

Minutes of the Salem City Council Meeting held on June 15 & 20, 2005 in the Salem City Council Chambers.

Council meeting on Wednesday June 15, 2005 was postponed because the lack of a full quorum. The motion was made by Councilmember Lynn Durrant to postpone city council meeting until Monday, June 20, 2005, morning at 8:00 a.m. Councilperson Dale Wills seconded the motion. Those who asked to be on the agenda were notified of the change. There were also postings of the change for the public to see.

MEETING CONVENED AT: 8:00 AM, Monday June 20, 2005.

CONDUCTING: Mayor Randy A. Brailsford.

COUNCIL PRESENT:

Mayor Randy A. Brailsford
Councilperson Dale R. Wills
Councilperson Dale Boman
Councilperson Stanley W. Green

STAFF PRESENT:

Jeffrey Nielson, City Recorder
Chief Brad James, Police Chief
David Johnson, Public Works
Junior Baker, City Attorney

Excused from Council Meeting:
Councilperson Lynn Durrant
Councilperson Terry A. Ficklin

OTHERS PRESENT

Pauline Smith
John Callister
David Charles
Kevin Jones

Paul Tervort
Michael LaFontain
Sharlene Tyler

Lane Henderson
Grant Charles
Tasha Lopez

1. VOLUNTEER MOTIVATIONAL/INSPIRATIONAL MESSAGE

Mayor Brailsford asked if anyone would like to give a motivational or inspirational message. Paul Tervort stated he would like to offer a motivational message in the form of a prayer.

2. INVITATION TO SAY PLEDGE OF ALLEGIANCE

Mayor Brailsford asked if anyone would like to invite those who would wish to participate to stand and say the pledge of allegiance. Police Chief Brad James stated that he would like to. He then led the pledge of allegiance for those who wanted to participate.

47 **3. PUBLIC HEARING**

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49 Open

50 **MOTION BY:** Councilperson Stanley Green to open public hearing.

51 **SECONDED BY:** Councilperson Dale Wills.

52 **VOTE:** All Affirmative (3-0).

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54 a. Kevin Jones – Zzorro 3 Annexation

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56 Mayor Brailsford turned the time over to Kevin Jones. Kevin posted a map of the
57 annexation area. There are 13 property owners on the annexation; seven of the 13
58 are in favor of the annexation, which is over the 45% needed. He explained and
59 showed the location of the annexation. It is by 800 South and Salem Canal Road.
60 Elk Ridge Drive is on the West side. The question was asked who the names of
61 the landowners opposed to the annexation. Kevin stated the landowners on the
62 north, who had homes already, were against it (Sharlene Tyler, John Callister,
63 David Charles, and Michael Lafontaine). Kevin stated that Michael Hendrickson
64 was okay with the annexation, but he does not have a home on it yet. He also
65 stated that Willard Kowallis and his wife have passed away, but he has heard that
66 the heirs of the home are okay with it. A representative from the Kowallis family
67 stated that that is not true. The family is against the annexation. Kevin also
68 understood that the people, who purchased Dennis Totman property, and home,
69 were okay with the annexation. A lady who purchased the home stated they have
70 some concerns about the annexation. She is also concerned about the canal and
71 whether it would be covered when it is annexed into the city. Kevin stated that he
72 is sorry about some of the miss representations heard today. His partner Daniel
73 Bingham was the one who provided Kevin with all of the information.

74
75 Mayor Brailsford opened the discussion for the public.

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77 Michael Lafontaine stated that he is concerned because when he was approached
78 he was told that if he did not sign the approval for the annexation he would have
79 to pay \$1,000 to buy out the Strawberry Electric. Kevin stated that there is a fee
80 for the Strawberry Electric. He was under the impression that in the upper portion
81 of the annexation (south) he had worked it out. The north section, he stated, Kim
82 Simmons wanted to annex into the city, and he would be willing to buy the
83 Strawberry Lines out for the others on the north. There would be no cost to those
84 property owners. Attorney Baker explained the process with the strawberry
85 electric and how they require the purchase of the infrastructure along with the 10-
86 year profit loss. The question was asked who would be responsible to pay for it.
87 Attorney Baker stated that the property owners are responsible for it and it would
88 have to be worked out between them.

89
90 David Charles stated that he is concerned about the animal rights and the power
91 issue; he feels the city should be responsible for the fee. Mayor Brailsford stated
92 that when you annex into the city you would keep your animal rights. Once the

property is divided into smaller lots that do not meet the requirements for animal rights, they will be lost. He also stated that if the property is greenbelt, it would stay greenbelt until it is changed by the property owner. The property tax is a little higher in the city, but you also receive the benefits of being in the city.

The representative of the Kowallis family asked who would be responsible for the curb and gutter. Mayor Brailsford stated that when the land is developed, the property that is being developed would have to have curb and gutter, and the developer would be responsible for it. The question about the canal also came up. The canal is the same as the curb and gutter; when the land is developed, if the canal is part of that property, the developer would be required to cover the canal. The question was asked about the zone. Mayor Brailsford stated that the General Plan is showing that area as a R2 zone, this would be determined when the annexation is approved. The lot size for R2 is 1500 square feet. Other concerns that came up, when the land to the south is developed who will determine where the roads go. The property owners to the north are very concerned about being land locked. Mayor Brailsford stated that the property is only being annexed; when the land is developed it goes through the process and different committees who look at the developments and try to make sure no one would be landlocked. The representative to the Kowallis stated that he was told that if he did not sell his property he would be landlocked.

Mayor Brailsford stated he is very concerned about some of the items that have been brought up, the misrepresentations, and what has been stated to some of the landowners. He recommended to the landowners to get with Kevin and his partner to go over some of these items of concern and try getting them resolved. There was another question on the power, what happens if Kevin fails to pay Strawberry for the power, who would then be responsible. Attorney Baker stated that it all has to be worked out before the annexation may happen.

a. Kevin Jones – Zzorro 3 Annexation

MOTION BY: Councilperson Stanley Green to continue the public hearing on Kevin Jones – Zzorro 3 Annexation.

SECONDED BY: Councilperson Dale Boman.

VOTE: All Affirmative (3-0).

Attorney Baker stated that with the percent of landowners being so close, there should be proof brought in to the council. The council agreed and told Kevin he needed to bring proof in of the percentage of property.

b. Ordinance Amending Certain Provisions of the Subdivision and Zoning Ordinances of the Salem City Municipal Code.

Mayor Brailsford turned the time over to Attorney Baker. Attorney Baker stated that the state law requires some changes to be made with the Land Use Development and Management Act. These changes made will affect our Subdivision and Zoning Ordinances. One of the key areas that are being changed is the way public hearings are now done for items in this ordinance. The Utah State law requires public hearings to be with Planning and Zoning. Attorney Baker feels that the public hearings should also be held during council meetings. The other item is the conditional use, he then read from the ordinance about the conditional use. He stated that this is a standard that we do follow, and it is spelled out in the law. Another change for the council is that once a developer has turned in the application, and paid the fee, the council when acting as a administrative can not deny the request if it meets all the standards. When the council is acting as a legislate function, this is when the standards are created, this is where the council can say no. If the development meets all of the standards, then the council can not say no.

Another change is the notice for the public. Junior read from sections from the state law that states when public hearings are needed. When talking to other lawyers, they feel that the safer way is to schedule public hearing for preliminary plat rather than for final plat review. The reasoning is why have public hearings for the final plat, when everything has already been approved and meets all of the requirements. Why put the council in that position to have public comment on items that have already been approved. The question was asked regarding when the council is approving the preliminary ,are they acting as a legislative body? Attorney Baker stated that is an administrative function, but when you are adopting standards and voting on them, then you are acting as a legislative body. Councilperson Wills stated that he has some concerns then with the PUD, it allows a wide variation, and feels we should look at those standards. Attorney Baker stated that the PUD does have some give and takes to it.

Mayor Brailsford had a question on the bonding, and how it needs to be from a qualified financial origination. Attorney Baker stated that is a requirement, that the letters of credit and escrow bonds shall be from a federally insured bank and shall be submitted on standard forms. Attorney Baker stated other changes are the construction standards, proposing the option to use modified roll back curb.

Another recommendation is a clerical change, the county has recommended changing the PUD (Planned Unit Development) to just PD (Planned Development). Another change is that we currently require the developer to pay 2.5% of the bond to be used for inspection fees. It is being proposed to changing it to 5%. This fee will be non-refundable.

Other changes include taking a member of the city council off of the Planning and Zoning board. They can still have the assignment of being over planning and zoning, but will not be on the board. One reason is that the council will be the appeal board now, and if some recommendations came from DRC and Planning and Zoning, and someone wanted to appeal that, the council would be the appeal board. The law has also eliminated the board of adjustments; this will be done by the 4th district court. Attorney Baker referred to the ordinance and read from it.

Councilperson Wills has a question on the rolled back curb. He likes the idea of the roll back, but what about the older part of town where you could have people with different types of curb and sizes. He does not want to have mixture of rolled back and straight. Dave Johnson stated that he feels that the roll back should be done in the new subdivisions. He felt that DRC can make the recommendations, and when a single home is being built, that Dave can make the recommendations. A lot of the transitions between roll back and straight curbs would be made at the intersections.

Mayor Brailsford asked if there were any questions from the public on this item.

MOTION BY: Councilperson Stanley Green to accept ordinance 62005 with special note accepting roll back curb with the discretion of the public works director and DRC, and change PUD to PD, and public hearings for preliminary plat approval.

SECONDED BY: Councilperson Dale Wills.

VOTE: All Affirmative (3-0).

Close

MOTION BY: Councilman Dale Boman to close the public hearing.

SECONDED BY: Councilperson Stanley Green.

VOTE: All Affirmative (3-0).

4. Approve Final Budget for 2005 – 2006 and Amend Budget for 2004 - 2005

Mayor Brailsford stated that the final budget needs to be approved before June 22, 2005. The budget has been worked on and presented to the council.

MOTION BY: Councilperson Stanley Green to approve the final budget for 2005/2006 year.

SECONDED BY: Councilperson Dale Boman.

VOTE: All Affirmative (3-0).

Mayor Brailsford stated that the amended budget for 2004/2005 has been given to the council for review, and asked if there were any questions.

MOTION BY: Councilman Dale Wills to approve the amended budget for 2004/2005 year.

SECONDED BY: Councilperson Dale Boman.

VOTE: All Affirmative (3-0).

5. Donald & Pauline Smith – Subdivision Waiver at Approx. 350 W. 800 S.

Mayor Brailsford turned the time over to Pauline Smith. Pauline explained that they would like to have a subdivision waiver. They would like to build a home on one lot. She stated that their house would be facing south, across from the Salem West Stake Center. There was some discussion about the curb and if they would set the precedence for either having roll back curb or a planter strip. It was recommended that they have the high back curb instead of roll curb because it is a main road and not in a subdivision. The other side of the road is high back, so this will help maintain the consistency of curb in the area.

MOTION BY: Councilperson Dale Wills to approve Donald & Pauline Smith Subdivision Waiver at approx. 350 W. 800 S.

SECONDED BY: Councilperson Stanley Green.

VOTE: All Affirmative (3-0).

6. Mike Daley

Canceled off council meeting, decided to go before DRC.

7. Jared Jensen

Canceled off council meeting, decided to go before DRC.

8. Resolution of Intent to adjust a common boundary with Woodland Hills

Mayor Brailsford asked Attorney Baker if Woodland Hills has passed this resolution. Attorney Baker stated that they had passed it. He then gave a little history about the Davis Ranch and how part of the Davis Ranch is in Salem, and part is in Woodland Hills. Davis's would like to have all of their property in Salem. The Utah State law allows a city to do a common boundary, rather than a de-annexation, by passing the Resolution then holding a public hearing. The agreement would be signed after that. The agreement is the next item on the agenda. The council can approve the agreement to be signed after the public hearing. Attorney Baker read a little bit of the agreement to the council (the council all had copies of it). He pointed out that Woodland Hills is asking for an access

road through the ranch, and if it is developed to make sure the access road is still there. That would be an emergency fire escape road if Woodland Hills ever needed it. The Davis pond would also be accessible for the use of fire fighting if ever needed. The Davis' were okay with it. Councilperson Wills stated he has a concern with paragraph six. Attorney Baker stated that it is reasonable, and they must meet Salem City Standards when developing adjacent to Woodland Hills. He stated that Earl Davis did not have a problem with either. Councilperson Wills was still concerned about it. Attorney Baker stated again, that the council could adopt the agreement with the condition to wait until after the public hearing.

MOTION BY: Councilperson Stanley Green to approve Resolution 62005C of Intent to Adjust a Common Boundary.

SECONDED BY: Councilperson Dale Boman.

VOTE: All Affirmative (3-0).

9. Approve Boundary Adjustment Agreement with Woodland Hills.

Attorney Baker stated that this is the agreement that was discussed in the prior agenda item.

MOTION BY: Councilperson Stanley Green to approve the Boundary Adjustment Agreement with Woodland Hills, with the condition to wait until after the public hearing on July 20, 2005.

SECONDED BY: Councilperson Dale Boman.

VOTE: Councilpersons Boman and Green; Aye, Councilperson Wills; Nay (2-1).

10. Ordinance Amending the Tax Rate on the Gross Receipts of Telecommunications Service Providers

Mayor Brailsford turned the time over to Attorney Baker. Attorney Baker stated that the city's current phone tax rate is 2.2%; the max the state will allow is 4%. The intent of the phone tax was to replace the cell phone tax that was in place a couple of years ago. He stated that the state tax commission might change the max to 3%. It has been recommended for budget purposes this year, to change Salem City's Phone Tax rate from 2.2% to 4%.

MOTION BY: Councilperson Dale Boman to adopt Ordinance 62005 Amending the Tax Rate on the Gross Receipts of Telecommunications Service Providers to 4%.

SECONDED BY: Councilperson Stanley Green.

VOTE: Councilpersons Boman and Green; Aye, Councilperson Wills; Nay (2-1).

11. Approve Resolution Establishing Electric Utility Rates

Attorney Baker stated that it has been proposed to have a \$7.00 base rate on all electric users utility bill. The city used to have a minimum charge of \$6.50; the base rate would do away with the minimum charge. Also, with commercial demand, their minimum charge will also be changed, but there were very minimal commercial businesses that were charged the minimum rate of \$17.50. They would not be charged the base rate also.

Councilperson Wills is concerned that we should be looking at ways to decrease expenses, rather than raise fees and taxes.

MOTION BY: Councilperson Stanley Green to approve Resolution Establishing Electric Utility Rates by charging a \$7.00 base rate.

SECONDED BY: Councilperson Dale Boman.

VOTE: Councilpersons Boman and Green; Aye, Councilperson Wills; Nay (2-1).

Mayor Brailsford was concerned that the budget had been passed with the understanding that the tax increase and electric base rate were included in the approved budget.

Councilperson Wills stated that he knew the budget had to pass by June 22 according to Utah State Law. He still feels very strongly that the city should look at ways to reduce expenses, before increasing taxes.

12. Approve Crack Seal Machine Interlocal Agreement

Councilperson Wills stated that Salem has an opportunity to share a crack seal machine, for the roads, with Spanish Fork and Mapleton Cities. This will allow our city workers to do the crack sealing on our roads rather than hiring out. He feels this would be a great investment for the city. Our cost on it would be \$3,484. The question was asked if it would work like the chip seal, where we send crews to the other cities to work on it. Councilperson Wills stated that it would not, that our crews would only be working on our roads.

MOTION BY: Councilperson Dale Wills to approve the Crack Seal Machine Interlocal Agreement with Spanish Fork City and Mapleton City.

SECONDED BY: Councilperson Dale Boman.

VOTE: All Affirmative (3-0).

13. APPROVE MINUTES OF June 1, 2005

MOTION BY: Councilperson Boman to approve the minutes of June 1, 2005 as written.

SECONDED BY: Councilperson Stanley Green.

VOTE: All Affirmative (3-0).

366 **14. APPROVE BILLS FOR PAYMENT**

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368 Mayor Brailsford stated that the bills were reviewed on Wednesday June 15, while the
369 council that was present was waiting.

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371 **MOTION BY:** Councilperson Stanley Green to approve the bills for payment.

372 **SECONDED BY:** Councilperson Dale Wills.

373 **VOTE:** All Affirmative (3-0).

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376 **15. PUBLIC SAFETY**

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378 Police Chief Brad James stated that the city was able to purchase a used ambulance from
379 Provo City. He feels that it was a great purchase for the city. The cost was \$500.

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382 **16. OPEN DISCUSSION**

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384 Mayor Brailsford asked if anyone had anything for open discussion, there was nothing for
385 open discussion.

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388 **COUNCIL REPORTS**

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390 **17. MAYOR RANDY A. BRAILSFORD**

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392 Mayor Brailsford stated that he has some concerns on the bids for the new tennis courts,
393 and would like to resolve them before he proceeds with the bids.

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396 **18. COUNCILPERSON DALE BOMAN**

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398 Councilperson Dale Boman did not have anything to report this morning.

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401 **19. COUNCILPERSON LYNN DURRANT**

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403 Councilperson Lynn Durrant was excused from council meeting.

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406 **20. COUNCILPERSON TERRY A. FICKLIN**

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409 Councilperson Terry Ficklin was excused from council meeting.

21. COUNCILPERSON STANLEY W. GREEN

Councilperson Stanley Green did not have anything to report this morning.

22. COUNCILPERSON DALE R. WILLS

Councilperson Dale Wills did not have anything to report this morning.

23. DAVE JOHNSON, PUBLIC WORKS DIRECTOR

24. ATTORNEY S. JUNIOR BAKER.

Attorney Junior Baker handed to the council a proposed ordinance dealing with town home standards. The ordinance will be having a public hearing with Planning and Zoning, and then with Council on July 20. He has given it to the council so they can review it and make any recommendations for it. Mayor Brailsford had some questions on siding. Councilperson Wills had questions on the roof pitch, the HOA, the acreage. Attorney Baker asked them to put in their recommendations for Planning and Zoning.

Paul Tervort was wondering if he could be on the council agenda for an item dealing with water annexation with Bartel Mortenson and an agreement that was made between Bartel and the city. Mayor Brailsford asked Paul if they could meet with Attorney Baker to see if it could be resolved before coming to the council meeting.

CLOSE CITY COUNCIL MEETING

MOTION BY: Councilperson Dale Boman.

SECONDED BY: Councilperson Stanley Green.

VOTE: All Affirmative (3-0).

MEETING ADJOURNED AT: 9:15 AM

Jeffrey Nielson, City Recorder