

Pleasant Grove City Council Minutes
November 18, 2008
7:00 p.m.

PRESENT:

Mayor:

Michael W. Daniels

Council Members:

Cindy Boyd Excused: Jeff Wilson

Bruce Call

Mark K. Atwood

Lee Jensen

Deputy Recorder:

Mary Burgin

Others:

Frank Mills, City Administrator

Gary Clay, Finance Director

Tina Petersen, City Attorney

Ken Young, Community Development Director

Lynn Walker, Public Works Director

Richard Bradford, Economic Director

Deon Giles, Leisure Services Director

Degen Lewis, City Engineer

Marc Sanderson, Fire Chief

Tom Paul, Police Chief

Libby Flegal, NAB Chair

The City Council and staff met at the City Council Chambers (south entrance), 86 East 100 South, Pleasant Grove, Utah

1. CALL TO ORDER

Mayor Daniels noted that himself as well as Council Members Boyd, Jensen, Atwood and Call were in attendance. Council Member Wilson was excused.

2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was lead by Boy Scout Travis Gonzales.

3. OPENING REMARKS

Opening Remarks were given by City Administrator Frank Mills.

4. APPROVAL OF MEETING'S AGENDA

Mayor Daniels asked if there were any changes to the agenda. There were no changes. The Mayor then asked for a motion.

ACTION: Council Member Atwood moved to approve the agenda. Council Member Jensen seconded and the motion passed unanimously with Council Members Jensen, Atwood, Boyd, and Call voting, "Aye."

5. CONSENT AGENDA (Consent items are only those which have been discussed beforehand, are non-controversial and do not require further discussion):

MINUTE REVIEW AND APPROVAL:

- a. Work Session Minutes for October 14, 2008
- b. City Council Minutes for October 21, 2008
- c. Work Session Minutes for October 28, 2008
- d. To consider appointment of Stacy Martineau to serve as a new member to the Arts Commission.
- e. To consider approval of paid vouchers (October 24, 2008 & November 10, 2008)
- f. To consider approval of Change Order #8 and Payment No. Seventeen to HDX L.C, a Dunn Company, for the Pressure Irrigation System – Schedule 6 project.

Mayor Daniels asked Art Commission Chair Wendy Vincent if she and Ms. Stacy Martineau would please come forward. Chair Vincent then introduced Ms. Martineau. She said that Ms. Martineau's name had been presented to serve on the Arts Commission.

Chair Vincent then said that Ms. Martineau had been a resident of Pleasant Grove for six years. She said that Ms. Martineau has said she and her family feel completely "embraced by the community." She said she had been a performer, artist and patron of the arts for many years. She has been involved with the Center Stage Youth Performers and the PG Players. Ms. Martineau added that she is really happy that the community provides so many outlets for all of those that want to participate and express their, "voice."

She then added that she would find it an honor to serve on the Arts Commission, and looks forward to associating with others in the community that enjoy the arts.

Mayor Daniels thanked Ms. Martineau for her remarks. He then asked for a motion on the consent agenda.

ACTION: Council Member Call moved to approve the consent items. Council Member Boyd seconded and the motion passed unanimously with Council Members Jensen, Boyd, Atwood, and Call voting "Aye."

6. OPEN SESSION

Mr. Glen Pack from Allstate Insurance came forward. He said he wanted to thank the Council and Mayor and the community for all of their support over the years. He then explained that through the Allstate Foundation, he would like to make a donation to Chief Tom Paul in the

amount of \$500. He said that this donation was an annual tradition that he enjoyed bringing to the City. He then said that his business was directly affected by the City's police department. Donations in the past had gone to such things as portable breath testing machines (or intoxilizers). He also noted that despite the fact that figures had just come out showing Utah to have the lowest rate of fatalities from drunk driving, there was still a need for enforcement of the drunk driving laws in Utah.

Chief Paul thanked Mr. Pack for Allstate's continuing support for the police department. He said he wasn't sure what the \$500 would be expended on, as yet.

7. NEIGHBORHOOD ADVISORY BOARD REPORT

Mrs. Libby Flegal said that the new Mudhole Chair had not yet been determined.

8. BUSINESS:

A. TO PROCLAIM NOVEMBER 21, 2008 AS "KIM BAHR DAY IN PLEASANT GROVE CITY."

Mayor Daniels read the Proclamation to those present regarding, "Kim Bahr Day in Pleasant Grove City."

The Mayor said that Mrs. Bahr has taught second grade at Mt. Mahogany Elementary for the last five years. He also noted that she is in her 15th year of teaching for the Alpine School District. She serves on the Mt. Mahogany School Community Council and teaches an early morning reading class. She also teaches reading recovery and special education preschool.

She has received the "Pleasant Grove P.T.A. Apple Educator of the Year," award. Mrs. Bahr was recently selected as a State Level Finalist for the Presidential Award for excellence in mathematics. This award entitles her and two other teachers from the State to represent Utah in national competition.

Finally, it was noted that Mrs. Bahr was very proud of her, "amazing little second grade mathematicians," who she says are also amazing writers and readers. She has shown that she is dedicated to the assistance of students and colleagues alike.

The Mayor then proposed that Friday, November 21, 2008 be proclaimed as "Kim Bahr Day in Pleasant Grove City." He then asked for a motion from the Council.

ACTION: Council Member Jensen moved to approve proclaim November 21, 2008 as, "Kim Bahr Day," in Pleasant Grove. Council Member Call seconded and the motion passed with Council Members Atwood, Jensen, Boyd and Call voting "Aye."

B. TO CONSIDER AWARDING BID FOR THE 100' HEAVY DUTY AERIAL TILLER (TRACTOR DRAWN) QUINT FIRE APPARATUS.

Following Mayor Daniels' reading of this item, Director Sanderson said that he and Deputy Chief Thomas would be presenting a short power-point presentation regarding the proposed bids for the new fire engine.

First, he explained that they had sent Request for Proposals (RFP's) to seven vehicle manufacturers. They received back two bids. One was from KME and the other from Ross Equipment Company, which sells Pierce fire engines. He said the Seagrave Company declined the bid invitation; the others did not respond.

The bid specifications and features included a 100 foot straight stick ladder. The ladder would be equipped for firefighting, fire rescue and technical rescue. He said the ladder would be able to reach over 30' high. It would also have a remote controlled ladder nozzle, a 2,000 G.P.M. pump, an ultra modern cab and extensive storage.

KME's bid was \$1,036,080. He said that they said it would take them 12 months or so to build the truck. Next, the Pierce bid came in at \$926,937, with a time frame of 12 to 14 months to build. He said in a side by side analysis, Pierce made no exceptions to the bid; but KME had 27 exceptions to the bid specs. The total difference between the two bids was \$109,143.

As far as the bid specifications and features for the new truck, the additional advantage to accepting the Pierce bid was that the repairs and service on the truck could be done locally. Safety features that would be included would be roll sensors and protection, seat belt pretensioners, air bag systems, engine brake, ABS brakes and side and rear vision cameras.

Chief Sanderson said he was recommending the bid from Pierce for a 100' heavy duty tiller (tractor drawn) Quint fire apparatus on a velocity chassis, as bid. He said the dealer for Pierce in the area is Ross Equipment Company out of Midvale, Utah.

The Mayor then asked if there were any questions of the Chief. Council Member Call asked why a tiller was needed. Chief Sanderson explained that the tiller was tractor drawn, versus a solid body truck. He said it could be operated from both the front and the back of the truck. Because the vehicle would be 59' long, it would give the back part of the truck a greater ability to steer. Council Member Call then asked if that long of a truck would fit in the current fire station. Chief Sanderson said it would—by just inches.

Council Member Jensen asked if the cost of the truck would be included in next year's budget, due to it not being completed for about 12 months. Chief Sanderson said that the initial cost would be included, and had been budgeted for in this year's budget. Director Clay further explained that initially, the City would lease the truck for the first year. He said that it would be a lease/purchase agreement with the company, and would carry forward for approximately eight years.

Council Member Atwood asked if any grants had been awarded for the purchase of the fire truck. Director Clay and Chief Sanderson said no, that the City had not been awarded the grant they

had applied for. Chief Sanderson added that the two-thirds of these particular grants had not been awarded due to the economic times.

Council Member Jensen asked for the actual cost of the truck. Director Clay said he wasn't sure what it would be with interest charges, etc, as he didn't have the figures with him. Council Member Atwood asked if the money from the recent sale of the old ladder truck would go toward the new truck. Director Clay said those monies had gone into the general fund.

Director Clay then explained that the lease payment on the new truck for the first year would run \$156,000. Council Member Atwood then expressed concern that the cost would be quite high until the truck was paid off—especially if grant monies continued to be a problem to obtain.

Council Member Call then commented that the vehicle could not be built until the monies were approved. Council Member Boyd agreed. She said that the multi-family units in the City could be in need of a ladder truck. Also, she said the ISO rating for the City would be better if the City had a ladder truck.

Mayor Daniels further said that the Class A office space in the City, as well as the multi-family housing could possibly need the services of a ladder truck.

There was then a discussion regarding the possibility of purchasing a used truck. It was noted that as the trucks age past about 10 years, the specialized repairs on the trucks get quite expensive. Director Clay reminded those present that the necessity of purchasing a ladder truck had been discussed about a year before in Council meeting.

Deputy Thomas then explained that the grants that had been denied had to be applied for prior to the truck being ordered. Council Member Atwood asked if there would be grants that could be applied for once the truck was ordered. Deputy Thomas said yes, there were grants available even if the truck had already been ordered from the manufacturer.

Mayor Daniels then asked if there were anymore comments. There were none, so he asked for a motion.

ACTION: Council Member Call moved to approve awarding the bid from Pierce Company in the amount of \$926,937 for the 100' Heavy Duty Aerial Tiller (tractor drawn) Quint Fire Apparatus. Council Member Boyd seconded and the motion passed unanimously with Council Members Boyd, Atwood, Jensen and Call voting, "Aye."

C. TO CONSIDER AWARDING BID FOR THE 2008 SEWER REHABILITATION PROJECT.

Following Mayor Daniels reading of this item, Director Walker came forward and explained that the Insituform Technologies Company had presented the winning bid at \$173,723 for the 2008 Sewer Rehabilitation Project. He said the budget for the project was \$200,000, so there was a significant savings with the winning bid. He also explained that the bidding was very competitive, as there were a lot of bidders that were involved.

Council Member Jensen asked where in the City that the project would take place. Director Walker noted that it would take place in several areas of the City. He also explained that his department prefers to perform this particular service during the winter months of December and January due to less traffic, etc.

Mayor Daniels then opened the discussion to anyone that had any comments or questions. There were none. He asked for a motion.

ACTION: Council Member Call moved to approve the award of the 2008 Sewer Rehabilitation Project to Insituform Technologies in the amount of \$173,723. Council Member Jensen seconded and the motion passed unanimously with Council Members Boyd, Atwood, Jensen and Call voting, "Aye."

D. TO CONSIDER GRANTING AN EXTENSION OF TIME, REVOKING THE PLAT APPROVAL, OR OTHER ACTION RECOMMENDED BY STAFF TO THE COUNCIL, FOR VARIOUS SUBDIVISIONS IN DEFAULT OR AT RISK OF DEFAULT. THE COUNCIL WILL TAKE ACTION FOR EACH INDIVIDUAL PROJECT, INCLUDING LARSEN ACRES, PLAT "B"; COOK PROPERTY; WARNICK ESTATES AND SUNRIDGE ESTATES.

Mayor Daniels read this item. City Engineer Degen Lewis then came forward to explain that he and his assistant, Assistant Engineering Inspector Clarence Flegal, had been looking into subdivisions that were in default, or at risk of going into default. He also explained that he would go through each individual subdivision, so the Council could take action on each one.

In the first subdivision, Warnick Estates, Engineer Lewis noted that the pre-construction meeting had been held on August 27, 2007. Since that time, he said that no work has been performed, and none of the improvements along 3300 North have been installed. There have been no changes to the existing roadway; and no new safety concerns have been introduced. The unfinished work consists largely of curb, gutter and sidewalk, with new asphalt to tie into the existing roadway. Although unfinished, the current status poses no risk to the public.

Mr. Warnick has submitted a letter requesting an extension of the construction time to August 31, 2009. Engineering sees no reason why the work cannot be completed by this time. The only clarification to the extension would be that this is a final completion date. Mr. Warnick should plan to schedule a final inspection of the work at least several weeks ahead of this time in order to allow for completion of any punch-list items.

Council Member Atwood then said that it was frustrating in that staff had tried to reach Mr. Warnick; and the work had gone undone for such a long period of time. He also expressed concern about some other projects where the roads were not completed, etc.

Mayor Daniels then indicated that he thought it might be best that the Council remember that they would be setting a precedent by their action. He then said that whatever action was taken, it needed to be, "according to our practice." The Mayor explained that due to the slow market at this time, the decisions regarding problems with subdivisions not being completed in the required 12 month time, would probably become more frequent.

Engineer Lewis then told the Mayor and Council that he was really trying to be flexible with Mr. Warnick. He said that he had sent default warning letters. However, he explained that if it is decided by the Council to declare a formal default, the applicant will have to start the whole process over again.

Council Member Jensen asked if there was an extension allowed, and if the same kind of non-action took place what would happen. Attorney Petersen then indicated that it would be monitored by staff that what was needed to be done would be completed in a timely fashion. She also said that the applicant could, conceivably, come back to the Council for another extension.

Council Member Atwood said it was his recollection that past extensions were for only six months instead of a year. Attorney Petersen explained that since building had slowed down so dramatically in the last year, Community Development staff was trying to be proactive in working with these applicants. She also indicated that the extension dates were from the day the plats were approved.

Engineer Lewis then further explained that since the motions that take place at the time of the plat approval by the Council generally specify that a condition of that approval would be based on the final approval of the City Engineer, the extension has historically been from the date of the pre-construction meeting.

Mayor Daniels then said that he strongly felt that the City needed to continue with the practice that had been historically followed with extensions. He also said he felt that if it was changed, then the extensions would become arbitrary.

Council Member Boyd observed that she felt the one-year extension was a good idea in that it helped the applicant in the current, difficult market; and it also gave the City what it needed in that the required improvements were made to the property.

ACTION: Council Member Jensen moved to approve a one year extension to August 31, 2009 for the completion of required improvements on the Warnick Estates Subdivision. Council Member Call seconded and the motion passed unanimously with Council Members Boyd, Atwood, Jensen, Call and Wilson voting, "Aye."

The next subdivision being considered for an extension was the Larsen Acres Subdivision, Plat B. Engineer Lewis said that the preconstruction meeting for this subdivision was held on October 4, 2007. Since that time, no work has been performed and none of the improvements along 300 East and 1100 North have been installed. Additionally, the plat has not been recorded as the required bonding has not been posted. There have been no changes to the existing roadway, and no new safety concerns have been introduced. The unfinished work consists of sidewalk along 300 East, and complete road improvements along 1100 North. Engineer Lewis said that although unfinished, the current status poses no risk to the public.

Mr. Ryan, he said, has not submitted an updated construction schedule. Engineering suggests a new completion date of May 1, 2009, and sees no reason why the work cannot be complete by this time. Much of the work can be performed in colder weather, he said. The only item that must wait until spring is the asphalt tie to the existing roadway along 1100 North. Additionally,

Engineer Lewis said that his department suggests that Mr. Ryan be required to record the plat and post bonding for all remaining work.

Mayor Daniels asked why this plat was not recorded. Mr. Ryan stepped forward and explained that he had not recorded the plat due to a lack of funds. He also told the Council that he had two pieces of property that were in the same situation one year ago. At that time, they were worth three-quarters of a million dollars. He said they are now worth \$90,000.

Council Member Jensen asked when the one year date would be for Mr. Ryan on this piece of property. Engineer Lewis said it would expire in October of 2008, so the extension needed to be to October of 2009. He also said this would be a very reasonable extension, as Mr. Ryan is currently working on a commercial project on Center St. that he said seemed to have a "brighter future," than most of the residential projects at this time.

Attorney Petersen said that she feels that the fact that Engineer Lewis' suggestion that there be a year extension, along with staff monitoring the applicant's progress is a very good idea. She said, in fact, that this kind of process is actually breaking new ground. She said that the Council could choose a shorter interim or to deny the extension. She also said that when the proposed extension time period was gone; the applicant would have to start the process over again.

Mayor Daniels then said that he had previously given instructions to staff to go through projects that were pending and had completed what engineering had required. He said he specifically requested that they look at the projects that had unfinished projects that posed a risk to the City such as unfinished roadwork, sewer, etc. He said he could see that this project that was being discussed was not posing any kind of risk.

Council Member Jensen asked why the extension couldn't be just until May 1, 2009, instead of October of 2009. Engineer Lewis replied that the needed improvements on the project would need more time in the warmer season for completion.

Council Member Call then asked if it would be better if the Council just denied the extension for this project. He said that the property will just be sitting, anyway, and when Mr. Ryan could better afford it (when the economy gets better), he could re-apply. Engineer Lewis said that Mr. Ryan has had the lots in the subdivision for sale for quite awhile.

Council Member Atwood then noted that there was a pile of dirt that would wash down a nearby storm drain if it wasn't removed prior to a rain or snow storm. Engineer Lewis said he would look into this concern.

After further discussion, Mr. Ryan said he would probably agree with Council Member Call in asking the Council to deny the extension. Council Member Atwood asked what the ramifications would be if the extension was denied. Engineer Lewis said that not much would happen, since Larsen Acres is not completed. He said it would actually not be going backwards. However, he said the only negative would be that Mr. Ryan would have to again go through the process.

Council Member Call said that he feels that if the extension was denied, it would give Mr. Ryan time to start again fresh. He added that he felt it made sense to deny the extension.

Mr. Ryan then said that another negative point, if he wasn't given an extension on the project, would be that all of his underground improvements were already in the project. He said he would hope that if he was denied the extension, and had to go through the process again, that he wouldn't have to underground again.

Mayor Daniels said that if the permit was not extended, there would need to be a reapplication. The Mayor explained that the applicant would need to abide by whatever current requirements would be in place. Mr. Ryan then said that he then withdrew his request for a denial of an extension.

Administrator Mills then asked Engineer Lewis if he was correct in understanding that this project was not recorded and a bond had not been posted. Engineer Lewis said that was correct. Administrator Mills then asked what would prevent another project on 1100 North that the City had to become involved with, as had happened in the past. Engineer Lewis said that there was a chance that the work on Larsen Acres could start. Administrator Mills then commented that it might be best to deny the extension as the plat had not been recorded and the bond had not been secured. Council Member Atwood added that it is his understanding that before Mr. Ryan can commence working on the project; he will need to record the plat and post his bond.

Council Member Call then reiterated that he feels that the best thing all around is to deny the extension. He said the only risk to Mr. Ryan would be if the requirements for the building codes perhaps changed. He said an example of this would be if the road width requirement changed, etc. However, Council Member Call said this would take Mr. Ryan beyond 2009, and give him a longer time frame. Mr. Ryan then explained that the sewer and water had been installed.

Council Member Atwood asked if Mr. Ryan could sell the property. Attorney Petersen said Mr. Ryan could sell it as one piece only.

Mr. Ryan then asked that if the extension was denied, if in starting over again, the improvements that he had in could again be approved. Council Member Boyd said it was her understanding that they could be approved. However, Mayor Daniels said any future work on the project would have to be inspected. Mr. Ryan then said he would be okay with the denial.

Mayor Daniels then asked for a motion.

ACTION: Council Member Call moved to revoke the application for the plat approval for Larsen Acres, Plat "B," and deny an extension of time. Council Member Jensen seconded and the motion passed unanimously with Council Members Boyd, Atwood, Jensen and Call voting, "Aye."

Engineer Lewis indicated that the next piece of property was the Cook property. He went on to say that the pre-construction meeting for this property was held on October 18, 2006. Much of the improvement work along 400 North and along the stem road for the flag lots has been installed. The asphalt pavement is the major item remaining. Since the shoulder grading along 400 North has been changed to accommodate the widened roadway and the curb and gutter installed, the drainage along the street no longer functions as in the past. Storm water is concentrated toward the gutter, but cannot reach the gutter and drain boxes without the asphalt in place. Instead, water is funneled to the west end of the project and has often flooded into the

neighboring driveway. Public Works has installed a temporary asphalt berm to mitigate the problem, but the proper solution is to finish the pavement. The plat for this subdivision has not been recorded, as the required bonding has not been posted.

Engineer Lewis next explained that Mr. Ryan has not submitted an updated construction schedule. He said that engineering has suggested a new completion date of June 1, 2009. He said his department sees no reason why the work cannot be completed by this time. However, he said the work cannot be completed earlier, as even if Mr. Ryan were ready to finish the project tomorrow, the paving must wait until spring due to the cold weather and the lack of asphalt production. Additionally, he said engineering has suggested that Mr. Ryan be required to record the plat and post bonding for all remaining work.

Next, Engineer Lewis noted that just north of the flag lot on 400 North, there was a need for asphalt as the drainage was not functioning, and the water cannot reach the gutter. He said that Public Works had put in a temporary berm; however, that was just funneling the water onto neighboring property. He said something needed to be done soon, as the asphalt plants were getting ready to close for the winter.

Mayor Daniels said he noticed that this proposed plat had been around since 2006, and wondered why it has taken this long to deal with it. Engineer Lewis said that was true. However, he said that he now has Mr. Clarence Flegal back to assist him with such projects.

Council Member Atwood said he was concerned that this project is abutting our road, and there are problems. Engineer Lewis agreed, and said the road problem needs to be wrapped up soon. Mr. Ryan said he has \$10,000 in equity in his current commercial project that he will try to access once the sale of this project goes through and repair the road.

Attorney Petersen then asked if there was something that could be done to alleviate the flooding sooner than Mr. Ryan completing the project. Mr. Ryan said he had asked the City to pave the road. Mayor Daniels then commented that this was why a bond was required of developers. Director Walker then observed that his department, as had been mentioned, had made a temporary repair on the road; and this, he said, should hold through the winter months.

Council Member Jensen then mentioned that he had a concern as to whether or not the City might have liability if there was any damage to property with the water run-off that Engineer Lewis had described. Attorney Petersen explained that Mr. Ryan is responsible for any water run-off from his property.

Administrator Mills then said that a storm mitigation plan has to be turned in with a project such as this. He said that if the property owner's not in compliance and the City is aware of it, the City has liability.

Engineer Lewis then said as he looked at it, he was actually not quite sure if the run-off was being shunted; or if it was even leaving the building site. Attorney Petersen said she thought she had understood Engineer Lewis to say the water run-off was going onto a neighbor's property. Engineer Lewis said he knew it was going down the street, but was not completely sure if it was entering a neighbor's property.

Mr. Ryan then said that the City had dug a hole and put a pipe in it in the area. He said that his responsibility ends at the edge of Mr. Cook's property. He then added that the City actually caused the problem. Director Walker said that was correct. Director Walker went to say that his crews had extended the road to the next lot to mitigate flooding and to protect the neighbor's property. He also added that it should have been Mr. Ryan's responsibility to run curb and gutter, or leave the pipe in that area to stop the flooding. He said Mr. Ryan just "dead-ended" his project, with no mitigation regarding flooding on the neighbor's property.

Council Member Atwood said that it looks like the road needs to be finished from down the curb to the storm drain. He said he feels this is the problem. Mr. Ryan then said that it would have cost "only about" \$20,000 to "finish the strip." He also said it "wasn't the money."

Attorney Petersen said that was her point; why didn't Mr. Ryan just complete that part of the project. Mr. Ryan said that it is now very difficult to get money from the bank. Engineer Lewis also added that at this point, Mr. Ryan has also modified his plan. He also said that he hasn't been able to review those modifications.

Attorney Petersen next indicated that if there is a violation, and storm water is running off on another property owner's land, the City can be held liable.

Administrator Mills then explained that even though Mr. Ryan had time to show a storm water mitigation plan and how the water would be carried away, the current conversation is concerning water coming off 400 North onto Mr. Ryan's property. He said that he is concerned that Mr. Ryan has not been held to his storm mitigation plan, and since the City has not held him to it, the storm water could go onto the neighbor's property and cause damage. He indicated that in this case, the City could be held liable if there were damages. Attorney Petersen said that was correct.

Engineer Lewis then said that someone has to finish the asphalt in that area. He then observed that probably the best solution was for the City to finish the road.

Mayor Daniels asked if anyone could see a different solution. Administrator Mills said no. He then agreed that whatever was done had to be completed soon. He reminded everyone that if something wasn't done almost immediately, once the area went through winter and then a thaw, there could be an additional risk of losing the road in that area due to water damage. He also said the irrigation water would run along the street. He suggested that perhaps the City would need to lien one of Mr. Ryan's lots in the development if the City (instead of Mr. Ryan) completed the work on the road.

Mayor Daniels then asked for a recommendation. Administrator Mills explained that he would only recommend an extension on the allowable time for Mr. Ryan if at least the minimum improvements were made. He then explained that what is called a cold mix would have be used during the winter for the repair on the road. He said that once the weather warmed up in the spring, a warm mix then could be used on the road. However, he recommended that any work that needed to be done on that portion of the road be completed within no more than two to three weeks.

Mr. Ryan then commented that financially, it was impossible for him to have the road work done at this time.

Council Member Atwood said he realized that there were hard financial times going on. However, he said that he would suggest Mr. Ryan stop working on his commercial venture on Center Street, and put his funds toward the road problem that was currently being discussed. Mayor Daniels then said that it was obvious that the City really didn't have a lot of leverage at the moment as there was no bonding in place and with the issues Administrator Mills had raised about the short amount of time that was left before the road could no longer be completed. He then asked for ideas from the Council.

Council Member Call then indicated that it was clear that the applicant, Mr. Ryan, couldn't pay for any improvements at this time. He said it was logical, then, that the City would need to pay. He also said the work needs to be done immediately.

Council Member Atwood then said that he agreed with Council Member Call in that he felt that if the applicant couldn't complete the work, the City would have to. He said that the drainage problem needed to be mitigated. He also said that the City might have to lien Mr. Ryan's property.

Attorney Petersen then suggested that a reimbursement agreement could be worked out with Mr. Ryan. She also said that if Mr. Ryan sold the property, they would have to pay the City back. She then said that one thing the Council needed to consider in the future was that the City was not in a situation to pay costs up front for a land owner. She also said she is sure there are other applicants that have not paid their bonds, and this needs to be taken care of. She also noted that in this, as well as other cases, there needs to be an evaluation as to how much of a safety hazard there might be.

Engineer Lewis then said that he didn't know for sure if the whole area in question with Mr. Ryan's property needed to have the whole thing paved at this time. He also said that the berm was working as traffic control, and seemed to solve the problem for the neighbors.

Mr. Ryan again reiterated that he was not in a financial place at the time to commit to any work being done on the road. Attorney Petersen asked about the \$100,000 equity that Mr. Ryan had spoken of earlier with the commercial property that he is currently developing. Mr. Ryan said that even if that project is finished, he would only make around \$100,000. Attorney Petersen then asked why Mr. Ryan couldn't borrow against the property to fund the work that was needed on the road. Mr. Ryan said that the margins were not there to borrow against.

After further discussion, Mayor Daniels then said that the easy way out was for the developer to say that they had expended their funds, so the City would need to lien the property.

Administrator Mills then said that he realized that there were issues like this, so he had asked staff to make sure the bonding was taken care of. In hindsight, he said that Pleasant Grove City has ended up serving as the bonding company. With these cases, he told the Mayor and Council that the health, safety and welfare of the citizens were impacted on that roadway. He said with all of the phone calls from citizens that want the City to reimburse them for flat tires due to potholes, he is concerned that the City will have some real problems as the road deteriorates. He also said that the City would probably have to use Class C road money to take care of the problem.

Council Member Atwood then asked if there were possibly a lot more developments that had been allowed to go without bonding. Director Clay said no, that there were very few without bonding. Engineer Lewis said that Copper Lefe was one of the few he knew of.

After further discussion, Attorney Petersen indicated that Mr. Ryan had offered to use the proceeds from his commercial venture, Castle Pines. She said a development agreement can be drafted. She then said the spring deadline for the work to be done can be made. She also said he has offered to use money from his current project to complete the work.

Mr. Ryan then said that his contractor said that the commercial project would take about another five to six months to finish. He said it might be late spring, but he said he would be happy to honor what Attorney Petersen had offered for street side improvements.

Mayor Daniels then suggested that there needed to be very specific compliance with what needed to be completed within the set time frame, which the City would need to be reimbursed on or before a certain time frame. He then asked if there was any more discussion. There was none. He then asked for a motion.

ACTION: Council Member Atwood moved to approve the extension for the Cook property to April 15, 2009, with the stipulation that as early in spring as asphalt is produced, the road damage along 400 North be corrected by the applicant.

At this point, there was a discussion. Mayor Daniels asked that the compliance issue be added to the motion. He said a certain date needed to be added.

Council Member Atwood then withdrew his motion.

Mayor Daniels then suggested that perhaps terminology should be included in the motion that would have the date that the property needed to be recorded by. Also, he said that it would need to include that a bond would be posted and the street improvements would be taken care of immediately.

ACTION: Council Member Atwood moved to approve the extension for Mr. Ryan on the Cook property until May 1, 2009; at which time Mr. Ryan would be required to record, bond and make the City whole in what the City had done to take care of the storm water compliance issue. Also, that Mr. Ryan would not be able to do any further work until the City was reimbursed for any work they had done with the road, etc. Council Member Call seconded and the motion passed unanimously with Council Members Boyd, Atwood, Jensen and Call voting, "Aye."

The next development that Engineer Lewis presented was the Sunridge Estates. He said the preconstruction meeting was held on May 31, 2007. Since that time, a significant amount of work had been performed, although it had been in fits and starts. Due to the most recent failure to actively work on the development as well as the concern of City staff that various open roadway excavations would sit exposed to another winter, the project was placed in default on November 7, 2008. The previous day, staff had discussed the project and decided that in addition to the declaration of default, City forces would take action to restore the open shoulders

of 1100 North and 500 East. This was after several weeks of attempts by City staff to contact the person that they understood was the proper contact.

The next morning, as City crews were placing material in the trench along 1100 North, a contractor arrived with some equipment. After some discussion, they received a good update on the project, he said. Engineer Lewis said he met with developers and presented the letter of default and instructed them to be present at the current meeting.

Due to the history of the problems and inconsistent prosecution of the project, Engineer Lewis said that the following suggestions for extending the project construction schedule: (1.) Require the developer to record the plat and post bonding for all remaining work; (2.) Require that the bonding be posted, including all anticipated repairs and extra work needed; (3.) Require that the developer provide additional plan sheets for accesses from the rear yards of the neighboring properties to the west, as was discussed during the original approval; (4.) Require a two-year warranty period on the basis of the applicant's prior performance.

Council Member Jensen then asked who was doing the work on the roadway at the current time. Engineer Jensen said the primary developer was doing the work. He also said that the developer was planning to asphalt that day. He said it would meet the specs, but would need an additional cap in the spring.

Engineer Lewis said that there was no bond in place with this development, so the bonding could not be seized. He said that the owner could not sell the property, either.

Attorney Petersen then said that due to a failure to be able to communicate with the owner, the City had gone ahead and acted to fix 1100 North.

Engineer Lewis then explained that the next step was to make sure that developers took the bonding process seriously. He said that if they lost their bond due to not complying, it would destroy their credit. This was why he had tried to warn the developers first. He said this case is serious, but there have been no liens placed on the property, as yet.

Mr. Josh Roberts, the primary contractor, then came forward. He said he was a member of the LLC that owns the property. He explained that he had hired a contractor to finish the project—and that money had not been an issue. He said they had paid the contractor, and the contractor had expressed a desire to be a partner in the project. However, he said when the times had gotten tough, the contractor had put the project on the back burner. He also said that he was unaware that the City was trying to contact the principals with the project.

At this point, he said he went to the contractor, and asked what was going on. He said with winter here again, work had not been completed on the project. At this point, he said that they told the contractor that they would take the project over, and hire the new asphalt and concrete contractors. He said that the new contractor had shown up that day, and offered to take all of the City's materials and take them back.

Mr. Roberts then said that in one week, 1100 North has been asphalted, with 600 feet of concrete being laid for the project. Also, he said he has met with the landowner to the west of his project, and has agreed, in writing, to building a retaining wall. He said a contractor for the wall project

has been hired. He again said that money was not a problem, and the contractor had been given money to complete the project. At this point, he said that there was a punch list of things on the project that had to be done by mid-December.

Engineer Lewis then said that he was concerned with the upcoming weather to pave the road. He said that the storm drain on 500 East was a problem that needed attention. Council Member Atwood agreed and said that in that vicinity of 500 East, the area had become a “dump.” He also said he was concerned that the plat had not been recorded. Mr. Roberts said that he was trying to get in touch with the contractor, who had said that he had compaction tests done. He said he would try to get the results of those tests by the next day.

Mayor Daniels then said that it sounded like time frames needed to be set for the project. He also said that Mr. Roberts would have to post a bond, and follow the criteria that staff had set.

Council Member Call said that now that Mr. Roberts had heard the conditions of approval, if he had any problems with those conditions. Mr. Roberts asked if the City was requiring that there be an access to the lane going through the project. Council Member Atwood said yes, all the way.

At this point, Engineer Lewis said that the details could be worked out with Mr. Roberts.

Mayor Daniels said the City was interested in progress, in a timely manner. Mr. Roberts said he understood that, and had the contractor’s crews working six days a week to complete the job. Mayor Daniels then explained that with the action tonight, Mr. Roberts would be held to those dates of completion, etc.

Council Member Daniels then said that he had serious questions about a compaction test on the hillside. He said that he knew there was water in the neighbor’s yard. Mr. Roberts said he would look into this issue.

Director Walker said that he would ask for verification on the tests. He then said that he would comply with any requests the City had on the project.

ACTION: Council Member Atwood moved to approve the extension for the Sunridge Estates until May 31, 2009, based on City Engineering recommendations for this project. Council Member Boyd seconded and the motion passed unanimously with Council Members Boyd, Atwood, Jensen and Call voting, “Aye.”

9. STAFF BUSINESS

- Director Giles said that the Historical Commission Chair, Mrs. Beth Olsen, husband had passed away.
- Administrator Mills reminded everyone that on December 9, 2008 the annual City party would be held at the UVU ballroom at 6 p.m. Also, on December 16, 2008, the Council and their partners would have a party at the Senior’s Center at 6:30 p.m. He next said that Recorder Fraughton would be retiring on December 24, 2008. He said there would be a retirement party for her in the basement of the library on December 17, 2008. He

said along with that, that there had been five applicants for the Recorder job, and interviews would begin on Monday. He then said that in the work session, there was a leisure services report scheduled. He said that the report might be put off until next year so that the Timpanogos Special Service District director could come in and give a report to the Council. He said the report would be concerning the budget and other issues.

10. MAYOR AND COUNCIL BUSINESS

- Council Member Jensen then commented that the Veteran's Day program had been very nice. He next said that a lot of issues had been talked about at the recent Fox Hollow Golf Course meeting with the Mayors, Board and Council Members. He said he felt the meeting had gone very well. He said he perceived that there had been a lack of trust between the cities and the Board. By the end of the meeting, he said that the differences had been bridged, and the Board now knew the concerns of the cities. He also said he felt that they all wanted it to work. He next said that the railing on the driving range had been removed, and they were looking for someone to come and take the posts out.
- Council Member Call then said that he had been recording various stories that had been done on the recent Supreme Court case that involved the City.
- Council Member Atwood said he could not attend the Utah Lake meeting on Thursday. Council Member Jensen said he would go to the meeting.
- Mayor Daniels said he also felt the meeting with the Fox Hollow Golf Course went very well. He said there will be a follow-up with a report on December 11, 2008. He said plans to bridge gaps and financial reporting were laid. Next, the Mayor said that the meeting with the Supreme Court was an excellent experience. He said he had a new appreciation of those that were defending the City in the case in that the Justices started immediately firing questions at them, and they were able to quickly answer. He suggested that if people wanted to know what happened, that they download the transcript from the web. He expressed appreciation for the attorneys with the American Center for Law and Justice for taking the City's case and defending it pro bono. Attorney Petersen then said that the attorneys from the Center complimented the Mayor and Council for having the courage to defend the lawsuit. The Mayor then reported that while in Washington D.C, they had met with the staff of Senators Hatch and Bennett.

11. SIGNING OF PLATS

There were no plats to be signed.

12. REVIEW CALENDAR

Mayor Daniels reminded everyone that there would be one Council meeting on December 2, 2008.

13. APPROVE PURCHASE ORDERS

Regarding the purchase orders, Mayor Daniels asked if there were any questions. There were none. He then asked for a motion.

ACTION: Council Member Boyd moved to approve the Purchase Orders for November 10, 2008. Council Member Jensen seconded and the motion passed unanimously with Council Members Boyd, Atwood, Jensen, Call voting, "Aye."

14. EXECUTIVE SESSION TO EXECUTIVE SESSION TO DISCUSS IMMINENT OR PENDING LITIGATION (UCA 54-4-205(1)(c))

ACTION: At 9:39 p.m, Council Member Call moved to go into executive session to hold a strategy session to discuss imminent or pending litigation (UCA54-4-205(1)(c)). Council Member Boyd seconded and the motion passed unanimously with Council Members Boyd, Call, Jensen and Atwood voting, "Aye."

ATTENDING:

Mayor:

Mike W. Daniels

Council Members:

Cindy Boyd Excused: Jeff Wilson

Lee Jensen

Mark K. Atwood

Bruce Call

Others:

Frank Mills, City Administrator

Tina Petersen, City Attorney

Gary Clay, Finance Director

Mary Burgin, Deputy Recorder

ACTION: At 10:30 p.m, Council Member Jensen moved to go back into regular session. Council Member Call seconded and the motion passed unanimously with Council Members Boyd, Call, Jensen and Atwood voting, "Aye."

15. ADJOURN

ACTION: At 10:31 p.m, Council Member Atwood moved to adjourn the meeting. Council Member Call seconded and the motion passed unanimously with Council Members Boyd, Call, Atwood and Jensen voting "Aye."

This certifies that the City Council minutes of November 18, 2008 are a true, full and correct copy as approved by the City Council on January 6, 2008.

Mary Burgin, Deputy Recorder