

Mayor
Kenneth Romney

WEST BOUNTIFUL CITY

City Administrator
Duane Huffman

City Council
James Ahlstrom
James Bruhn
Kelly Enquist
Mark Preece
Rodney Wood

550 North 800 West
West Bountiful, Utah 84087

Phone (801) 292-4486
FAX (801) 292-6355
www.WBCity.org

City Recorder
Cathy Brightwell

City Engineer
Kris Nilsen

Public Works Director
Steve Maughan

**WEST BOUNTIFUL CITY COUNCIL WILL HOLD A REGULAR MEETING
AT 7:30 PM ON TUESDAY, MARCH 15, 2022
AT THE CITY OFFICES, 550 N 800 WEST**

Online Participation via Zoom Available: <https://us02web.zoom.us/j/85135624712>

AGENDA:

Invocation/Thought – By Kelly Enquist; Pledge of Allegiance – By Rod Wood

1. Approve Agenda.
2. Public Comment - Two minutes per person; five minutes if speaking on behalf of a group.
3. Resolution 513-22 – A Resolution Approving a Non-Exclusive License Agreement with Google Fiber Utah LLC for the Installation of Network Facilities in the City Public Right-of-Way.
4. Request for Deferral of Public Improvements at 1450 N 1100 West (Lackey).
5. Discuss Blackgate Investments, LLC's Proposal to Lease Land to Manheim Auto Auction for Outdoor Storage in Exchange for Residential Property Adjacent to Highgate Estates Fronting 1450 West.
6. Land Use Appeal Hearing – Determination of Quasi-Public Use – CHOICE Education, L3C, Paul & JeVonne Tanner – 841 W 400 North.
7. Cost/Budget Approval – New Public Works Facility, 1410 W 1200 North.
8. Request for Deferral of Public Improvements at 1410 W 1200 North (WBC Public Works).
9. Ordinance 450-22, An Ordinance Modifying Public Improvements Required for Building Permit Approval.
10. Ordinance 451-22, An Ordinance Clarifying Yard Regulations in Residential Zones.
11. Meeting Minutes from March 1, 2022.
12. Staff Reports – Police, Public Works, Engineering, Community Development, Administration.
13. Mayor/Council Reports.
14. Closed Session for the Purpose of Discussing Items Allowed Pursuant to UCA § 52-4-205.
15. Adjourn.

This agenda was posted on the State Public Notice website, the city website, emailed to the Mayor and City Council, and provided to the Davis Journal on March 11, 2022, by Cathy Brightwell, City Recorder.

Minutes of the West Bountiful City Council meeting held on Tuesday, March 15, 2022, at West Bountiful City Hall, 550 N 800 West, Davis County, Utah.

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

STAFF: Duane Huffman (City Administrator), Kris Nilsen (City Engineer), Cathy Brightwell (City Recorder), Steve Maughan (Public Works Director), and Clint Drake (Appeal Hearing Counsel).

EXCUSED: Steve Doxey (City Attorney), Chief Brandon Erekson

PUBLIC: Alan Malan, Corey Sweat, Richmond Thornley, Jay Gough, Todd Willey, Kay Goldberg, Shari Naegle, Scott Caldwell, Michelle Curtis, Bill Goldberg, Jesse & Cami Bryson, Pam Nichols, Bonnie Braegger, JeVonne & Paul Tanner, Marty Vowles, Blake Heller, Tom Haslam, Shelly Iosefa, Willi Haslam, Natalie Hogge, Kaleb Ellis, Kayla Thompson, Shane Thompson, Wes Garrett, Sean & Keri Salmon, Pat McReynolds, Tristina Bown, Bill Bown, Debra Larsen, John Hunter, Charlene Stuntsenberger, Jacob & Lisha Folsom, Christelle Hunter, Jacob Brace

Mayor Romney called the meeting to order at 7:30 pm. Kelly Enquist offered a thought and Rod Wood led the Pledge of Allegiance.

Mayor Romney explained to the large number of attendees that the land use appeal on the agenda is scheduled to be heard a little after 8 pm. The city council usually operates as a legislative body, but this appeal is different as it requires the council to act in a quasi-judicial role. The Tanners have appealed city staff's determination that a "quasi-public" use does not apply to a private school. The Tanners do not believe the law was interpreted correctly. In its judicial role, public comment is not part of the proceeding but instead the council hears arguments from the applicant and makes a decision based on whether the law was interpreted correctly. Policy decisions about whether a private school should be allowed at this location is not part of this proceeding. If we were considering a zone change or other change in the law, public comments would be considered.

1. Approve the Agenda.

MOTION: *James Ahlstrom made a Motion to approve the agenda as posted. James Bruhn seconded the Motion which PASSED by unanimous vote of all members present.*

2. Public Comment – Two Minutes Per Person, or Five Minutes if Speaking on Behalf of a Group.

Kaleb Ellis asked what actions follow the judicial process? The mayor explained that they will listen to both parties, take the information under advisement and then issue written decision. Duane Huffman

added that if the city council decides the school falls under a 'quasi-public' use the applicant can move forward with their conditional use application before the planning commission. The planning commission will then come up with conditions to mitigate any negative impacts of the use. If the city council denies the appeal, the applicant can go to district court or request a code change with public hearings.

Marty Vowles has lived in West Bountiful for 17 years and is speaking for the family and as friends of the Tanners. He gave examples of what he believed were several inconsistent decisions by the city and has the opinion that the city uses the code selectively to reject or approve issues based on connections. An evaluation needs to be done. He suggested decisions are better made from a permissive position than a restrictive position. Discussion should be taking place about whether this school is good for the community.

Bill Goldberg agreed with statements that previous decisions have been arbitrary. He is a retired schoolteacher and believes the public education system is not in good place at this time. He would like this city to be a trendsetter but not at the expense of our local public school. It is important to ensure that public funding is not moved to private institutions.

Tristina Bown stated she has a lot of concerns about having a private school in a residential area. She pointed out that there is currently a lot of traffic on 400 North putting children and animals at risk and there have been accidents. Adding more traffic will significantly increase the traffic and problems. She said that some of these businesses fail, and she would hate to see this school approved and then have it not succeed leaving a large vacant building in place. She noted that she is a real estate agent and believes having this school in the area will decrease property values. There is an enormous number of commercial properties available and she does not understand why a school is being considered for this location. She has spoken with all the neighbors, and they are not happy.

Michelle Curtis commented that the definition of private school is nebulous, and she is concerned that if the city says private schools are not allowed, it could negatively impact a mom teaching 6 kids in her house. Home-schooling falls under the definition of private school so the city needs to clearly define private schools including size, location, etc.

Shari Naegle is representing her in-laws who live at 890 W 400 North. They are concerned about the increase in traffic and potential for accidents. West Bountiful Elementary school is beautiful, and a lot of money has been put into it so there is no need for another school so close.

Pat McReynolds said she has loved living here for 40 years. She has known Paul Tanner for 25 years and is here to vouch for the Tanner's dedication and goodness. West Bountiful is an inclusive city and we should be open to people with new ideas and opportunities for children to learn better in different environments. Please look at this with open minds and the good it could bring out in our community.

Kayla Thompson has lived in West Bountiful for 2 years and has loved the rural aspect and being so close to the city. Two of her children have attended Choice school. She said that with mental health issues and learning disabilities in the family this learning style has helped her children succeed. Putting it here may seem absurd, but it could be a good fit. Ask for a little research on this type of school to understand the benefits it can bring to our community.

Corey Sweat commented that planning commission spent a lot of time on agenda item 9 (public improvements required as part of building permit approval) and he believes they came up with a great result. The planning commission may not have gone as far as staff wanted but feels it was a fair decision, especially given how unfair some of the previous requirements were.

3. Resolution 513-22, A Resolution Approving a Non-Exclusive License Agreement with Google Fiber Utah, LLC for the Installation of Network Facilities in the City Public Right-of-Way.

There has been a growing demand for high-speed internet options in West Bountiful, which intensified with the recent pandemic. It is very likely that demand for additional internet options will continue to grow as work, school, and entertainment options increasingly rely on internet capabilities. High-speed internet within West Bountiful is currently limited, as no incumbent provider has a fiber-to-the home network.

Google Fiber owns and operates a fiber optic network that supplies high-speed residential internet service. The neighboring cities of North Salt Lake and Woods Cross approved licensing agreements with Google Fiber in 2021, and this allows for a connectivity option to West Bountiful.

Duane Huffman explained that the proposed agreement does not require the city to help fund installation or operating costs of the network; is non-exclusive so the city retains the right to allow additional providers in the future; Google will pay the city a 2% license fee based on gross revenues (currently approximately \$1.40 per connection per month) which is precedent that will help us with other networks; grants a one-time 2-year exemption from the normal excavation restriction on roads; all construction will be pre-approved by the city and require a permit; and includes standard language that applies to other entities that use the right-of-way such as the city's ability to make emergency repairs in the right-of-way and the requirement that network facilities be moved at no-cost for city projects.

Mr. Huffman noted that the city has looked into other options, e.g., Utopia and a city-owned system and from a financial standpoint and timing, and he believes this is the best. Google Fiber has the ability to select where they will go throughout the city based on whether it makes economic sense. They install fiber in a trench 2 inches wide and 12 inches deep next to the curb on one side of every street. There is also a transverse trench that crosses the street at approximately 200-300 foot intervals. These trenches are then filled with flowable fill (concrete). The traversing trenches and some parallel trenches which in some cases need to be offset from the curb will also be treated with a mastic or crack seal material. This will not look as good on newer roads and minimally impacts the integrity of the road, but the trade-off to be determined is whether it is worth getting high speed fiber internet to residents.

Jacob Brace, Google Fiber Government & Community Affairs Manager for Utah, gave a brief overview of how internet is provided and explained their pricing packages: 1 gig = \$70/month and 2 gig = \$100/month. Wireless modems and installation are provided for free. They are already in North Salt Lake and Woods Cross so initial build out will come from the south. Construction goes quickly and they will turn up different areas at different times as the service is available. The majority of the city will be built out within 2 years. On any new construction developments, they will coordinate with developers as roads are going in. He also mentioned the federal Americans Connected Program (ACP) that provides a \$30/month credit based on income.

In response to a question from council member Wood, Mr. Brace confirmed that for emergency road repairs such as waterline breaks, there is no penalty if the line is accidentally struck, and they will work with the city together on repairs. Their fiber network is located through Blue Stakes.

MOTION: *James Ahlstrom Made a Motion to Approve a Non-Exclusive Licensing Agreement with Google Fiber Utah, LLC for the Installation of Network Facilities in the City Public Right of Way. James Bruhn Seconded the Motion which PASSED as reflected below.*

James Ahlstrom – aye
Kelly Enquist – aye
Rod Wood - aye

James Bruhn – aye
Mark Preece – aye

4. Request for Deferral of Public Improvements at 1450 N 1100 West (Lackey)

Kris Nilsen summarized the request for deferral of public improvements from the Lackey's for their property at 1450 N 1100 West. There is no existing curb, gutter, sidewalk, or secondary water on 1100 West in this area. Staff has reviewed the request and believes the improvements will be better if done as part of a larger project.

MOTION: *James Ahlstrom Made a Motion to Defer Public Improvements as Requested at 1450 N 1100 West. Mark Preece Seconded the Motion which PASSED with a vote of 4-1, with Council Member Wood voting Nay.*

5. Discuss Blackgate Investments, LLC's Proposal to Lease Land to Manheim Auto Auction for Outdoor Storage in Exchange for Residential Property Adjacent to Highgate Estates Fronting 1450 West.

Duane Huffman briefly summarized the issue explaining that Blackgate is proposing to lease the auto auction 6.75 acres of their adjacent property to the north for outdoor storage in exchange for 3.32 acres of land fronting 1450 West, which would be used to develop homes. He said it is complicated and will require several steps, so Highgate is looking for direction before they continue.

Duane said he spoke with Manheim's legal counsel, and they believe a lot line adjustment can be done for the property they are selling Highgate and then Highgate can come back with a 4-lot subdivision proposal. The property is currently zoned Blended Use with a Legacy Overlay so they would need a zone change or new overlay for the leased property of outdoor storage. A development agreement would include the details. He said it would be tricky but can probably be done.

Jay Gough pointed out that the auto auction vehicles are being parked farther east than ever before and the proposed agreement would move them to the west and away from the residential area. They believe by building homes on the currently vacant land they will fill in the gap so the vehicles are no longer visible from the subdivision. He said they met with the planning commission last week and they were receptive to the idea.

Todd Willey added that they are looking at the big picture and like that the agreement will contain the auto auction for 10 years. It puts this 6.75 acres on hold as surrounding areas develop. It's important to fill in the gap from 1450 West to eliminate the eyesore.

James Ahlstrom said it is complicated and troublesome to him but may be workable. Rod Wood has a problem with spot zoning but likes the idea of moving the vehicle storage farther to the west. Mark Preece agrees it is better to move the cars to the west farther away from homes.

Mayor Romney said if they can come up with a mechanism to make it work it may be ok. He suggested they look at options and come back with a proposal.

A 5 minute break was taken

6. Land Use Appeal Hearing – Determination of Quasi-Public Use – CHOICE Education, L3C, Paul & JeVonne Tanner – 841 W 400 North

9:00 pm:

LaVonne Tanner presented the appellant's case and referred to their Appeal Letter dated February 21, 2022. She described her background as a teacher and how the school came about at the request of their children. She offered a book, *Courage to Grow* by Laura A. Sandefer, that describes the special teaching methods used in their school and how they benefit students. She explained that the only way to fund the school is through tuition; no public funds are requested. Families still pay taxes to the school district and pay tuition. She is the owner, administrator, and teacher which shows how small the school is. They only meet 4 days a week. Site plans are not set in stone and can be changed if requested, for example moving the school building to the rear area of the property making it more difficult to see from the road. Having open space is important and there will be lots of on-site parking so no one will need to park on 400 North.

With a public school and church on the same roads, they thought this would be a great location for the school. They believe that churches and schools have quasi-public uses that serve the public good. West Bountiful does not provide a definition of quasi-public, but nearby cities of Salt Lake City, North Salt Lake and Woods Cross include private schools in the definition of quasi-public, and other communities like Bountiful and Farmington allow private schools in residential zones.

If schools cannot go in residential areas, they must go in commercial zones which is not good for children and does not offer open space. She said they were trying to be good neighbors so talked with surrounding neighbors to see how they felt about the school. Their initial interactions were positive but based on the current audience, some of those positions may have changed.

Duane Huffman provided city staff's response. Staff does not have any problems or ill feelings with the Tanners and appreciate what they have done with their school. This is not about whether the school is good, or about the owners, or the location, or the neighbors. The issue is about whether a private school can be considered a quasi-public use under the West Bountiful Municipal Code (WBMC). After review, the land use administrator determined a private school does not fit that term.

WBMC 17.12.040 states that the uses allowed in each district are plenary and if not specifically listed as permitted or conditional are not allowed. It means the city's code hasn't contemplated them yet.

Public schools, day cares, learning studios and commercial learning centers are listed in code, but private schools are not listed anywhere and are not defined in code. If the city wanted to include it, it would have. Quasi-public is service to the general public. Just because it may provide a public benefit does not mean it is a public use. For example, an individual couldn't build a private park in a residential area and call it quasi-public. If the city council were to consider all private schools as quasi-public, conceivably it could have a private college take up an entire residential block. Other cities have included private schools in their code, but this does not govern West Bountiful. The best course of action for the applicant may be a zone change or text change.

Paul Tanner provided the appellant's response. He thanked council for reviewing all the documents which were very informative. He said they approached neighbors early on as part of the conditional use process and to get input on any concerns they might have. The site plans are very flexible. Traffic is currently a problem, and he would love to see the speed limit reduced to protect everyone, but he doesn't feel the traffic from their small school will impact it very much. He believes this location is the best location for the school; it is 2.3 acres so will not lead to absurd uses. It is permitted in the commercial area on Highway 89 but that is not safe for children. Restaurants with alcohol are not allowed by public or private schools for safety reasons which also make commercial areas undesirable.

Mr. Tanner posed the questions; how many applications has the city received for a private school? If none, that is probably why it was never contemplated. If a request had come in for a different residential location, would it have been allowed? Maybe. If a small religious group applied, would they be allowed? Yes. If the LDS church wanted to provide education, could they do that here? Yes.

He said they are flexible. He is not sure why the city's brief lists it as limiting students. The school accepts all students that apply and can pay the tuition. Could a not-for-profit school be allowed? If so, we could change our status. He said he respects that the city can come up with its own definitions, but as a private landowner, if I want to dedicate a portion of my property to a quasi-public use, I can but I'm responsible for the safety of the users. A private owner can allow the public to use its land.

He closed by saying he is not a lawyer but hopes the city will allow us this opportunity. Staff said private schools are not quasi-public so are not allowed, but we believe it is within our legal right to have school here and as part of our filing package have also submitted a request for text change.

Mayor Romney said the council will consider the comments made, review briefs, and take the issue under advisement. They plan to take the time to make the right decision and will issue a written decision as quickly as possible, probably 1-2 weeks.

7. Cost/Budget Approval – New Public Works Facility, 1410 W 1200 North.

Mayor Romney disclosed that the company he works for is the contractor doing work on the Public Works facility. He was not involved in the selection process.

Duane Huffman presented the current construction budget and costs prepared for the new Public Works facility on 1200 North which were discussed in the council work session on March 1, 2022. The construction total is \$5,158,580. He added that staff and contractors continue to work to lower costs

where possible and obtain the best-value bids. Staff will bring updated budgets/costs as they are available.

MOTION: *James Ahlstrom Made a Motion to Approve the Cost/Budget for the New Public Works Facility not to exceed \$5,158,580. James Bruhn Seconded the Motion which PASSED by Unanimous Vote of All Members Present.*

8. Request for Deferral of Public Improvements - 1410 W 1200 North (WBC Public Works)

Kris Nilsen provided information on the request for deferral of public improvements and secondary water requirements for the West Bountiful Public Works facility on 1200 North. There is no sidewalk or curb on 1200 North between 1100 West (2,360 feet East) and the entrance to the Legacy trailhead (590 feet West), and there is no secondary water service on 1200 North west of 1100 West.

On-going infrastructure improvements and future connecting developments may warrant the construction of deferred improvements in the future, but staff recommends a deferment at this time. We do not know the future of this road, there is no pipe for curbing to drain into, and we may decide we want trails in this area so installing the required public improvements and the connection to a secondary water system is premature until such time as curb, sidewalk, and secondary water are extended into 1200 North near the subject property.

James Bruhn commented that because the new facility is near the end of the road, it is a good place to start and will make the building look better. He does not have a problem deferring sidewalk but would prefer to see curb/gutter installed. There was discussion on drainage and what would need to be done if it was built as an island.

MOTION: *James Bruhn Made a Motion to Deny the Request to Defer Public Improvements for the Public Works Facility. Rod Wood Seconded the Motion. The Motion failed with a Vote of 3-2 as reflected below.*

James Ahlstrom – nay
Kelly Enquist – nay
Rod Wood - aye

James Bruhn – aye
Mark Preece – nay

MOTION: *James Ahlstrom Made a Motion to Grant the Request to Defer Public Improvements for the Public Works Facility. Mark Preece Seconded the Motion. The Motion passed with a Vote of 3-2 as reflected below.*

James Ahlstrom – aye
Kelly Enquist – aye
Rod Wood - nay

James Bruhn – nay
Mark Preece – aye

9. Ordinance 450-22, An Ordinance Modifying Public Improvements Required for Building Permit Approval.

This agenda item was tabled until the next regular meeting.

10. Ordinance 451-22, An Ordinance Clarifying Yard Regulations ins in Residential Zones.

This agenda item was tabled until the next regular meeting.

11. Meeting Minutes from March 1, 2022.

MOTION: *James Ahlstrom made a Motion to Approve the Meeting Minutes from March 1, 2022, as Presented. Rod Wood Seconded the Motion which PASSED by Unanimous Vote of all Members Present.*

7. Staff Reports

Police – Duane Huffman

- Moving along with background on our new candidate.

Public Works – Steve Maughan

- 400 North well completion is getting closer. Working to get chemicals taken care of and a permit issued. We hope it will be up and running by April 1.
- Aerating parks and will open restrooms next week before baseball begins.
- Grading will begin this week for the Public Works facility.
- Spring clean-up hours have changed. We will only offer clean-up on Thursday, Friday and Saturday (April 14-16) but will be open from 8 am to 8 pm. Green waste will be paid for at the Bountiful Landfill all week from Saturday, April 9 – Saturday April 16th.

Engineering – Kris Nilsen

- 600 West road construction project - working on bonding and contracts.
- Looking at water connection for the golf course.

Community Development – Cathy Brightwell

- Working on updated Landscape ordinance to meet Weber Basin standards.

Administration – Duane Huffman

- Weber Basin irrigation water start-up will probably be delayed until mid-May, contracts will be reduced by 60%, and watering will be limited to 1 day/week. We expect more information in the next couple of weeks. Last year the council adopted Weber Basin's restrictions for consistency and may want to consider again this year.
- Plan to have an early budget work session on April 5.
- Met with Scratch Development. The new owners of the Smith property have a vision for the property. They are not as concerned with where they annex as previous owners were, they just want the best project. Propose we meet on March 29 (5th Tuesday), so they can present their vision. *Council agreed to meeting.*
- West Bountiful is now a two-time recipient of the Best Water in the State award. He reviewed options for again purchasing commemorative squishy balls for the parade, and the council asked him to proceed.

8. Mayor / Council Reports

Kelly Enquist – Mosquito abatement still needs employees. They sent out notices for previous no spray zones, if they are not returned, they won't be recognized.

James Bruhn – There are still barrels across 1450 West by Jack Williams' property so vehicles cannot get to the turnaround. Steve Maughan said they were left there because there aren't any homes, but he will have them moved.

James Ahlstrom – Youth City Council is busy filling Easter eggs for the Easter Egg Scramble to be held on April 16.

Mark Preece – explained the problems at South Davis Sewer District. Haven't been paid for the past 8 weeks for gas conversion. Compressors need oil and have become sticky due to being up and down. South plant is pretty much done, but still waiting on some materials. Still engineering the north plant to start construction required by the state.

Rod Wood asked who is responsible for Legacy trail where bench has graffiti. Steve Maughan said he would take care of it. He also commended Duane, Kris, and Steve for doing a great job handling the well issue last week.

9. Closed Session Pursuant to UCA § 52-4-205.

MOTION: *James Ahlstrom Made a Motion to move into Closed Session in the Police Training Room for the Purpose of Discussing Pending or Reasonably Imminent Litigation. The Regular Meeting Will Adjourn Simultaneously Upon Adjournment of Closed Session. Mark Preece Seconded the Motion which PASSED as reflected below.*

James Ahlstrom – aye
Kelly Enquist – aye
Rod Wood - aye

James Bruhn – aye
Mark Preece – aye

10. Adjourn.

The meeting adjourned simultaneously with the closed session

The foregoing was approved by the West Bountiful City Council by unanimous vote of all members present on Tuesday, April 5, 2022.

Cathy Brightwell, City Recorder