

Minutes of the Work Session meeting of the Syracuse City Council held on May 22, 2012, at 6:00 p.m., in the Council Chambers, 1979 West 1900 South, Syracuse City, Davis County, Utah.

Present: Councilmembers: Brian Duncan
Craig A. Johnson
Karianne Lisonbee
Douglas Peterson
Larry D. Shingleton

Mayor Jamie Nagle
City Administrator Robert Rice

City Recorder Cassie Z. Brown was excused from the meeting

City Employees Present:

Finance Director Steve Marshall
IT Director TJ Peace
City Attorney Will Carlson
Community Development Director Michael Eggett
Public Works Director Robert Whiteley
City Planner Kent Andersen

The purpose of the Work Session was for the Governing Body to hear public comment; receive a presentation from the North Davis Sewer District (NDSD); have a discussion regarding the creation of a Volunteer Group/Citizen Committee; Discuss proposed changes to Title Ten relative to the creation of a Business Park Zone; discuss the State Audit Report with findings and recommendations; discussion Title Two of the City Code; and discuss Council Business.

Public comment

10:03:39 AM

Terry Palmer stated that his comments are mostly related to the Neighborhood Services Zone. He stated that he has property in Ogden and various other places and in his opinion the City should stick with the commercial and residential zones that are already in place. He stated he feels this is the creation of a zone the City really does not need. He stated that if the City is only considering creating the zone for the Rentmeister company, it is easy enough to handle that issue with grandfather clauses. He then stated that he wanted to talk about the rule limiting residents to three minutes when making public comments. He stated that rules are necessary and he feels the Mayor are right and people should be limited to three minutes to prevent very lengthy meetings.

Presentation from North Davis Sewer District (NDSD)

10:05:00 AM

Ivan Anderson, Chair of the Board of the NDSD, approached the Council and provided information using the aid of a PowerPoint presentation. He stated that joining him are NDSD Director Kevin Cowan and Dr. Hecht from Brown and Caldwell – the NDSD's engineering firm. Various Councilmembers interjected with questions throughout the presentation.

Discussion regarding creation of a Volunteer Group/Citizen Committee

10:43:01 AM

This item was added to the agenda upon a request by Councilmembers Lisonbee and Shingleton.

10:43:10 AM

Councilmember Shingleton stated that he is recommending the creation of a Volunteer Committee and he would like each member of the Council to recommend a few people for appointment to the Committee that they feel would be willing to work in such a capacity. He then expanded on his recommendation.

10:45:34 AM

Mayor Nagle asked Councilmember Shingleton if he would be willing to lead the charge to create the Committee, to which Councilmember Shingleton answered yes. Councilmember Peterson stated that all Committees and Commissions must adhere to the Open and Public Meetings Act (OPMA). Mayor Nagle stated that is correct if they are a recognized Committee. Councilmember

Peterson asked if this would be a recognized Committee. Mr. Carlson stated that he would need to research that issue and noted that some Commissions currently fall into the category that must adhere to the OPMA while others do not. The Council discussed the potential creation of the Committee further with Councilmember Lisonbee stated that she envisioned that the Committee would take some of the pressure off City staff to organize various events.

[10:48:21 AM](#)

Councilmember Peterson stated he feels that the creation of this type of Committee may create more work for the Public Works Department and he asked Public Works Director Whiteley how his Department currently handles requests for community service opportunities. Mr. Whiteley explained the process the City employs to address such requests.

Discussion regarding proposed change to Title Ten – addition of Business Park Zone

[10:51:33 AM](#)

A staff memo from the Community Development Department explained the Syracuse City Planning Commission, in coordination with a 200 South Subcommittee, created the Business Park Zone (see attached). Planning Commission review of the first draft of the Business Park Zone began December 6, 2011. The Business Park Zone went through three additional refinements to get it to the present product. The purpose of this zone is to provide areas primarily for planned general office and business park developments and related service that will be compatible with, enhance value of, and provide a transition to, nearby residential areas and will promote a quiet, clean environment. Development in this zone should emphasize a high level of architectural and landscape excellence. These zone districts will generally be established along high volume arterial streets in order to buffer the impacts of these streets from less intensive land uses. The intent is to create an attractive environment that will compliment, and serve as a transition to, surrounding uses.

On March 20, 2012, the Syracuse City Planning Commission held a public hearing regarding the proposed Business Park Zone, in which a few comments were received. On April 17, 2012, the Syracuse City Planning Commission approved recommendation to the Syracuse City Council the attached amendment to Title Ten, a new Business Park Zone within the Syracuse City Code. Within the Business Park Zone, the way the Architectural Review Committee is structured, it is in conflict with other chapters within Title Ten which also outline the structure of the Committee. In other chapters of Title Ten, the Mayor, with consent of the City Council, appoint the Committee members. However, in the Business Park Zone, the Planning Commission Chair, with consent of the Planning Commission, appoint the Committee members. Staff recommends consistency with the application of the Architectural Review Committee.

The Community & Economic Development Department hereby recommends that the Mayor and City Council discuss the inclusion of a new Business Park Zone in Title Ten within the Syracuse City Code.

[10:51:42 AM](#)

City Planner Andersen summarized the staff memo.

[10:54:44 AM](#)

Mike Ostermiller representing Ninigret provided his input regarding this issue to the City Council.

[10:59:31 AM](#)

Council discussion regarding the proposal then ensued. There was extensive debate between the Council and Mr. Ostermiller.

[11:45:49 AM](#)

Mayor Nagle suggested that the City schedule a meeting between two citizens that were on the citizen committee regarding this issue, two Planning Commissioners, two Councilmembers, City staff, and the developer and try to reach a compromise regarding the zoning of the property. She stated that maybe that will bring some resolution to the issue and it cannot hurt. Councilmember Shingleton stated that he feels the Council has not had the appropriate amount of dialogue on this issue. He stated that the City owes it to both the developer and the citizens to address the issue appropriately. Council discussion regarding the Mayor's proposal ensued. Mayor Nagle stated that she will contact Planning Commission Chair Day to see if he will recommend Commissioners that would participate on the working group. She then asked which Councilmembers would be willing to participate. Councilmembers Peterson and Johnson volunteered. Mayor Nagle asked Ray Zaugg if he would be willing to participate. Terry Palmer stated that he would be willing to participate. Mayor Nagle stated that she would also like to find a citizen that is in support of the project. Mr. Ostermiller stated that he will be willing to participate. There was a discussion about inviting more than two residents to participate. Mayor Nagle stated that she would invite two citizens from both sides of the issue to participate; she stated that she does not want the committee to become too large. Councilmember Lisonbee stated she would like to have four citizens on both sides of the issue. Mayor

Nagle agreed to Councilmember Lisonbee's suggestion. Councilmember Johnson stated he would like for there to be an agenda item on the next business meeting agenda to allow the Council to vote on the creation of the proposed zone.

Discussion regarding State Audit Report with findings and recommendations

12:12:07 PM

A memo from the City Administration explained the City has received a draft audit report from the State Auditor's Office that addresses a hotline complaint and allegations that the City misspent Class C Road funds and had not followed proper bidding procedures.

12:12:20 PM

Mr. Marshall summarized his staff memo as well as reviewed the State Auditor's report.

12:24:06 PM

Council discussion regarding the item then commenced.

Discussion regarding Title Two of the City Code

12:25:31 PM

A memo from the City Attorney explained that on April 24, 2012 he reported to the City Council that the Council's majority vote to recodify Title II was in error because four adjustments to mayoral power in the recodification required either a unanimous vote of the Council without the Mayor or a majority vote with the Mayor. In response, the Mayor and City Council directed the City Attorney to draft revisions to Title II that would eliminate these adjustments. On May 8, 2012 the City Attorney introduced two alternative resolutions to the City Council, The first was to adopt the new version of Title II as currently drafted and the second was to adopt Title II with revisions to the four previously mentioned adjustments of mayoral power. The City Attorney recommended that whether the Mayor and Council proceeded with either version or draft a new version of Title II, a unanimous vote of the Council or a vote of a majority of the Council and the Mayor would be the best way to avoid a challenge. On May 8 after hearing the City Attorney's recommendation, Councilmember Duncan suggested that due to the invalid vote, the previous version of Title II is automatically in effect. The City Attorney recommended that since the City has been implementing the new version for the last 18 months, if the City were to now proceed under the earlier version of Title II, a unanimous vote by the Council or a majority vote of the Council with the Mayor would help avoid any challenge from individuals who relied on the new version to their detriment. Councilmember Duncan asked the City Attorney to research whether anyone who has detrimentally relied on an invalid law has been successful. There are multiple, but not many, cases where people have detrimentally relied on an invalid municipal law and later sued based on that reliance. In each case, the courts have declined to extend protection to the people who relied on the invalid law. In *State v. Spring City*, 260 P.2d 527 (Utah 1953), Spring City issued bonds to improve a power plant. Three years after the bonds were issued Spring City stopped making payments, maintaining the bonds were void because they were issued in violation of the state constitution. The purchaser filed suit against the city, arguing "the bonds were purchased under mutual mistake, that defendant Spring City used the money for a legitimate purpose for its benefit and that plaintiff is therefore entitled to restitution apart from any express contract. Although it results in a hardship on the purchasers of such invalid bonds, neither reason nor authority support this position." *Id* at 531.

While the Utah Supreme Court declined to protect the interests of the purchasers of the bonds, it did extend a warning:

This situation should be distinguished from cases where, although the city was authorized to [pass a specific law, the law was] found to be invalid because certain procedural requirements were not met... In such situations, justice may well require restitution... *Id*

In spite of such warnings, Utah courts have yet to grant restitution to parties who detrimentally rely on a constitutionally invalid law. For example, in *Weese v. Davis County Commission*, county employees sued for breach of contract regarding pay raises. 834 P.2d 1 (Utah 1992). The Utah Supreme Court held that 1- the County was constitutionally barred from negotiating raises for future years, so any such promise was null and void, and 2- any reliance on a contract like that was unreasonable and could not form the basis for a claim of promissory estoppel.

This position is similar to that held in other jurisdictions, including Oregon. In *Wild Rose Ranch v. Benton County*, a developer filed suit after relying on a county land use planner's statement that a conditional use permit would not be necessary even though it was required by ordinance. 149 P.3d 1281 (Or. App. 2006). The Court of Appeals of Oregon held that the County was not liable for misstating the law because "plaintiffs' evidence failed to

establish that a special relationship existed between plaintiffs and defendant that gave rise to a duty by defendant to protect plaintiffs from economic loss.” *Id* at 1286.

The research does not clearly indicate how a court might decide a case where 1- a special relationship does exist between the city and the plaintiff that does not exist between the city and the general public, and/or 2- there is detrimental reliance on a law that is not constitutionally invalid, but invalid because certain procedural requirements were not met.

The City Attorney continues to recommend that whether the City proceeds under the new version of Title II, the old version of Title II, or any variation, that such decision be made with a unanimous vote of the Council or a vote of a majority of the Council and the Mayor. Should the Mayor and Council decide to proceed under the old version of Title II without such a vote, limited case law on the issue suggests that the city would be reasonably likely to succeed against any challenge based on detrimental reliance.

[12:25:35 PM](#)

Mr. Carlson summarized his staff memo.

[12:29:00 PM](#)

Council discussion regarding the item commenced.

[12:45:51 PM](#)

The Council directed Mr. Carlson to refer to the original Title One and look at any changes that have been made in the law that are now in conflict with the old Title One. Councilmember Duncan stated that the Council needs to work to bring the old ordinances into compliance with current law. He stated that the Title Two adopted in 2011 is null and void.

Council business

[1:03:09 PM](#)

Councilmember Lisonbee stated she has heard from some citizens that there are big gaps of audio missing from the recordings of Council meetings that are made available online. She asked if someone can request that IT Director Peace look into why that is happening. Mr. Rice stated that the UStream program that the City is using is free and the City has no control over it. Mayor Nagle added that the City is not required to provide recordings of the meetings online. Councilmember Lisonbee stated that she would like to continue to provide the recordings. Councilmember Duncan suggested looking into the issue and determine the cost to upgrade the equipment or the software to provide recordings.

[1:05:26 PM](#)

Councilmember Lisonbee stated that on the next agenda she would like to have an item that would allow the Council to review a list of all employment positions in the City to determine if the positions are filled. She stated in the past two Councilmembers requested the opportunity to review all personnel files in order to clean them up. After brief discussion Councilmember Lisonbee clarified she meant she would like to review and discuss the City’s wage scale. Mr. Rice stated that was just done by the Council. Councilmember Lisonbee stated that during the discussion it was mentioned that there are some positions that are created, unfilled, but funded and she wants to review those types of positions. HR Specialist Whitaker suggested that Councilmember Lisonbee meet with her one-on-one to review the wage scale and discuss whatever issues she wants to discuss. Discussion regarding the item continued.

The meeting adjourned at [1:15:44 PM](#) p.m.

Jamie Nagle
Mayor

Cassie Z. Brown, CMC
City Recorder

Date approved: February 26, 2013