

Pleasant Grove City Council Meeting Minutes
Work Session
November 12, 2013
6:00 p.m.

PRESENT:

Mayor:

Bruce W. Call

Council Members:

Cindy Boyd
Cyd LeMone
Heather Pack

Excused:

Jay Meacham, Council Member
Kim Robinson, Council Member

Staff Present:

Scott Darrington, City Administrator
Dean Lundell, Finance Director
Degen Lewis, City Engineer
Tina Petersen, City Attorney
David Larson, Assistant to the City Administrator
Deon Giles, Parks and Recreation Director
Kathy Kresser, City Recorder
Mike Smith, Police Chief
Marc Sanderson, Fire Chief
Ken Young, Community Development Director
Lynn Walker, Public Works Director
Mike Robert, Fire Captain
Clint Warnick, Recreation and Aquatics Manager
Libby Flegal, NAB Chairperson

Others:

Ben Stanley, Council Member Elect
Becca Mallory, Victim Advocate
Justin Earl, Ivory Commercial (ICO)

The City Council and staff met in the City Council Chambers at 86 East 100 South, Pleasant Grove, Utah.

1) **CALL TO ORDER**

Mayor Call called the meeting to order and noted that Council Members Boyd, LeMone, and Pack were present. Council Members Meacham and Robinson were excused from the meeting.

2) **PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by Council Member Elect, Ben Stanley.

3) **OPENING REMARKS**

The Opening Remarks were given by City Administrator, Scott Darrington.

4) **BECCA MALLORY VICTIM ADVOCATE TO UPDATE THE COUNCIL ON THE PROGRAM STATUS.**

Victim Advocate, Becca Mallory, discussed the court process for domestic violence once abuse occurs. She explained that once a domestic violence case takes place and is reported if it results in hospitalization. Ms. Mallory goes to the hospital to speak to the victim and help coordinate any needs the victim has, such as helping children find a family member to stay with. If the case does not require hospitalization Ms. Mallory visits the victim in another location.

Once the officers determine that domestic violence has occurred, Utah State law requires that an arrest be made. Sometimes a citation is issued and generally the perpetrator is sent to jail. The victim is given the option to sign a No Contact Order, which means the perpetrator may not contact them in any form until the first court date. Perpetrators that are taken to the County jail are required to sign a Jail Release Agreement, which has the same requirements as the No Contact Order.

Ms. Mallory reported that most domestic violence victims do not want to be involved in court cases. The victims are often not compliant with the police or court. Most victims have a difficult time seeing the perpetrator in court for several reasons. Ms. Mallory sits in on court hearings and takes notes on all domestic violence and sexual assault cases and keeps track of progress in the case. Prior to a hearing she talks with victims and explains the court process and gathers information about how they feel about testifying and if they are still in a relationship with the perpetrator.

Ms. Mallory indicated that she is a liaison between the prosecutor and the victim. Her job is to build a relationship with the victim and helps inform officers of necessary details that the victim did not feel comfortable sharing with a sworn officer. She helps victims understand the importance of stopping the cycle of violence. Once a proposed resolution has been reached by the attorneys the judge can either accept the proposed deal or not. Sentencing typically occurs at that point. There is usually a \$1,000 fine imposed as well as a 12-month probation. Clinical and other treatments are also often required. Jail sentences are sometimes imposed and typically begin at a 90-day sentence.

Ms. Mallory remarked that if the victim decides to leave the situation she helps them fill out protective orders and other injunctions. This is a long and difficult process that requires the victim to face the defendant in court. The Utah Office for Victims of Crime provides funds for victims of

violence that helps with medical bills, mental health, relocation, lock changes, and other necessary costs. The office pays up to \$20,000 per crime but the victim is required to cooperate with the prosecution. There are many other resources available to victims.

Mayor Call asked how often Ms. Mallory is involved with victims post sentencing. Ms. Mallory responded that she is typically not involved unless there is another assault or a violation of orders. Council Member Pack asked if there are men in need of help because they cannot go to the centers for women and children. Ms. Mallory stated that there is a coalition that offers help as well as services that offer funding. If a No Contact Order is issued the perpetrator has to leave the home and the victim can stay in the home.

Council Member LeMone asked if contact information for Ms. Mallory is listed on the police website. Police Chief, Mike Smith, confirmed that there is contact information and by law when officers respond to domestic violence cases they leave a packet of information that contains Ms. Mallory's contact information as well as other places they can go for help. Ms. Mallory stated that she will always get in contact with victims once she learns of a situation.

Council Member LeMone asked if people can refer family members who are in need of help and how that process works. Ms. Mallory stated that she will assess the situation and determine how to best help.

Mayor Call asked Ms. Mallory how busy she has been since starting the job. Ms. Mallory responded that she has been very busy and has had some big cases. Council Member Pack asked where the grant that pays for her position comes from. She explained that a grant from the Violence Against Women Act that is funded by the State of Utah covers a portion of her salary. The City pays the rest. Ms. Mallory works only for Pleasant Grove and is a full-time employee.

Council Member LeMone asked what the best way is to contact her. Ms. Mallory stated that she prefers email in order to have a paper trail, but she also takes calls on her office phone. Chief Smith stated that through the years they shared a Victim Advocate with several cities. Having Ms. Mallory in house has been a huge asset for the City. He felt her position was far too valuable to let go of despite dwindling grant funds.

5) **DISCUSSION ON ICO DEVELOPMENT AGREEMENT.**

City Attorney, Tina Petersen, said they have succeeded in creating a draft development agreement with ICO. They agree on most issues, however, liquidated damages were still being discussed. ICO submitted an amended site plan with three small buildings instead of one large building and they have requested that the City modify the liquidated damages clause to have the clause cease after a certain amount of building is complete.

Attorney Petersen stated that staff and ICO have not come to any conclusions yet. She received comments from Randy Sant and Council Member Meacham which she forwarded on to ICO's attorneys.

Justin Earl with Ivory Commercial (ICO) reported that they are working hard to meet their bank deadlines. Attorney Petersen reported that they are on the next Planning Commission agenda for initial approvals. Mr. Earl said they divided the one large retail building into three smaller buildings because breaking it up will add variety and be more aesthetically pleasing. In between the two buildings they will place outdoor seating for restaurants, which they believe will help drive leasing activity as well as create a pleasant atmosphere.

Mr. Earl stated that there will be a better opportunity to get sit down restaurants with this new type of layout. Each of the three buildings will be 6,000 square feet. There will be a meandering sidewalk on the Garden Drive side of the buildings. Mr. Earl stated that their architect did a great job of adhering to the Tuscan theme of the area and creating a beautiful plan.

Council Member Boyd asked if they were open to using some of the larger pads for a restaurant if a larger restaurant expresses interest. Mr. Earl confirmed that they were open to that and were not locked into any specific office or retail type. He remarked that they have more parking than necessary for office just in case the space is used for a restaurant.

Mr. Earl stated that ICO's initial impression after discussing liquidated damages with the Council was that the Council had constituents who are concerned about multi-family developments. ICO's understanding was that one of the commercial buildings needs to be built before or alongside the housing piece. Mr. Earl did not remember specifications that retail needs to be developed first. Mayor Call confirmed that retail is very important. Mr. Earl did not think that the number of square feet was the most critical, but rather that commercial activity is taking place on the site.

Mayor Call explained that if the Council was to prioritize what they want to see happen, retail would be first, commercial second, and residential third. Mr. Earl felt there was a foundation of an agreement that they could all agree on. ICO's biggest concern was filling all of the space. No one benefits from vacant space and they felt that the buildings should only be built as they are occupied.

Mr. Earl commented that their proposal states that they will have two years after completion of the residential development to build a commercial building, which will likely be retail. If a company approaches ICO with interest in the space they will build their facility before the residential piece. If that does not happen they plan to build a retail building and have a 50% prelease to assist in bank financing and help get tenants into the building.

The agreement would force ICO to either pay a liquidated damage or build a building spec. He assumed that ICO would choose to build something on spec and try to generate activity. Their biggest concern was that the City will then come to ICO and require them to continue building even if the buildings are not full. That is not fair or equitable to ICO. Mr. Earl remarked that if a certain percentage of the building is leased, they would want to continue developing.

Attorney Petersen commented that there may be some confusion regarding what the intent of the City was on the first proposal. The first proposal included that the retail would likely be built first in a building with 18,500 square feet. The liquidated damages were to compensate the City in the event ICO did not build in a timely fashion pursuant to the contract. The amount of liquidated

damages was not discussed, but Mr. Sant came up with a proposal of \$18,900 which he calculated was what the City would make in property and sales tax revenues on the retail space.

Attorney Petersen stated that ICO's attorney was not happy and felt that the liquidated damages were draconian. Following that discussion ICO presented the updated site plan with the three smaller buildings. The intent of the contract was never to build buildings that would be vacant. The idea was that ICO made promises that if the City Council was willing to approve the senior housing and apply the overlay, there would be a retail component within a designated period of time.

Mr. Earl stated that neither he nor ICO disagreed with Attorney Petersen's statement. It seemed to Mayor Call that the redesign was done to build one building at a time to mitigate risk. Mr. Earl remarked that it did not benefit anyone to build a second 6,000 square-foot building if the first was not full. Mayor Call stated that the City's point of view was that they are not experts at filling commercial space. If there is more motivation to fill buildings that is what the City wants. Mr. Earl agreed.

Attorney Petersen stated that ICO originally agreed to not start the senior housing until 2015. Depending on leasing activity, they would construct the retail portion first. If the leasing activity lags they guaranteed that within 24 months of pulling the building permit on the senior housing they would have the retail constructed or at least underway. She explained that the purpose of the liquidated damages is to put some incentive to the timeframe. Attorney Petersen stated that in terms of liquidated damages, the amount the City presented was negligible. She felt they may be able to talk about implementing a reduction in the liquidated damages as each building is built. ICO's proposal was that once the first building is built the liquidated damages clause would be removed.

Mr. Earl stated that they need to find a way to meet the needs of both parties. Mayor Call asked that they begin using the term "retail" instead of "office" because that is what is important to the City. Mr. Earl noted that a 25,000 square foot medical facility should fulfill their end of the agreement. The Council did not agree because the City has more office than necessary already.

Council Member Pack felt that by removing the one large office building and developing three smaller ones, much of the risk to ICO is removed. The City needs to keep the risk stable in order to encourage speedy development. Mr. Earl stated that by requiring all commercial as part of the agreement it is actually increasing the risk to ICO. Council Member LeMone commented that if there is retail along Garden Drive the senior housing will not be as difficult of a sell to their constituents.

Mr. Earl stated that he is not advocating for more commercial and less retail. Council Member Pack thought it made sense to have retail next to a movie theater. Mr. Earl agreed. Council Member LeMone explained that they had been burned in the past and are trying to protect themselves. Mr. Earl stated that ICO is interested in exploring the possibility of adding language that would add a component of occupancy requirements. He reiterated that it is in no one's interest to have a vacant building, but it also does not seem right to continually penalize a developer who has cleaned up a blighted property and put a lot of money into making the area better. He understood the City's point of view that if the building is full the developers should continue development quickly.

Mayor Call said the City is not skilled at finding a tenant for their building and they don't want to incentivize ICO to build an empty building. While the City and ICO are aligned with what they want to see happen on the property there needs to be continuing motivation from the City for ICO to have functioning businesses.

Mr. Earl commented that the internal rate of return clock starts ticking the day ICO spends their first dollar. Vacancy will kill his returns, which means that ICO is motivated to fill all of the building space as quickly as possible. Mayor Call preferred to discuss the agreement in terms of the original plan of 18,500 square feet of retail/commercial space. Mr. Earl stated that that was the reason he felt an occupancy requirement could be useful.

Council Member Pack asked what ICO's worst case scenario would be. Mr. Earl responded that having the property remain vacant would be the worst case scenario. He was not concerned about filling senior housing. Senior housing makes the risk for the rest of the project more palatable; however, there is massive risk and cost still associated with the rest of the project. The property consists of 10 acres and senior housing will only cover two of those acres. Mayor Call stated that the worst case scenario for the City is having a senior housing development and nothing else.

Mr. Earl stated that due to funding, the earliest the senior housing would be developed is 2015 and the worst case scenario would be 2017. Council Member Boyd asked how long they would wait for the retail. Development was to begin by 2015. ICO will begin marketing the space as soon as possible. If the leasing activity is great enough they will build the retail building before the senior housing. The contract states that the retail building must be done before or within 24 months of the senior housing.

Attorney Petersen noted that Mr. Earl was asking the Council to consider suspending the liquidated damages clause once one 6,000 square-foot retail building is built until a certain occupancy is met, which would require ICO to begin development of the next building or the liquidated damages clause kicks back in.

Mr. Earl stated that development of the first building will begin any time from the present through 2017 but they hope to begin in the spring. They were already talking with a well known restaurant in Pleasant Grove that has to move locations soon. Council Member LeMone was comfortable with the idea of an occupancy requirement.

Mayor Call stated that a logical occupancy trigger is in the 75% range. He asked if the Council was comfortable with the proposed changes to the liquidated damages clause. The Council felt comfortable moving forward with the updated option.

Mayor Call asked Attorney Petersen to be sure the agreement specifies that retail is required rather than commercial. Mr. Earl hoped to have an agreement the following week that both ICO and the City are comfortable with.

Council Member Boyd asked when the site cleanup was scheduled. Mr. Earl indicated that they will have it cleaned up within six months of approval. They cannot begin until the ground is no longer frozen. Mayor Call thanked Mr. Earl for working with the City.

6) DISCUSSION ON RECREATION CENTER GYMNASIUM USE.

City Administrator, Scott Darrington, stated when the Rec Center was built their initial philosophy was that there would always be one gym available for open play. All of the programs and classes were developed around that philosophy. Recently there were different leagues and groups interested in renting the available gym for practices, drills, or other activities. They would like to come up with ideas that make it possible to adhere to the original philosophy of always having one gym available to the public while creating options to allow people to rent the gym. They also need to discuss how to address liability issues.

Recreation and Aquatics Manager, Clint Warnick, stated that every year around this time the Rec Center has many teams wanting to use the gym. The teams are not sponsored by the City but have City member participants. The center was built for people to purchase memberships. There is a conflicting need for the space. Manager Warnick was working to address the needs of both the leagues/teams and the pass holders. During certain times of the year where it may be possible to rent out the gym while not placing a burden on the paying pass holders.

Manager Warnick stated that a proposed solution would allow for one-half of one of the three gyms to be rented for \$50 per hour. Use of the full court would cost \$100 per hour for one of the gyms. The proposed prices are comparable to other rec centers and high schools. The times that teams rent the gym would change throughout the year depending on availability. There would be less availability during the winter months than the summer months. The entire gym will need to remain open during the busier times of the week and season.

Mayor Call asked if teams would be willing to pay the \$50 per hour. Manager Warnick responded that he has seen many teams pay more than that at other places he has worked. He recognized that some of the smaller groups may not be able to pay \$50 per hour and would be dealt with on a case-by-case basis. Mayor Call asked what types of teams would be interested. Interested parties include mainly super league basketball groups, volleyball, soccer, cheerleading teams and others.

Administrator Darrington stated that if the Council felt \$50 per hour was too much they could discuss reducing the amount. Manager Warnick stated that if there are 10 to 15 children on a team it is only slightly more money than the drop in price. Mayor Call asked how teams like Junior Jazz practice. It was noted that those types of teams practice at the old Rec Center and at school gyms. Manager Warnick indicated that they are trying to create a policy in order to be fair and consistent. There are times when all three gyms are in use by the City but typically there is always space for paying members to use gym space.

Manager Warnick stated that they have discussed the possibility of extending the Rec Center hours or being open on Saturday nights in order to accommodate the needs of teams. The goal is to try and meet the needs of as many groups as possible. Council Member Pack thanked Manager Warnick for keeping balance with the public service and the Rec Center is providing as well as

accommodating the teams that are income generators. Mayor Call remarked that this does not seem very different from renting non-athletic space at the community center. If there is a City sponsored program there are rules for that, and if a private group wants to use the space they need to rent it.

Council Member LeMone asked if all organized groups would be covered under their own certificate of insurance. Attorney Petersen explained that any organized group that charges money is required to have liability insurance. Administrator Darrington said they would ensure that all organized groups have insurance.

Council Member LeMone suggested offering a discount to groups that are willing to practice at less desirable times. Mayor Call asked that staff conduct research to be sure they know what the correct amount to charge is. Administrator Darrington stated that some research has already been done and the Council was free to request a different price. Mayor Call requested that they take one last look at the numbers before making a final decision.

7) **DISCUSSION ON AGENDA ITEMS FOR THE NOVEMBER 19, 2013 CITY COUNCIL MEETING.**

Mayor Call said there will be a presentation from the Chamber of Commerce. Assistant to the City Administrator, David Larson, reported that the Chamber recently held their annual planning retreat. He wanted to update the Council on the state of the Chamber and their plans for the future. In response to a question raised by Council Member LeMone, it was reported that there is a complete list of City businesses on the City's website. Mayor Call requested Assistant Larson make sure the list is updated.

Mayor Call reported that they will meet as a Board of Canvassers to accept the election results for item "b." Item "c" was to change the Master Plan on 800 North. Administrator Darrington indicated that the 600 West and 800 North portions were discussed over a year ago to help eliminate the train track issues. If the fire station ends up in the pipe plant property, closing off 800 North could be problematic for access for safety vehicles. Mayor Call said they should keep it on the agenda and discuss potential fire station issues.

Council Member LeMone asked if Chief Smith and Fire Chief, Marc Sanderson, could share their thoughts at the next meeting. Administrator Darrington remarked that if it goes on the Master Plan they will amend the Master Plan the following week and the building permit will come in the next day. The 600 West portion will have to be pushed back to another meeting due to the need to notice the public hearing.

Mayor Call said that item "d" will be the Tuscan Garden Development Agreement. Item "e" will be extending the overlay to that property. It was noted that the overly zone that was recently approved for the Strawberry Villas.

Item "f" pertains to application of the residential agricultural overlay. City Engineer, Degen Lewis, stated that the overlay ordinance was created because an individual purchased property and wanted to pursue a subdivision proposal. There was a large lot left over that they want to keep horses on. There have not been horses in the area for awhile and the grandfather entitlement to allow for large

animals expired. The owner approached the Board of Adjustment but was not successful in receiving an ordinance amendment. The only other option was to create an overlay. If the overlay is granted it will allow for the agricultural use. The Council would have to grant it with the condition that approval of the Plat that has already been approved be revoked. If the owner created the three lots as planned he would not have enough acreage in a single parcel to qualify for the overlay. The owner indicated that he was willing to make the necessary adjustments.

Mayor Call indicated that the Bike Pedestrian Master Plan as well as the Parks and Recreation Master Plan will be continued until December 3.

Allied Waste asked for a one-year extension in exchange for not charging a CPI. The Council agreed in principal and stated that the item is to finalize that paperwork. Mayor Call reported that there will be a discussion regarding the zoning along State Street where the Downtown Zone meets State Street. They will discuss having a corridor there that is more commercial.

Administrator Darrington said the intention is to not have a meeting on November 26.

8) MAYOR, CITY COUNCIL AND STAFF BUSINESS.

Attorney Petersen stated that the addendum with Waste Management is only good for one year.

Council Member LeMone thanked the Mayor, staff, and the Council for the excellent Veterans Day Service.

Council Member Boyd reported that she attended the police meeting earlier in the day and learned that they will be losing a key dispatch employee with many years of experience. She will likely move to Utah Valley because she is only getting 27 hours per week and will not be able to afford insurance. She asked if the Council could look into adding another full-time employee in an effort to keep this individual employed. Administrator Darrington stated that they had begun looking into part and full-time employees and their wages recently and will continue to look into options.

Mayor Call said the City should not craft policy around on individual, however this is not the first time this has happened and it will not be the last time until the City begins making a career out of the dispatch positions. He remarked that this was perfect timing to move forward in correcting this problem. Chief Smith thanked Council Member Boyd for addressing the problem. He stated that it has been an issue they have dealt with for years because of a need for benefits. The cost of training is very high and Pleasant Grove creates excellent dispatchers. He feels like they are training dispatchers for other communities and hopes the City can fix the problem soon.

9) EXECUTIVE SESSION TO DISCUSS THE CHARACTER, PROFESSIONAL COMPETENCE, OR PHYSICAL OR MENTAL HEALTH OF AN INDIVIDUAL (UCA 52-4-205 (1)(a)).

ACTION: At 7:34 p.m. Council Member LeMone moved to go into executive session to discuss the character, professional competence, or physical or mental health of an individual. UCA 52-4-

205 (1)(a). Council Member Pack seconded and the motion passed unanimously with the consent of the Council.

PRESENT:

Mayor Call

Council Members:

Cindy Boyd
Cyd LeMone
Heather Pack

Staff Present:

Scott Darrington, City Administrator
Tina Petersen, City Attorney

ACTION: At 7:39 p.m. executive session convened. There was a discussion on Arts and Culture Director Candidates. Administrator Darrington was authorized to make an offer to the recommended candidate. Mayor Call advised the City Council that he was concerned about providing continuity in certain key appointed positions where there was no “back up” person who could take over duties in the event an appointed official was discharged without cause. Mayor Call stated that he was going to execute employment contracts with the City Attorney and City Finance Director and informed the Council of what the terms of the contracts would be. He also stated that he would like the City Attorney to draft an amendment to the Policy and Procedure Manual that would institute some due process protections for all appointed positions.

Mayor Call asked if there was any further discussion, being none he called for a motion to adjourn.

ACTION: At 8:08 p.m. Council Member LeMone moved to adjourn the meeting. Council Member Boyd seconded and the motion passed unanimously with the consent of the Council.

10) SIGNING OF PLATS.

The Young Subdivision Plat “B” was signed.

11) ADJOURN.

This certifies that the City Council Minutes of November 12, 2013 are a true, -full and correct copy as approved by the City Council on December 10, 2013.

Kathy T. Kresser, City Recorder

(Exhibits are in the City Council Minutes binders in the Recorder’s office.