end the arguing. The Council is supposed to be discussing the amended budget.

Mayor Dunn: Confirmed the "point of order" with his gavel and called for the Council to get back on task.

Raymond Brown: (Back to the budget) He pointed out that the budget figure is actually \$5,000 lower in "Road Repair" than the original bid; it was lowered.

The Recorder spoke to the Council about the respect she has for any citizens willing to run for elected office. It is a difficult job to fulfill. The ill feelings being expressed are not accomplishing anything toward a solution to the City's financial problems. There have been tough times to get through in the past; the City has come through it, but it has taken some creative work on the part of Councilmembers. There are possibilities for added revenue that need to be explored. Next month will take the City to that time of year when we are in the middle of two budgets. The condition of the economy brings out fear in people and fear results in short tempers and frustrations. To "blame" is not productive...personally and as a Council. This Council has the future of the City in their hands; regardless of how we arrived at this point. Foresight has to be the focus. Putting the bond money (City land purchase) that is left back onto the end of the bond, will take time off the back but will do nothing to lessen the annual bond payments. Perhaps that money could be utilized proactively instead.

Mayor Dunn: Information came to the Mayor not long ago that Woodland Hills might be building a new City Center (they are still working on a new one currently). After time he found out that a private citizen in the City contacted other professionals in the City and got commitments from them to fund a commercial type building close to the entrance and offered to lease space to the City Government. The other one would then be turned over to the Fire Dept. for a Fire Station. The offer came from the private sector.

Before the Mayor took office, he was on an Economic Development Committee and they had been looking at the property the City ended up purchasing + some other land in the area for possible "soft commercial". The goal of the Economic Development Committee was to supplement the City's property tax.

There is a great deal of talent on the Council; thinking "outside the box" could bring some good results, if the Council works together.

The Mayor had a long conversation with Mark Rindlesbach (one of the developers involved with the purchase of the land where the PUD developed); and though the land purchase appeared to be a good deal at the time, he said he wished he had not bought then land now. He has land a various places going through the same problems as a result of the economic recession.

There are opportunities with the land that the City purchased. Construction costs are way down; including materials and labor. Advantage could be taken of these lower costs. IF we take action on something; whether in a "modular fashion" or in some way...we would have the fact that commodity prices are down.

City Recorder: The mid-year amendment to the Budget is a "guide" for the Council; it is not sent in to the State. The Budget will be amended again at the end of the Fiscal Year...but, the actual year-end financial report is the Audit. This amendment acts as a "wake-up call" for future planning.

Questions:

- Will the replacement of the old water line on North Canyon View Drive take place this year or next?
- How much will be needed for spring repairs on roads?

Suggestion: When Loafer Canyon Rd. is finished, the curb and gutter expense should be coded to the Storm Drainage Fund rather than to Roads (General Fund);

in fact Councilmember Brown and the Recorder could get together and figure out how much of this year's expense on Loafer Canyon Rd. could go to Storm Drain (this should be done before June).

Raymond Brown: Much of the prep work to finish Loafer Canyon Rd. could be done this year and the curb & gutter could wait until July.

- Sewer: The O & M payments to Payson have been shorted somehow. There has been a discrepancy in the number of connections we actually have and what they are charging us for. It is straightened now, but will results in some fees being made up.

Mayor Dunn closed the Public Hearing. He asked if anyone has any final concerns to express.

Sean Roylance: He has been looking into "online bill pay"; he has found that consistent bill payment increases with online payment possibilities. He has no facts to substantiate that; however the claim seems to be in favor of online payments. Perhaps if a higher percentage of residents are paying their bills to the City, there may be the possibility of lowering utility (water) rates to help off-set an increase elsewhere.

Mayor Dunn: He has looked into online payment possibilities with Linda Cooper and a representative from a firm that does that type of service. There is a difference between "online bill pay" and the "automatic withdrawal" option. Beaver City had online bill pay and went off of it.

The City has also signed up with a collection agency to assist with some of the "bad debt" the City incurs.

The conclusion that Linda Cooper and the Mayor had come to was that it needs to be a pretty fair sized community to benefit from online payments due the associated costs.

*Sean Roylance: If no one has any strong objections, he would like to further investigate this type of option for the citizens.

Mayor Dunn: He feels that the City would benefit from any added information like this. The level of "bad debt" has decreased and is somewhere around \$2,500 per year. There are also stricter measures being taken with "shut-offs".

PRIMARY WELL PRESENTATION

Mayor Dunn: This was not included in the Council packets because much of the information requires some explanation. The information gathered together represents water usage dating back to April, 2003.

The peaks on the chart (high point of usage) are in the same summer months year after year. All of the figures come from past billing and pumping records, compiled from past bills from SESD.

Looking at the chart: every thing below the red line = water that could come from one well (Loafer Canyon Well); and everything above the red line could come from the Cloward Well.

The summer time surge is where supplemental water would come into place. The Cloward Well has been producing most of the water and this has resulted in high pumping costs.

Well production per hour:

- 700 East Park Well: about 46 gpm about 220 gal. per kilowatt hour (Not a very efficient well)
- Loafer Canyon Well: about 1,000 gal. per kilowatt hour
- Cloward Well: about 180 gal. per kilowatt hour
- Fairway Booster Pumps (combined with Cloward Well): about 450 gal. Per kilowatt hour (This is about twice the pumping cost of the Loafer Well)

Explanation of "single phase" vs. "three phase" systems...along with the electrical charges that accompany both. Demand charges can be less in the middle of the night than earlier in the evening with peak usage.

Determination (after meeting with Kent Haskell):

- To turn off the smaller well located at E. Park Drive in Loafer Canyon.
- Leave the Oak Lane Booster Pump (Well is currently not in use due to sand being pumped)
- Loafer Canyon Well: All the winter demands can be met by running the Loafer Well 91 minutes pre day
- Hillside Tank: Replace the altitude valve (About \$1,000) for accuracy so that the Loafer Well can be considered the primary well for the City.

This will reduce costs by possibly \$20,000 to \$30,000 per year; which will bring that 2% return on assets back up to 4%.

Nelson Abbott: Is there a specific time when it is most efficient for water usage during those "peak times"?

If so, this should be communicated to the citizens.

Mayor Dunn: Example: On a windy day, a person could save over 80% of water usage by not watering.

Watering at night could also save about 80% of the usage, in 15 minute cycles...say, with 6 stations (perhaps twice in one night...2 or 3 times per week. Watering at night allows the water to avoid evaporation.

ADDRESS UPDATE

Mayor Dunn: "This has been a hot topic"; but the Mayor wanted to update the Council on some things.

Two of the City's EMT's came in to talk to the Mayor; reporting a problem that they had been called out on some calls and there are still addresses that have not been changed nor updated. These EMT's went around to check every single address in the City and brought the Mayor a list of the existing issues:

- addresses with no visible marking
- double addresses on mailboxes (old & new)
- wrong addresses on houses / mailbox good
- wrong addresses on mailboxes / house number good
- (small list) no address changes at all either on the houses or mailboxes

The mayor brought this up due to what the Census Bureau has been asking the Mayor to do for the last 18 months. He got a packet from the Census Bureau in preparation for the 2010 Census. The Mayor had to go through and put al the correct house numbers in the information...everyone's address...this was done by the end of March, 2008. The Census Bureau has that record...they will not recognize the old (incorrect) numbers.

All of the systems (911, emergency services, post office, etc) have the new numbers; these new numbers fit the established grid. *(Brief explanation of the grid system created in the City, as well as the resulting problems of applying the grid backwards some years ago)*

The changes were not done due to any "personal agenda"; but to put the numbering back in line with the system used to establish the town...this was done to match the standard for the sake of emergency services and other services could have numbers that match the standard.

The Mayor wanted to know if the Council thinks he should send out letters to residents not in compliance, as assessed by the EMT's, as to where they are in relation to the address changes; this would be done in a pleasant manner (some citizens will take the letters pleasantly and some will not). This still needs to be dealt with; we need the standard to work for now and for future growth.

Nelson Abbott: This issue has re-surfaced due to the EMT's research; he feels the EMT's should issue the letter; it may be received with a more positive response than if the Council were to write the letter.

Julie Haskell: She feels that these are safety issues and it should not matter who generates the letter.

Nelson Abbott: There will come a time when the Post Office will no longer recognize the old addresses.

Sean Roylance: He agreed with the suggestion to actually have the EMT Department draft the letter and send it.

Nelson Abbott: That was his intent; there are certain people within the EMT and Fire Departments who are good at drafting letters that educate as well as inform people.

Derrek Johnson: He agreed that a reminder would be received better if it came from the EMT's.

Sean Roylance: He still hears complaints about the address changes. He does not think too many people realize that so many residents have changed their addresses; the letter could point this out and that it would create more problems to switch back at this point. This would educate people.

Nelson Abbott: He suggested that the Council review the letter prior to mailing it out to residents.

*Mayor Dunn: He will speak to the EMS people and ask them to draft a letter and he will try to have it by the next Council Meeting.

Lari Fitzgerald: They still get a lot of mail with the wrong address (old address). She contacted the Post Office and she said they told her that she could be either address, since she is located at the center of town. She asked if they could post #3 or #4 on their mailbox.

Mayor Dunn: No. You can post #4 on your house...he suggested letting important people know of the change.

Sean Roylance: He has changed his address; and he believes all of his mail gets to him.

Mayor Dunn: He has contacted the Payson Post Office; there is a new and temporary manager and he does not know much about the issue and does not really want to know much, since he is temporary.

ELK RIDGE CITY COUNCIL MEETING February 24, 2009

TIME & PLACE OF MEETING

This Regularly Scheduled Meeting of the Elk Ridge City Council, was scheduled for Tuesday, February 24, 2009, at 7:00 PM; this was preceded by a Public Hearing at 6:00 PM, on a proposed amendment to the 2008/2009 fiscal year Budget; and City Council Work Session items. The meetings were held at the Elk Ridge City Hall, 80 East Park Drive, Elk Ridge, Utah.

Notice of the time, place and Agenda of these Meetings were provided to the Payson Chronicle, 145 E Utah Ave, Payson, UT, and to the members of the Governing Body, on February 20, 2009.

7:25 PM -

CITY COUNCIL MEETING – REGULAR SESSION AGENDA ITEMS

ROLL

Mayor: Dennis A. Dunn; *City Council*: Nelson Abbott, Raymond Brown, Julie Haskell & Sean Roylance & Derrek Johnson; *City Planner*: Shawn Eliot; *Public*: Scouts: Tyrel Carter, Tyler Christensen, Ryan & Garrett May; Rodger Hardy (Deseret News), Margaret Leckie, Rob & Lari Fitzgerald, Ed Christensen; and the *City Recorder*: Janice H. Davis

OPENING REMARKS & PLEDGE OF ALLEGIANCE

An invocation was offered by City Recorder, Jan Davis and Scout Tyler Christensen led those present in the Pledge of Allegiance, for those willing to participate.

AGENDA TIME FRAME

MOTION WAS MADE BY RAYMOND BROWN AND SECONDED BY SEAN ROYLANCE TO APPROVE THE AGENDA TIME FRAME; ADJUSTING THE START TIME TO 7:25 PM
VOTE: YES (5) NO (0)

FAIRWAY HEIGHTS, PLAT "C" – EXTENSION REQUEST

The Fitzgerald's submitted a written request for the Council to consider granting an extension for their portion of the Fairway Heights Subdivision; this would be for the Preliminary Approval, which terminates April 9, 2009. (Letter from Fitzgerald's...read by Mayor Dunn)

"Dear Elk Ridge City Council Members,
The Fairway Heights plats C & D was pre-approved by you on April 9, 2008. Since that time the United States economy has entered into a recession, causing an undesirable environment to develop and sell lots for both the city and the developer.

As developers of the Fairway Heights plat, we request an extension of one year from the original final approval date (this was for Preliminary Approval, not Final), resulting in a deadline of April 9, 2010.

The extension request is for the following reasons:

- The current economy has decreased the interest of potential buyers
- Unpurchased new lots are less desirable than pristine raw land
- Decreased land values have caused an unsuitable economic environment in which to develop land
- Empty building lots are not aesthetically pleasing to the residents, city or developer.
- For some time now, there have been more lots available within Elk Ridge City Boundaries than there have been buyers.

We feel it would be in the best interest of Elk Ridge City and its residents to consider and approve this extension."

(Discussion on whether this is considered Plat C or Phase 1...it was decided that Plat C is more correct. It was also determined that RL Yergensen's portion of the development goes with this Plat.)

Mayor Dunn asked if the Fitzgerald's had anything to add...they declined.

Nelson Abbott: When the Council spoke to Brian Ewell, he had all of his water rights and was ready to go, if the economy were to turn around in the next few days; Is the purpose of this request to buy more time in hopes that the economy will turn around? Are you ready to go at this point?

Rob Fitzgerald: The funding has been arranged, he has a realtor ready to go with the deal; in fact this same realtor recommends holding off on this.

Raymond Brown: (Same question he asked of Brian Ewell) Councilmember Brown asked about the requirement to convey water rights to the City in conjunction with development.

Rob Fitzgerald: There are some sources they have available to them; their realtor has been looking for them. We could buy some from the same realtor, or others to purchase.

Raymond Brown: He pointed out that water transfers are taking a year or more to go through the process at the State.

City Recorder: SUVMWA is willing to still sell some of the water rights that were available to the City until last November. The price would have to be negotiated once a developer decided how much they needed. These rights are already transferred and ready for conveyance. Ms. Davis pointed out that the requirement to convey water rights is with Final Plat Approval, so the Fitzgerald's are not "behind" by not having them now; but it should be addressed so they have time to transfer, if needed.

Raymond Brown: *(Reading from the minutes where Brian Ewell came in with his request for an extension)* Councilmember Brown went over the time line of approvals if the request were not granted. They would still have ample time to get all the things done to develop.

Rob Fitzgerald: He feels that an extension would give more time for the economy to turn around. They are being counseled that selling lots may not be possible until 2012...he agrees with this estimate.

Mayor Dunn: He has spoken to developers that have other properties across the State and the demand seems to be for "entry-level" homes, which this development would not allow. He was told that anything over \$300,000 is not selling. The Mayor of Santaquin said that their City had over 22 building permits a year ago; this last year they only has 25 permits. The ratios are quite similar throughout the communities.

Raymond Brown: *(Directed to Shawn Eliot)* There are 16 lots included in this proposed Plat; what would the new code do to this number? As has been mentioned previously, if there are substantial changes, the Council may or may not approve the extension.

Shawn Eliot: There are two issues:

- The code would have to be amended to allow for an exception: The minimum acreage wherein they would be able to do ½ acre lots is 20 acres; it would probably not be too difficult to amend the code to say that an exception could be made for contiguous open space...in the code, that open space can be anywhere. Also, If adjoining developments are smaller lot development; then an exception could be made to that 20 acre requirement. The total development (both Plats) is about 19.8 acres.
- The other issue is the 40% open space; they are currently at 30%.
- On the other side, the code does allow for up to 30% more density...where they could do more than ½ acre lots...in return for amenities (flatter open space, natural space mixed with park space, "street furniture")
- When he looked at the differences before for Plat D, he found that Plat C would go from 16 lots to 12 lots...that would have to be reviewed further.

Mayor Dunn: *(Further explanation of SUVMWA water rights)*

- Another advantage is that you would not lose any of the rights in the transfer process.
- He spoke to an individual (Mark Rindlesbach) who, along with Randy Young, purchased water rights and went through the transfer process. He said to the Mayor that he would "love to sell it". There is a lot of water there. The Mayor suggested he deed it to the City and sell it to developers here in Elk Ridge. It was brought in for some of the phases of the Elk Meadows PUD; which is a ways out from developing.

Nelson Abbott: If this extension is granted to the Fitzgeralds; "this is it. This is the final...there will not be another, because this is how our code is written, right?"

Shawn Eliot: The Code says that the Council can grant up to a one year extension.

Mayor Dunn asked for any other questions, from the Council and from the Fitzgerald's...there were none...except that no one was willing to make the motion at this point.)

Sean Roylance: On the one hand...similar to the last request by Brian Ewell...according to our code, an extension should not be granted if circumstances have substantially changed. On the other hand, the Council did grant the extension two weeks ago. Up until two weeks ago, this has been presented as one combined project; he did not see, at this point why they should be split apart and treat them differently...with opposite outcomes.

Raymond Brown: You cannot split out RL Yergensen's portion of this Plat C. So the Council would have to approve Mr. Yergensen's portion along with the Fitzgeralds' portion...all one Plat.

Sean Roylance: (Question to Fitzgerald's) Two week ago the Council was presented with a written request that had the Fitzgerald's names on it, but not their signatures; were the Fitzgerald's intending to be included in this previous discussion and request to extend?

Lari Fitzgerald: She explained that they (the Fitzgerald's) had received an email with the statement on it...they reviewed it and called Brian (Ewell) and said it sounded great; they would be out of town...and for them to represent them.

Raymond Brown: Mr. Ewell said that he had tried several times to contact you and could get no response.

Lari Fitzgerald: Because we were out of town...we did not know for sure what date this would be presented; "when he tried to contact us, we were already gone. He typically does try to get a hold of us a day or two or the day of a meeting that he wants us to be at".

Mayor Dunn: The Planner designed these as two plats that would provide for being separate...in case one moved faster than the other. There have been many issues involved. He feels perhaps keeping them separate would be good.

Lari Fitzgerald: "That's good. Does that mean that we need to go ahead and to "that" with Trane Engineering? That has not been done. We have discussed it multiple times with Brian (Ewell) and with Trane Engineering...we have not paid money to have that separated...? We had decided that we would not do that, as far as the engineering goes."

Shawn Eliot: They did not submit two separate plats; it was all one map. "We asked them to do two separate maps; but there was concern about one being approved and one not being approved. So, they kept them that way stating that it would be separated at Final. I think going forward that Final would be separated." He did not feel they would have to go back and have them separated at this point.

MOTION WAS MADE BY DERREK JOHNSON AND SECONDED BY NELSON ABBOTT TO GRANT A ONE YEAR EXTENSION TO THE PRELIMINARY APPROVAL FOR FAIRWAY HEIGHTS, PLAT C; FROM APRIL 9, 2009 TO APRIL 9, 2010

**VOTE (POLL): DERREK JOHNSON-AYE, JULIE HASKELL-AYE, SEAN ROYLANCE-AYE (3)
RAYMOND BROWN-NAY & NELSON ABBOTT-NAY (2)**

Passes 3-2

Derrek Johnson: Asked for an explanation why Councilmembers Brown and Abbott were willing to grant an extension to Plat D, but not to Plat C.

Nelson Abbott: Mr. Ewell would have lots one lot...this Plat would be affected by four lots or 25%...that's why.

Derrek Johnson: Mr. Ewell would have lost more than one lot...he would have lost all of the lots on top of the hill (three lots).

Raymond Brown gave no explanation.

PLATTING FEES –
HORIZON VIEW
FARMS

Shawn Eliot: A series of emails between the City Planner and the City Recorder revealed brought up a question regarding the status of Horizon View Farms (Elk Ridge Meadows PUD, Phase 4) and applicable fees. Brief History:

This has been considered the "town home project" within the PUD, which had received Preliminary & Final on their previous project; they had never bonded nor recorder the plat. The project has since changed; and the new owners came in October or November, 2008, with Preliminary & Final on their altered plat. They came in with both due to having already received Final previously. They were required to pay the fees for Final Approval. They went to their Technical Review meeting, then on to Planning Commission, where the plat was denied based on the open space issues. Since then, it was discovered that there is a small notation on the one of the Concept Plat maps for the entire PUD that states that there is no open space required for Phase 4. None of the Planning Commission, the Planner, the engineers not the developers themselves noticed this note. At the time of Concept, the details for Phase 4 were nebulous because there were no available details at the time. When Randy Young was questioned on the open space, he responded that it would be a part of the individual plat's Preliminary when it comes forward. The notation basically says that all the other phases have enough open space together to leave Phase 4 out of needing any on its own. Since that time, the Planner has met with the developer and corrected this misunderstanding. Now a new Concept has been submitted that adjusted some of the buildings; now they will come back in with Preliminary and Final Plats.

The Planner felt that they had paid their fee in November and had one Technical Review before going before the Planning Commission, where they were denied. The reasons they were denied were invalidated by the note on the Concept Plat. The Policy has been that if a developer submits for both Preliminary and Final together, and there isn't much work to be done on it; that Final Fees would apply. The Final Fee allows for two Technical Review Meetings. He felt that an additional fee did not have to be charged due to:

- The Planning Commission's input changed the plat
- They have not had two Technical Reviews

There was a difference between this project and another (Dean Ingram plat) because they had many meetings with Mr. Ingram, and he was charged both Preliminary and Final application fees.

The question: Do we charge them for a whole new plat due to the changes from the previous project description? Or, do we say that this can be considered the second Technical Review, which is provided for by the Final Fee?

City Recorder: Ms. Davis asked if the previous plat was considered "null & void" based on the changes on the plat. As it was re-submitted? The previous Final was based on a different concept.

Shawn Eliot: Yes, according to the City Attorney; the time allotted to having the plat recorded was up; but they were postponed due to the denial in November by the Planning Commission, which denial was based on an erroneous assumption.

Recorder: She was under the impression that it was considered void because they changed the plat's concept. What was approved is no longer applicable.

Shawn Eliot: When they re-submitted back in October, 2008, and paid their fees; that would have started their "clock" again. They were still within their year for Preliminary.

Recorder: She felt that Preliminary time periods do not apply when the Final is granted at the same time...the process has simply "fast forwarded" past Preliminary to Final and the time period for Final (six months) applies.

Shawn Eliot: He feels that the denial that put the developers off was the Planning Commission's mistake regarding the required open space. He is treating it as the same application turned in the fall of 2008.

The project can be treated either way; but it has gone back and forth...and David Church also said we should be working in a spirit of cooperation to encourage development; particularly in the attempt to get this PUD "out of the hole".

Raymond Brown: He expressed his concern that the City may not be meeting expenses with regard to fees charged to the City related to this proposed development (planning, public works, engineering, staff, etc.).

Shawn Eliot: The reason for allowing Preliminary and Final together was that there wasn't much review needed. We were at fault due to requiring the open space, which was not the case because of the note on the Concept Plat. Phases 1 & 2 filled the requirement for open space for Phase 4.

Recorder: Is the Planning Commission close to solving the existing problems? Will there be further reviews? Will those be covered by the one fee?

Shawn Eliot: Since the open space in Phase 2 is tied up with the Bank, a solution needs to be arrived at between the developer and the Bank. The City needs to know what is to be done with this. (The open space is the park located east of Phase 2.)

Recorder: With the City in a deficit situation in the General Fund, she is simply concerned that there will be one more cost not covered by revenue coming in; then tax payers would be covering what should be developer costs.

Shawn Eliot: The previous Preliminary and Final was with different developers; it could be looked at as having changed enough to warrant Preliminary and Final being separate. Perhaps the dynamics of the project have changed enough to warrant separating the two approvals off.

The changes are not to the infrastructure; but to the arrangement of the town homes, with single family units included (actually, there are now more single family dwellings, with a few town homes). The Planning Commission has asked the developer to locate all of the town homes along the open space and do "zero lot lines" in the back yards...the open space would be a "common area" for their development. If they cannot secure that open space, then they will have to come back and propose a different idea. The "zero lot lines" allowed more open space in the middle of their development.

So, it must be decided which direction this development should take.

Raymond Brown: Though he is not in favor of burdening the City with any extra costs; he also does not want to burden the developer with the City's mistakes, if this could be thought of as a "mistake".

Shawn Eliot: The developers were also unaware of the notation on the plat...so everyone was responsible for this situation.

Mayor Dunn: Perhaps there is "equity" in the fees paid due to services un-rendered...they had not had both the Technical Reviews allowed. Salisbury picked up the project from Pangea (former developers) and picked up the process from them. He did not believe that Mr. Salisbury had paid anything as yet.

Shawn Eliot: He believes that Pangea was trying to market the development and trying to get Mr. Salisbury to purchase it. Mr. Salisbury's name is not on the project at this time.

Mayor Dunn: If it is not in Mr. Salisbury's name, then perhaps we are still obligated by the previous fee schedule.

Shawn Eliot: There have been a lot of changes; depending on the perspective, it could be thought of either way. Since they had to re-submit Concept, perhaps it is appropriate to work through the entire subdivision process.

Raymond Brown: He suggested splitting any overages with costs between the developer and the City. He does not have the answer.

Shawn Eliot: Doing Preliminary & Final together will cut the costs. The hard part is; we are not doing as much work, but it keeps coming back time and again. The Planning Commission has had a hard time with the concept of small, single-family homes...they liked the town homes better. It is the single-family homes that have "eaten up" much of the open space; so it wasn't just the lack of open space that was the issue, but a combination of things.

Raymond Brown: Even though the perspective could go either way, Councilmember Brown asked the Planner what his recommendation is.

Shawn Eliot: After talking through the issues, he felt that the plat should be put back through the entire process, with Preliminary and Final separated off. There has been a great deal of work that has gone into the multiple times that this has come back for adjustments. If questions arise, he said he would just have to deal with them.

Nelson Abbott: If they are allowed to "come back through again", he thinks the City needs to be clear that they will not be allowed another "go around" after this time. If they attempt to come back through, they need to understand that they will be paying all fees. He does not believe they are finished even yet.

Mayor Dunn: (In the attempt to clarify the guidance to the Planner) The direction is to go ahead and "push them through" with Preliminary and Final together at this time; however, if they re-submit, they will have to start over with the entire subdivision process...subject to all applicable fees.

Raymond Brown: He is still concerned that the City could be covering fees for the various reviews by the Planner, Engineer, etc.

2008/2009 AMENDED
BUDGET –
ADOPTION

The question remained regarding the replacement of the water line on Canyon View Dr.)

Nelson Abbott: He preferred to postpone the replacement until next fiscal year and hope that the cost of materials continue to decrease. If costs hit a low, he would consider amending this year's budget to do the replacement in 2008/2009.

Mayor Dunn: Perhaps we should keep an eye on costs and get an estimate of what materials would be needed for the project. The estimate was about \$105,000.

Raymond Brown: That estimate was on the high end of costs 6 months ago.

MOTION WAS MADE BY RAYMOND BROWN AND SECONDED BY JULIE HASKELL TO ADOPT THE AMENDED BUDGET FOR THE 2008/2009 FISCAL YEAR BUDGET FOR THE OPERATION OF ELK RIDGE CITY; AS PRESENTED

VOTE: YES (5)

NO (0)

Mayor Dunn: He counseled that the Dept. Heads should keep close watch on expenditures to see where things could be adjusted; both in considering the final amended budget for the current fiscal year and in looking to the next fiscal year.

Nelson Abbott: He added that it may be prudent to schedule a City Council Closed Session for the purpose of discussing personnel.

(A discussion of what makes up a quorum on the City Counsel took place...simply for information.)

RATIFY POLLED VOTE
RE: SCHEDULEING
PUBLIC HEARING FOR
IMPACT FEES

Amy Thatcher needed a date to be able to notify various entities that would be required by law to be included.

MOTION WAS MADE BY RAYMOND BROWN AND SECONDED BY SEAN ROYLANCE TO RATIFY THE PREVIOUSLY POLLED VOTE TO SCHEDULE A PUBLIC HEARING TO ADDRESS UPDATED WATER, SEWER AND ROAD IMPACT FEES, ON MARCH 10, 2009; AT 6:00 PM

VOTE (POLL): DERREK JOHNSON-AYE, JULKIE HASKELL-AYE, RAYMOND BROWN-AYE, NELSON ABBOTT-AYE & SEAN ROYLANCE-AYE (5)

NO (0)

Passes 5-0

SCHEDULE PUBLIC
HEARING – DEFAULT
FOR ELK RIDGE
MEADOWS PUD,
PHASE 2

Brief history of issues (Memo from Recorder to Council, dated 2-24-09)

"During the meeting with Centennial Bank representative to determine responsibility for Phase 2...the Bank does not want to claim responsibility for any of the work to be done...only the impact fee re-imbursements to be collected. He was informed that the City's Attorney advised paying the money to a third party, namely the court system, and the courts could determine who ultimately gets the money.

It was suggested we withhold building permits while all the patch work + overlay work gets done...I called David Church in the middle of the meeting and he said we cannot do that, besides we want building to get going! He advised we get started on the default process, since it takes a while...so we can start the paperwork to tap into the Surety Bond...if the developer fails to install the needed improvements. The developers are responsible for the work (not the Bank), since it is they who have the bond in place. The Surety Bond is up in September, 2009; so we haven't much excess time to draw on it."

(Also included in the packets: letter from Craig Neeley regarding the process to draw upon a bond.)

Raymond Brown: This has been discussed in a previous Council Meeting; we have a certain amount of money set aside in a Surety Bond. We want to have this Public Hearing to:

- Let the developers know that we are going to finish the project (roads, gutters and whatever else needs to be done)
- Allow them the opportunity to complete the list; if not, then the City can simply draw on the bond.

Councilmember Brown submitted a bid from Staker Paving (they did the original work) for \$91,388. This would take care of the 1" overlay and would also repair the entrance where the sewer pipe went in and has caved in. A 2 1/2" asphalted trail would also be finished where the electrical pole were removed (4,280 sq. ft. of asphalt). He feels the estimate is a good one and that we should proceed with the Public Hearing process.

We are not contracting with Staker at this time; this is just a bid. The City will not proceed until the money is available, since it can be a bit difficult to draw on that bond, according to Mr. Neeley.

He was told by Ron Knight (Staker) that he would hold to these prices.

MOTION WAS MADE BY NELSON ABBOTT AND SECONDED BY RAYMOND BROWN TO SCHEDULE A PUBLIC HEARING TO CONSIDER THE DEVELOPERS OF ELK RIDGE MEADOWS PUD, PHASE 2; ELK RIDGE MANAGERS, IN DEFAULT; ON MARCH 24, 2009, AT 6:00 PM

VOTE: YES (5)

NO (0)

FUTURE OF CITY-
OWNED PROPERTIES

Raymond Brown: *(Memo to Council)*

"Due to excessive manpower used to maintain the flow of salt distribution in our snowplow spreaders, less effective distribution, loss of salt due to the elements and leaching of salt in private property, it has been proposed to spend funds to prevent this loss of road salt and the extra expense associated with same. The savings would be re-occurring and would essentially amount to a one-time expense. Over a period of time, the realized savings will pay for this expenditure.

This proposal is to build a shelter on City property to protect the road salt from weather conditions that dissolve and destroy the road salt. This unit will consist of a roof and containment walls of concrete (4 foot pony wall) in an area of about 22' X 26'. Also there will be additional protection on the sides through the two extra sheets of steel panels. Electricity will be needed for the purpose of lighting and to heat diesel engines, i.e.: front loader. Most of the electrical, foundation or prep work, road base work and concrete prep/finish, will be accomplished by the City Works Department and City volunteers. Below is the estimated cost, less buyer furnished equipment and labor:

- 22' x 26' enclosures would be	*base price:	\$2395.00 (12 gauge)
- Two additional side panels	\$85 each:	\$ 170.00
- Vertical roofing vs horizontal		\$ 500.00 (additional)
- 4 ft pony concrete wall		\$ 2000.00 est.
- Road base flooring		\$ 500.00 est.
- Electrical		\$2000.00
	Approximate cost:	\$7565.00

*Price includes delivery, prep and assembly (on level ground) clean up and haul off"

Councilmember Brown reviewed his memo with the Council. Many cities have their salt in enclosed areas so they do not have these problems. Vertical roofs are more expensive, but he does not think that is needed.

This would be located on the property the City already purchased.

He included prices and a diagram of the shed. The price of this would come from Roads (or possibly the money designated for the City Center?).

Nelson Abbott: (Vertical roofing vs. horizontal) Ed Christensen (resident) had a shed like this with the horizontal roof; the snow collapsed it.

Raymond Brown: He would order 12 gauge...

Discussion regarding sturdiness of the proposed shed.

It may cost a bit more for a vertical roof (about \$500 more), but perhaps it would be better, particularly with the amount of snow we get in Elk Ridge. (Councilmember Abbott agreed.) There are no options to increase the pitch of the roof.

Mayor Dunn: If this shed is a step-by-step project, where the salt shed is erected; later on perhaps a Public Works building; later on the park, perhaps...with the rate of growth, a City Center would not be needed for a while. But we are crowding the Public Works.

The brick to be able to load the trucks would have to be moved.

Question: What does the Council think about using some of the bond money to build this structure? The options for the bond money would include this modular type if building.

We still have 21 months left to utilize the bond money left (about \$600,000). Options include:

- Put it back onto the loan; it would not help to decrease the annual payments, it would be taken of the back end of the loan. We will still have to be creative about what the City does with the property in Loafer Canyon. It is already a lot, and it would need to be cleaned up. About 43 loads of fill were placed on the lot by the City.

Raymond Brown: He spoke to the two residents living just east of the City lot; they mentioned they were interested in buying that land. Councilmember Brown did talk to them about the City being interested in selling this land to them. They may not be in as good a position as when they initially proposed the idea.

City Recorder: Would the City be willing to finance the cost and carry paper on it?

Raymond Brown: He feels this would be a good option and the City could put this money toward the loan payments on the property on Gooseneck Dr. If the bond money could be used, then the expense would not further deplete the General Fund.

Mayor Dunn: He is not sure how far the discussion on City owned property can go during this meeting; the Council does not have information like blueprints to examine, cost estimates, ideas about what to install first, etc. Perhaps the park needs to be addressed first.

City Recorder: Salem Recreation Dept. is not including Elk Ridge and Woodland Hills in their sports without the non-resident fees. Elk Ridge and Woodland Hills are trying to have our own younger league; additional park space would be great to be able to better accommodate sports.

Raymond Brown: He added that the City is way behind on the amount of park space we have per capita.

Russ Adamson (former Planning Commission Chairman) was very concerned about this lack of space for activities in the City. The survey was also much in favor of more park space.

Recorder: There should be sample plans that show the future of this land; we cannot just install a park without knowing the best location for it in relation to the rest of the future. The overall plan can be installed one phase at a time, as funding is available.

Mayor Dunn: Ken Harris (local architect) gave the City some plans to Eagle Mountain's City Center for review. Their Center is rustic and would fit beautifully here in Elk Ridge...perhaps on a smaller scale. He submitted others, but they would not be conducive to Elk Ridge.

Raymond Brown: He feels that the Council needs to sit down and review the plans and see where things should go and how much the costs would be, so there is a beginning point; of the Council could then decide not to move forward...but the decision needs to be an informed one.

-The Public Works supplies in the Canyon, stored on the City property, would be moved.

- Perhaps the City could look at the existing house on the City property, move it or sell it as is.

Mayor Dunn: It would take about \$30,000 to move the house; is the building worth moving?

Sean Roylance: He asked how many square feet the house is.

Raymond Brown: Maybe 2,800 sq. ft.; but that could include the basement. He thinks it could be about \$14,000 to move it.

Sean Roylance: The City could just lower the price of the house considerably, and try to just sell it.

Mayor Dunn: He suggested selling the house as it is; but the new owner would have to move it. The house did not cost the City anything; it was gifted, along with the property.

There may be some commercial opportunities to consider for the area.

Sean Roylance: We have talked about one option for the \$600,000...putting it back onto the loan:

1. There may be more years that would be taken off the end
2. Would it be impossible to re-finance the loan? Councilmember Abbott recalls Curtis Roberts explaining this and he thinks he said no to re-financing due to certain "strings" attached to the Sales Tax loan itself.

Mayor Dunn: He knows that the terms of the loan include the bond being "callable"; which means that it could be paid off early without penalty.

Sean Roylance: He would like to check into exactly how much time or how many payments would be taken off the end of the loan if the money were put back onto the loan.

(The Council reviewed the loan documents, specifically the payment schedule.)

- He would also like to explore the possibility of re-financing the loan
- He would like to see how much would be taken off the end

Under certain circumstances, it may be best to make use of the money rather than paying onto the loan; but he would like some answers to these key question before making that decision.

Mayor Dunn: He suggested getting an idea of the purchasing power the City would have by getting a ballpark some kind of a general plan to get an idea of the cost of materials.

Three years ago, former Mayor Dean Allen of Mapleton, took all of the Mayors in South County through the new City Center. Mayor Dunn asked him how a little town like Mapleton could afford such a nice building; he answered that they did it with three methods:

- Bonding
- Fund raising
- Donations

They got the whole community involved. That is what was expressed in a newsletter article to the citizens. There was an anonymous letter sent to the City, of which part said that the Mayor was unrealistic in this view (in fact, the letter actually said his idea was "laughable"). Mayor Dunn comes from the background where neighborhoods would not only build chapels, but homes for sale to help in the costs of building the chapel themselves. Communities do come together...he has participated in this type of community effort. He does feel a City Center could be a community project. He does love this City and his objective is to assist in making it a lovely and comfortable place to live. He, personally, would be willing to donate time and effort into a project like this.

General Guidelines:

- Get some additional plans from Ken Harris for the Council to review in a Work Session
- He has a son-in-law that works at Sun Rock; he will have a materials list made up based on approximate sq. footage.
- He feels the Council should come up with a priority list, based on the survey that has mentioned. Perhaps the timing is not right for a City building, but other parts could still be considered and the Council should keep in mind the future need of the City and pass that information on to future Councils.

Julie Haskell: It does not cost anything to plan.

Mayor Dunn: It just costs "time"...and with building the way it is, the Council does have time. He feels if the Council can see a picture and turn it into a "puzzle", with the modular types of opportunities that could present, then the decisions made would be based on a plan.

*Councilmember Roylance will check with Curtis Roberts.

There was a general discussion on the economy of the Nation.

Mayor Dunn: He apologized if he caused offense earlier in the evening; he feels that the Council needs to work together as a team to get through these difficult times. He hopes that the Council will be good stewards of the responsibilities designated to them. He would like to leave his term of office with the feeling that he did everything he could...and that he did it "honestly and fairly". Even with the differences, he hopes that good feelings within the Council are possible.

Raymond Brown: There are certain realities that need to be considered:

- Fire truck (The Fire Chief says the City needs another one...where will it be parked?)
- The City needs another sweeper (the one we have does not work well...it just stirs up dust)
- The Public Works trucks are backing into one another

Mayor Dunn: The Fire Chief did suggest at one point, adding onto the bay area we have to make more room.

Derrek Johnson: These are all great ideas; but he can see the future...and with everything that is going on...he does not want to get into a situation where there are increases to taxes or fees. People are hurting. We have to make sure we do not go over the amount of the bond right now.

It may not make any sense to put the money on the back end of the loan.

Raymond Brown: With building costs down, it may be a good time to use that money to build part of the project.

Mayor Dunn: Volunteerism in the community builds unity. Citizens find "ownership" in that which they have helped build. The current City Hall was built that way.

EXPENDITURES:

General: None

CITY COUNCIL
MINUTES

A. City Council Meeting 1-13-09:


MOTION WAS MADE BY JULIE HASKELL AND SECONDED BY RAYMOND BROWN TO APPROVE THE CITY COUNCIL MINUTES OF 1-13-09

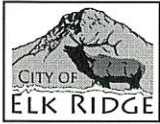
VOTE: YES (5)

NO (0)

ADJOURNMENT

At 9:20 PM, the Mayor adjourned the Meeting.


City Recorder



ELK RIDGE - 80 East Park DR - Elk Ridge, UT - 84651

t.801/423-2300 - f.801/423-1443 - email staff@elkridgecity.org - web www.elkridgecity.org

AMENDED NOTICE & AGENDA – CITY COUNCIL

Notice is hereby given that the City Council of Elk Ridge will hold a regular **City Council Meeting on Tuesday, March 10, 2009, at 7:00 PM, to be preceded by a City Council Work Session at 6:00 PM.**

The Public Hearing on Impact Fees, scheduled for 6:00 PM, was CANCELLED. (To be re-scheduled)

The meetings will be held at the Elk Ridge City Hall, 80 E. Park Drive, Elk Ridge, Utah.

6:00 PM - PUBLIC HEARING – CULINARY WATER, WASTEWATER COLLECTION & ROADWAY IMPACT FEES

CANCELLED

6:00 PM - CITY COUNCIL WORK SESSION AGENDA ITEMS

Administrative Protocol Discussion – Raymond Brown

A. Discussion to included ULGT Video

7:00 PM - REGULAR COUNCIL MEETING AGENDA ITEMS:

Opening Remarks and Pledge of Allegiance Invitation

Approval/Agenda Time Frame

Public Forum:

1. Horse Boarding Rates / Discussion – Kevin Paxton
2. Planning Commission Member Appointment – Mayor Dunn
3. Dates for Joint City Council Work Session – Payson City – Mayor Dunn
4. Schedule Public Hearing – Adopt Impact Fee Ordinance (April 14, 2009; at 6:00)
5. City Celebration – Derrek Johnson
6. Expenditures: General

A. Check Registers & Payroll Registers – City Council Approval

7. Approval of Minutes of Previous City Council Meetings

Adjournment to City Council Closed Session

CITY COUNCIL CLOSED SESSION

Discussion of Personnel

Handicap Access, Upon Request. (48 Hours Notice)

The times that appear on this agenda may be accelerated if time permits. All interested persons are invited to attend this meeting.
Dated this 9th day of March, 2009.



City Recorder

CERTIFICATION

I, the undersigned, duly appointed and acting City Recorder for the municipality of Elk Ridge, hereby certify that a copy of the Notice of Agenda and an Amended Agenda was faxed to the Payson Chronicle, 145 E Utah Ave, Payson, Utah, and provided to each member of the Governing Body on March 6, 2009; & another amended Agenda on 3-9-09



City Recorder

ELK RIDGE
CITY COUNCIL MEETING
March 10, 2009

TIME & PLACE
OF MEETING

This Regularly Scheduled Meeting of the Elk Ridge City Council, was scheduled for Tuesday, March 10, 2009, at 7:00 PM; this was preceded by a City Council Work Session at 6:00 PM. The Public Hearing on Impact Fees scheduled for 6:00 PM was cancelled.

The meetings were held at the Elk Ridge City Hall, 80 East Park Drive, Elk Ridge, Utah.

Notice of the time, place and Agenda of these Meetings were provided to the Payson Chronicle, 145 E Utah Ave, Payson, UT, and to the members of the Governing Body, on March 6, 2009; and an Amended Agenda on 3-9-09.

6:00 PM -

PUBLIC HEARING - CULINARY WATER, WASTEWATER COLLECTION & ROADWAY IMPACT FEES CANCELLED (To be re-scheduled)

6:00 PM -

CITY COUNCIL WORK SESSION AGENDA ITEMS

ROLL

Mayor Pro-tempore: Raymond Brown; *City Council:* Nelson Abbott, Julie Haskell, Sean Roylance & Derrek Johnson (Mayor Dunn: Absent); *Public:* Scouts: Dallin Kimber, Spencer Weakley, Payton Kimber, McKay Simmons & Jonny Weakley; Rodger Hardy (Deseret News), *High School Students:* Kaitlyn Jones, Brianna Jones, Sara Callor, Nicole Bradley, Kevin Stringham, Howard Van Nostringam, George P. Ranks, Davey Jones, Eric Johansen, Marvin J. Pimp (sure), Smelty R. Hooglehof (?), M. Mitchell, Kurst Mackzie, Dean Christensen; Melanie Paxton; and the *City Recorder:* Janice H. Davis

ADMINISTRATIVE
PROTOCOL

Raymond Brown: Councilmember Brown has had extensive experience in Human Relations, as related to various working environments. He conducted what could be considered a "training session" with the idea of assisting the Council in gaining a better perception of one another, as well as their particular duties as elected officials. Through a power point presentation as well as various exercises meant to cast a positive light on themselves, one another, the Mayor and the Council, as a legislative body.

The Mayor, the City Recorder and Councilmember Brown attended a Utah League Conference two years ago where they were given a type of personality analysis; they are very different types. Councilmember Brown is trying to get this "test" for the Council to take, but has not been successful to date. The point of the "test" was to point out that, though certain types may differ, there is a way to learn to function with a positive attitude of cooperation...and still be effective.

Knowing one another makes a difference in the level of respect and understanding that exists from one person to another. Knowing another person also reveals which "buttons" not to push for the sake of better communication.

- "If it is to be, it is up to me."
- Everyone should take responsibility for their own areas and the Council, as a whole, should take advantage of the various areas of expertise that are made available through the experience of the individual Council members and the contracted professionals.
- Repeating things over and over again tends to be a waste of time. (Example: Building Heights were re-visited numerous times; he feels that was too much time to spend on one subject...but re-hashing things seems to occur on things the Council has already voted on. This happens often.
- If there are areas of disagreement, it should be worked out between the individuals, not in a public meeting. Words and intent can be misunderstood and mis-quoted.

Comments:

The Council generally agreed with the points made by Councilmember Brown.

Nelson Abbott: He added that the individual Councilmembers really do not know one another very well; and he agreed that if they knew each other better, there would be a higher level of respect.

Sean Roylance: He had been thinking of the points being made for the last couple of weeks.

- He agrees with the things that were said.
- He also feels that the members of the Council should get to know one another better; it is difficult to find the time and there are restrictions as to the number of Councilmembers that can get together at one time, legally.
- Goals: He agrees that goal writing is important.

**Councilmember Brown asked that the Councilmembers each write up a set of goals for the Council, submit them to Jan Davis and she can compile them for the Council.*

The Mayor allowed Councilmember Brown to run this portion of the Meeting; he was asked not to be in attendance and he agreed. This gave the Council an opportunity to talk and to share perspectives; some of them about the Mayor.

The Mayor is the Administrator; but he should not "do all the work"; it is not his "job"...it isn't fair. The Council needs to be responsible for their Departments and follow-up on assignments. "Everyone needs to do a little bit more...everybody."

Councilmember Brown asked the Recorder for any comments:

City Recorder: Having worked with many Councils and Mayors, she knows that the nature of the job of an elected official is seldom a "popular" one. Decisions made will seldom, if ever, please everyone; and this can be difficult. She also has deep respect for anyone willing to serve our City in this way.

Raymond Brown: (Quoting a former Director of Human Relations of Eastern Airline) Councilmember Brown had asked him how to be successful, in that he was taking over his job...his response, "I don't know, but I can tell you how to fail; try to please everyone...I promise you, you will fail."
Councilmember Brown compared this to Mayor Dunn, saying that if he could pick a fault in the Mayor, it would be that he tried to please everyone..."sometimes you have to take the hard line and say, 'No, you can't do that'. Sometimes that is not the most popular stand, but you've got to do it; either way, you're going to lose... you can't win. Just do the right thing."

There was a video from Utah Local Governments Trust to play; however the speakers were not connected to the equipment and that was postponed.

Since there was some extra time, some of the items scheduled for the Regular Session were discussed:

Planning Commission Member Appointment: Jason Bullard has applied and has been interviewed by the Mayor to be a member of the Planning Commission (replacing Russ Adamson). He moved here from Indiana; he works with artists in setting up shows to show their art. He represents the local artist, Jon McNaughton. He is married with children and is a resident of Elk Ridge.

Dates for Joint Work Session /Payson: Councilmember Brown brought up that Woodland Hills has some problems with such things as water, financial, snowplowing, etc. (The City Council would also like to meet with Woodland Hills' Council to discuss various issues and possibilities for joint agreements.) He was talking to Corbett Stephens about reuniting water to Woodland Hills; it would be a win/win situation.

Re-schedule Public Hearing on Impact Fees: The Public Hearing was cancelled because the code is going to have to be re-written regarding impact fees. Last time there was a change, it was done by resolution and the current code was not updated with the changes. So there were some complications. Amy Thatcher (Aqua) did notify the people involved about the cancellation and will re-notify them of the re-scheduled Public Hearing; the date she will use is April 14, 2009, at 6:00 PM.
Raymond Brown: Road Impact Fees are specific to the particular road they were collected for or adjoining roads and the rights-of-way...nothing else, like trails. Most of the City's roads are interconnected.

*It needs to be checked out if overlays are considered "repairs" or "new" and if impact fees can be used on overlays.

Nelson Abbott: He would like to see the "dugway" improved and widened, if possible. There have been a number of cities that have adopted road impact fees.

ELK RIDGE CITY COUNCIL MEETING March 10, 2009

TIME & PLACE OF MEETING

This Regularly Scheduled Meeting of the Elk Ridge City Council, was scheduled for **Tuesday, March 10, 2009, at 7:00 PM;** this was preceded by a **City Council Work Session at 6:00 PM.** **The Public Hearing on Impact Fees scheduled for 6:00 PM was cancelled.**
The meetings were held at the Elk Ridge City Hall, 80 East Park Drive, Elk Ridge, Utah.

Notice of the time, place and Agenda of these Meetings were provided to the Payson Chronicle, 145 E Utah Ave, Payson, UT, and to the members of the Governing Body, on March 6, 2009; and an Amended Agenda on 3-9-09.

7:25 PM -

CITY COUNCIL MEETING - REGULAR SESSION AGENDA ITEMS

ROLL

Mayor: Dennis Dunn; *City Council:* Nelson Abbott, Julie Haskell, Sean Roylance & Derrek Johnson & Raymond Brown; *Public:* Scouts: Dallin Kimber, Spencer Weakley, Payton Kimber, McKay Simmons & Jonny Weakley; Rodger Hardy (Deseret News), *High School Students:* Kaitlyn Jones, Brianna Jones, Sara Callor, Nicole Bradley, Kevin Stringham, Howard Van Nostringam, George P. Ranks, Davey Jones, Eric Johansen, Marvin J. Pimp (sure), Smelty R. Hooghehorf (?), M. Mitchell, Kurst Mackzie, Dean Christensen; Melanie Paxton; and the *City Recorder:* Janice H. Davis

OPENING REMARKS & PLEDGE OF ALLEGIANCE

An invocation was offered by Raymond Brown and Brianna Jones led those present in the Pledge of Allegiance, for those willing to participate.

AGENDA TIME FRAME

MOTION WAS MADE BY RAYMOND BROWN AND SECONDED BY JULIE HASKELL TO APPROVE THE AGENDA TIME FRAME

VOTE: YES (5)

NO (0)

PUBLIC FORUM

Melanie Paxton: Has the City ever considered a swimming pool?

Mayor Dunn: He answered, yes; however it is cost prohibitive, particularly in the present economy.

HORSE BOARDING
RATES

Mayor Dunn: (Brief Summary of why this is an Agenda item) The Mayor has sent out a couple of letters to Kevin & Melanie Paxton regarding the boarding of the horses on City property. Kevin Paxton came in to speak to the Mayor and the proposed contract to board their horses. The contract was based on the decisions made by the City Council. Mr. Paxton gave the Mayor a bit of history that he passed onto the Council: Horses have been boarded in this location for 12 or 13 years and the price for the horses had been \$25 per horse. The Paxton's horses have been occasionally to the Haskell's property to graze. Mr. Paxton requested being allowed to approach the Council and ask them to reconsider the rate being charged per horse (the rate the Council decided on was \$40 per horse/month).

Melanie Paxton: They understand that the land is City property and they are willing to pay; but are hoping that the rate will be equal to what it has been in the past; the fencing that is up belongs to the Paxton's, which should count to bring the price down a bit. Moving everything is a lot of trouble; they would like to have their horse up here in Elk Ridge for as long as they live here and would appreciate this consideration.

Raymond Brown: The price was arrived at through contacting various people that board horses in the surrounding area. The rates varied from \$125 (with nice accommodations) to \$30 (building your own stalls); he also spoke to an owner in Salem who charged \$40/horse + \$100 deposit per horse (she does not want to board horses any longer); another person charged \$45/horse (just putting the horse on the land). Kent Haskell is running the land owned by his brother, Lee Haskell while he and his wife are on a mission; he does not want to board horses.

Melanie Paxton: She actually spoke to Lee Haskell's son and he said that Lee was agreeable to boarding horses.

Raymond Brown: He spoke to Lee Haskell before he left on his mission and he said he was turning over the management of his property to Kent Haskell, and Kent does not want to get into boarding horses.

Nelson Abbott: He also looked into the charges by talking to owners who do board them as well as going onto KSL's Web site to see what was advertised...the rates go from \$30/horse up to \$125/horse, depending on the amenities and amount of space and number of horses included. He feels \$40/horse is a fair rate, based on location and his research.

Sean Roylance: He asked Mrs. Paxton if she had done any research on other possibilities.

Melanie Paxton: She spoke to Andrew Haskell to see if they would still be willing to rent out space; and he said they are, in fact another person is going to board horses this spring. (Councilmember Haskell commented that he only owns a 1/4 of that land and the corrals are full.) They are willing to charge \$25/horse on their ground.

Mayor Dunn: He also spoke to Kevin about the possibility of the City putting in a "salt storage shed" and it may affect the area where the Paxton's horses are located.

Nelson Abbott: Though he is fine with the contract the way it is, the City should be aware that if a fee is collected, the State law requires that a sign be posted that reads: "The owners of this facility are not liable for accidents that may occur as a result of inherent risks associated with use of this facility; barn and/or arena for equine and/or livestock type activities, as per Utah State law, Section 78-27B-101". (Cost of the sign: \$20)

Sean Roylance: He appreciates the research done by Councilmembers Brown & Abbott; but he does not feel property values are any less than a couple of years ago and perhaps the price should be lowered a bit. He suggested at least dropping the cost by \$5.

(Councilmember Brown mentioned that the availability of horse rental property has dwindled in the general area for some reason.)

Mayor Dunn asked the Council if the contract should be altered or left the way it is.

Julie Haskell: Given the research, the rate seems fair. Derrek Johnson: He is okay with the rate as is.

Raymond Brown: He feels it should be left at \$40/horse; he feels it is fair.

Sean Roylance: He said that he would be more comfortable if the rate were dropped by \$5.

(Melanie Paxton added that they do pay their own water through Goosenest Water, as well.)

Mayor Dunn: He reminded those present that the City did not collect any money in the past year; and at \$40/horse the City lost \$1,920 in revenue...at \$25/horse it would have been a \$1,200 loss to the City. So, basically there is a discount involved due to the year's worth of boarding at no charge.

When the City purchased the property, the Mayor was told by the former owner that the horses would be removed within three months...and they did not say who the owners are.

(Mrs. Paxton was not informed of this by the former owners.)

The Council chose to waive any back-charges, so that could be seen as a discount. The City is trying to be fair.

(Mrs. Paxton said she understands that.)

Raymond Brown: He suggested staying with the contract as it is and then to review it annually.

MOTION WAS MADE BY RAYMOND BROWN AND SECONDED BY NELSON ABBOTT TO STAY WITH THE ORIGINAL DRAFT OF THE CONTRACT, AT A BOARDING RATE OF \$40/HORSE PER MONTH; WITH THE POSTING OF THE LIABILITY SIGN ON THE CITY PROPERTY, WITH THE CITY COVERING THE COST OF THE SIGN

VOTE: YES (5)

NO (0)

A copy of the contract was given to Mrs. Paxton to consider with her husband.

PLANNING
COMMISSION
MEMBER
APPOINTMENT

(Jason Bullard was not present because he was at Planning Commission training.)

The Mayor told of his interview with Mr. Bullard, who lives on Elk Ridge Drive by the brown chapel. Mr. Bullard was a policeman in Indiana, where he ran for Mayor (unsuccessfully) and currently works with Jon McNaughton (local artist). He is anxious to serve our Community.

MOTION WAS MADE BY JULIE HASKELL AND SECONDED BY RAYMOND BROWN TO RATIFY THE 4 POLLED VOTE TAKEN TO APPOINT JASON BULLARD AS A MEMBER OF THE ELK RIDGE CITY PLANNING COMMISSION, REPLACING RUSS ADAMSON
VOTE (POLL): DERREK JOHNSON-AYE, JULIE-AYE, RAYMOND BROWN-AYE, NELSON ABBOTT-AYE & SEAN ROYLANCE-AYE (5) NAY (0)
Passes 5-0

JOINT CITY COUNCIL
 WORK SESSION WITH
 PAYSON CITY
 COUNCIL - DATES

Mayor Dunn: He has talked to both Payson City and Woodland Hills about getting together with them to discuss possible joint agreements/ventures. Jill Spencer is the Assistant Planner for Payson City, emailed the Mayor about a week prior to the meeting asking for some dates to choose from. And she would take them before their Council. Their Council Meetings are on Wednesdays.
Raymond Brown: An agenda for items to discuss needs to be decided on prior to meeting with their Council.
Mayor Dunn: Things to consider:
 - They have 1.8 acres of Hole #7 left. They have offered it to Elk Ridge at the price we suggested some time 1 ½ ago.
 - Annexation of Haskellville area and concerns associated with that
Raymond Brown: Some research would be wise to determine some of the deals cut with Payson City when they acquired the land for the Golf Course; perhaps it could be given back. The Council needs to "do our homework" and be prepared with good information.
Mayor Dunn: Closed Sessions can be used to negotiate land acquisitions.

The Council discussed dates.

Tuesdays or Wednesdays are fine with the Councilmembers; preferably Tuesdays.
 April 21 or May 5 were the dates decided on.

*The Council is to discuss the Agenda items to take to Payson at the Council Meeting on April 14.

SCHEDULE PUBLIC
 HEARING - IMPACT
 FEES

MOTION WAS MADE BY NELSON ABBOTT AND SECONDED BY RAYMOND BROWN TO SCHEDULE A PUBLIC HEARING FOR APRIL 14, 2009, AT 6:00 PM; TO CONSIDER A PROPOSED ORDINANCE ADOPTING WATER, SEWER AND ROAD IMPACT FEES
VOTE: YES (5) NO (0)

CITY CELEBRATION

Derek Johnson: The Celebration will be coming up at the end of June. He has some concerns. Last year, the Parks Department went over budget for the Celebration; we have to pay for everything upfront, regardless of how many people from the Community show up for the Celebration.

Due to economic difficulties, he proposed some possible changes:

- He checked with Party Land: Most "inflatables" have stayed pretty constant in price, but the toys (prizes) have gone up considerably.
- He is concerned about going ahead with the Carnival portion of the Celebration (due to cost)
- He suggested just doing the Parade and the Mayor's Dinner
- Open to suggestions

Raymond Brown: He wondered if there would still be concessions where things like hog dogs, popcorn, soda would be sold. *(That would be the Mayor's Dinner.)*

Suggestions:

- Various types of tosses with water balloons (we have the boards)...using other types of prizes
- Dunk Tank (with the Mayor)

Julie Haskell: She suggested having the Bike Fair at that time.

Nelson Abbott: Matching the prize to the cost of the tickets might help.

(There cost of the tickets is already high for what they are getting.)

Councilmember Abbott continued that what the City provides for the families is better than comparisons with other celebrations. There is a good feeling here, where the kids can run and have fun.

He feels there is still value associated with the event where people would be willing to pay a bit more.

- Perhaps cold beverages could be sold out on the field where the games are going on...it is hot and we might sell more.
- Assign more Eagle projects to make more games.

Derrek Johnson: The prizes will still cost, even with home-made games. Last year there were complaints about the price of the tickets for the inflatables...but they are the most popular things with the kids.

Mayor Dunn: He brought up just getting a bunch a plastic and soap on the lawn for a sliding contest...see who could slide the farthest.

Nelson Abbott: Councilmember Roylance mentioned this last year: how about providing commercial space for booths for non-competing businesses.

Raymond Brown: He added that a craft fair could bring in revenue by charging a fee for the space.

Mayor Dunn: He thought of a "Silent Auction"...he would donate some of his art and he could talk to other artists...as well as other crafts people. The Sheriff would want a booth there.

Nelson Abbott: He knows a resident that might be willing to head something liker that up; Councilmember Johnson can contact him for the name and number.

Mayor Dunn: The Firefighters' Breakfast needs to be successful...

Nelson Abbott: He added that if there is not enough going on for the day that could negatively impact the attendance at the Breakfast.

Sean Roylance: The charge for the craft booths as well as the Silent Auction could off-set the cost of the inflatables.

Julie Haskell: Services could also be auctioned off...yard work, baby sitting, etc.

*These were all good suggestions and Councilmember Johnson will follow up on these and "get going".

*Councilmember Abbott and Mayor Dunn will look into the Silent Auction. *Sean Roylance knows a woman that might run a quilting booth.

EXPENDITURES:

General:

1. The axle broke on the older "Bobtail" truck; the cost of repair is not known at this point.
2. There was a flat tire on the backhoe that will need to be fixed.
3. There was a water line break on Highland Circle.
4. The telemetry on the upper tank failed.
5. Councilmember Brown had jackets, hats and shirts made for the Public Works Dept. and the cost of the purchase and the embroidery will be coming through.

Check Registers & Payroll Registers:

MOTION WAS MADE BY RAYMOND BROWN AND SECONDED BY JULIE HASKELL TO APPROVE THE CHECK AND PAYROLL REGISTERS FOR JANUARY AND FEBRUARY, 2009

VOTE (POLL) SEAN ROYLANCE-AYE, NELSON ABBOTT-AYE, RAYMOND BROWN-AYE, JULIE

HASKELL-AYE & DERREK JOHNSON-AYE (5)

NAY (0)

Passes 5-0

CITY COUNCIL
MINUTES

City Council Minutes of 1-27-09:

MOTION WAS MADE BY RAYMOND BROWN AND SECONDED BY JULIE HASKELL TO APPROVE THE CITY COUNCIL MINUTES OF 1-27-09, AS AMENDED

VOTE: YES (5)

NO (0)

A. City Council Meeting 1-13-09:

MOTION WAS MADE BY JULIE HASKELL AND SECONDED BY RAYMOND BROWN TO APPROVE THE CITY COUNCIL MINUTES OF 1-13-09

VOTE: YES (5)

NO (0)

ADJOURNMENT

At 8:10 PM, the Mayor adjourned the Meeting.


City Recorder

**ELK RIDGE
CITY COUNCIL MEETING
March 24, 2009**

**TIME & PLACE
OF MEETING**

This Regularly Scheduled Meeting of the Elk Ridge City Council, was scheduled for Tuesday, March 24, 2009, at 7:00 PM; this was preceded by a City Council Work Session at 6:15 PM. The Public Hearing regarding consideration of a Declaration of Default for Elk Ridge Meadows PUD, Phase 2, was held at 6:00 PM.

The meetings were held at the Elk Ridge City Hall, 80 East Park Drive, Elk Ridge, Utah.

Notice of the time, place and Agenda of these Meetings were provided to the Payson Chronicle, 145 E Utah Ave, Payson, UT, and to the members of the Governing Body, on March 20, 2009.

6:00 PM -

PUBLIC HEARING - ELK RIDGE MEADOWS PUD, PHASE 2 - DEFAULT DECLARATION

The City Council consideration of a Default Declaration regarding Elk Ridge Meadows PUD, Phase 2

ROLL

Mayor: Dennis Dunn; *City Council:* Julie Haskell, Sean Roylance & Derrek Johnson (Absent: Raymond Brown & Nelson Abbott); *City Attorney:* David Church; *City Planner:* Shawn Eliot; *Building Official:* Corbett Stephens; *Sheriff:* Deputy Jim Tindall; *Public:* Kelson Eliot, Jennifer Robinson, Dave Millheim, Paxton Guymon, Bob Peavley, Tom Henriod, Bill & Sherrie Ross, Grant Mines & Alan Thompson; and the *City Recorder:* Janice H. Davis

Mayor Dunn opened the Public Hearing at 6:00 PM.

"Mayor Dunn: (Read from the code regarding defaulting on Performance Guarantees)

10-16-6: DEFAULT:

Where, in the opinion of the city council, a developer fails or neglects to satisfactorily install the required improvements or make required corrections, or to pay all liens in connection with said improvements, make payment to the city for administration and inspections, or otherwise fails in carrying out the activity for which the performance guarantee was required, the city council may, after a public hearing with due notice on the matter, declare the performance guarantee forfeited and thereafter may install or cause the required improvement to be installed using the proceeds from the guarantee to defray the costs; provided, that the city shall not be responsible for work beyond the limits of the bond amount. Any funds remaining after completion of the required improvements will be returned to the developer. (Ord. 97-7-8-8, 7-8-1997)"

This bond is a surety bond; and this public hearing meets a portion of the code requirements that allows the City to actually call on the bond, as in the case of a default.

The items to be addressed:

- The 1" overlay on the roads
- Finishing the trail on the north end of the Development

David Church (City Attorney): "Notice was sent to the developers, Elk Ridge Managers, at the last address that they have on record with us."

"They have been given notice of what we are alleging is the default in the performance, which you have described as being the minor problem with the sewer, the trails is not complete and then, of course, the one inch overlay that needs to be completed. We don't want to let another paving season go by..."

"This is a two-year bond and it will be up in August. Anyway, they have been given appropriate notice of the public hearing; this is the time and place that they should be here to contest whether or not they are or are not in default. So, I think the procedure is that you would indicate whether or not anybody's here representing the developers that want to comment on it. If there isn't, then I think that fulfills the purpose of the public hearing; if there is, then you would hear their comments and then receive the response from the staff...and then, eventually, make a determination based on the information presented at the hearing, whether or not they are or aren't in default of their subdivision obligations. If they are, then we'll send notice then to the surety to either repair or "pay over"; and with the surety, I am sure that they will be in contact with you to try and work out the arrangements on what you want done and how."

Mayor Dunn: "That being said, is there anybody here representing the developer that wants to make comment? Anybody at all?"

(There was no public present at that time specifically for the Public Hearing; so the Public Hearing was left open, but a non-agenda item was allowed to be presented. Representatives from the Sheriff's Dept., specifically for the RAD Program, were there to address the Council...the Agenda was to include them, but it did not.)

6:15 PM -

CITY COUNCIL WORK SESSION AGENDA ITEMS

ROLL

Mayor: Dennis Dunn; *City Council:* Julie Haskell, Sean Roylance & Derrek Johnson (Absent: Raymond Brown & Nelson Abbott); *City Attorney:* David Church; *City Planner:* Shawn Eliot; *Building Official:* Corbett Stephens; *Sheriff:* Deputy Jim Tindall; *Public:* Kelson Eliot, Jennifer Robinson, Dave Millheim, Paxton Guymon, Bob Peavley, Tom Henriod, Bill & Sherrie Ross, Grant Mines; and the *City Recorder:* Janice H. Davis

"RAD KIDS" PROGRAM
(NON- AGENDA ITEM)

Mayor Dunn: This is a program the Sheriff and the Mayor have spoken of and they felt the Council should be aware of what it is and how to best make use of it for our Community.

Jennifer Robinson: (Representing the RAD Kids Program)

RAD = "Resistant Aggression Defensively"...RAD Kids is a National Child Safety Program that is one of the largest of its kind in the Country. It is set apart from other National Child Safety Programs by: Kids seem to have an innate sense of "resistance"; this Program makes use of this tendency in a constructive way.

1. They cover a very comprehensive Child Safety curriculum

Focus is on several areas: Recognizing emergencies, strangers, tricks, passwords, school safety, drugs, internet safety, cyber bullying (fairly new, but a growing problem), fire safety, safety in the home, vehicle safety, guns, dog safety (not usual, but needed) & safety in stores.

2. Physically train the kids involved with the Program, besides informing them

People learn better by involving "muscle memory".

Some of the actual drills were discussed and examples of those were given, demonstrating that this is a Program for parents; as well...it is a partnership between parent and child.

The Program teaches kids that they have options, should they be placed in a threatening situation. Perhaps some of the tragedies with kids could have been avoided if they had been given some training and taught that they have options.

"The first time a child practices getting away from danger should not be in real life...let's give it to them in a context where they have the ability to practice it and to develop that self esteem, that self value and that self realization that they can...that they do have realistic choices and options to get away."

How do we do this? Let's give them a reason to want to do that.

Three things that are applied to *all* of the curriculum (3 Things all RAD Kids know):

(Life Skills taught in a safety context)

1) No one has the right to hurt me. (Explanation)

Statistics: 96% of the time, when a child is sexually assaulted or abused, they know the perpetrator; yet we tell our kids that "strangers" are the ones to beware of. She worked in Youth Corrections for 10 years and she witnessed over and over young men and ladies brought into their facility for sexually assaulting another child.

2) I don't have the right to hurt anyone else, including myself

(If someone is physically trying to hurt me, I can stop that person and get help)

3) If anyone tries to hurt me, it's not my fault, and I can tell

(This is empowering to a child or anyone to hear and to understand.)

This teaches the child that even though something bad has happened to him/her, it does not define who he/she is.

Many inmates, whose children have participated in the RAD Program, have expressed that, had they known these things, perhaps they would not have led the lives they have and may have ended up in a different place.

Ms. Robinson has worked with Deputy Tindall in the RAD Program and has been impressed with his ability to work with children. She acknowledged his efforts in bringing the Program to the southern part of Utah County.

Deputy Tindall: There was a "graduation class" from RAD Kids in Goshen (today) at the Elementary School; and there will be another on Thursday.

This is not a "guarantee" but offers options.

Individuals arrived for the Public Hearing on developer default; so the Mayor interrupted Deputy Tindall to allow the Public Hearing to continue.

**PUBLIC HEARING – ELK RIDGE MEADOWS PUD, PHASE 2 – DEFAULT DECLARATION:
(CONTINUED)**

The City Council consideration of a Default Declaration regarding Elk Ridge Meadows PUD, Phase 2

David Church (City Attorney): He was out in the foyer bringing the gentlemen up to date that the Public Hearing had opened and reiterating the issue to them of whether they were or were not in default on the subdivision items; and they were reminded of the three items under consideration (as per Corbett Stephens):

1. Sewer trench that needs to be repaired

2. The trail

3. One-inch overlay that needs to be completed

That the purpose of the Hearing is to receive their input on those three items; whether or not they think that they need to be repaired and what the status is with them. Mr. Church mentioned that the developers had brought an attorney with them and introduced Mr. Guymon to the Council.

Dave Millheim: He knows this is an unpleasant thing the City is entertaining; they are certainly not happy with how things turned out with the subdivision in question (Elk Ridge Meadows PUD, Phase 2).

"We no longer own any lots out there. Centennial Bank, Alan's here behind me; they have 52 (corrected himself...66) lots." There is another small bank that owns about 13 lots. About 13 lots were sold; and there are about 4 or 5 homes in there and only two are occupied and the other two are "spec" homes.

Regarding the issues raised by Mr. Church:

- "We believe the sewer failure is the direct fault of Payson City's faulty sewer installation. If you ask Payson City, they will tell you it's a direct fault of how our guys connected to the sewer...that is something that will be adjudicated between the 'warring' parties, if it gets to that; because we clearly saw the failures
- and took pictures right after they started. So, I'm not here to defend my position, I'm just telling you we don't think that's our fault."
- "The trail is not done; I see no visible way it's going to get done....and
- I know you're dealing with the overlay question under warrantee; but we do believe we have claims against the City...we have a pending law suite that's going no where fast, as it relates to the original exaction of the owner.
- Road Fees: We also have some fees we believe we have to be reimbursed for that we paid on the front end.

"I am pleased...and I can't speak for the bank...because I no longer own the lots; but I know (Alan, you jump in if I say anything inappropriate)...prior to our foreclosure (and I think this is really important; 'cause the decision that you make could help or hurt; and I hope you make good ones...and that's all I can say)...Prior to the foreclosure, Centennial and some other banks had taken a bunch of lots and some homes; this was the Well's Fargo auction (6 or 8 months ago...before the market was "in the tank"...but it was going down). The Bank did something that I think was very wise...I hope they will be able to maintain that course; but a lot of how they are going to be able to maintain that course is a function of what happens...does anything happen to salvage the subdivision. What I am referring to is, unfortunately these banks were sitting on some lots and sitting on some houses (or spec houses) and the press got hold of it and made a big 'tadoo' about nothing...and started talking about how everybody was going to get a 'great deal'...you know, 'ten cents on the dollar'... 'come steal a lot'... 'come steal a house'...type thing. So, they had this big auction at the Well's Fargo building and it was attended by a couple of hundred people and there were about 80 some properties that were bid on. To give you a bench mark, we had no lots in that sale; even though we had thought about it, we just thought it was a 'death spiral' and we didn't really want to be part of it. Lots that were at the time...the market price was say \$100,000 to \$120,000 were bid on at about the \$25,000 to \$30,000 range. So, the next story the next night (the first story was, 'Come to this great sale tonight') and the next night it was all these people, 'Look what I got!'. Well, there was this little clause that the bankers were wise to stick in there that says, 'We're not going to agree to any sale, until we see what the offers were'...they had a week or two to reject any sales.

The bottom line is, every bank rejected every bid in that auction. I think that was very noble, correct or wise of the banks; because had they done that, they would've just said the new market price for a lot in Elk Ridge is 30 grand or 25 grand instead of the \$120,000 or \$130,000 that it was. I know the Wentworth or Rimrock or whoever is in the Phase next door and maybe they're not in as precarious a situation as ours. But their best lots are 1/2 that.

I'm not here to tell you what you want to hear; I'm here to tell you the reality, you know. We have walked away from a lot of projects that were 'upside down'. As you know, we came before this body and tried to get you to buy that park and use that and make it a public park before it became the headache it's now become. You wanted to put your monies into other things and chose not to do that; I don't believe you've actually moved forward in the new park effort, but it's frustrating for us because we've lost a ton of money and we have no visible way to finish out that subdivision...not do we own any lots.

"The last thing I would say is...Mayor, I did get your letter inviting us to the meeting of the 19th...I got it on the afternoon of the 19th. I understand you had a big 'pow wow' meeting with a bunch of vested people. We'd have been here had we known about it. I'm not sure when the letter was sent out..."

Mayor Dunn: "We sent three out to you...two came back with 'wrong addresses'."

Dave Millheim: "I got one at my old office...I still own the building where you sent it to; but we no longer office in that building. We've down-sized, we've been laying people off; so, I only go into the office to collect mail once a week. I actually went in and saw it the day...that afternoon of the meeting. (Mayor: I'm sorry.) Dave (David Church) gave us a brief report on what you did there and I understand that Salisbury would like you to rescind or modify or tone down your sprinkler ordinance. If you recall, we went on the record and said, 'Bad idea. Don't do it. It's going to hurt builders'...but, you did it anyway."

"That's where we are, and any more questions than that...we do believe we have some claim against the City. What I would propose...it is your decision, it's not mine...is that my attorney and your attorney get together and see if some of the solutions are workable as a way to mitigate some of the claims we have and some of the claims you have against us. I will also tell you that 'calling bonds' is a 'nightmarish' project; and if you think that it's as easy as sending a letter to a bond company and telling you to send it; I can tell you that the only bond I've ever been a part of where I tried to "Call it" was when I picked up a "defunked" subdivision the city wanted to call the bond and I spent three years in cooperation with the city trying to help that city get its bond monies back so that we could finish some of the stuff that had been left undone; so I don't know if this bond company is even solvent right now...because every developer I know right now is "in the toilet" and they're all just trying to survive and not declare bankruptcy. That should shed some light on where we are; it's not what you want to hear, but thank you for listening."

Mayor Dunn: He thanked Mr. Millheim and his part for being in attendance. He asked if there were any other comments.

Mr. Guymon (Attorney to Mr. Millheim) "We know that there's this overlay issue that needs to be taken care of in terms of completing the overlay on some of the streets in the subdivision; and there is a "maintenance bond" (is what it is called)...it is basically a "surety". We've received the noticed of the intent to assert a claim under that bond, and I would like to share my views. That might seem like an easy solution; but it often turns out to be prolonged...I mean insurance companies don't like to really write out checks; and if they can find a way to avoid it, then they do. So, what Dave said is correct; we would like to have the chance to, you know, have Mr. Church and I meet and see if we can't come up with some sort of a solution that would avoid the calling on that bond; resolve the claims that are going back and forth...and allow the City to move on and address other items. I know how to get hold of Mr. Church and I think that's something that we'll proceed to discuss. Thank you."

Mayor Dunn: "One of the things we've wrestled with, here...in looking at not the surety bond, itself...but in the contract to reimburse impact fees that are collected on the properties that now belong to the Bank...the contract says they come to you (*directed at Mr. Millheim, representing Elk Ridge Managers*). Is there need for an amendment to that, or does it still go to you? Or is that something that goes to the Bank? That's a question we've asked several times...we just don't have an answer for it. If you don't have an answer now for it, it's probably something that you and Dave (*Church*) should discuss because that's one of our big concerns in returning that..."

Mr. Millheim: "It is certainly one of ours too; because you have a lot more money than that bond has and I know I had to write a lot of checks to get advanced to get my subdivision approved...now the Bank would want to get whatever they are entitled to get...but we know that we put a lot of money into the project to get the financing. We know how the development leads all the attorneys argue through the legalese...because I believe we are entitled to those funds that we paid on the front end, because we paid that...obviously the Bank may feel differently because they would like to see it..."

The tragedy, Mayor, is that it may be ten years under your existing ordinance that those monies would be matriculating back in...that "sticks in our craw" and it "bugs" us because you are getting free use of those funds in the mean time...you probably already spent them and used them..."

Mayor Dunn: "Oh, we did...it's up there on the hill, buried under the dirt..."

Mr. Millheim: "I'm not expecting it to be sitting in an account somewhere; but...you know, certainly that's one of the claims that we believe is still out there, unresolved...and I would let the "legal guys" figure it out."

Mayor Dunn: "It's been utilized and the water storage tank and improvements to the well that service the needs of that neighborhood are in line and in the ground now...so it's there."

David Church: "And you should know that the Mayor and I both emphasized at the meeting the other day, that our agreement is with you (*Elk Ridge Managers*) and as far as we're concerned, that's who the agreement is with until some court or judge or you tell us otherwise. And so the individuals there know that is our position...that we have a contract with you and we'll honor the contract the way it's written. Others can make their claims against the contract."

Mr. Millheim: "We also know there is unhappiness with some of the neighboring property owners in that meeting, that want to see things progress quicker. I can't speak for what Salisbury is going to do, or when they're going to do it, or how they're going to do it. I also can't speak to the other phases of the Project that had some early approvals. We made a conscious decision; we got scared...and I think it was the right thing, because we had a chance to do all of those phases and we chose only to do the one that we're in. Frankly, we would be in a much bigger pickle if we had bitten off 300 or 400 lots concurrently than just the 80 or so we're struggling with."

Mayor Dunn: He asked for any other comments or questions...there were none.

At 6:40 PM, the Mayor closed the Public Hearing.

The Mayor further commented that one of the reasons for this Public Hearing was to take a necessary step if needed, without losing the time line that's associated with the surety bond, which has a deadline to it. He said he appreciated the developers showing up to the meeting. He asked when the two attorneys would be getting together.

David Church: He responded that they would get back in touch with the Mayor before the next City Council Meeting and to plan on placing the decision on whether or not to authorize calling on the bond or not, on the Agenda for the next City Council Meeting. "As they do say, it is a surety bond and we'll want to at least...I don't think anyone has put the surety on notice of the issue...so we'll want to do that as early as possible and not wait until the last minute."

Mr. Millheim: He asked if he could assume that no action would be taken that night, other than postponing action until the next Council Meeting, and until the attorneys have a chance to meet.

Mayor Dunn: He affirmed that when the action item came up in the Regular Session, that action would be postponed.

CITY COUNCIL WORK SESSION AGENDA ITEMS (CONTINUED)

"RAD KIDS" PROGRAM
(NON- AGENDA ITEM)

(Continued) Deputy Tindall: The RAD Program does not claim that it is a "guarantee"; but reports indicate that when there is some sort of resistance shown on the part of a child, the chances are better that the planned act will discontinue. This is not a class that teaches children "how to fight" or to be aggressive...it is a Program that teaches children to defend themselves and to get away. The curriculum is geared toward those goals.

On "graduation day" they actually have to defend themselves against a "would-be" attacker (Officer Tindall dressed up in padded "attack suit") and practice some of the techniques they learn during the class. At this point, Deputy Tindall told of some actual incidents involving local children and their attackers. These things DO happen in our Community and surrounding areas and prevention should be addressed. There have been incidents of children being approached as recently as February, 2009. In these incidents, the children who struggled and resisted in some way got away or the would-be attacker left the scene and any further incident was avoided.

He wants to bring this Program to Elk Ridge. So the question remains as to when to present it to the residents? He knows that the children are taught the "Nova" Program in school (noveprinciples.com) by Officer Gurney (Salem); that Programs teaches taking responsibility for one's own actions. He spoke to Officer Gurney to be sure the RAD Program does not conflict with what they are taught during the school year. Officer Gurney feels the two Programs go hand-in-hand and that they compliment each other. He proposed dates: Beginning on June 2, 2009 and with the Council's support, he would like to conduct the classes on a Tuesday and Thursday mornings from 9:30 to 11:30...graduation would be on June 25, 2009. Where: the Park Pavilion (weather pending)

Class size: 15 children

Jennifer Robinson: There are two different age groups: 5-7 years old and 8-12 years old.

Deputy Tindall: He would like to address the 8-12 year old group first.

(Mayor Dunn interrupted Deputy Tindall again to allow those attending for the scheduled Agenda Item, "Elk Ridge Meadows PUD" to be heard; as the RAD Kids Program was a non-agenda item.)

After discussion about Elk Ridge Meadows PUD, the Council came back to the RAD Kids Program presentation:

Deputy Tindall: We talked of the times and ages of those participating. The first session will be for ages 8-12 years old...probably one child from each family to give many families the opportunity.

Utah County has all the equipment; the contract with the City should cover costs of pamphlets, etc.

Donations are accepted for the Program.

He would like to just schedule the 1st session and then see what the interest is in Elk Ridge. Perhaps the second session could be in August, ending the week before school starts.

Advertising:

- Newsletter for April
- Announcements at school
- Sign up at the City Hall

The Council agreed that this is a worth-while Project and should be pursued.

ELK RIDGE MEADOWS PUD

Tom Henriod: He and Alan Thompson (Centennial Bank) were present to address some of the issues regarding the PUD and how to best move forward. (Mayor Dunn had passed out a copy of the email he received from Mr. Henriod on 3-23-09):

"I have not heard back from all the interested parties today, but I think the following are issues that need to be discussed Tuesday:

Relative to the Covenants, it is my belief that the owners are in agreement about amending them in the following ways:

1. Eliminate the minimum size restriction and note that the minimum size restrictions shall be in harmony with Elk Ridge City code requirements regarding building size and that in no event shall they exceed those minimum requirements.
2. Eliminate the obligation of the HOA to maintain the parks/open spaces and state that those areas will be dedicated to the City as public open spaces to be maintained by the City by separate agreement.

Relative to other items that we request that the City discuss and decide on are:

1. Necessity of Fire sprinklers
2. Use of the park impact fee assessed at building permit / omission of the fee.
3. Other potential stimulus efforts to promote building activity.

Thanks for your help."

Mayor Dunn: He referred to the memo from the City Planner to the City Council, dated 3-24-09 (included in the Council packets):

"Background

The Elk Ridge Meadows PUD has many issues regarding ownership, required improvements, park and open space neglect and ownership, and the ability for units to be sold in the current environment. The mayor and staff met with the land owners of the development including, the banks, the school district, and Rick Salisbury on March 26 to talk about the issues in the development to see if the city can work with the land owners to help make the development succeed.

Meeting Discussion Points / Options for the City Council

1. **Assurance Bond** - Land owners present (including the largest-bank) were ok with the city declaring the phase 2 of the development in default and working toward gaining the funds to finish up the one inch asphalt roads overlay, road settling problems, and installation of trail.
Option - City should move forward to gain funding from the bond to make the needed improvements.
2. **Park** - Centennial Bank wants to work with the city to see what landscaping can be salvaged in the development, reestablishing the landscaping, and to see what options are available for park ownership.

Option - Work with the bank to revive/restore the park and deed the park over to the city. Would recommend that the agreement require that the developer restore the park and keep ownership for at least 2 years until the park is well established. Could require a certain percentage of homes built before it is signed over to the city. The bank has stated they would be willing to restore the park and deed it over to the city if park impact fees are waived. This would bring the city up to the general plan standard of 1.5 acres of park space per 1,000 residents.

3. **Open Space** - The open space area in phase two directly north of the park and east of the phase 4 (townhome project) was allowed as natural grass and wildflowers. This has not worked. Phase 4 has come to the planning commission with a concept that would include landscaping and keeping up this portion of the open space. The details of this still need be worked out between the bank, city and Rick Salisbury before the planning commission would approve the preliminary plat of phase 4. Phase 1 open space is also in disarray and will need attention. The issue of the trail system and should the city try to require a public easement on it needs to be addressed.

Option - Continue to work with Rick Salisbury and the bank on phase 2 open space and work on getting a public access easement for the trail system. Should require an open space plan of attack before more units are approved.

4. **Impact Fees** - Developers want to know if the city can relax some of the fees to help make their development more marketable. Since the development is providing park and open space (though private) it was thought that the \$1385 park impact fee could be waived.

Option - Park and water are the only two that should be addressed. Park should be waived in lieu of the park being deeded to the city. Water will have to be addressed in court.

5. **Fire Sprinklers** - Developers want to discuss with the city council the need for fire sprinklers in all homes. Ok with it on hillside and in townhomes, but not single family homes. Would aid in bringing the price point for selling homes in this development down by 6 to 8k.

Option - The original discussion on fire sprinklers was to require them in the wild land interface zone (hills), rural Gooseneck area, and in homes over 4,000 sq ft. If the city council is willing to reduce the requirement these original areas should be held. Also, multi-unit buildings (townhomes) should also be required to have sprinklers.

6. **Rambler Size** - Currently the CC&Rs in the development require that ramblers have 1,400 sq ft finished on the main floor. City code requires 1,200 sq ft. The owners would like to change their CC&Rs to be 1,200 sq ft. Not really anything here for the city council to do. CC&Rs are between the owners. The city code allows down to 1,200 sq ft.

7. **Water Impact Fees Reimbursement** - This issue is a bit muddy. The agreement was entered into with Elk Ridge Managers, which has turned the development back to the bank. Our contract is with Elk Ridge Managers. This issue will most likely have to be determined in court.

City Council Discussion

1. Many of the owners and developers have given interest in attending this meeting. Should allow them to give input.
2. How best can the city work with the owners/developers to get the development moving and improved?
3. What can the city do to facilitate owners/developers while preserving safeguards that the development standards promised when the PUD was approved aren't lowered (varying home styles, siding types, street trees, etc.)?
4. What are the pros and cons of the city acquiring the finished park?"

The Mayor asked Shawn Eliot to review his memo with the Council and those present.

Tom Henriod: (In the interest of time, since he had to leave; Mr. Henriod asked if he might address certain issues: The main thing they wanted to emphasize to the Council was that they knew from the start of their subdivision (Elk Ridge Meadows PUD, Phase 1) that Elk Ridge City is a unique Community and they knew it would cost a little more to develop here. They had a perception of Elk Ridge as being a slightly "nicer" place to develop. He went over some of the points made in his email to the Council:

- He does not feel there is a problem with reducing the minimum sizes down to City code; that seems to make sense.
- The parks: that is something for the Council to weigh and discuss; that could potentially remove a burden from the HOA and make building a bit more affordable.
- There are concerns they have had with exterior materials: they want them to stay "respectable" at the very least...something that is complimentary to the surrounding areas..."keeping it nice". (This is one of their biggest concerns; they feel Elk Ridge is a nice place..."and just because the market is bad, doesn't mean that Elk Ridge stops being a nice place. We're going to be here; we're Phase 1 owners...we will be there. We realize Phase 1's landscaping, which was supposed to be natural landscaping, with drip systems to trees and some shrubs, hasn't been laid down and we apologize for that. It would be in better shape if there were some residents that cared; but we will hold our landscapers' feet to the fire on that. Her needs to make it...it needs to look nice; and it will...we assure you of that."
- They would not like to see Elk Ridge get compromised too much as a result of this rough market. "That is the spirit of what I would want to say to you as the owners of Phase 1."
- Fire Sprinklers: Even though that is up to the City, they might be able to find examples where other cities do not require them...but that is for the Council to discuss.

Shawn Eliot: He felt the meeting with the various developers and owners of the Elk Ridge Meadows PUD was a good and productive meeting. (He wondered if the owners had been told that the Council discussion was to be at 6:15; many had expressed interest in being at the Council Meeting.)

Mayor Dunn: He commented that Mr. Henriod was the only Owner he had talked to as a result of the meeting.)

Mr. Eliot started with the last part of his memo, entitled, "City Council Discussion". He read items 2-4 of that section.

Those owners in attendance: School District, many property owners, 2 banks and Rick Salisbury (currently either owns or has an option on Phase 4). Mr. Salisbury is talking with Centennial Bank about the possibility of acquiring more of the PUD.

Review of the memo:

1. Assurance Bond: Already discussed earlier in the meeting
(The letter sent to Elk ridge Managers went out in plenty of time and they also called to check on the address.)
2. Park: The Mayor went out to check out the park (Phase 2) and saw that all that is left of the sod and seeding is the mulch. Many of the trees appear to be dead; or partially alive. It is in the Bank's best interest to try to salvage as much of the park as they can.
It would be better for the City and for future homeowners to have the park re-furbished. A dead park does not aid sales.
The discussion also included the idea of the City taking over the park. The City needs more park space; but this park was designated as a "private park" for members of their HOA. When finances became difficult, Elk Ridge Managers asked if the City would be interested in purchasing the park; then, when the City did not buy the park, it was allowed to die and "now we're here". If there is a way to work it out with the owners to get it back and restored, then the City take it over...he feels this would be a "win/win" situation. The City is behind in its acreage of parks per person; the General Plan calls for 1 ½ acres per 1,000 in population. When Park Impact Fees are collected, the fees can only use that toward established parks until we get caught up in acreage of park space. The fees can be used to establish new parks when we are above the established threshold. "This puts us in a bind...for instance with the City Hall property, if we wanted to start that park, we can't use impact fees to do it.
Options:
There could be "conditions" placed on development; he listed "The Ranches", which is a large PUD in Eagle Mountain with a large city park in the middle of it...but, they also have a HOA for all of the smaller "pocket parks" and the open space areas in the PUD. On the large city park; the development owned it for the first 5 years and then they turned it over to the city, once the city signed off on it.
Another option would be to require a certain number of homes before the City takes over a park; this would allow a greater tax base to build up to assist in paying for the maintenance of the park.
3. Open Space: Mr. Eliot indicated on the wall map the open space included in Phases 1 & 2...both of the open space areas were approved with natural grasses and wild flowers, with some trees. It has not been maintained. In the discussions with Rick Salisbury regarding Phase 4, Mr. Salisbury has proposed single family dwellings with townhomes...and part of this proposal would have homes located right against the open space in Phase 2...and with negotiations with the Bank, he could take over the open space to claim it part of his townhome development...he would also improve it more than just the grasses and wild flowers.
The proposal is for fewer town homes and more single family homes on smaller lots; this drops the number of units from 74 to 68.

Alan Thompson: (Centennial Bank)

1. "In our discussion the other day, we talked about the impact fees that are charged the building permits; and there is a park fee as part of the impact fees...and maybe using those impact fees to restore the park and put it back into working order...that is just one suggestion.
2. The second thing is, I would think that Dave (*meaning Dave Millheim*) is still on the hook for the warrantee period for the park. I know you mentioned the overlay and the sewer; but I think part of his responsibility is the park, too. Isn't that still part of the Warrantee?

City Recorder: It was not part of the bonding process; because it was part of the Home Owner's Association and they were to maintain it.

Shawn Eliot: Open Space: We do have a trails system as part of the City's Master Plan; and there is the "Bonneville Shoreline Trail that goes along the Canal. As part of Phases 1 & 2, the trail is in and stubs at Salem's City limit and at the other end of their development. One of the things that Mr. Henriod brought up at the meeting was: If this is a private trail, why would it be stubbed for future connections to it? We need to determine if any public easements are needed along this trail. Currently it is included in a HOA and is considered "private". If we are serious about having a trails system, then we don't want part of it private and part public.

4. Impact Fees: (Review of the memo to the Council) The developers wanted to know why the Park Impact had to be paid by those building in the PUD, since they are providing park space. The response at the time was that the park in the PUD is a private park and they received in return a much denser development.

Mayor Dunn: As a resident of the City, they have access to the City's public parks and property.

Shawn Eliot: At those public areas and parks, the City provides City-wide sports programs that they also have access to. Again, we can't use impact fees to add more park space at this point.

The developers suggested that if they could fix up the park and then give it to the City, taking the park impact fee off would assist in the "bottom line" for marketing those lots/homes.

Mr. Eliot feels that it makes sense: if they are fixing the park up and deeding it to the City, then the City could "relax" the Park Impact Fee in that area. Having this park space would bring the City to the required acreage per person for park space.

City Recorder: In the past, when impact fees were paid up-front at the time of development, developers did have the option of either putting in installing park space or paying the impact fees...they did not have to do both. This would support Mr. Eliot's suggestion, though this option is not in the City's code currently.

Shawn Eliot: He believes that the code does state that impact fees can be waived.

Sean Roylance: He wanted to know how many units would be affected if the impacts fees were either waived or lowered.

Corbett Stephens: Phase 2 (5 permits have been issued out of the 82 lots = remaining 77 units); Phase 1 (50 units) & Phase 4 (74 units or 68 units)

Shawn Eliot: This would need to be discussed:

- Phase 1 - the developer just said he is going to fix up the landscaping to be able to sell lots;
- Phase 2 – our options are to have Mr. Salisbury said he would fix up that one open space area and getting the park fixed up
- The Park; this can be looked at in two ways:
 1. It is a benefit for the entire PUD
 2. The park will be done and the Park Impact Fees could be waived for that park
- Phase 3 (School District) – there is a lot of open space in that Phase. We have seen some plans that show the main open space on the west side of Elk Ridge Drive improved with grass; but other plans have shown "natural wild flowers". Perhaps Impact Fees would remain for that Phase.

Mayor Dunn: He feels that may be the way to go, since that Phase was also set up with the density bonus with the open space. If the open space is gone, that would change the layout of the properties.

Shawn Eliot: Phases 1, 2 & 4: All of the open space requirement is self-contained within those 3 Phases. Currently, we are up to the 25% with the three Phases. Phases 3, 5 & 6 could come in on their own merits and be fine.

Corbett Stephens: The total is 283 units that could be affected by impact fees; and at \$1,385 per unit, over a period of time; the City would pay almost \$392,000 for that park. The City would give up \$392,000 in impact fees to obtain that park.

Shawn Eliot: Those 3 Phases + the Bank would like to do anything they can to "shave" the over-all cost and that would help them market houses and get things moving in those Developments. They feel that \$1,385 less would make the units more marketable by being able to "hit the certain price point that the market is supporting right now.

So, "if we get a new park out of it, it would make sense to waive the impact fees. Basically, they're not paying us to go back and fix it later; and we can't fix it later anyhow because we're not up to that threshold that we would need to be before we could use it for those types of things."

Derrek Johnson: If we didn't take the park, what other options would they have? He wanted to know if they could plow it over.

Corbett Stephens: They can't plow it over, it must be maintained.

Shawn Eliot: The benefit to them would be that their HOA fees could be much lower, because they would not be paying to take care of a park. The benefit to us is that we have a City park that we can use for the public and for sports. The City would also have the added expense of maintaining the park; which is why he suggested waiting a few years before the City takes over the park, so that the landscaping is well-established and there is more of a tax base to water the park. He asked the Mayor if the costs to water the park are available. *(The Mayor responded that it is not over a couple of hundred dollars per month. The cost was higher for the establishment of the park in Phase 2 because they were watering new lawn, plants trees.)* It must be weighed and decided if the cost = the benefit to the City.

4. Fire Sprinklers: The owners and developers want the City to re-consider the sprinkler requirement, particularly with the land north of town. They agree that the hillside and the townhomes should still have them, but the elimination of this requirement would aid in furthering to bring the cost of a home down. Originally the proposed ordinance was to be for the Goosenest area and the HR-1 areas (mountainous areas) and homes over 4,000 sq. ft. Corbett Stephens came to the Planning Commission meeting and showed a "convincing" video supporting sprinklers in all homes. The Planning Commission and the Council had a joint work session to discuss this. The decision became one in which the requirement would apply to the entire City.

The developers felt that since most cities do not require sprinklers city-wide and perhaps that regulation could be relaxed. Mr. Eliot recommended keeping the regulation for town homes with common walls. This would cut off \$6,000 to \$8,000 from the building permits.

Derrek Johnson: (Directed to Mr. Thompson from Centennial Bank) In reviewing the list of concessions for the Council to consider and he has some concerns:

- Fire Sprinklers: He does not want to re-visit this issue
- "What is the Bank going to do? How much are your lots going to be? Are you going to cut dramatically the cost of your lots, or are we going to take all the concessions so your homes sell better...so you can continue to have high-priced lots?

Alan Thompson: "We have cut our lot prices dramatically...\$65,000 to \$70,000...we've cut them in half. That's why when Dave got up and addressed the Council...he's walked away from a ton of money that he owes us. So when he talks about you refunding money back to him...all those checks he gave to you...I think the checks he gave to you came out of our pockets." (*Councilmember Johnson thanked him for his answer.*) "We want to make it a good place to live. I came here with Rick Salisbury and a couple of other developers that are interested in buying some of our lots; if we can't find some builders to come in and build on those lots, that's just going to be a weed patch...we will have to keep it maintained, obviously...and I'm not saying this threateningly in any way...but it's just going to sit there as a 'ghost town' for another 2 to 5 years, if we can't get things to where we can build affordable (I don't mean just 'track homes', but nice homes...but in an affordable house range."

Derrek Johnson: He feels the cost of these lots is still high when one considers the size of the lots (8,000 to 10,000 sq. ft.).

Mr. Thompson: The lots appraised at \$170,000.

Derrek Johnson: "I'm sure they did then, but what the market goes for now, that seems awfully high for that size lot. That's just my feelings" He said he feels like when times were "booming" the developers want to get all they can...and now they're coming back again and asking for more favors. You know, they took the risk."

Mr. Thompson: "Sure; and the Bank took the risk, too."

Derrek Johnson:

"Yeah, and I don't have a whole lot of sympathy for it, personally."

Mr. Thompson: "That's fine. When we met the other day, it was at the request of the City; we didn't come here asking for concessions...the City called us to say, 'What can we do to make this thing work out?'...these were some of the suggestions that came out of that work session. It wasn't us coming to the City saying, 'You've got to do this to make this work'; the City invited us in saying 'What can we do to work together to make this work? So, if you are thinking that we came to you asking for all these things, it was just the other way around."

Shawn Eliot: He wished that David Church could have stayed around the meeting a bit longer, because he had talked of the benefits of working together on this...and if we do let it just sit...if infrastructure is not used, it helps it to decay quicker. If we have all these water lines and sewer lines...they have to be used. That, and obviously, the City is "hurting" right now because we aren't getting any income. So, that's why we called the meeting, was to try to work together on this."

David Church's comment was that when things are good, when we are busy...sometimes "bad" as well as good decisions are made; now we have the "luxury" to take our time on some of this...and we are simply trying to be proactive to see if there is anything the City can do to facilitate things.

We asked them for concessions, like the park; getting the landscaping re-done was an important point. If the City could take it over and if the City can afford to maintain it; that would be a benefit. Mr. Church also feels having a large public park in the middle of the City would be a good thing.

5. *Rambler Size*: The request was to lower the minimum size from 1,400 sq. ft. to 1,200 sq. ft. (what the City code allows). The size requirement is within their CC&R's for their Development; the City has no authority over those. There was a concern that the quality of the ramblers could go down with a smaller sized home. The only guarantee is through the CC&R's...which the City is not involved with. There was concern with what Mr. Salisbury has proposed; since some of his developments are not as nice as others...some are nicer, like one that is in Spanish Fork. That is something that needs to be discussed with Mr. Salisbury.

6. *Water Impact Fees – Reimbursement*: The up-front money used on our water system, is being paid back through water impact fees to the developer. The Agreement is with the developer, Elk Ridge Managers, but he Bank has taken over the majority of the lots. It is likely that the decision as to who gets the reimbursement will go to the courts.

Mayor Dunn: Either an amendment to the original Agreement will be drafted or the City simply submits the money to an escrow account to be held while the courts work it out.

The Mayor commented that the meeting on 3-19-09 with the property owners and developers was very well-attended, with the exception of representatives of Elk Ridge Managers, as discussed earlier. The meeting was open discussion and went well. The issue with sprinklers and rambler size came out of the meeting as possible options in considering the current economy; they were not on the agenda for the meeting. The options came out if Mr. Church's encouragement that something needs to be happening down there...it needs to "come alive" and get back on track.

The Mayor asked what the Council thinks of the various issues discussed.

Julie Haskell: She is concerned about the City being able to afford the maintenance of the added park; as well as providing security to the area.

Sean Roylance: The price to the City in impact fees would be about the same as what the Council said no to last year.

Shawn Eliot: The difference was that the City would have had to come up with the actual money to purchase the park last year. He recommends determining what the actual costs would be to maintain the park before any decisions are made.

Sean Roylance: As he has listened to all of the issues, a couple of thoughts came to mind:

- There is the CC&R issue: He is not sure, but when the agreements were originally made, the developers were promising buildings at 1,400 sq. ft.; and exteriors of a certain quality...and in return, they could negotiate certain concessions from the City. Now that we are past that, the

developers are taking the attitude of "We're not sure we really want to do those"...and there seems to be nothing we can do about it regarding the control over the CC&R's.

- He would perhaps be willing to waive the Park Impact Fees, if we had a way to come to a more formal agreement some of those agreements, like the quality of the exteriors.

His biggest worry is that we may loosen standards and make things "easier" right now...and in the future those same things may not be good...he is concerned about the "long run". If we can take into consideration the future as well as the current situation, he might be interested, but he does not want to sacrifice the "long run".

Mayor Dunn: There are several areas in town where CC&R's were in place when the development first went in, but eventually the code has replaced those CC&R regulations. The City has been warned repeatedly about not getting involved with CC&R's, even to the point of not keeping copies on hand in the City's records. The only thing the City can enforce is the City code. CC&R's are upheld by the HOA associated with a particular subdivision.

City Recorder: (Question directed to Alan Thompson of Centennial Bank) Are the by laws of the HOA associated with Phase 2 being re-written? If no one to enforce the regulations, what good are the CC&R's?

Shawn Eliot: Typically, when there are no HOA fees collected, the CC&R's are useful in establishing the subdivision...not for on-going enforcement.

Mayor Dunn: (Referring to Jodi Hoffman – ULCT) She is an authority on homeowner's associations; she says that when the architectural committee (enforcement body) fails or is inactive for two years, the courts do not recognize the HOA as being in existence, because it has not been functioning for 24 months. The question would be if we are comfortable with our own code being applied in that area? If it works for the rest of the town, it should work for them, too.

Shawn Eliot: Perhaps he (Mr. Eliot) should contact Mr. Salisbury to see if he is still heading toward purchasing those properties; and if he is, to see if he is at a point of presenting to the City what he is actually proposing. If he is willing to stay with the CC&R's, perhaps they could be written into the development agreement so there is more of a guarantee.

Sean Roylance: That is what he was referring to.

Alan Thompson: (In response to the Recorder's question) The CC&R's would ordinarily maintain the common area; "if the common area is deeded over to the City, really, the need for a homeowner's association goes away...in my mind.

"The second part to that...just like the Mayor said, and I am familiar with several other homeowner's associations...if someone is out of line and decides they want to build a house that doesn't conform with the CC&R's, and they build it...and they have enough money to sue the homeowner's association, sue the architectural committee of that homeowner's association...the homeowner's association has no money to fight that law suit. So, what happens? Typically, the homeowner's association will back down.

I am not saying I don't want to see the CC&R's enforced; I have just seen it in two different neighborhoods where people with money came in and built what they wanted to build; and then they sue the architectural committee and they end up getting what they want...because the homeowner's association couldn't fund the law suit.

Sean Roylance: He is hesitant about the fire sprinklers...he is not sure the amount of money quoted to install a sprinkler system; therefore, the amount of money to be saved. For all the reasons already discussed about the sprinkler systems, he would be very hesitant to "go back on that".

He understands that six to eight thousand dollars is a lot of money; on the other hand, on \$150,000 to \$200,000 over-all cost, he hates to see 3% to 5% of the price to forgo the fire sprinklers". The City does not have much money to add to the Fire Dept.

Derrek Johnson: He brought up a further issue: the homes could be as close as 10' apart.

Bill Ross: (Mines & Ross - One of the original developers for Crestview Estates, Plat A) He realized the issue of fire sprinklers has been discussed thoroughly at the City level; but they have not been a part of those discussions. He just found out about this requirement as they are thinking about building a couple of homes. "We have found, with the sprinkler systems, is that it is pricing us right out of building here."

He went on to make the point: The fire sprinkler system where you do have adequate fire hydrants...where you do have adequate spaces between the homes and where you do have a fire system in place...it should be the homeowner's choice to put the sprinklers in. Where it is forced onto us after we have already developed the land, and got it back (which we didn't want)...now we are trying to build and salvage it; it's put a hardship on...we've had sales that when they found out about it, it's gone. We've lost the sales; because of the six to eight thousand dollars...it's just too much for a smaller home to bear. I just hope the City would consider certain areas like...right there (indicating across Park Drive to their development). I know that one day in may be mandated through the Building Code...but I know they put it in; but it looks like it's going to go down and be rejected again...right now it still will be Elk Ridge City that is mandating that. It's priced us out; they can go elsewhere and buy the land and build cheaper". He added that it is also whether they can qualify for the loan..."that \$6,000 to \$8,000 puts them over the limit for a lot of people that they can't qualify...where the banks are so tight with the money".

Grant Mines: "I would have agreed with you (meaning the City) six months ago...yeah, it's only 3% or 4%; but our experience with buyers is that...it actually made the difference...it actually kicked them over the line where couldn't afford it. I was as surprised as anyone that it makes that much difference."

"In terms of the set-backs; if they were 10' apart, I wouldn't even dare ask for this, but in our development, the homes are going to be 50' to 60' apart...we've got 20' to 30' set-backs on the side-yards. So we are just asking for that consideration."

Corbett Stephens: (He was asked by the Mayor where the IBC is regarding this topic) He responded that currently it is in the State Legislature.

Grant Mines: It was passed last week as House Bill 211 and is on the Governor's desk.

Bill Ross: It will be the cities' choice.

Grant Mines: But, it's not a mandate from the State...it is in the IBC for 2009.

Bill Ross: "If it were mandated everywhere, then it would make an equal playing field. But, right now, it's not equal. It is creating a burden on us to where we have literally lost sales because people are shopping the lots. Our prices on our lots...these prices were at \$135,000 when we first started (wholesale price). Right now we can't even give them away for \$60,000. That's how bad it is...that's the hardship. We're into it more than that; so we've lost. Now we want to try to build our way out of it; and to build the homes at 'rock bottom' prices; and we're still not getting them. But that's our risk and we took that risk...and we were 21 when we did it..."

Grant Mines: "We understood the risk, and we took it and it's a hard thing; but the point is...from your side of it, we're on the same side. We want to develop a Community that is a thriving vibrant Community that's an asset; which you've already got here." He agrees that Elk Ridge is a "step up" from some of the surrounding communities. It is difficult to see the various developments in an abandoned state. They want to do what they can to "fix" what they can, without sacrificing the integrity of the homes. They have done their economic studies and they can't go as small as 1,200 sq. ft. or 1,400 sq. ft...their minimum house is 1,700 sq. ft. They are trying to maintain the Community at that status, but they feel like they keep hitting these obstacles...then the fire sprinklers..."just consider it for us, if you would".

Alan Thompson: "There is one other fee the City has no control over; but it is a fee and that is with Strawberry Power (SESD)...and that is \$4,000 or \$5,000."

He recognizes that is not the City's fee, but they all add up to about \$20,000 to \$25,000 in fees before one can even begin to build.

Mayor Dunn: Without the fire sprinklers, the fees add up to about \$12,000.

Grant Mines: He feels we are partners in building a Community...we want to create a "partnership attitude".

Mayor Dunn: The purpose is to examine these discussion points in this Work Session; and hopefully, with the input from those that have taken the time to be here, to come to some solutions. The City Attorney has commented that this is one of those situations where a bedroom community (like Elk Ridge) that depends on growth to "keep us alive", needs to understand the market and what homeowners are facing regarding their limits in obtaining financing...all of this to avoid leaving areas in a "blighted" condition.

We have a trails system designed across the City; but perhaps trails would be an additional cost to the City in order to maintain the trails and keep them open all year...and accept the liability if someone gets hurt. He would prefer sidewalks in the City. Sidewalks can be the homeowner's responsibility; they make the Community look nice. Communities are not perfect, particularly with our economy.

He could not recall Mr. Church's exact words on the topic, but his overall intent was that you've got to do something to keep these things alive without compromising your integrities and your standards. He feels there could be some "wiggle room" on the issue; he thinks it should be an option to the homeowner.

Bill Ross: HE agrees. What if the City decided to require that all existing homes have to be retro-fitted with fire sprinklers? How would the residents feel? Where do we draw the line on requirements? He asked if any of the Councilmembers have sprinklers in their homes.

Derrek Johnson: He answered that he does not, but it was not a requirement at the time he built his home. Things do progress and change.

Bill Ross: It was not required when they started their project. They felt they had done everything the "right way" and according to code; the improvements were inspected and passed and after the fact, they have had this added onto it. His is a "hard ball" we can't quite take.

Derrek Johnson: He said he could see Mr. Ross's point of having it "thrown back" at them.

Mayor Dunn: He said the Council would not be taking action on this in the regular session; but it has been a good discussion and he would like the Council to "ponder" the things that were brought up. The subject will be discussed at a future Council Meeting.

Derrek Johnson: He added that he appreciates the way Mr. Ross and Mr. Mines approached the matter; and that he has respect for them.

*Shawn Eliot: He will contact Rick Salisbury and see if amending the Development Agreement is negotiable.

Derrek Johnson: He asked about the lots sizes in Crestview Estates and the selling price.

He also needs to find out the projected costs of maintaining the park, should it be deeded to the City. (The lot size = 1/3 to 1/2 acre; priced at \$60,000 to \$100,000.)

Shawn Eliot: He reminded the Council that there are amenities that come with the PUD lots; which would add to the price of the lots.

Sean Roylance: (Directed to Mr. Mines and Mr. Ross) He asked about people actually walking away from purchasing lots when they found out about the sprinkler systems.

Mr. Ross: It is not that they minded the sprinklers, it's that the price had to be raised to cover the added cost; but, yes they could not afford the added cost. The same house located elsewhere would cost that much less, so they choose against Elk Ridge.

Mr. Mines: They had qualified out at a maximum of a certain amount that did not allow for the added cost.

ADMINISTRATIVE
PRIORITY LISTS

Mayor Dunn: He asked that the suggested lists of topics to discuss with the Payson City Counsel be submitted as soon as possible; to be compiled by Jan Davis.

ELK RIDGE
CITY COUNCIL MEETING
March 24, 2009

TIME & PLACE
OF MEETING

This Regularly Scheduled Meeting of the Elk Ridge City Council, was scheduled for Tuesday, March 24, 2009, at 7:00 PM; this was preceded by a City Council Work Session at 6:15 PM. The Public Hearing regarding consideration of a Declaration of Default for Elk Ridge Meadows PUD, Phase 2, was held at 6:00 PM.
The meetings were held at the Elk Ridge City Hall, 80 East Park Drive, Elk Ridge, Utah.

Notice of the time, place and Agenda of these Meetings were provided to the Payson Chronicle, 145 E Utah Ave, Payson, UT, and to the members of the Governing Body, on March 20, 2009

ELK RIDGE CITY COUNCIL MEETING – REGULAR AGENDA ITEMS

ROLL

Mayor: Dennis Dunn; *City Council*: Julie Haskell, Sean Roylance & Derrek Johnson (Absent: Raymond Brown & Nelson Abbott); *City Planner*: Shawn Eliot; *Building Official*: Corbett Stephens; and the *City Recorder*: Janice H. Davis

OPENING REMARKS
& PLEDGE OF
ALLEGIANCE

An invocation was offered by Corbett Stephens and Mayor Dunn led those present in the Pledge of Allegiance, for those willing to participate.

AGENDA TIME
FRAME

MOTION WAS MADE BY JULIE HASKELL AND SECONDED BY DERREK JOHNSON TO APPROVE THE AGENDA TIME FRAME; ADJUSTING THE START TIME TO 8:25 PM
VOTE: YES (3) NO (0) ABSENT (2) NELSON ABBOTT & RAYMOND BROWN

PUBLIC FORUM

Sean Roylance: (RE: Fire Sprinklers)

1. He is hesitant to change the code again.
2. Perhaps he would consider it across the street (Park Drive or Crestview Estates).
3. He would not consider changing with a 10' clearance; *perhaps* if the set-backs were wider.
4. He would want to consider the requirement on a case-by-case basis.

He is willing to consider these things; however he is not sure he would change the code due to the compelling information that was discussed when the requirement was adopted into code.

Corbett Stephens: When circumstances change; perhaps the need arises to "re-group". There is no argument that fire sprinklers save lives; but is it the right time? Woodland Hills has had that code in place for 17 years; Trees do not really make the difference...90% of reason that this is in place is to put the fire out before it gets out of control...within the structure. If it were for the outside, the requirement would be for the outside of the structure.

Sean Roylance: It is for that reason that Crestview Estates makes a bit bore of a compelling argument because they homes are separated and closer to the Fire Station.

Corbett Stephens: One of the concerns he has with "case-by-case is how to regulate it? Who is going to decide which case? (*Councilmember Roylance clarified his statement in that he meant case-by-case...by development; not by lot.*)

Julie Haskell: She agrees with the case-by-case basis.

Corbett Stephens: Currently, the County requires fire suppression...sprinklers in the structure and you have to have a "reservoir".

ELK RIDGE
MEADOWS PUD,
PHASE 2 - DEFAULT

Postponed until 4-14-09, to allow the attorneys to get together.

PLANNING
COMMISSION
MEMBER
APPOINTMENT

Mayor Dunn: He interviewed John Houck for the position on the Planning Commission; he would take Scot Bell's place.

MOTION WAS MADE BY JULIE HASEKELL AND SECONDED BY SEAN ROYLANCE TO APPOINT JOHN HOUCK AS AN ALTERNATE PLANNING COMMISSION MEMBER

VOTE: YES (3) NO (0) ABSENT (2) NELSON ABBOTT & RAYMOND BROWN

BID APPROVAL –
WELL #7

(*This is to replace the wood-framed roof on the well house*)

Mayor Dunn: The safety representative from Utah Local Governments Trust (ULGT) was here and brought up the need to replace the roof on that well house; because the wood is rotten. This well will be shut down for now; but we still want to protect it. The cost is or \$1,639.27 or \$1,533.17 without the metal deck. This

project will be "in-house". Corbett Stephens feels it would be worth it to take the time to do it without the "B" Decking (it rusts over time).

The Council felt the long-term option would be better.

MOTION WAS MADE BY SEAN ROYLANCE AND SECONDED BY JULIE HASKELL TO APPROVE REPLACEMENT OF THE WOOD-FRAMED ROOF ON WELL #7; WITH CONCRETE, AS OUTLINED ON THE BID PROVIDED...ELECTING TO NOT USE THE "B" DECK AND USE PLYWOOD INSTEAD...AT A COST OF \$1533.17 (NOT TO BE CONCERNED IF THE COST ALTERS SOMEWHAT)

**VOTE (POLL): JULIE HASKELL-AYE, DERREK JOHNSON-AYE & SEAN ROYLANCE-AYE (3)
NAY (0) ABSENT (2) NELSON ABBOTT & RAYMOND BROWN Passed 3-0**

(Discussion and Schedule Public Hearing)

A draft of the budget figure for this year + a blank space following each account was provided to the Council to review. Each Dept. Head is to provide figures for the Tentative Budget.

Sean Roylance: The finances for the City (current and future) are a priority for him.

City Recorder: The Council needs to decide about the possibility of a Truth in Taxation Hearing in August. Will we have one? The reservations for a date to hold the Hearing must be made with Utah County as soon as possible. The Hearing must take place prior to August 17th.

Mayor Dunn: In talking to other Mayors in the County, about ½ the cities will have these Hearings this year. The advertising is expensive...over \$2,000.

Nine Mayors were at the Elk Ridge City Hall on 3-19-09. One of the tax related topics was the issue of Nebo School District will entertain an election bond in June, 2009; for \$165,000 for three new Jr. High's and a couple of new grade schools. This would be a vote for all the residents within the District. All nine mayors were concerned with what this would do to property taxes and to the cities' needs. The property tax that the City gets off of the entire assessment is 12% in Elk Ridge; State-wide, it is 18%. All of the mayors expressed their concerns about the tough times we are in and what this could do to city budgets...and how the School District can do what they want. The Mayor feels that if this bond goes through, people will blame the city government; when we have no control over this aspect. It is a vote by the people. There will be more information available. And he will keep the Council informed.

City Recorder: Since the main well will shift to the Loafer Well to save the City money in pumping costs, she suggested that the Council consider reviewing the tiered rate structure for water rates; and the possibility of lowering those rates to off-set the possibility of raising property taxes.

Julie Haskell: Asked for clarification of the "high-end users" and the rates they pay.

Mayor Dunn: He gave an explanation of tiered structuring in rates. It keeps the Enterprise Funds in the "black" and also assists rationing water by price...the more you use, the more it costs. Some places add on a third tier during hot months. Elk Ridge does not do that. Again, many cities give nothing for their base-rates.

City Recorder: Former Councilmember Harward submitted a proposal for a change in water rates that had some very good point to it; for instance, he suggested allowing more gallons for the base rate.

*(The Recorder is to see if that proposal can be located.)

Sean Roylance: If he were to consider raising property taxes, he would be in favor of lowering water rates. General:

Fire Extinguishers:

Mayor Dunn: He informed the Council that all of the fire extinguishers in the City Hall are expired. They cannot be serviced if they pre-date 1984; and these do. They must be replaced.

A bid was given for over \$800 to replace 14 extinguishers.

Perhaps the old ones could be sold off.

MOTION WAS MADE BY DERREK JOHNSON AND SECONDED BY JULIE HASKELL TO APPROVE THE PURCHASE OF 14 FIRE EXTINGUISHERS TO REPLACE THOSE THAT ARE OUT-DATED; AT A COST NOT TO EXCEED \$900

**VOTE (POLL): DERREK JOHNSON-AYE, JULIE HASKELL-AYE & SEAN ROYLANCE-AYE (3)
NAY (0) ABSENT (2) NELSON ABBOTT & RAYMOND BROWN**

Passes 3-0

MINUTES

City Council Minutes of 2-24-09:

There was a question on Councilmember Johnson's intent on what was said regarding the subject matter discussed in a meeting he had with the Mayor; discussed on page 2, lines 32 & 33. He was referring to the water tank, rather than the purchase of the city property. The wording is to change: add..."RE: the water tank and the future of the economy"

Julie Haskell: Pg 7: line 33: change "lots" to "lost"

MOTION WAS MADE BY JULIE HASKELL AND SECONDED BY DERREK JOHNSON TO APPROVE THE CITY COUNCIL MINUTES OF 2-24-09, AS CORRECTED

VOTE: YES (3) NO (0) ABSENT (2) NELSON ABBOTT & RAYMOND BROWN

ADJOURNMENT

Mayor Dunn adjourned the Meeting at 9:05 PM.

[Signature]
City Recorder