

Mayor
Kenneth Romney

WEST BOUNTIFUL CITY

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Duane Huffman

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James Bruhn
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THE WEST BOUNTIFUL CITY COUNCIL WILL HOLD A REGULAR MEETING AT 7:30 PM ON TUESDAY, JUNE 20, 2023, AT THE CITY OFFICES

AGENDA

Invocation/Thought –Mark Preece; Pledge of Allegiance – James Ahlstrom

1. Approve Agenda.
2. Public Comment - Two minutes per person; five minutes if on behalf of a group.
3. Appeal by Craig Hammond of the Planning Commission's Approval of a Conditional Use Permit for Auto Italia Repairs at 638 N 660 West.
4. Public Hearing for a Proposed Exemption for Parks & Recreation Impact Fees under WBMC 3.22.050 for Development Activity Attributable to Moderate Income Housing.
5. Ordinance 471-23, An Ordinance Amending the *WBMC 3.22 Impact Fees* to Waive Park Impact Fees Related to Moderate Income Housing.
6. Ordinance 472-23, An Ordinance Amending *WBMC 17.52 Off-Street Parking* and *WBMC 17.44 Housing in Certain Commercial Areas Overlay* Related to Reduced Parking Regulations for Certain Residential Properties.
7. Resolution 537-23, A Resolution Adopting Amendments to the FY 2022-2023 Budget.
8. Resolution 538-23, A Resolution Adopting the Tentative Budget and Proposing a Property Tax Rate for Fiscal Year 2023-2024.
9. Bid Award – 2023 Asphalt Street Overlay Project.
10. Meeting Minutes from June 6, 2023.
11. Staff Reports–Police, Public Works, Engineering, Community Development, Administration.
12. Mayor/Council Reports.
13. Closed Session, if necessary, for the Purpose of Discussing Items Allowed Pursuant to UCA § 52-4-205.
14. Adjourn.

The above agenda was posted on the State Public Notice website (Utah.gov/pmn), the city website (WBCity.org), posted at city hall, emailed to the Mayor and City Council, and provided to the Davis Journal on June 16, 2023, by Cathy Brightwell, City Recorder.

Minutes of the West Bountiful City Council meeting held on Tuesday, June 20, 2023, at West Bountiful City Hall, 550 N 800 West, West Bountiful, Davis County, Utah.

MEMBERS: Mayor Pro Tem Mark Preece, Council members James Ahlstrom, James Bruhn, Kelly Enquist, and Rod Wood.

STAFF: Duane Huffman (City Administrator), Chief Brandon Erikson, Steve Maughan (Public Works Director), Kris Nilsen (City Engineer), Steve Doxey (City Attorney), and Cathy Brightwell (City Recorder).

EXCUSED: Mayor Romney

PUBLIC: Deby Marshall, Alan Malan, Craig Hammond, Debbie Hammond, Jenn Nielsen, Clinton Drake, Dennis Vest, Michelle Curtis, Renate Allen, Kassie Salmon, Aimee Hinojosa, Dannie McConkie, Laura Mitchell, Amy Paget, Alan Malan, David Ryan, Terrie Ryan.

Mayor Pro Tem Preece called the regular meeting to order at 7:32 pm and provided an invocation; James Ahlstrom led the Pledge of Allegiance.

1. Approve the Agenda.

MOTION: *James Bruhn made a Motion to approve the agenda as presented. Rod Wood seconded the Motion which PASSED unanimously.*

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

Amy Paget, resident, commented that she has a soft spot for small businesses and supports the auto repair business appeal that will be heard later this evening. Her opinion is that the shop is so far back off the street by the railroad tracks that most people won't even know they're there and they are not nearly as loud as the trains. If the new business can meet the conditions, there won't be any problems and they should be allowed to operate.

Michelle Curtis, resident, commented on the plans to install sidewalk on 660 West. She is happy the city has scheduled this project, especially if there is more traffic from a nearby home business. She asked for details about the level of improvements planned for the road and was told that the city currently plans to put sidewalks on both sides of the road. She said she would love that as the kids now have to walk out into the street to go around cars parking along the road.

Renate Allen, resident, asked when the 660 West project is scheduled to begin. She was told that bids will go out after the first of the year and likely begin early 2024.

Amy Parker, resident, asked how far the improvements on 660 West will eat up her yard. There was a brief description of public right-of-way, and Steve Maughan said the city will be able provide an idea of where the improvements will be as the design process proceeds.

3. Appeal by Craig Hammond of the Planning Commission's Approval of a Conditional Use Permit for Auto Italia Repairs at 638 N 660 West.

An appeal was filed by Craig Hammond on June 1, 2023, after the planning commission issued a conditional use permit ("CUP") for an auto repair business in the R-10 zone, at 638 N 660 West. Duane Huffman reviewed the appeal process explaining that the appellant will present his case followed by Mr. Doxey,

representing the city planning commission. After both parties have had an opportunity to state their case, the city council will go into closed session to deliberate. Mr. Clinton Drake is acting as counsel for the city council in their role as an appeal body.

Craig Hammond stated he appreciates the process of government. This appeal is not public clamor, personal to the planning commission or to Auto Italia, and not vindictive, but addresses the concern of residents and provides an opportunity for comments on the conditional use permit and its impact on our city.

Mr. Hammond noted that this home occupation includes a conditional use permit that runs with the land, and a business license for the business owner. If the business ends, the conditional use will continue as a vested property right for any new owner who can then ask for the same use. Utah Code says a CUP is unique as it requires approval if conditions can be established to mitigate the negative impacts and it meets applicable standards. Once granted it is deemed an allowable use. It cannot be used for prohibited uses.

The stated purpose and intent of Title 17 (Zoning) is to promote health, safety, and general welfare of city residents. The planning commission applied standards from Title 5 (Business Licenses and Regulations). There are eighteen different requirements that must be met for a home occupation including that the home occupation must be clearly incidental and secondary to the use of the dwelling or structure in which it is located and may not change its purpose. Incidental means it is subordinate or secondary. The installation of two lifts in the shop is not incidental, especially when they are located in the far end of the structure with access to the lifts leaving little area for other uses.

Another concern is parking. One of the conditions is to limit business use, including parking, to 25% of the 2000 sq. ft. building. How can parking be limited to 500 sq. ft when there are two lifts to be used in the building and cars waiting for service or waiting to be picked up? When does the restriction for outside storage begin? What if customers can't pick up vehicles until the next day? These are questions that need to be answered.

Increased traffic is also an issue. The conditions limit deliveries, customers, and tow truck deliveries to three times a day, and even more concerning than the increased traffic is the type of traffic. Tow trucks, waste collection vehicles, etc., are not typical in a residential neighborhood. According to the truck company that will be used to pick up oil and other waste, they will use 4,000 gallon mounted trucks with 80,000 GVW which is not allowed in the city.

Does the city's general plan and city code permit this type of use of land in a residential area? According to the planning commission, since it is not prohibited, it can be allowed. My position is the opposite. According to Craig Call with the Utah Land Use Institute, all parts of an ordinance are to be read together to reconcile discrepancies. For example, in WBMC 17.24 (R-1-10 zone) the Purpose is to preserve and enhance the residential nature of the neighborhood. In 17.04.030, Home Occupation is defined as an occupation carried on entirely within the dwelling unit and shall not involve the use of any accessory building, either attached or detached, or yard space outside the main building. This conflicts with Section 5 – Home Occupations that says 25% of an accessory building may be used so long as it does not change the residential character of the lot.

Additionally, in reviewing the eight zoning districts, auto repair is allowed in four of the commercial/ industrial zones but is not listed as allowed in the Commercial Neighborhood zone. This indicates that auto repair is not intended to be located in or coexist in residential areas.

Auto Italia may be a small business but if approved, will change the residential character of the city. There may be others waiting in the wings to apply for a similar business on their property. The only way to stop

these kinds of businesses changing the character of our city is to deny this conditional use and make a legislative move to clean up the discrepancies in the city code that have come out of this case.

Questions from council:

James Ahlstrom asked why Mr. Hammond doesn't believe the proposed conditions will mitigate the negative impacts. Mr. Hammond responded that traffic is a big issue, especially large trucks. Also, it is difficult to separate public clamor from the law. Mr. Call, from ULCT, has cautioned against adopting unreasonable restrictive conditions that businesses may not be able to meet.

Mr. Ahlstrom commented that there are situations where no slate of conditions can mitigate negative impacts and should not be a conditional use matter. He does not believe the intent of City code is to allow the CUP process to approve commercial businesses in residential areas, especially when that business is not allowed in one of our commercial zones. Title 17 is clearly at odds with Title 5.

Rod Wood added that the zoning regulations do not allow accessory buildings to be used for home occupations or otherwise it would be listed as permitted or conditional, and with large trucks coming for oil pick-up and cars waiting for service, how does it become an acceptable use in a residential zone?

Craig Hammond – Title 17 definitely conflicts with Title 5 and is ambiguous. Trucks the size required for this business are not something we allow in residential areas, and surrounding cities do not allow this use in residential areas. The city needs to more clearly define what is and is not allowed. If uses are clarified, it will help similar cases in the future but won't be applied to a business already approved. He gave an example of another home business that had been approved years ago and after neighbor complaints, the city changed the code. This prevented similar businesses from starting up but because the existing business owner already had a CUP, his business became permitted (grandfathered).

James Ahlstrom noted that our code does not list affirmatively what is allowed or what is prohibited so determination can be made by looking at the intent of the code. He believes heavy commercial businesses should be relegated to commercial areas.

Rod Wood asked what the previous use of the building was. Mr. Hammond responded that the previous owners (Roush) had a trucking company in the accessory building, but it was never licensed.

Mr. Doxey presented arguments on behalf of the planning commission. He stated that Mr. Hammond provided capable and passionate arguments and he appreciates the strong feelings on both sides. He noted that the important thing to remember as an appeal authority is the standard of review from city code. The correctness of the planning commission's decision is an interpretation of law. It was consistent with State code that requires a CUP to be approved if reasonable conditions can be imposed. If conditions cannot substantially mitigate the negative impacts, the CUP may be denied. The bias is toward approving a CUP.

One of Mr. Hammond's points is that auto repair is not listed as a permitted or prohibited use, and if the use is not specifically allowed, then can be prohibited. It is necessary to read the Code as a whole, a more specific provision will prevail over a general provision. The statement in Title 5 is specific when it says that 25% of an accessory structure can be used for a home occupation. The definitions cited by Mr. Hammond are more general. The applicant is in conformity with code by using a portion of the home and 25% of the accessory structure.

It is correct that a CUP runs with land, but a future tenant would need to apply for a home occupation business license and go through the CUP process; it is not something that is automatically passed on. There is also a provision in the CUP that allows compliance reviews. The planning commission imposed a three month review of the impact on the neighborhood. If there are concerns about the unreasonableness of conditions, it must be brought up by the applicant not by neighbors. The city council should not be concerned about future compliance, but instead whether the planning commission made the correct decision. The conditions are set up to mitigate impact, so the CUP should be approved. If the applicant cannot comply with the conditions, it can be dealt with at a later time.

Another issue is Mr. Hammond's argument that a home occupation cannot alter the character of an accessory structure. The standard is whether it will alter the residential character of the dwelling.

James Ahlstrom asked if there are uses that cannot be mitigated, for example, gas stations? Mr. Doxey said based on the fifteen conditions, it's apparent the planning commission attempted to mitigate the impacts. If a use is proposed and the negative impacts cannot be mitigated, the CUP would be denied. Mr. Ahlstrom asked if code should be changed to specifically list uses that are permitted and prohibited. Mr. Doxey explained that the business being discussed is a home occupation not auto repair, and home occupation is an allowed use. Mr. Ahlstrom then asked if that means a gas station or grocery store could be allowed as a home occupation? Mr. Doxey replied that they could be if reasonable conditions can be imposed.

Aimee Hinojosa, representing Auto Italia, said their business specializes in European cars. Their customers are return or referrals, and by appointment only. She stated that they believe the conditions imposed by the planning commission to be reasonable. She explained that when they were looking for new commercial space after their lease was not renewed, everything they found was at least 3 times more than they had been paying. They became aware of the property on 660 West and loved the large home and yard for their family. An added bonus was the shop where they could continue their small business. She said they have no plans to expand. Her husband has always worked by himself and is a tidy mechanic with his workspace clean and organized. They went to the city to file all necessary paperwork to make sure their business met all requirements; it was important to them to operate legally. In response to several comments made earlier, their oil containment is properly handled, the same way it was at their previous commercial location. She added that tow trucks do not arrive without notice and are typically only necessary 2-3 times a month.

Mr. Hammond made closing comments raising the following points.

- Having restrictive language in code should not nullify other sections of code that are in conflict.
- The code says that the dwelling or structure cannot be changed, which is not the case here.
- A CUP runs with the land, and it is important to consider future tenants. We need to analyze the current use but also future uses because it becomes an invested right.
- Approval needs to be based on the list of permitted uses not on conditions that may or may not be met.

Mayor Pro Tem Preece explained that the council will move into a closed meeting to discuss the issues raised and provide direction to their attorney to draft a decision which will be issued at a later date.

MOTION: *James Ahlstrom Made a Motion to Move into Closed Session in the Police Training Room at 9:25 pm Pursuant to Utah Code Ann. § 52-4-205(c) for the Purpose of*

Discussing the Appeal/Reasonably Imminent Litigation. Rod Wood Seconded the Motion which PASSED.

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

*James Bruhn – aye
Mark Preece – aye*

The meeting resumed at 10:10 p.m. Mayor Pro Tem Preece said the written decision is expected to be voted on at the July 18, regular city council meeting, or at a public noticed special meeting, if necessary.

4. Public Hearing for a Proposed Exemption for Parks & Recreation Impact Fees under WBMC 3.22.050 for Development Activity Attributable to Moderate Income Housing.

Duane Huffman reviewed the three strategies the city selected last year as part of the state mandated Moderate Income Housing efforts. By the end of next month, the city must report to the state on its success in accomplishing the Strategies.

Strategy 3 is to “reduce, waive, or eliminate impact fees...” City staff and legal counsel reviewed the city’s code related to impact fees. After studying the issue, staff recommended a proposal to City code that eliminates park impact fees for moderate income housing development.

MOTION: *James Bruhn made a Motion to open the public hearing. Kelly Enquist seconded the Motion which PASSED unanimously.*

No public comments were offered.

MOTION: *James Bruhn made a Motion to close the public hearing. James Ahlstrom seconded the Motion which PASSED unanimously.*

5. Ordinance 471-23, An Ordinance Amending WBMC 3.22 Impact Fees to Waive Park Impact Fees Related to Moderate Income Housing.

MOTION: *James Ahlstrom Made a Motion to Approve Ordinance 471-23 to Waive Impact Fees Related to Moderate Income Housing Development. 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*

6. Ordinance 472-23, An Ordinance Amending WBMC 17.52 Off-Street Parking and WBMC 17.44 Housing in Certain Commercial Areas Overlay Related to Reduced Parking Regulations for Certain Residential Properties.

Duane Huffman reviewed Strategy 2 selected by the city as part of its Moderate Income Housing plans. The Strategy requires, “land use regulations to eliminate or reduce parking requirements for residential development where a resident is less likely to rely on the residents’ own vehicle, such as residential development near major transit investment corridors or senior living facilities.”

City staff and contract planners drafted proposed amendments to City code to implement this strategy. The planning commission reviewed the proposal, held a public hearing, and recommended the changes proposed this evening.

MOTION: *James Bruhn made a Motion to Approve Ordinance 472-23 as presented. James Ahlstrom seconded the Motion which PASSED as reflected below.*

<i>James Ahlstrom – aye</i>	<i>James Bruhn – aye</i>
<i>Kelly Enquist – aye</i>	<i>Mark Preece – aye</i>
<i>Rod Wood – aye</i>	

7. Resolution 537-23, A Resolution Adopting Amendments to the FY 2022-2023 Budget.

Duane Huffman presented the Amendments to the FY 2022-2023 Budget as previously shared with the Council. He noted that after the public hearing held at the last meeting, one significant change has been made. This change relates to the timing of the police department's new record system. Initially, we had the full \$80,000 in next year's budget, but now we have it split with half in the current year budget and half in the 2023-2024 budget.

MOTION: *James Ahlstrom made a Motion to Approve Ordinance 537-23 as presented. Rod Wood seconded the Motion which PASSED as reflected below.*

<i>James Ahlstrom – aye</i>	<i>James Bruhn – aye</i>
<i>Kelly Enquist – aye</i>	<i>Mark Preece – aye</i>
<i>Rod Wood – aye</i>	

8. Resolution 538-23, A Resolution Adopting the Tentative Budget, and Proposing a Property Tax Rate for Fiscal Year 2023-2024.

Duane Huffman reviewed the FY-2023-2024 Tentative Budget which the council has been working on for the past several months. The current draft incorporates what was discussed in those meetings. The biggest change is the capital project for next year which will be 660 West instead of 700 North, although nothing has yet been designed. He also reviewed Park and RAP projects, clarifying that the council chose not to move forward with the fence along Pages Lane at the city park, and no trail connection or piping is included at the end of 975 West on the south end of the golf course at this time.

He explained that this Resolution does not adopt a final FY-24 budget but will allow the city to implement new wages and begin the process to hire a new police officer. A final budget and new tax rate will be presented at the end of the Truth in Taxation process for adoption.

MOTION: *James Ahlstrom made a Motion to Approve Resolution 538-23 as presented. Rod Wood seconded the Motion with PASSED as reflected below.*

<i>James Ahlstrom – aye</i>	<i>James Bruhn – nay</i>
<i>Kelly Enquist – aye</i>	<i>Mark Preece – aye</i>
<i>Rod Wood – aye</i>	

9. Bid Award – 2023 Asphalt Street Overlay Project

Kris Nilsen explained that the FY-23 budget included funding for Street Maintenance and Repair projects which included an Asphalt Street Overlay Project. A request for bids was issued that covers the 560 West cul-de-sac and includes two inches of asphalt surface milling removal and placement of two inches of asphalt overlay for the full width of the street. Four bids were received that were very close. Staff recommends awarding the project to Morgan Asphalt, Inc., for \$38,651, as the lowest responsible bidder.

MOTION: *Kelly Enquist made a Motion to Award the 2023 Asphalt Street Overlay Project to Morgan Asphalt, Inc. James Bruhn seconded the Motion which PASSED unanimously.*

10. Meeting Minutes from June 6, 2023.

MOTION: *James Ahlstrom Made a Motion to Approve the Meeting Minutes from June 6, 2023, as presented. James Bruhn Seconded the Motion which PASSED Unanimously.*

11. Staff Reports

Police – Chief Erikson

- The entire department has completed training on the new records system. It is scheduled to start up next week.

Public Works – Steve Maughan

- Public Works building update. The exterior is done, and grading and paving. Furniture is being installed today. Expect occupancy in the next few weeks.
- Google Fiber is completing their clean-up.
- The water project is moving slowly. They are in the testing phase and then will begin hook ups. The goal is to get them out of the park and cleaned up by July 3rd. The same contractor is working both sections of the project so they can move around. Crack seal finishing up.
- Working on safe sidewalks starting at the north end of the city. The tree project contracts have been signed, and we will begin meeting with residents to make arrangements to take down the trees.
- Will begin hanging holiday banners next week.

Engineering – Kris Nilsen

- Continue to work on Doug's Corner subdivision. The trailers are gone and the safety conditions, including fencing, have been met. There are a few more conditions to be met before city council approval.

Community Development – Cathy Brightwell

- No report.

Administration – Duane Huffman

- No report

12. Mayor / Council Reports

Kelly Enquist – Mosquito Abatement is still short staffed forcing current employees to work a lot of overtime. They sprayed 35,000 acres in May. Last year there were 700 spray requests, and there were more than 450 just in May.

He also commented that he has been asked by residents if the city will consider a youth recreation program similar to surrounding cities.

James Bruhn – Wasatch Integrated was able to purchase the two trucks with double trailers that have been hauling the garbage out every day so they will be able to continue to work. It's a big undertaking to transition without shutting down. There is talk of a new transfer station, possibly near Bountiful City Landfill.

Arts Council is working hard on preparations for the July 4th holiday celebration.

Have been getting complaints about the Terry Nilsen property next to the park. It needs to be addressed.

James Ahlstrom – Five of our Youth Council members volunteered for the Rotary Club's Coats for Kids event last weekend setting up and moving equipment. As in years past, we received very good feedback on the hard work our kids do and how they can be relied upon to show up and work.

Mark Preece – South Davis Sewer District compressors are having motor problems. Purchase is delayed until everything is fixed, which is expected to be a \$1M repair.

Rod Wood – no report. Asked for an update on the plaque for the public works building. Duane Huffman indicated it is being worked on.

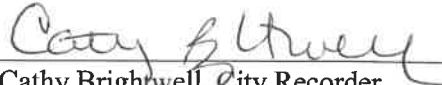
13. Closed Session pursuant to *Utah Code Ann. § 52-4-205*, if needed.

No closed session was needed.

14. Adjourn.

MOTION: Kelly Enquist made a Motion to Adjourn the Meeting. James Bruhn Seconded the Motion which PASSED Unanimously.

The foregoing was approved by the West Bountiful City Council by unanimous vote of all members present on Tuesday, July 18, 2023.


Cathy Brightwell, City Recorder

