

Minutes of the Hurricane City Council held on Thursday, November 19, 2015 at 5 p.m. in the Council Chambers at 147 N. 870 West, Hurricane, Utah.

Members present: Mayor John Bramall, Council members Pam Humphries, Darin Larson, Kevin Tervort, Darin Thomas, and Ethelyn Humphries were present.

Council member elect Kevin Thomas and Cheryl Reeve were also present.

Staff members present: Assistant City Manager Kaden DeMille, City Engineer Arthur LeBaron, Police Chief Lynn Excell, GIS Specialist Joe Rhodes, City Attorney Fay Reber, Power Superintendent Dave Imlay, Planning Director Toni Foran, Public Works Director Mike Vercimak, and Water Superintendent Ken Richins.

Discussion of Agenda Items

Mayor Bramall led a discussion of the agenda items. First the Council discussed the minutes and went over corrections and concerns.

Regarding the **400 South – 300 North engineering bid**, Arthur LeBaron clarified the \$114,000 for design services is below 10% of the total project price, which is the industry standard.

Darin Larson questioned the 1000' buffer in the **vacation rental ordinance** and stated he believes 500' is enough. Pam Humphries stated she prefers 1000'. Ethelyn said she feels the 1000' doesn't do what it should do because it handicaps people in one subdivision because the neighboring subdivision has one in it already yet the properties are on different roads and in different neighborhoods. She referred to the Washington City ordinance which requires all property owners within a certain distance to sign off on permitting a vacation rental in the neighborhood. Darin Larson stated he feels that kind of regulation hurts private property rights. Pam Humphries agreed it impacts private property rights – the right of property owners in residential neighborhoods to not be impacted by a commercial activity, which is exactly what a vacation rental is in a neighborhood. Darin Larson contended any home based business has an impact on the neighborhood. Toni Foran clarified a home based business is located where the owner lives so by definition vacation rentals are not home based businesses. Kevin Tervort commented he does not want Hurricane to be a Jackson Hole or Park City and would be happy with 1500' separation. After looking at the overlay map provided by Joe Rhodes of the different distances and hearing Darin Larson's explanation of his support for a 500' buffer, Kevin Tervort stated Hurricane City has the potential of 260,000 people and a vacation rental every 500' has a large impact. Darin Larson pointed out that would limit an area like Dixie Springs to 6 or 8 vacation rentals. Kevin stated that would be a reasonable limit.

Council member elect Kevin Thomas expressed concern with giving neighbors 1000' away the right to decide. It was clarified that Washington's ordinance requires neighbor permission but the distance in Hurricane's ordinance is just intended to limit the disruption to a residential neighborhood, not for seeking permission or giving notice to neighbors.

The council members discussed financing and taxing on vacation rental properties.

When distances were being discussed, City Attorney Fay Reber cautioned the Council members to have a reason why the distance is being specified and have a method of measuring the distance. The distance should not be "arbitrary or capricious." The purpose for the separation as stated in the ordinance was read, "Separation requirements listed in C below are based on a desire to maintain the overall residential character of neighborhoods and the purpose of single family residential zones to promote

safe locations for residential uses.” Those present also discussed the limits on number of occupants and license fees.

Council members advised Chief Excell to update the demographics and change Fire Department to Hurricane Valley Fire District in the proposed **Emergency Management Plan**.

Council members discussed the **proposed resolution regarding the payment to Tuacahn**. Kaden DeMille said City Manager Clark Fawcett wants this to be tabled until the next meeting. Darin Larson said when he motioned to approve the RAP tax designation to Tuacahn he intended to go only 10 years and review extending it when the RAP tax is being reviewed. Fay Reber asked how the City could commit from RAP tax for 20 years when it is not necessarily going to be approved after 10 years, which is why the language “or other legally available sources” was inserted into the resolution. John Bramall stated he understood the City was committing RAP taxes for 10 years but the 20 years was only if the tax continues past the 10 year. All agreed a need to clarify the intent in the minutes from the approval in August.

Mayor Bramall said Richard Carter does not want to serve on the **Airport Board** but has said maybe a friend in his community will want to serve.

Department Reports

Dave Imlay reported Christmas lights will start going up on Monday and the Power Department will light them as they go. They should all be up by Wednesday night.

He reported Santa Clara is raising their power rates over a three year period. Washington City will be considering their rate increase after January. Ethelyn commented Social Security did not go up and this hurts people. Dave explained the power costs if an energy balance market is approved could increase to \$700,000 a year and the rate increase only brings in \$60,000.

Dave referred to the rate comparison document he sent to the Council earlier in the month.

Mike Vercimak reported building and growth activity is on the rise and staff time is getting tight. Crews are putting final touches on the Confluence Park trailhead. Streets crew is starting to get busy on crack sealing. Ethelyn questioned the chip seal job on Sand Hollow Road. Arthur said all the materials used did pass the testing but the engineers are going to send a report on why the rock is coming up. The road is being swept.

Arthur LeBaron said the completion of Exit 2 to Sand Hollow Road of SR-7, UDOT will be sending traffic off I-15 at exit 2 for Zion National Park. He stated the Utah Transportation Commission members commented SR-7 is never used so they don't see a reason to fund the next section.

Work is progressing on Grandpa's Pond Park. Need to discuss project management with mayor. The Purgatory Road EA is going forward, despite the emotions and politics involved. Purpose and Need chapter is complete and Arthur is hoping for some more fact based analysis.

Fay Reber mentioned an email from Janice Carpenter regarding a custodial issues and he did not recommend getting involved in this situation or any other situation where the officer would have to understand all the changes to divorce decrees.

Mayor and Council reports: Darin Larson said he is talking to downtown business owners about forming a committee for the downtown area improvement plan.

Pam Humphries reported boundaries of the Fire District have been changed to include Hurricane City and Leeds. The Fire District budget was also discussed. The CIB presentation went well and the District is being approved for a loan and grants.

Pam said a meeting with property owner Ron Lemmon regarding a water tank site went well. She reported she asked Robert Dowell of UDOT about a new speed limit on SR-9 through the business area and he is willing to do a new study. Arthur said the public could go to the Transportation Expo and give input to UDOT regarding speed limits on SR-9.

Mayor Bramall said the airport fencing project is moving forward and Frog Hollow Wash is being cleaned up. He reported the property on 2260 West for a hotel closed last week. He reported year to date value for new construction is about \$44 million.

John Bramall said he is very concerned about what is happening in Colorado City and Hilldale and is meeting with the FBI tomorrow.

Darin Thomas asked about the cans for **recycling**. Ethelyn Humphries explained they should be delivered in January to every house that has an individual trash container. Because so many people signed up the household rate is \$2.94 a month.

Kevin Tervort stated there were only five pools in the county this year with West Nile Virus compared to 15 last year. The Mosquito Abatement District treated 5239 acres and most of the fogging was done for flood water mosquitoes this year. Hurricane had the most vicious mosquitoes this year.

Ethelyn Humphries reported the Ash Creek Sewer District has approved a new sliding scale for acreage required for septic tanks, depending on nitrate loading.

The Solid Waste District is looking at 60 acres from BLM to expand the landfill.

Toni Foran reported to the Council that she has sent notice to the Hirschi small engine repair business that they are not meeting the terms of their conditional use permit and notified Mr. Goulding that his property is too small to clarify for RM-2 zoning.

Mayor Bramall called for a five minute break at 5:55 p.m.

He called the meeting back to order at 6:04 p.m. and welcomed interested residents and future Council members Cheryl Reeve and Kevin Thomas and congratulated Pam Humphries on her re-election.

Pledge of Allegiance was led by Arthur LeBaron and Ethelyn Humphries offered a prayer.

John Bramall took a moment to remember the victims of last week's terrorist attacks in Paris. He expressed his appreciation for the freedoms of the United States and recommended how the Syrian crisis could be resolved. All observed a moment of silence for the Paris victims.

20 Year Service Award to Ken Richins – Clark Fawcett stated Ken is a great worker and now serves the City as the Water Supervisor. Mayor Bramall presented the award and thanked Ken for his service. Mayor Bramall said he often talks to women over 90 in his care centers and they say running water in the house is the greatest invention of the modern age.

Approval of City Council meeting minutes: November 5, 2015; November 10, 2015; October 15, 2015; August 20, 2015 – Pam Humphries commented on a correction in meaning on the October 10th meeting and one on Page 3 line 22 in the October 15th minutes.

Darin Larson said he does not want to have the minutes approved for August 20th. The Council members discussed the issue in the minutes regarding Tuacahn and the RAP tax.

Pam motioned to approve all the minutes presented except August 20th with the corrections, seconded by Kevin Tervort. Motion unanimously approved with Darin Larson, Pam Humphries, Darin Thomas, Kevin Tervort, and Ethelyn Humphries all voting aye.

6:15 p.m. – Public Forum – Comments From Public

Norman Gubler was not able to attend but the mayor reported Mr. Gubler wanted to do a presentation of appreciation to the Police Department and what they do. Mayor Hirschi said citizens have to stand up and support the good work done by the Police Department.

Ken Livingston stated he is representing the Tri-State ATV Jamboree. He is charged with setting up a charity called the Tri-State ATV Jamboree 50/50 charity drawing. 50% of the money will go to the holder of the winning ticket. 50% will go to the charity selected before the last night of the Jamboree. Is there a problem advertising it as such? Ethelyn said it seems to sound like a lottery ticket. Chief Excell said technically the ticket buyers must be getting something for the ticket and the tickets must be available to people who want one without paying. Money for the ticket must be considered a donation.

Lynn offered to vet it with the City's legal counsel or the Attorney General. Mayor Bramall said he feels it is too close to a lottery.

Appreciation for the Jamboree was expressed and Mr. Livingston expressed appreciation for City support.

Consideration and possible approval of an engineering contract for the 400 South and 300 North project designs-Arthur LeBaron explained the contract to the Council is for design work. The Streets Department plans to design and re-construct 400 South from 700 West to 100 East. They also want to have design from 200 West to 100 East on 300 North project to help decide on financing and timing. The not to exceed price includes construction engineering. The Civil Science Infrastructure bid of \$199,588 was recommended and Tyler Turner from Civil Science was present to answer any questions. Darin Larson asked for a time frame on construction on 400 South. Arthur explained they plan to start on construction in the spring and be done by the time school is in session. Darin Larson asked about the trail on 400 South on the other side of 700 West and asked if there was any advantage to doing it at the same time. Arthur explained the environmental work still required as part of the grant for the trail and the timing.

Pam Humphries motioned to approve the engineering contract for the 400 South and 300 North project designs with Civil Science not to exceed the price of \$199,599. Motion seconded by Ethelyn Humphries. Motion unanimously approved with Darin Larson, Pam Humphries, Darin Thomas, Kevin Tervort, and Ethelyn Humphries all voting aye.

Presentation regarding WCWCD water conservation plan- Julie Jones with the Washington County Water Conservancy District explained the District is required to update their water conservation plan every five years and the District Board recommended she come present this plan to the cities. The PowerPoint presentation and the Water Conservation Plan discussed are included with the record of this meeting.

Julie offered to provide copies of the consultant study for details on any of the items. She stated the plan is open for comment until Tuesday November 22nd and the final will be presented to the Board on December 8th.

Mayor Bramall stated he is all for conservation but wants to speak in favor of property rights. He said every person who pays impact fees is given the right to use the water they pay for and that right should be protected and not diminished over time.

Julie explained that education and incentives were chosen over regulation to be sensitive to property rights and not forcing ordinances.

Consideration and possible approval of an updated Preliminary Plat for the Retreat at Sand Hollow Resort – Sand Hollow Resort applicant: Robert Allen agent – Robert Allen was present in case there were any questions.

Pam Humphries asked Fay Reber if there should be notice of possible problems to future property owners. Fay said there is an ordinance requiring property owners' sign an indemnification agreement before a building permit is issued in areas of known problems or hazards.

Pam Humphries motioned to approve the updated Preliminary Plat for the Retreat at Sand Hollow Resort subject to JUC and Staff comments, seconded by Darin Larson. Motion unanimously approved with Darin Larson, Pam Humphries, Darin Thomas, Kevin Tervort, and Ethelyn Humphries all voting aye.

Consideration and possible approval of a Preliminary Plat for the Villas at Canyon View – a 6 unit townhome subdivision located at the corner of 600 North and 2480 West – Rick Christensen applicant Gerold Pratt of Pratt Engineering represented the applicant.

Ethelyn Humphries motioned to approve the Preliminary Plat for the Villas at Canyon View including staff and JUC comments, seconded by Darin Thomas. Motion unanimously approved with Darin Larson, Pam Humphries, Darin Thomas, Kevin Tervort, and Ethelyn Humphries all voting aye.

Consideration and possible approval of an application to join contiguous lots G-9 and G-12 in plat G of Dixie Springs – Jim and Jo Barnes owners – American Heritage Homes agent Seth Foster represented American Heritage Homes.

Pam Humphries motioned to approve the application to join contiguous lots G-9 and G-12 in plat G of Dixie Springs and abandon the easement between the two lots, seconded by Darin Larson. Motion unanimously approved with Darin Larson, Pam Humphries, Darin Thomas, Kevin Tervort, and Ethelyn Humphries all voting aye.

Public Hearing to take comments on proposed amendments to Title 3, Business Licensing, Section 10 Transient Lodging Facilities, Subsection 11 Short Term Vacation Rental:

Darin Thomas motioned to open the public hearing at 6:50 p.m. seconded by Ethelyn Humphries.

Motion unanimously approved with Darin Larson, Pam Humphries, Kevin Tervort, and Ethelyn Humphries all voting aye. Mayor Bramall said the time limit would be 2 minutes per comment and asked people not to repeat comments already made.

Kendall Clements owner and operator of Escape Properties gave two comments. First he expressed a concern with the 10 person maximum occupancy limit. He explained that vacation homes operate differently and he has a home with 6 bedrooms. He recommends setting occupancy as a maximum of three per bedroom and that the City not count other rooms as sleeping areas, such as great rooms. He stated having 18 guests in a house makes it economically feasible.

It was clarified the International Fire Code limits it to 10 people in transient lodging that is not built to a commercial code.

Mr. Clements commented on the 1,000' spacing which would limit Dixie Springs to about 6 total. He said he understands the intent to not allow a neighborhood to be overrun but questioned the distance. He commended the Planning Commission for their good work on this ordinance. He stated as a vendor in that industry he supports most of it.

Lynn Marsh asked for the definition of short term rental and it was clarified that means 30 days or less. He then asked about the single family zoning in Dixie Springs and questioned whether having 10 unrelated people in a home would violate single family residential zoning. He also pointed out the possible economic impact on hotel businesses. He talked about a specific house where 12 cars were parked up and down the street and questioned whether anybody really only comes with 10 at a time. He encouraged the Council to vote against vacation rentals because Dixie Springs' residents like it as a residential neighborhood.

Kevan Adams expressed a concern with the current proposal regulating the market without addressing the problems such as the 1,000' spacing. This will change the overall number in the city without looking at specific locations, such as the end of a cul-de-sac where parking could be a problem. He said there are locations where having them clustered would be appropriate. He stated a principal of zoning is that commercial uses in a residential neighborhood should be an accessory to the primary residential use. He recommended vacation rentals be allowed only along arterial streets or in neighborhood commercial zones.

Kevin Tervort motioned to close the hearing at 7:05 p.m., seconded by Darin Larson. Motion unanimously approved with Darin Larson, Pam Humphries, Kevin Tervort, and Ethelyn Humphries all voting aye.

Consideration and possible approval of an ordinance amending Title 3, Business Licensing, Section 10 Transient Lodging Facilities, Subsection 11 Short Term Vacation Rental

Pam Humphries commented on the points made in the public hearing. She said maybe the Planning Commission should look at areas and not look at distance. She stated she is not sure she could vote for it tonight.

Darin Larson said he has a concern with the 1,000' buffer distance considering property rights while not looking at hurting neighborhoods. He said he could see pluses and minuses to the distance. He expressed a concern that a property owner could get a license and lock up 1000' without ever opening a vacation rental.

Darin Thomas commented he feels Hurricane's local motels cannot be recommended for his family or friends and he uses vacation rentals when he travels. He said the City does promote the lake and that is where people want to live.

Pam Humphries pointed out the property rights for home owners are in opposition to the rights for vacation rental owners.

John Bramall commented he has been to countries where vacation rentals are common throughout an area and hesitates to impact freedoms but need to see a balance.

Ethelyn Humphries said she believes it is a good ordinance though she is not comfortable with the 1000' and questioned the quiet hours. She stated she often uses vacation rentals.

Fay Reber said if the Council is concerned is the distance perhaps they should look more specifically at the reason for the separation distance and how it should be measured.

Darin Larson stated he feels this is a very good ordinance but the Council should table it to discuss the distance. It was clarified the moratorium will expire in December.

John Bramall said the Planning Commission recommended the 1000' distance and the Council could just move forward with their recommendation.

Kevin Tervort motioned to approve the motion as written changing the time for use of hot tubs to 10 p.m. and changing #2 under E to 10 p.m.; Pam Humphries seconded the motion. Motion not approved with Darin Larson voting no, Pam Humphries voting yes, Darin Thomas voting no, Kevin Tervort voting yes, and Ethelyn Humphries voting no.

Darin Larson motioned to table the item to look at the distance, seconded by Darin Thomas. Mayor Bramall commented on a distance he was considering. Motion approved with Darin Larson voting yes, Pam Humphries voting no, Darin Thomas voting yes, Kevin Tervort voting no, and Ethelyn Humphries voting yes.

Pam asked about taking a field trip before the discussion goes forward to look at distances in neighborhoods.

Consideration and possible approval of the Emergency Operation Plan for Hurricane City-Chief Excell gave a brief history of the plan, starting with funding from Five County Association of Governments helping communities throughout the Five County area. The plan that was adopted at that time was a mix up of boiler plate plans from a variety of other plans with a variety of formats that was difficult to follow. He stated this updated plan should be a living document that is changed as necessary and when rules are added or rules change and be reviewed annually during September, which is Preparedness Month. A local expert who lives in Leeds helped tailor the plan to better fit the City and fix some language. Then the plan was reviewed by the department heads and their Emergency Support Functions. He recommended the City Council approve it.

Council members advised him to change "Fire Department" to "Hurricane Valley Fire District" and update 2007 numbers to current demographic numbers.

Pam Humphries asked who keeps the list of people who need special help. Chief Excell said there is a registry for residents who want to be helped and the City's emergency plan has people in every neighborhood district or block who know their neighbors' needs. Pam recommended a reference go into the plan to mention the citizen group. She also clarified that the document should not refer to the Leeds Fire Department as they are now part of the Hurricane Valley Fire District.

Kevin Tervort motioned to approve Emergency Operation Plan for Hurricane City with the changes discussed, seconded by Pam Humphries. Motion unanimously approved with Darin Larson, Pam Humphries, Darin Thomas, Kevin Tervort, and Ethelyn Humphries all voting aye.

CONSIDERATION FOR ADOPTION OF A RESOLUTION OF THE CITY COUNCIL OF HURRICANE CITY, UTAH, AUTHORIZING THE EXECUTION AND DELIVERY OF AN INTERLOCAL REVENUE PLEDGE AGREEMENT TO PLEDGE CERTAIN LEGALLY AVAILABLE REVENUES TO THE TUACAHN CENTER FOR THE ARTS; AND RELATED MATTERS

Tuacahn COO Kevin Warnick explained they are hoping to start construction on Monday and anticipate closing the bonds by December 1st. They have selected Watts Construction, a local construction company, to do the work. Mr. Warnick asked that the decision for support already made by the Council be solidified in this resolution so the bond counsel and bond buyers are assured that the City has made a commitment.

Council members stated they have not seen a final draft of this document and the City Manager is uncomfortable with some sections. Fay Reber said he saw the change made by the St. George City attorney which allowed the City to provide the funding from whatever source is available to the cities. City Manager Clark Fawcett sent a message to the City Council recommending they table the decision until final review of the document.

Council members explained to Mr. Warnick that there is still a misunderstanding of the motion made in August giving approval to the funding due to the fact that the RAP tax could expire in 10 years and the commitment has to go 20 years without knowing where the funds will come from for the 10 years without RAP tax revenue.

Fay Reber commented the only change Clark has not seen is the change to allow payment to be from “any available funds” rather than just the RAP tax revenue.

Mr. Warnick said they expect the agreement to be signed because the Council already approved it in concept in August. He reminded the Council that time is of the essence on this issue.

Kevin Thomas asked where the funds would come from if the RAP tax is not re-instated, questioning a 20 year obligation against all future Councils.

Fay Reber stated he believes the intent was to support Tuacahn for 20 years, though the agreement does obligate the City even if the RAP tax is not reinstated. Darin Thomas stated he did not feel the RAP tax will not be reinstated. The Council discussed the intent of the original motion of support. Mr. Warnick commented he understood the intent was to support Tuacahn for 20 years. Ethelyn Humphries stated she believes the Council knew in August that 20 years was required for the Tuacahn bond so even if the motion refers to the RAP tax, the intent was 20 years of support. She stated it does not do Tuacahn any good for the City to support it for 10 years on a 20 year bond.

Darin Larson said he made the motion in August with only the figures for RAP tax in front of him but he does not want to hold up the resolution or the construction for a technicality.

Darin motioned to approve the resolution authorizing the interlocal revenue pledge agreement for Tuacahn, understanding it obligates the City of 20 years, seconded by Ethelyn Humphries. Motion approved with Darin Larson, Darin Thomas, Kevin Tervort, and Ethelyn Humphries voting aye and Pam Humphries voting no.

Mr. Warnick thanked the Council and told them it takes courage to have faith in an organization that can raise money for the arts. He stated, “We promise to good things with our funds.”

Consideration and possible approval of incentives for Hall Plaza lots 3 & 4 Gallery-Jackrabbit Ridge LLC

The applicant was not present. Ethelyn Humphries motioned to table this item, seconded by Darin Thomas. Motion unanimously approved with Darin Larson, Pam Humphries, Ethelyn Humphries, Darin Thomas, and Kevin Tervort all voting aye.

Approval of Board and Commission Members – Mayor Bramall said he has not talked to Mr. Richard Carter about being appointed as member of the Airport Board but don’t have an approval. Pam Humphries stated she did not believe he is interested in serving but Mr. Carter’s home teaching companion might be interested. After discussion, Ethelyn Humphries motioned to approve Richard Carter if he accepts, seconded by Kevin Tervort. Motion unanimously approved with Darin Larson, Pam Humphries, Ethelyn Humphries, Darin Thomas, and Kevin Tervort all voting aye.

Mayor, Council and Staff reports

Pam Humphries asked about a site visit to a vacation rental location before the next meeting discussing the ordinance. In the ensuing discussion the Council members talked about distances, parking for Sunday dinners, enforcement, suitability of certain areas for vacation rental property, and the length of the moratorium

Meeting adjourned at 7:50 p.m.