

Minutes of the Special meeting of the Syracuse City Council held on May 28, 2013, at [9:10:31 PM](#), in the Council Work Session Room, 1979 West 1900 South, Syracuse City, Davis County, Utah.

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

Mayor Jamie Nagle
City Manager Robert Rice
City Recorder Cassie Z. Brown

Excused: Councilmember Karianne Lisonbee
City Employees Present:

City Attorney Will Carlson
Finance Director Steve Marshall
Community Development Director Sherrie Christensen
Public Works Director Robert Whiteley
Police Chief Garret Atkin
Fire Chief Eric Froerer
Parks and Recreation Director Kresta Robinson

1. Meeting Called to Order/Adopt Agenda

Mayor Nagle called the meeting to order at [9:10:36 PM](#) p.m. as a special meeting, with notice of time, place, and agenda provided 24 hours in advance to the newspaper and each Councilmember.

[9:10:56 PM](#)

COUNCILMEMBER DUNCAN MADE A MOTION TO AMEND THE AGENDA BY ADDING PUBLIC COMMENTS AND ADOPT THE AGENDA WITH THAT CHANGE. COUNCILMEMBER JOHNSON SECONDED THE MOTION; ALL VOTED IN FAVOR. Councilmember Lisonbee was not present when this vote was taken.

[9:11:39 PM](#)

2. Approval of Minutes.

The minutes of the following meetings were reviewed: work session and business meeting of May 14, 2013.

[9:11:42 PM](#)

COUNCILMEMBER PETERSON MADE A MOTION TO APPROVE THE MINUTES OF THE WORK SESSION AND BUSINESS MEETING OF MAY 14, 2013 AS PRESENTED. COUNCILMEMBER SHINGLETON SECONDED THE MOTION; ALL VOTED IN FAVOR. Councilmember Lisonbee was not present when this vote was taken.

[9:11:55 PM](#)

Public Comment

[9:12:01 PM](#)

Tim Rodee stated he became aware of the discussion of the Irben Development Stillwater project today and he came to the City offices this morning to submit a Government Records and Access Management Act (GRAMA) request for information and he was provided with the Council packet for this evening. He stated his initial concerns were relative to how this project had been impacted by the West Davis Corridor; the Corridor was moved north of the property and will ultimately go through the middle of his home and property. He stated he read through the 495 pages of the packet and found that the City was going to use park money and 'seller-finance' the project and transfer all the risk to the City. He stated he finds it incredible that the City would consider using public funds that were paid in the form of impact fees to purchase property and then sell the property and bear the risk of the success of the project. He stated he has reviewed and likes the project, but the City is not in the business of bankrolling development projects and if that is the decision the City makes tonight the Council will receive a request from every developer in the City for the same benefits. He stated he apologizes for being opposed to the project from that standpoint, but he would implore the Council to decide against transferring the risk for this project to the City. He stated this is a major conflict of interest for the City Council, the City of Syracuse, and he is strongly urging the Council to listen to the City Attorney who has recommended the Council move forward with extreme caution relative to the

seller financing issue and the partial sale of water rights. He stated that if Irben Development wants to be in business and make money they should assume their own risk.

[9:15:11 PM](#)

3. Public Hearing – Proposed Ordinance 13-06 amending Title Six, chapter Five of the Syracuse City Code regarding irrigation service.

A staff memo from City Attorney Carlson explained the Davis & Weber Counties Canal Company, the primary supplier to Syracuse' pressurized irrigation ("secondary") water system, announced that 2013 water shortages require it to drastically limit water distribution. Customers can expect to receive 25% to 40% less water this year than in previous years. Since Syracuse operates its own secondary water system, the City has a choice in how to impose this reduction on the residents of Syracuse. Even so, the City should plan to have only 60% of last year's water to meet the secondary water needs of residents and visitors during this irrigation season. This requires the City to promptly implement some form of water conservation. Traditionally, municipal water conservation efforts have focused on prescriptive regulations, such as rationing water for specific uses or requiring installation of specific appliances or infrastructure. Recent research suggests that market-based policies (charge higher rates for more use and lower rates for less use) are the most cost effective way to conserve, while prescriptive regulations are better at reaching a specific conservation level. See "Comparing price and nonprice approaches to urban water conservation," Water Resources Research, Volume 45, W04301. Since Syracuse has thus far declined to meter secondary water, it does not currently have an option of a market-based conservation strategy.

At the meeting on May 14, 2013, the City Council expressed interest in an ordinance recommended by the St. Johns River Water Management District in Florida. This ordinance allows watering two days per week for up to thirty minute increments, subject to several exceptions. Four concerns were expressed:

1. Agricultural irrigation needs to be exempt.
2. Any penalties should only be applicable in drought years.
3. Moisture detectors on sprinkler systems may be prohibitively expensive.
4. People should be trusted to self- regulate without an ordinance.

Regarding agriculture, in the draft ordinance landscape irrigation is defined to exclude "agricultural crops, nursery plants, cemeteries, golf course greens, tees, fairways, primary roughs, and vegetation associated with recreational areas such as playgrounds, football, baseball and soccer fields." Accordingly, farms will not be regulated by the proposed ordinance.

An enforcement trigger has also been added to the proposed ordinance. The proposed ordinance attaches no penalty for watering outside the schedule "unless the City Council has passed a resolution declaring a drought." The ordinance allows the Council to pass such a resolution upon recommendation of the Public Works Director and limits the life span of the resolution to "the end of Daylight Savings Time for that calendar year or passage of a nullifying resolution by the City Council." Basic research on moisture detectors indicates that costs can be minimal. For example, Amazon is selling a Hunter Solar Sync Rain Sensor for about \$77. Finally, whether to regulate secondary water conservation or simply educate is a policy decision for the Council to make. Even so, as operators of a secondary water system, the City has a duty to ensure that the system operates. The City has been informed that its water supply will be substantially lower this year than in past years. Failure to take action to conserve water will result in a drained and damaged system and substantial expense to the city.

[9:15:20 PM](#)

Mayor Nagle convened the public hearing

[9:15:32 PM](#)

TJ Jensen, stated he feels this issue is related to the agenda item regarding the Irben Development project and he feels one easy and quick way to solve the problems in a way that will be fair to everyone is to meter secondary water. He stated there is currently no way to know how much secondary water someone is using; in the past the Council has said the City does not have the money to pay for secondary water meters, but this is a pretty serious drought year. He noted there was a shortage of nearly 50 percent in the Layton Canal that jumped to 100 percent when farmers started watering due to hot temperatures. He stated he asked Public Works Director Whiteley what would happen if the City's secondary water ponds are sucked dry and he was told air will get in the water lines and that could completely ruin a secondary water pump. He stated that is the one things that Mr. Whiteley should never have to deal with; the pumps are designed to be under water at all times and if they are ruined the cost to replace them would be \$80,000 each. He stated that if the City decides to sell water shares to Irben Development that money could be used to purchase secondary water meters for the entire City; the City needs a way to track secondary water and metering is the most fair way to determine how much water is allowed or is using. He stated that is the way to solve this issue.

[9:17:47 PM](#)

Cindy Haacke stated she read in the newspaper that water should be limited to 30 minutes for every watering station. She stated there are residents with larger properties and they have many stations. She stated she has a neighbor that has over 30 stations and in her yard alone she has 19 stations and to be limited to watering two times per week for that many stations it will be necessary for her to be monitoring the watering time on her stations until 4:00 a.m. on her watering days. She encouraged the Council to set their alarm for every 30 minutes and get up, run around outside, and then come back in their house and see how difficult that would be. She stated she wondered if those with larger plots of land could be allowed additional time to irrigate their property. She stated that she will not be able to get up and go to work the day after watering until 4:00 a.m. She added she cannot let her yard go more than a week without watering. She stated that she could technically put four houses on her property and she argued that she should be able to water every day of the week; but, what she is being limited to based on the potential to locate four houses on her property is that each of those houses would only be able to water once every two weeks. She asked the Council to take these issues into consideration; otherwise she will not be able to plant a garden this year and she would be forced to let some of her property go unwatered.

[9:20:04 PM](#)

Brandon Haddock stated he wanted to offer some points to consider relative to water conservation, which he has been involved in for over 30 years in his career. He stated the City has a very difficult task; it is hard to get through to residents via education, but he believes that is the first thing that should be done. He stated he has done some research and taught some classes about water conservation and he has found there are rebates available to people for converting their irrigation systems based on the use of certain landscaping materials; up to 75 percent of the costs associated with conversion could be paid for by the water supplier. He stated Weber Basin Water Conservancy District has a long list of several products on their website that are available at a discounted rate of up to 50 percent off and that is attractive for someone in the market for a new timer clock or a moisture sensor. He then added he feels Weber Basin is being a little too aggressive in their recommendations regarding conservation and it may be necessary to instead take baby steps towards the watering restrictions. He stated the first step could be to encourage residents to switch their water time to water on odd or even days based on certain criteria and that would result in someone that currently waters seven nights a week to watering three nights a week. He stated lawns must adapt to these changes as well. He noted he talked to Mr. Whiteley and understands that the City cannot provide an advertisement encouraging someone to use Sprinkler Supply for parts in order to get rebates and discounts, but that same information is available on Weber Basin's website and residents could be encouraged to view the information regarding rebates on that website.

[9:22:35 PM](#)

Ray Zaugg asked if the City is currently monitoring inflow and outflow on the secondary water system; if not, that would be a good thing for the City to do so that Mr. Whiteley can understand the increases and decreases to the system on certain days or times of the year. He noted there has been mentioned tonight that this is not the first time the City has faced a water shortage and being required to deal with a reduction in the water supply. He stated that when he was growing up his family irrigated their property and there were some years that there was very little water in the ditch to water their acreage and they were forced to deal with it. He stated water availability was cut to those on the irrigation system, but there is no real way of doing that now; however, he does not suggest any type of metering of secondary water. He stated that when the secondary water system was first brought to Syracuse the residents were promised that they could use the water they needed for their acreage; there was never a mention of limitations though there was discussion about smart watering. He stated that when someone develops land in the City they are required to provide water into the City's system, which means the flow from Davis Weber Canal is increased for the developed land; property owners selling their land are required to provide water shares with their land. He stated that Syracuse is the last city on the line and any excess water goes to the Great Salt Lake and that is why he suggests that the inflow and outflow of water be monitored to make sure water is not being wasted.

[9:24:59 PM](#)

Mayor Nagle closed the public hearing.

[9:25:03 PM](#)

COUNCILMEMBER DUNCAN MADE A MOTION TO CONTINUE THE PUBLIC HEARING AND TABLE ADOPTION OF PROPOSED ORDINANCE 13-06 AMENDING TITLE SIX, CHAPTER FIVE OF THE SYRACUSE CITY CODE REGARDING IRRIGATION SERVICE. COUNCILMEMBER JOHNSON SECONDED THE MOTION.

[9:25:15 PM](#)

Council discussion regarding the motion ensued.

[9:28:11 PM](#)

Mayor Nagle stated there has been a motion and a second regarding the proposed ordinance and she called for a vote. ALL VOTED IN FAVOR. Councilmember Lisonbee was not present when this vote was taken.

[9:28:23 PM](#)

4. Authorize Mayor Nagle to execute the “Addendum no. 4” to the Real Estate Purchase Contract with Irben Development.

A staff memo from City Attorney Carlson explained in January 2012 the City entered an agreement to sell 60.595 acres of land directly south of Jensen Park (“South Jensen Park”) to Irben Development (“Irben”). That sale had a settlement deadline of October 18, 2013 and did not include the transfer of any water rights. Irben has asked the city to finance the sale over 18 months between next October and April 2015. Additionally, Irben plans to develop a residential subdivision on the property, which will require Irben to convey water rights to the City as a condition of subdivision approval. Seller Financing Irben has drafted the attached “Addendum No. 4” to the Real Estate Purchase Contract and requests the City Council’s approval. This addendum proposes five changes to the contract:

1. Under the current agreement, payment of \$1,969,400 is due in full at the settlement date, October 18, 2013. Under this Addendum, Irben will make a down payment “at closing” of \$527,850.00. There is no closing date provided.
2. Under this addendum, Irben will make three additional payments at six month intervals for the remaining \$1,441,550.00 owed.
3. The City’s loan to Irben will be charged 3% simple interest per year. Assuming the payments are on schedule, this will amount to approximately \$43,200.00 in interest over 18 months.
4. The land would be divided into four horizontal quarter sections stacked from south to north. At closing, the southernmost section would be transferred to Irben. Upon the first loan payment the next section to the north would be transferred, and so on until all payments are received and all land transferred.
5. Irben has until September 18, 2013 to choose this City financing. By September 18, both parties must also agree on the form of the promissory note.

City staff has three concerns about the proposed addendum: the extended time of the contract will extend the time that the city is exposed to risk, seller financing will place restrictions on the city’s ability to expend the funds as required by law, and the proposed time frame assumes a rate of home sales that is historically unsupported for new subdivisions in Syracuse. First, approving addendum 4 will extend the time that the city is exposed to risk. The City entered this real estate purchase contract seventeen months ago and is obligated for another five months under the current agreement. During that time, the city has been prevented from considering changed circumstances, including the improved economy and UDOT’s proposed West Davis Corridor route, in deciding what to do with the land. Should addendum 4 be approved by the City Council, the City will sell land in April 2015 based on its estimated value in December 2011. Additionally, during the time that the city is financing Irben’s development, it will also be regulating the development as the land use authority. This could result in subdivisions being proposed under an ultimatum of approving a subdivision or risking the sale of the remaining sections of land. Second, the land in question was purchased by the city with park purchase impact fees and so the money from the sale must be used to purchase additional park lands. Under state code, the city must spend impact fees

“within six years of their receipt.” UCA §11-36a-602(2)(a). Unspent impact fees plus interest should be refunded to the developer. UCA §11-36a-603. Neither statutes nor case law outline the time frame that applies when impact fees are spent and then returned to the city years later, which is what is anticipated here. If the time frame is six years from original receipt, then the City will be in violation as soon as it receives payment for South Jensen Park. If the six year time frame is paused while the city has expended the funds and then resumes when the funds are returned to the city, then it will be important the City act promptly to expend the Park Purchase funds. If the six year time frame restarts when spent impact fees are returned, then the city will have six years from the first payment for South Jensen Park to spend the funds. Since the city is selling a large span of park property, it would serve to promptly purchase a separate large span of park property. The Seller financing will create a span of at least eighteen months between the first payment and final payment to the city, which will require the city to either purchase multiple smaller land areas or to wait to purchase a large space. This delay increases the risk that the City would be in violation of the time restraints on expending impact fees. Third, while Irben anticipates using profits from the sale of properties on the earlier sections to fund their payments for later sections, the eighteen month time frame would require that homes be built at a rate that is not supported historically in Syracuse. This increases the risk to the city that either 1- the sale of the later sections will fall through, or 2- Irben will return with requests for subsequent addendums to further extend the time before payment is due. Since the recession, developers have been cautious in creating subdivisions. For example, Trailside Park has proposed subdivision phases of approximately ten lots at a time, completing one phase before

beginning the next. Since 2002, city code has required subdivisions larger than 36 lots be planned in subsequent phases, which prevents developers from over committing resources before the subdivision can be completed. Even with this cap, several subdivisions across the city remain unfinished, the result of developers who were more optimistic than the market could support. Irben anticipates building approximately 200 homes, or 50 per quarter section. This would require Irben to build and sell approximately 150 lots over the course of eighteen months, approximately two per week every week. Even with the recovering economy, Syracuse has issued building permits for 74 single family residences in 2013, which is about 3.5 per week across the entire city. While possible, Irben's projected development is very optimistic. Should Irben fall short, the City will either be left holding the bag on the remainder of the property, or be asked by Irben to extend the city's time commitment and risk. For the above reasons, City Staff urges extreme caution in considering whether to approve Addendum 4. The City Council may accept, reject, or amend Addendum 4 and the Water Rights Memorandum of Understanding. If accepted or amended, they will be forwarded to Irben Development for consideration. City Staff recommends extreme caution regarding Addendum 4.

[9:28:47 PM](#)

COUNCILMEMBER DUNCAN MADE A MOTION TO DENY AUTHORIZATION TO EXECUTE THE "ADDENDUM NO. 4" TO THE REAL ESTATE PURCHASE CONTRACT WITH IRBEN DEVELOPMENT. COUNCILMEMBER SHINGLETON SECONDED THE MOTION.

[9:28:53 PM](#)

Council discussion regarding the motion ensued.

[9:30:18 PM](#)

Mayor Nagle stated there has been a motion and second regarding the agreement and she called for a vote. ALL VOTED IN FAVOR. Councilmember Lisonbee was not present when this vote was taken.

[9:30:29 PM](#)

5. Authorize Mayor Nagle to execute the Memorandum of Understanding with Irben Development regarding Water Rights related to Stillwater Estates.

A staff memo from City Attorney Carlson explained the City serves dual roles as the "Seller" of South Jensen Park without water rights and the "Land Use Authority" requiring conveyed water rights as a condition of subdivision approval. Irben has asked the city as Seller for help providing the water rights to the Land Use Authority. Accordingly, the City Attorney has drafted the attached Memorandum of Understanding for the Council's consideration. Under this Memorandum of Understanding, Irben must convey water rights to the Land Use Authority as required by city code. This is a condition of subdivision approval. However, for the portion of any proposed subdivision that is on South Jensen Park, Irben Development may instead pay the City \$9,836.07 per acre or part thereof. The city will not deposit any such payment in the general fund or park purchase impact fund, but in the Secondary Water Operating Fund. If Irben's proposed subdivision were to develop less than an acre of South Jensen Park, it could pay \$9,836.07 instead of conveying water rights for that portion. On the other end of the spectrum, if Irben's proposed subdivision develops all of South Jensen Park, it could pay \$600,000.00 instead of conveying water rights for South Jensen Park's portion of the subdivision. Whether it pays or conveys water rights is in the discretion of Irben. This price is in accordance with the fair market value of water rights at Layton Canal Company, the irrigation company that supplies water to the area surrounding South Jensen Park. Public Works Director Robert Whiteley has determined that Layton Canal water shares are one acre foot per share and are currently valued between three and four thousand dollars per share. This MOU values the water rights at under \$3,300 per acre foot. Mike Thayne of Irben has disputed the City's valuation of water shares. He indicated that he has purchased some water shares at a lower price and that several decades ago, before water rights were conveyed as a condition of subdivision approval, water shares were valued under one hundred dollars each. Nevertheless, he has agreed to enter this Memorandum of Understanding at the price indicated. The City Council may accept, reject, or amend this Memorandum of Understanding. If accepted or amended, it will be forwarded to Irben Development for consideration.

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Mr. Carlson summarized his memo.

[9:32:22 PM](#)

Council discussion regarding the item ensued.

[9:32:49 PM](#)

City Council Special Meeting
May 28, 2013

COUNCILMEMBER PETERSON MOVED TO AUTHORIZE MAYOR NAGLE TO EXECUTE THE MEMORANDUM OF UNDERSTANDING WITH IRBEN DEVELOPMENT REGARDING WATER RIGHTS RELATED TO STILLWATER ESTATES. COUNCILMEMBER SHINGLETON SECONDED THE MOTION.

[9:33:06 PM](#)

Council discussion regarding the motion ensued.

[9:44:30 PM](#)

Mayor Nagle stated there has been a motion and second regarding the agreement and she called for a vote. ALL VOTED IN FAVOR, WITH THE EXCEPTION OF COUNCILMEMBER DUNCAN WHO VOTED IN OPPOSITION TO THE MOTION. Councilmember Lisonbee was not present when this vote was taken.

At [9:44:47 PM](#) p.m. COUNCILMEMBER SHINGLETON MADE A MOTION TO ADJOURN. COUNCILMEMBER PETERSON SECONDED THE MOTION; ALL VOTED IN FAVOR. Councilmember Lisonbee was not present when this vote was taken.

Jamie Nagle
Mayor

Cassie Z. Brown, CMC
City Recorder

Date approved: June 11, 2013