

The Meeting of the Nibley City Council held at Nibley City Hall, 625 W. 3200 S. Nibley, Utah, on Thursday, May 6, 2010.

The following actions were made during the meeting:

Councilman Jacobsen motioned to adopt Ordinance 10-06—Establishing a tree board; striking item G-2. and the last sentence of I-2. Councilman Hansen seconded the motion. The motion passed 3-0; with Councilman Jacobsen, Councilman Hansen, and Councilman Dustin in favor. Councilman Mickelson abstained from the vote.

Councilman Dustin motioned to approve the contract with the Cache County Sheriff Department. Councilman Mickelson seconded the motion. The motion passed unanimously 4-0; with Councilman Dustin, Councilman Mickelson, Councilman Jacobsen, and Councilman Hansen all in favor.

Councilman Mickelson motioned to approve Ordinance 10-05—Weed control and removal. Councilman Hansen seconded the motion. The motion passed unanimously 4-0; with Councilman Mickelson, Councilman Hansen, Councilman Dustin, and Councilman Jacobsen all in favor.

Councilman Mickelson motioned to accept a tentative budget for fiscal year 2010-2011. Councilman Hansen seconded the motion. The motion passed unanimously 4-0; with Councilman Mickelson, Councilman Hansen, Councilman Jacobsen, and Councilman Dustin all in favor.

Councilman Hansen motioned to approve the agreement with the Cache County School District with the changes made by Mr. Anhder to Section A number 2; and the waiver of the sewer impact fees, half the water impact fees, and no waiver on the meter hook-up fees; with the inclusion of plan B for the restroom minus the door going to the art room; and section C number 4 be changed to “the appraised replacement cost or the original construction costs whichever was less”; and that the bathroom be included as part of the center and the construction costs. Councilman Mickelson seconded the motion.

Councilman Jacobsen motioned to amend to split both impact fees down the middle. Councilman Mickelson seconded the motion. The amendment passed 4-0; with Councilman Jacobsen, Councilman Mickelson, Councilman Hansen, and Councilman Dustin in favor.

The amended motion passed 3-1; with Councilman Jacobsen, Councilman Hansen, and Councilman Mickelson in favor. Councilman Dustin was opposed.

OFFICIAL MINUTES OF THE MEETING

Minutes were taken and prepared by Assistant City Recorder Cheryl Bodily

Mayor Gerald Knight called the Thursday, May 6, 2010 Nibley City Council meeting to order at 6:05 p.m. Those in attendance included Mayor Gerald Knight, Councilman Shaun Dustin, Councilman Larry Jacobsen, Councilman Bryan Hansen, and Councilman Thayne Mickelson. Also in attendance were Larry Anhder, City Manager, and Shari Phippen, City Planner. Councilman Scott Larsen was excused from the meeting.

Call to order, approval of the evening's agenda and minutes of the April 15, 2010 meeting.

Mayor Knight called the meeting to order. Councilman Hansen made a motion to approve the minutes from the last meeting and the evening's agenda. Councilman Jacobsen seconded the motion. Mr. Anhder suggested a change in the agenda to accommodate Ms. Phippen. Mayor Knight said he could do that. The motion passed unanimously 3-0; with Councilman Hansen, Councilman Jacobsen, and Councilman Dustin in favor.

Consideration of Ordinance 10-06—Establishing a Tree Board to recommend City policies concerning the planting and care of trees in the city generally and on city property specifically

Mr. Anhder said they were setting up a board that consisted of one City Council member, one Planning & Zoning Commission member, one citizen with the appropriate background, and two citizens at large with the City Planner and Parks administrator as advisors. Mr. Anhder said this was a requirement to become a tree city and they have talked several times of doing a tree plan for the city. This board will discuss and make the decisions on a tree plan. Councilman Hansen asked if this ordinance did anything with the electric company and the strange cutting they do. Mayor Knight said they can encourage the correct trees to be planted in those areas. Ms. Phippen said there was a provision included with the utilities (I-2.); they need to contact Blue Stakes before any trees are planted. Then no trees can be planted within 5 feet of the underground utilities once they are identified. There are a lot of cases where utilities are placed in the park strip. They do not want the trees to disrupt any power lines. Mr. Anhder said he is of the opinion that they ought to take that line out. He was afraid that would negate the possibility of planting trees in the park strip. The Council agreed to take out the line.

Ms. Phippen said this ordinance was modeled from another city's tree ordinance. Councilman Jacobsen asked if the requirements of being a tree city included the ordinance. Ms. Phippen reviewed the requirements to become a tree city. Councilman Jacobsen questioned G-2. which referenced Nibley heritage trees. He was concerned that if a tree becomes a dedicated heritage tree the land owner loses the right to do what they want with their tree and it takes away a private property right. Mayor Knight asked what the permitting process and designating process was for a heritage tree. Mr. Anhder suggested they remove item two and then have the tree board come up with a list of Heritage trees and then suggest an amendment to the ordinance. Corlyss Drinkard described the process of applying for and having a heritage tree in Virginia. Councilman Jacobsen noted that she had become a part of the process with the tree. Councilman

Jacobsen said Mr. Anhder's suggestion worked for him. Mr. Anhder suggested the addition: "the city tree board shall recommend to City Council a process to identify and maintain a list of designated Nibley heritage trees".

Councilman Mickelson arrived at 6:20.

Ms. Drinkard said there was a tree in front of her house that she would be interested in making a heritage tree once this process was available

Councilman Jacobsen made a motion to adopt Ordinance 10-06—Establishing a tree board; striking item G-2. and the last sentence of I-2. Councilman Hansen seconded the motion.

Mayor Knight noted in section M that they had extended the nuisance height. He brought back the comment from the weed ordinance the previous week—that life goes on. Mayor Knight asked what constituted a big enough problem for the city to come in and take action. Ms. Phippen said the city tree board makes that decision and they have to trust the determination of the board and trust that they will be reasonable. Mayor Knight said there are places where those things should not be removed. Mayor Knight asked if this is something they really wanted to fix. Ms. Phippen said they need to have the option to take care of these things when they do become a problem. Councilman Dustin said that it did not say that someone didn't have recourse. Councilman Jacobsen said it would have to be a very onerous situation before the city would go in. There would be a process and discussion first. Councilman Mickelson proposed a different approach; he said they tend to develop criteria for punishment for a violation and suggested they take the approach of offering a service and providing service instead of regulating and fining.

Mayor Knight said when this language is put into a document you have to assume that it could happen. He takes issue with the "harboring of insects or disease which constitute a potential threat". He noted trees on his property as an example of an area where insect were a natural part of the environmental process. Ms. Phippen said there is no point of writing an ordinance if they do not have punitive damages to enforce them. Councilman Dustin said essentially they need to trust that the City Council and/or tree board are going to be reasonable. Councilman Dustin said this City Council was very invasive with regard to individual property rights in his neighborhood; he does not think a fence ordinance is necessary. He said none of them live in neighborhood like his. Councilman Jacobsen said the burden of proof rests on whoever is going to clean the area up. That alone makes the enforcers act responsibly. He thought common sense would prevail.

The motion passed 3-0 with Councilman Jacobsen, Councilman Hansen, and Councilman Dustin in favor. Councilman Mickelson abstained from the vote.

Review and approval of law enforcement and animal control contracts with Cache County Sheriff Department

Mr. Anhder said he had not provided this contract to the Council members because the contract had not changed. Mayor Knight said he needed a motion. Councilman Dustin

made a motion to approve the contract with the Cache County Sheriff Department. Councilman Mickelson seconded the motion. The motion passed unanimously with Councilman Dustin, Councilman Mickelson, Councilman Jacobsen, and Councilman Hansen all in favor.

Consideration of Ordinance 10-05—Weed Control and removal

Ms. Phippen said based on the last discussion it was her understanding that the council wanted to keep the existing ordinance but reduce the height to 12 inches excluding tracts engaged in growing agricultural crops, and include the paragraph that required developers to maintain their undeveloped property. Councilman Dustin said he was concerned with the area behind the Sunset Park community and behind the Nibley Garden church. Mr. Anhder said he would interpret that as subdivision and not fallow; he has dug out his roads. Councilman Jacobsen said if they call a weed something that is hazardous and dangerous why they exclude agricultural crops. Mr. Anhder said because they like farmers. Many farmland pieces in the city are excellently farmed except for 2 feet around the fence lines. They have not enforced those things but it is typical of most farmland in the valley.

Councilman Mickelson made a motion to approve Ordinance 10-05—Weed control and removal. Councilman Hansen seconded the motion. The motion passed unanimously with Councilman Mickelson, Councilman Hansen, Councilman Dustin, and Councilman Jacobsen all in favor.

Mr. Anhder said that for the record; they were not going to pursue weeds on active farm ground. Councilman Dustin asked that if anyone came in complained about land being a fire hazard that they do not get a free pass as farm ground.

Presentation of the Nibley City Budget for the fiscal year beginning July 1, 2010

Councilman Mickelson thanked staff for the comments included on the side. Mr. Anhder said because the Mayor did not anticipate being at the next two meetings he intended to do the majority of the discussion tonight. He said they will have a public hearing the second week in June and it should be passed that night.

Mr. Anhder said generally speaking all their revenue projections are conservative. Mr. Anhder said this was the year they adjust the property tax rate. That adjustment was built into the proposed budget. There will be a public hearing on that the first week in August. The only rate increase was in the sewer department which was passed four months ago. He believed before the year was out that staff would come before Council with a proposal for storm water. Mr. Anhder said they have recommended 2% across the board increases for expenditures and employee compensation. Councilman Jacobsen asked if they had looked at Bureau of Labor Statistics on cost of living. Mr. Anhder said he had not. Councilman Jacobsen said he would look it up and report it. Mr. Anhder said major equipment purchases included a replacement sander, a portable radar unit for problem areas in the city (\$4,000-\$5,000), a skidster, and a full-time position for parks/sewer (\$35,000) to assist Rob. Mr. Anhder said major public works projects included are \$160,000 for the public works building, \$1.3 million for the water reservoir tank, and

payment/equipment on the community center (\$15,000). Mr. Anhder said a great bulk of their street department budget has been for new construction; this is the first budget to contemplate money for maintenance. The city has 23 miles of roads to be maintained. He proposed \$70,000 to start chip and sealing. That should chip and seal 3-4 miles of their roads. Mr. Anhder reviewed each page and section of the budget with the Council and addressed their questions. Mr. Anhder said the budget was strait forward and to maintain their current programs and status in the city there is very little discretionary. What is left over seldom goes into operations; it goes into capital.

Acceptance of the tentative budget for the fiscal year 2010-2011

Mr. Anhder said state law says Council should accept a tentative budget. It would not be out of order to have a tentative acceptance. He asked for questions on the budget.

Councilman Dustin questioned if the budget reflected their priorities as a Council and what they would like to see happen in the city. Are there things not being addressed that they think ought to be? He asked where the cut off was between a major and a minor project. He would like to see them be more specific on these projects.

Regarding capital improvements, Councilman Dustin said if they were going to hire another person he would like to know specifically what projects they were going to work on. He said they spend a lot of money on parks and he would like to know specifically where that money goes.

Councilman Dustin said under line 10-41-230; he would like to reallocate that to Council discretionary or Council travel. Councilman Mickelson disagreed with that because it opened it up for questionable use. Councilman Dustin said ultimately they are all responsible to the citizen. He did not feel he needed to control what someone else wants to do. If someone did not feel any value at all to going to the league then there is money available to do other things they feel would be valuable to the city and its constituents.

Councilman Dustin said parks and trail are not addressed. They talked about emergency response training for city employees but that has never been done. Mayor Knight said there was a line item to handle that and he supports it. He anticipates doing a joint exercise next spring. Mr. Anhder said on 10-50-515 there is a \$2,000 emergency amount. Councilman Dustin noted there was nothing allocated for pursuit of grants. Mr. Anhder said he did 90% of the grant work. Councilman Dustin proposed they start talking to the County about 8th West. Councilman Dustin said he did not see a transportation plan in the budget. Councilman Dustin said given what they are paying for sewer; if anyone had looked at opening up a Southern Valley treatment facility? Mr. Anhder said he had some and had since forgotten about it. Mr. Anhder said it did not need to be budgeted to look at the study again. Mayor Knight said he thought larger scale, regionally, was the better way to handle it.

Councilman Mickelson made a motion to accept a tentative budget for fiscal year 2010-2011. Councilman Hansen seconded the motion. The motion passed unanimously 4-0; with Councilman Mickelson, Councilman Hansen, Councilman Jacobsen, and Councilman Dustin all in favor.

Consideration of Agreement with the Cache County School District for the joint use of the Community Center

Mr. Anhder said the city can still walk away from this and the school district understands that. Mr. Anhder said the school can use the 18,000 square feet paid for by the city if it is scheduled through the city. Councilman Dustin said he believed they were asking the city to pay a lot on the utilities.

Mr. Anhder said one of the sticky points is how they get reimbursed when they leave the building. The decision was made to not decide at this time. The idea is they will get an independent appraisal at that time the city vacates the building. Councilman Dustin asked how they handle the agreement on who cleans up after using the facility. Mr. Anhder said a management committee (City Manager, school principal, independent 3rd party) will form policy to handle that. Mr. Anhder said there will be a fee plus a deposit put in place to use the facility; that will help ensure the facility is clean up after it is used. Mr. Anhder said the city will handle the scheduling of the facility.

Mr. Anhder said the school district felt really strongly that the city should waive the sewer (\$7,500) and water (\$19,000) impact fees plus the money for meters. He said he did not feel bad about waiving the impact fee for the sewer but feels they should pay at least half of the water impact fees because the school will have such a large impact on the water system. Mr. Anhder said the Board did not care if they are there or not—they felt they got nothing out of the arrangement—the Board feels it is an imposition on them. Councilman Mickelson suggested they write a letter that expressed they were willing to back out of the deal. Mr. Anhder said they need to make that decisions soon because they have already incurred some costs. Mr. Anhder said they have a point with some of the extra costs: the parking lot, sidewalks, etc. Mayor Knight asked what Mr. Anhder recommended now. Mr. Anhder said he felt the City Council was more involved in this process by far than the Board of Education and that they should have had an agreement before now. Mr. Anhder said he would hate to lose the building over half the water impact fee. He said there is a great deal of anticipation in the community for it. He said he would waive the impact fees. Councilman Dustin said he is concerned if it will be like this for the things they pay for.

Mr. Anhder said in their discussions they would not have access to their portion of the building during the day time—it was written this way in the original draft of the agreement. The principal said they can't have people wandering in the school during the day time for security reasons. They could facilitate this by putting in another restroom. Mr. Anhder showed two plans for the extra restroom. Mr. Anhder said plan A was less expensive. Mr. Anhder said the school district has told them they can have access to the room during the day if the city built the bathroom. Mr. Anhder said that decision to build a bathroom needed to be made tonight; with either plan A or B. Both A and B are ADA compliant. Councilman Dustin said the bathroom is a lot cheaper than a lawsuit or a safety problem. Councilman Hansen said he liked plan B but did not care if the door to the art room was there. Councilman Mickelson seconded that. Councilman Jacobsen said it was hard for him to approve something that was written wrong.

The Council discussed amendments to the agreement with the school. Mr. Anhder suggested and the Council agreed on wording as follows: “All sections of the center shall be available to the city and district after school hours unless otherwise scheduled under the terms of this agreement. Section A shall be used exclusively by the district during school hours. Section A shall not be used by the city or any other scheduled user during school hours. Sections A, B, and C shall be available to the city and the district as scheduled under the terms of this agreement after school hours. The city reserves the right to limit access to and the scheduling of C at the discretion of the city. Sections B and C may be used by the city as scheduled under the terms of this agreement during school hours.”

Councilman Hansen said if they wanted to be on the cutting edge and do something different then they may need to pay a little extra in order to do it. They are forging new territory. They hopefully will be providing a pattern for other schools. It could boost the school district and the community; it could be a win-win. Mr. Anhder said he is fairly concerned about the buy out on it too. Councilman Dustin said they do not know how long they are going to be there, the cost just went up 20% between the bathroom and the impact fees, and they do not know if they will recover anything. Mr. Anhder read from the agreement; “In the event of termination of the agreement, the value of areas B and C shall be equitably determined and a settlement worked out between the parties based upon the then fair market value of these areas”. Councilman Dustin asked how you access fair market value on a city council room in the middle of a school.

Councilman Mickelson said he saw three options; go forward and give them what they want, nicely say they will back out of it, or they say they do not agree with the buyback and need to agree on a dollar amount. Councilman Dustin said he would replace fair market value with replacement value. Mayor Knight said reasonably he thought the negotiating was the fair option. Councilman Hansen said all of them are surprised by the additional costs and he does not know if they should go all the way. Councilman Hansen said maybe they should propose waiving the sewer fee and half the water fees, recognizing it will be a significant impact to their community, and take on the extra cost of the restroom; show them they are will to meet them half way. He also proposed adding the wording “the lesser of replacements cost or the actual construction costs”.

Councilman Dustin said they significantly overpaid for it already. Councilman Dustin made a motion to withdraw from negotiations. The motion died due to lack of second.

Councilman Hansen made a motion to approve the agreement with the Cache County School District with the changes made by Mr. Anhder to Section A number 2; and the waiver of the sewer impact fees, half the water impact fees, and no waiver on the meter hook-up fees; with the inclusion of plan B for the restroom minus the door going to the art room; and section C number 4 be changed to “the appraised replacement cost or the original construction costs whichever was less”; and that the bathroom be included as part of the center and the construction costs. Councilman Mickelson seconded the motion.

Mayor Knight said he was concerned; the uncertainty of if they could use the gym or the rest of the building needed to be negotiated. Councilman Hansen said if they do not agree to this agreement then they certainly wouldn't be able to agree to the gym. Mr. Anhder said in his initial meeting with the principle, his impression was that the principle was very protective of the school and was not in agreement with the superintendent on sharing and community use. Mayor Knight said he liked the vision, but the vision had changed and from an investment standpoint it is hard to sell a chunk of school that they own or lease. From an investment standpoint, he would look at this and say we're not interested. Councilman Dustin said they may be committed at this point. He said he appreciated the vision that went into it but if they cannot have smooth implementation then they shouldn't go into it at all. Councilman Hansen said they are going to have to develop the relationship with the principal; he said he believed they would be good stewards of this space. Councilman Dustin said if it moves forward from this point; the relationship with the principle is going to be critical. Councilman Jacobsen said he thought Councilman Mickelson's words that when you have a discussion you split the whole thing down the middle.

Councilman Jacobsen made a motion to amend to split both impact fees down the middle. Councilman Mickelson seconded the motion.

Councilman Jacobsen said this sent a message that they will meet them half way and that is it. Councilman Mickelson asked for Mr. Anhder's thinking on the impact fees. Mr. Anhder said the impact of the school on their water system is large; with the needs of the reservoir and well he hated to give up the money because of the needs of the system. With the sewer they do not have those needs and he did not feel as strongly. Councilman Jacobsen said he thought a good working relationship started with splitting this disagreement right down the middle. It also gave them a chance to get out.

The amendment passed 4-0; with Councilman Jacobsen, Councilman Mickelson, Councilman Hansen, and Councilman Dustin in favor.

Councilman Jacobsen said if there was nothing in it for them they can give them a reason to get out. Councilman Hansen asked what the school got if they walk away. Mr. Anhder said he did not feel they got anything. They could get the extras they put in because of the needs of the City Council. If they walk away they can come back and access all the impact fees.

The amended motion passed 3-1 with Councilman Jacobsen, Councilman Hansen, and Councilman Mickelson in favor. Councilman Dustin was opposed.

City Manager Report

Mr. Anhder said that Judge Stevenson had announced his retirement early. His F.Y.I to the City Council gave the steps for his replace. Judge Stevens works for both Hyrum and Nibley and Hyrum has asked that they look together for a replacement. Mr. Anhder needs

the Council's approval to do a combined search. The Council indicated they were in favor. In the interim the city council appoints an interim judge.

Mr. Anhder noted the passing of Mr. Tim Gibbons. Mr. Anhder said he had a lot of admiration for Mr. Gibbons. Mr. Gibbons gave a lot to Nibley city and treated them very good. He was a great fan of youth sports and gave unsolicited monetary donations to those programs. Mr. Gibbons donated generously to the city and was a major contributor to Heritage Park. Mr. Anhder also noted that Mr. Gibbons was a very competent water engineer. Mr. Anhder said they mourn with the family and express their condolences to the family. Mr. Anhder said his passing was a loss to the community. The City Council concurred with those statements.

Council Reports

Councilman Jacobsen said the website job had increased substantially in the last months. He had noted the extra work going into the website. Mayor Knight said he really liked their newsletter.

Councilman Dustin said he appreciated everybody's service.

Mayor Knight said he had a couple of letters of concern from a resident due to some legal burn close to her residence. The citizen said her roof had burn divots on it.

Mayor Knight said the Parks and Trails master plan is being updated and is on the website. Mayor Knight noted the Council could link to it from the City website. He encouraged the Council to look at it. Councilman Jacobsen said the website administrator would like to include photo insight of Nibley parks on the city website. Mayor Knight said that Ms. Phippen was going to be taking some updated pictures.

Councilman Hansen said he talked to the Harris' about the recycle area. They are very upset about it. Councilman Hansen said he thought they needed to do something to help. He said some vegetation could create a softer view from their angle.

The meeting was adjourned at 10:44 p.m.