

Mayor
Kenneth Romney

WEST BOUNTIFUL CITY

City Administrator
Duane Huffman

City Council
James Ahlstrom
James Bruhn
Kelly Enquist
Mark Preece
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THE WEST BOUNTIFUL CITY COUNCIL WILL HOLD ITS REGULAR MEETING AT 7:30 PM ON TUESDAY, JANUARY 19, 2021

Meeting will be held ONLY electronically via Zoom (see info below)

Mayor Romney has determined that due to the COVID-19 pandemic and the physical distancing needed to prevent the spread of infection, public meetings present a substantial risk to the health and safety of those who may be present. That risk can be substantially mitigated by holding City Council meetings through electronic means that allow for public participation without an anchor location. A copy of the Mayor's determination and order is available at www.wbcity.org

AGENDA: Invocation/Thought – Rod Wood; Pledge of Allegiance – Mark Preece

1. Approve Agenda.
2. Public Comment - two minutes per person, or five minutes if speaking on behalf of a group.
3. Rear Yard and Side Yard Variance Request – Mtn View Estates Lot 104 – 995 W 1950 N.
4. Options for Hole #16 at Lakeside Golf Course.
5. Scope of 2021 Porter Lane/800 West Street Restoration Project.
6. Discuss Sidewalk Repair Options Related to Trees.
7. Minutes from January 5, 2021.
8. Staff Reports – Police, Public Works, Engineering, Community Development, Administration.
9. Mayor/Council Reports.
10. Closed Session for the Purpose of Discussing Items Allowed Pursuant to UCA § 52-4-205.
11. Adjourn.

This agenda was posted on the State Public Notice website, the City website, emailed to the Mayor and City Council, and sent to the Davis Journal on January 15, 2021.

Join Zoom Meeting:

<https://us02web.zoom.us/j/83205785088>

Meeting ID: **832 0578 5088**

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Minutes of the West Bountiful City Council meeting held on **Tuesday, January 19, 2021** at West Bountiful City Hall, 550 N 800 West, Davis County, Utah.

All participants were on Zoom. Those in attendance:

MEMBERS: Mayor Ken Romney, Councilmembers James Ahlstrom, James Bruhn, Kelly Enquist, Mark Preece, and Rod Wood.

STAFF: Duane Huffman (City Administrator), Steve Doxey (City Attorney), Steve Maughan, (Public Works), Chief Brandon Erekson, Cathy Brightwell (City Recorder), Kris Nilsen (City Engineer), Dallas Green (Director of Golf), and Josh Virostko (Golf Superintendent).

PUBLIC: Alan Malan, Dennis Vest, Gary Jacketta, Kris & Suzanne Burt, Steve Israelsen-SI Builders

Mayor Ken Romney called the meeting to order at 7:31 pm. He read the following: ***I, Mayor Romney, have determined that due to the current COVID-19 pandemic and the physical distancing required to prevent the spread of infection, public meetings present a substantial risk to the health and safety of those who may be present at the meetings. That risk can be substantially mitigated by holding City Council meetings through electronic means that allow for public participation without an anchor location. A copy of the Mayor's determination and order in this regard is available at www.wbcity.org.***

Rod Wood gave an Invocation, and the Pledge of Allegiance was led by Mark Preece.

1. Approve the Agenda.

MOTION: *Kelly Enquist made a motion to approve the agenda. James Bruhn seconded the Motion which **PASSED** by unanimous vote of all members present.*

2. Public Comment

Dennis Vest, resident, referred to the discussion at the last city council meeting regarding glass recycling. He commented that at one time he lived in Oregon where the law required glass recycling. Glass breaks and raises havoc with bike tires, animals, etc. He gave an example of vandalism when kids broke glass recycle bins in front of homes making a huge mess. As a result, large, locked bins were installed around town and curbside recycling stopped. He supports glass recycling but wonders if centrally located bins might be better than individual curbside.

Mayor Romney thanked him for sharing his experience and committed to consider all options. Council member Bruhn said he thinks bins at the city shops would be a good idea.

3. Rear Yard and Side Yard Variance Request – Mountain View Estates Lot 104 – 995 W 1950 N.

Background:

In September of 2018, the City Council granted Day Lay One LLC final plat approval for the Mountain View Estates, a 42-lot subdivision on 26.7 acres (R-1-22 zone), and it was recorded October 16, 2018. Several lots within the subdivision are affected by various large easements for transmission lines intersecting the subdivision related to power, sewer, natural gas, and petroleum.

Lot 104 is still owned by Day Lay One LLC, the original developer, but SI Builders entered into a contract to buy the lot which it has since assigned to Jason and Shalane Israelsen. This lot has a limited building envelope due to oil and gas pipeline easements totaling 76 feet in width that run from the southwest corner to the northeast corner of the lot. The easternmost of the easements is 16.5 feet wide and is now owned by Marathon Pipe Line LLC (“Marathon”). This easement restricts the property owner from constructing or maintaining any structure on the easement or impairing or interfering with Marathon’s rights under the easement, including the right to operate, repair, maintain, or replace any of the pipelines within the easement.

The city has reviewed and approved a building permit application for this lot, but Marathon has filed a motion for restraining order preventing SI Builders from proceeding with its current plans; consequently, SI Builders has not picked up the building permit.

While the proposed home is outside of the defined easement, Marathon is claiming that it is still too close to their pipeline (8’) for safety and maintenance purposes. Typically, Marathon requires 50’ of distance between its pipelines and residential structures. Marathon has therefore refused to allow the home’s utility lines and driveway to cross its easement unless the proposed home is moved farther away.

As a compromise between the parties, Marathon has stated that it will allow the crossings if the proposed home is built at least 20’ away from the location of the pipeline. To meet this requirement and keep the original building plans, the building would encroach 2’ into the east side yard setback (resulting in an 8’ setback instead of a 10’ setback) and 5.5’ into the south rear yard setback (resulting in a 24.5’ setback instead of a 30’ setback). These reduced setbacks are the purpose of the proposed variance request.

Discussion:

Steve Israelsen with SI Builders noted that this lot has sat vacant for a very long time – earlier contracts have failed. They designed a unique home to fit the limited building size but had to request an exception from the developer because the home did not meet the minimum size as required in the CCRs. In response to questions, he said they could design a smaller home, but it puts this property at a disadvantage when compared to others in the subdivision as the home’s footprint would need to be 1000 sq ft smaller than standard homes in the development. This reduction in size would not work for the current buyers as they have small children and need bedrooms on the main floor.

Council member Bruhn said he does not have a lot of concern over the request. This is a large lot in a subdivision approved by the city and the subject home will be located towards the neighbor’s rear

yard. Marathon Pipeline is requiring the relocation for safety reasons that we did not know about when the subdivision was approved.

Mayor Romney stated that he struggles more with the reduction in the side setback than the rear setback because the property backs up to the canal and there are no rear neighbors.

Council member Wood commented that he is familiar with this very unique lot. He asked Mr. Burt, the east side neighbor, how far his home is from the neighboring property line. Mr. Burt indicated it is 14' so there would be a total of 22' between homes rather than the standard 20' with our minimum setbacks. Mr. Burt added that they do not object to the variance.

Steve Doxey reviewed the five criteria to be considered for a variance which is a waiver or modification of the requirements of a land use ordinance as applied to property and runs with the land. All five criteria must apply to grant a variance.

1. *Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances.*
 - a. *The unreasonable hardship must be located on or associated with the property and come from circumstances peculiar to the property, not from conditions that are general to the neighborhood. An unreasonable hardship may not be self-imposed or economic.*
2. *There are special circumstances attached to the property that do not generally apply to other properties in the same zone;*
3. *Granting the variance is essential to the enjoyment of a substantial property right possessed by other properties in the same zone;*
4. *The variance will not substantially affect the general plan and will not be contrary to the public interest; and*
5. *The spirit of the land use ordinance is observed and substantial justice is done.*

Item 1 - There was discussion about whether the hardship is self-imposed or economic, as a smaller home can still be placed on the property.

Item 2 - While special circumstances may apply to this lot, utility easements in this zone are common and apply to many lots in the area.

Item 3 – The builder argues that forcing a smaller home that is already less than what is required in the subdivision CCRs creates an unfair disadvantage to the buyer.

Item 4 – The east side neighbor does not object to the setback reduction and there will remain a 22' distance between the two dwellings which is more than minimum setbacks require.

Council member Ahlstrom commented that the request for variance came from the builder and the buyer as they are impacted by this situation, but a variance runs with the land, so it falls back to the developer. The lots could have been realigned to better fit around the easements even if it meant

losing a lot, but the developer chose to go with additional lots which is an economic hardship that we cannot consider as part of this request. He added that a buildable footprint still exists; property right is not defined as a certain size home. The developer set the restrictions in the CCRs which is self-imposed. The city has held firm in the past on these issues and we should not consider setting a new precedent.

Council member Wood stated he would normally not support this but sees this property as unique with all the easements and the pipeline company has applied leverage over the builder and buyer. He agrees that if approved, it must be made clear that it does not set a precedent for other properties.

Council member Enquist commented that there was a lot of discussion about the size of the lots with planning commission as this subdivision was considered. The developer stated that all lots had sufficient buildable space for homes. He is reluctant to grant the variance.

Council member Preece said it is a difficult situation. He feels bad for the buyer, but the developer knew there were limitations.

Mr. Israelson responded to comments. The requirements imposed by Marathon were unforeseen by the developer and the city and will result in any future home being significantly smaller than surrounding homes. The proposed reduction in setbacks will not negatively impact neighbors or the spirit of the land use ordinance. There has been a series of unfortunate things that have happened that are unique to this lot and the request for minimal changes is reasonable.

Duane Huffman asked if the builder plans to go forward with legal proceedings if the variance is denied. Mr. Israelson responded that it is a costly process, and a decision has not been made on how far to pursue it. Tens of thousands of dollars have already been spent to design a home to fit on this lot.

MOTION: *Mark Preece made a Motion to Deny the Variance Request for Mountain View Estates Lot 104 on the Grounds that the Applicant has Failed to Establish Each of the Requirements for a Variance for the Reasons Discussed in this Meeting and in the Staff Memo and Directs Staff to Prepare a Written Decision to That Effect. James Ahlstrom seconded the Motion.*

The Motion PASSED 4-1 with a vote as follows:

James Ahlstrom – aye	James Bruhn – nay	Rod Wood - aye
Kelly Enquist – aye	Mark Preece – aye	

Council member Ahlstrom suggested Mr. Israelson contact Utah Land Use Ombudsman for advice and guidance in dealing with Marathon Oil.

4. Options for Hole #16 at Lakeside Golf Course.

Hole #16 is a long par 3 (about 185 yards from farthest tee) that runs parallel to 1100 West. The hole's proximity to 1100 West has always presented a risk of errant golf balls leaving the course and striking vehicles or pedestrians. A row of about 15 poplar trees and a small fence provided some

protection, but hooked golf balls did make it over the trees on occasion, and staff has always been interested in improving safety in the area.

The 2020 windstorm significantly damaged the row of poplar trees, leaving them about half of their previous height. Since the storm, temporary tee boxes were moved north about 30 yards. The shorter distance results in a significantly smaller risk of errant balls leaving the course, but also significantly diminishes the hole's rating (this is the course's only par 3 of a longer length).

There are four options being discussed as possible broad solutions with pros and cons to each:

1. Status Quo / Re-plant Trees
2. Complete Hole Redesign
3. 400' Length of 60' High Net
4. Tee Box Redesign

Duane Huffman gave examples of problems in the past and reviewed the listed options. Dallas Green was asked for his opinion. He said he is not a huge fan of netting as it can be damaged in windstorms, requires ongoing maintenance, and requires periodic replacement. He prefers the status quo or moving tee boxes although he believes it is important to maintain as much length as possible for the hole.

There was discussion of the options. Redesigning the hole and moving the green would likely be more expensive than netting. Planting large trees is planned but they are not available right now. Josh Virostko said he is recommending poplar trees as they are very fast growing. It is expected they would be blown down over time but if planted in double rows, they can be rotated with new ones. He expects each tree to cost roughly \$100 - \$150 dollars and in the past Holly has agreed to help cover the cost.

Steve Doxey answered questions about liability. He explained that liability always goes to golfer for their shot, although the City may be liable if it can be shown that no reasonable measures have been taken to prevent damage. Planting trees is a good step toward reducing chances of liability.

Mayor Romney recommended they proceed with adding trees and continue to review these and other options.

5. Scope of 2021 Porter Lane/800 West Street Restoration Project.

The FY 21 budget included \$200K as a placeholder for an undefined asphalt project on Porter Lane between 600 W and 800 W. Steve Maughan and Kris Nilsen have performed tests and considered different re-construction options on this section of road as well as 800 W and 1950 N to Porter Lane, and propose the following scope:

- A. Porter Lane (600 W – 800 W) – Estimated cost: \$400,000
 - a. Mill 6-8 inches of asphalt surface.
 - b. Place 6 inches of new asphalt.
 - c. Remove cross gutter at 725 W and replace with inlet box and pipe.
 - d. Remove and replace all concrete collars.

- B. 800 W (1950 N to Porter Lane) – Estimated cost: \$100,000
- Mill 3-6 inches of asphalt surface.
 - Place 3 inches of new asphalt.
 - Remove and replace all concrete collars.

The city is projected to have over \$300,000 in Highway/Transportation funds (Prop 1) and over \$200,000 in Street Funds (property tax) in addition to money already in the budget for this project. There were no suggested changes to the proposed scope; the Project will be put out to bid this week.

6. Discuss Sidewalk Repair Options Related to Trees.

Staff has surveyed the city for sections of severely damaged sidewalk resulting from trees. It found the following:

- There are at least 32 properties with trees/roots that have lifted the sidewalk more than 1 inch with at least 22 of these trees still in place.
- About 132 sections of sidewalk need to be replaced. (roughly \$6,000 - \$10,000)
- Estimates for tree removal range between \$1,000-\$1,500 per tree, but in some cases may be as high as \$2,000 (roughly \$27,500).
- Staff's experience is that beyond the cost of removal, many residents will protest the removal of the tree due to aesthetic or personal reasons. They will often want to replace the sidewalk without removing the tree. Other than the likelihood that this will result in further damage, cutting roots to replace a sidewalk can also injure or destabilize the tree.

West Bountiful Municipal Code 12.04.020 places the burden solely on the property owner for extraordinary repairs needed as the result of the act or omission of any person and specifically "when the removal of a tree or tree roots is necessary to complete the repairs." This is the case regardless of whether the tree is in the park strip or on private property.

Single-family property owners generally have three options (after receiving notice from the city).

- Have the work completed within 60 days;
- Have the city share in 50% of the cost of the repair, not including the cost to remove trees;
- Owners with incomes "at or below the levels established by the Department of Housing and Urban Development in its "Income Limits for Housing and Community Development, Section 8 Program" (for 2020 this is \$43,150 for a family of four) are eligible to have the entire project paid by the city, subject to available funds.

There was discussion about how best to move forward. The list will be prioritized, and money put in the budget with a goal to tackle some each year based on the responsibilities listed in Code. The city has a good liability program. As problem areas are brought to our attention, we mark them which lessens our liability.

Duane Huffman will send out letters seeking interest from residents on the list and report back.

7. Minutes from January 5, 2021.

MOTION: *Rod Wood made a motion to Approve Minutes from January 5, 2021. Mark Preece seconded the Motion which PASSED by unanimous vote of all members present.*

8. Staff Reports

Police – Brandon Erikson

- Asst. Chief Lance Wilkinson is celebrating his seventh year anniversary with the city.
- 90% of police staff have received their first round of vaccinations; second doses will be scheduled over the next couple of weeks.
- Meeting next week to discuss possible dispatch consolidation including virtual options. Legislative changes resulted in a desire to consolidate 911 centers so that callers are not transferred all around, and the same records management system are utilized for all centers. There is a possibility that there may be 1-2 centers for the entire county.

Public Works – Steve Maughan

- Steve and Kris Nilsen have been working on the Porter Lane project and will get it out to bid this week.

Engineering – Kris Nilsen

- Well house bid open will be held on Friday, January 22 at 2 pm.

Community Development - Kris Nilsen & Cathy Brightwell

- Planning Commission held a public hearing on the Historical Overlay District and will hold a hearing to remove similar language from the city's general plan. A proposal is expected to be ready for city council on February 2.
- Contract planners have presented information on Accessory Dwelling Units. The planning commission discussed policy issues that include expanding the current regulations for detached ADUs in the A-1 zone. They will also look at things like height, size, setbacks, etc.

Administrative Report – Duane Huffman

- Budget – In response to our request, Centerpoint Theater provided a proposal for a \$20K donation for stage lighting. They offered to have someone attend the next meeting if helpful to answer questions. James Ahlstrom provided background that the theater was intended to be a regional, multi-city arts facility. West Bountiful's attempt to support it (2015 Prop #9) failed by 40 votes, so we were not obligated to contribute as other cities were, but we are not restricted to contribute. There was discussion about a one-time vs. ongoing donation. He said some sponsorships include tickets that can be used as perks for city employee and do not require ongoing commitment. Mayor Romney suggested donations could be on behalf of city and Lakeside golf course and agreed that it should be reevaluated annually. There was also discussion about whether a donation to the Arts differs from supporting other local businesses. Some felt that they collect money from ticket sales and should be able to stand on their own. Concern about spending RAP funds was also raised based on the language that was used on the ballot question that limited expenses to activities within the city. Duane will prepare options for review.

- Windstorm was declared a national disaster so he and Patrice will attend FEMA meeting to get information on how to report damage and receive reimbursement.

9. Mayor / Council Reports

Mayor Romney – Arts Council is concerned about putting in a lot of work on July 4th activities if it turns out events will be canceled. They are looking for some level of certainty. If we have our annual fireworks event it will probably be held on Friday, July 2 with parade or park events (if possible) held on Saturday, July 3.

James Ahlstrom – Youth Council canceled its January meeting as the Mayor and Mayor Pro Tem are both participating in Centerpoint theater performances. The Council is doing a good job.

James Bruhn – Arts Council has prepared another concert for its YouTube channel.

Kelly Enquist – Birnam Woods park looks nice with the fence down – really opens it up. He also reported that the recent wind took the turbine off the Park restroom roof. Steve will check it out.

Mark Preece – nothing to report.

Rod Wood – nothing to report.

10. Closed Session for the Purpose of Discussing Items Allowed Pursuant to UCA § 52-4-205.

MOTION: *James Ahlstrom made a Motion to go into closed session via zoom pursuant to UCA § 52-4-205 (1)(c) for the purpose of discussing pending or reasonably imminent litigation. The regular meeting will adjourn simultaneously upon adjournment of the closed session. Mark Preece seconded the Motion.*

The Motion PASSED with a vote as follows:

James Ahlstrom – aye	James Bruhn – aye	Rod Wood - aye
Kelly Enquist – aye	Mark Preece – aye	

MOTION: *Mark Preece Made a Motion to Adjourn the Closed Meeting Rod Wood seconded the Motion which PASSED by unanimous vote of all members present.*

The foregoing was approved by the West Bountiful City Council by unanimous vote of all members present on Tuesday, February 2, 2021.


Cathy Brightwell, City Recorder

