

**PROCEEDINGS OF THE MUNICIPAL COUNCIL MEETING  
JANUARY 20, 2009**

**THE MUNICIPAL COUNCIL MET AS A COUNCIL OF THE WHOLE ON JANUARY 20, 2009  
AT 7:05 P.M. IN THE COUNCIL CHAMBERS, PROVO CITY CENTER, PROVO, UTAH.**

UPON ROLL CALL, THE FOLLOWING MEMBERS OF THE COUNCIL AND ADMINISTRATION WERE PRESENT:

Council Member David Acheson  
Council Member Cynthia R. Dayton  
Council Member Midge Johnson  
Council Member Cindy L. Richards  
Wayne Parker, CAO  
Neil A. Lindberg, Council Attorney

Council Member Steve Turley  
Council Cynthia J. Clark  
Council Member Sherrie Hall Everett  
Mayor Lewis K. Billings  
Terry Ann Harward, Council Executive Director  
LaNice Groesbeck, City Recorder

CONDUCTING: Chair Cynthia Dayton

OPENING CEREMONIES:

INVOCATION: Ben Dorton

PLEDGE OF ALLEGIANCE: Alek Chapman

MINUTES:

Council Member Richards moved to adopt the January 6, 2009, Council Meeting minutes as written, an action seconded by Council Member Hall Everett and approved 6:0.

QUESTIONS FOR THE MAYOR AND COUNCIL

Kendra Ammott, Provo, raised a concern about merchandise sold at Spencer's Gift Store in the Provo Mall. Some items are offensive, "extremely vulgar," and "out of control." Mall offices told her there was nothing they could do regarding this issue and referred her to Provo Police. The officer there did not know what to do and suggested she bring the issue to the City Council. She suggested a separated area for sale of certain items and an ID check to enter that section. Mayor Billings said Provo City and Utah County attorneys are looking at a similar compromise reached between the Davis County Attorney and Spencer's corporate office. Many times petitions tend to help business at such establishments. She gave her contact information to the Administration.

Robert Hammond, Provo, distributed an email he wrote regarding the Lover's Lane trail in north Provo. He built a home there in 1970 and landscaped and fenced to leave the lane open for future right of way as requested by the City. Recently he and his wife were walking north on Lover's Lane by Riverside Country Club and as they came to Timpview Estates, they noted "No Trespassing" signs in the trees and the lane was blocked. He asked the City's position on Lover's Lane. Mayor Billings said the City and the majority of area residents want Lover's Lane open to the public. But there is one property owner who is attempting to block use of the trail. The City evaluated options and preferred not to use eminent domain, believing a more patient approach is more appropriate. However, the City also doesn't want long standing prescriptive rights to be questioned. Mr. Hammond felt the City should do what is necessary to inform any future developers of the plans and expectations for the trail to protect the trail property farther north as it begins to develop. He hoped those who placed signs and blocked the trail would not think they could take possession because "no one has done anything." Mayor Billings added there have been two separate neighborhood and community ad hoc task forces to look at the trail that have made recommendations to Parks and Recreation staff. City representatives will contact Mr. Hammond to provide strategies for the north and south portions of the trail.

PRESENTATIONS, PROCLAMATIONS AND AWARDS:

**1. Proclamation: White Ribbon Week.** Mayor Billings invited Stephanie Vokfel and Cindy Moreno, president of *Communities for Decency*, forward to receive the proclamation declaring February 2009 as White Ribbon Against Pornography Month. A study of 600 American males and females of Jr. High School age and above showed 91% of the males 82% of females admitted to having been exposed to X-rated, hardcore pornography, mostly while doing homework. Unlike drugs, which can be eliminated from the body, pornographic images in the brain will stay forever. *Communities for Decency* is a statewide, nonprofit organization that promotes standards of decency, teaches children good values, and provides tools to empower parents to speak to children about the destructive power of pornography. Stephanie Vokfel, BYU Chapter, said the organization on campus helps to promote community decency and to educate the community on the impacts of pornography.

**2. Employee of the Month for January: Chris Morgan, Engineering.** Brent Taylor, Employee Association President, invited Chris Morgan to come forward to honor her as Employee of the Month for January 2009. Dave Graves, Engineering, said Ms. Morgan has worked with Engineering since 1996 and is a valued and dedicated employee. She faces challenges of job and family with enthusiasm and a positive attitude, and always has a smile on her face. She deals very effectively with contractors, engineers and the public in gathering data for utility permits and to solve complicated issues. She has also served with the Employee Association for about 10 years and is well respected by her coworkers and fellow employees.

**3. Presentation: Council.** Chair Dayton presented a plaque to Council Member Richards to recognize her service as the Council Chair for 2008. She noted that Ms. Richards approaches everything she does with great passion. As chair, she listened, participated, and gave dignity to the duties and responsibilities of the Council service.

#### ACTION AGENDA

**A. A resolution appointing David Acheson to the Provo Municipal Council to fill the unexpired term of Council Member George O. Stewart in City-Wide District 1.**

Chair Dayton expressed deep admiration and appreciation to each applicant who demonstrated a desire to serve the City. Those not selected were encouraged to run for election this year and to serve on City boards. She explained the selection process, starting with Mr. Stewart's resignation and ending with action tonight. Through the process, the Council received many good ideas to promote a better Provo. The person who fills this unexpired term will have the responsibility to listen carefully, weight the information and come to a best possible outcome for the city and neighborhoods in a way that best represents Provo. Chair Dayton noted that Coy Porter had withdrawn his application for this appointment. At the request of Ms. Richards, the Council and audience applauded all applicants as they stood to be recognized.

Chair Dayton introduced the resolution and invited a motion. Council Member Turley moved to adopt the resolution appointing David Acheson to fill the vacancy on the Municipal Council. The motion was seconded by Council Member Johnson and approved 6:0.

Mr. Acheson was administered the Oath of Office by LaNice Groesbeck, City Recorder, and took his place on the dias. He said he appreciated this process and the opportunity to serve.

#### RESOLUTION 2009-06

**A RESOLUTION APPOINTING DAVID ACHESON TO THE PROVO MUNICIPAL COUNCIL TO FILL THE UNEXPIRED TERM OF COUNCIL MEMBER GEORGE O. STEWART IN CITY-WIDE DISTRICT 1.**

**B. A resolution approving the purchase of property located at 204 West Center Street, Provo, Utah, and resale of the property to Utah County; and authorizing the Mayor to execute associated purchase and sale agreements.**

Chair Dayton introduced the resolution and invited Paul Glauser, Redevelopment Agency (RDA) Executive Director, to comment. He said the City has been negotiating with the owner of the property as well as with Utah County, and the agreements are ready to be executed, subject to Council approval. He identified the property adjacent to the preferred location for the downtown convention center. Much of the surrounding property has been purchased by the Redevelopment Agency or Utah County. Acquiring this property will allow the convention center to have a presence on and connection to Center Street. The property could be used for buildings or for a plaza with water features, etc. The sale of the property to the City is a “voluntary sale” and the existing business will relocate to another location in the downtown. Utah County will purchase the property from the City at appraised value and the City is providing the seller of the property with enough payment on this property to relocate. There is a gap of about \$185,000 difference between the values of the two properties which is proposed to be paid by the City. Reasons to do this include the enhancement of the convention center, which the City will enjoy, and the enhancement of the property at 295 West Center Street to which the business will relocate.

Mr. Turley said, while the gap is sizeable, proceeding with the proposal is in the “public good.”

Responding to Chair Dayton, Mayor Billings said funds for the proposal will come from the Economic Development Fund for land purchases.

Council Member Hall Everett moved to adopt the following resolution, an action seconded by Council Member Johnson, and approved 7:0.

**RESOLUTION 2009-07**

**A RESOLUTION APPROVING THE PURCHASE OF PROPERTY LOCATED AT 204 WEST CENTER STREET, PROVO, UTAH, AND RESALE OF THE PROPERTY TO UTAH COUNTY; AND AUTHORIZING THE MAYOR TO EXECUTE ASSOCIATED PURCHASE AND SALE AGREEMENTS.**

*C. A resolution adding approximately 0.11 acre of real property located generally north of the property owned by Fairway II, LLC, located at 933 East 1910 South, to the Surplus Property List and authorizing the Mayor to dispose of the property.*

Chair Dayton introduced the resolution and invited Tara Riddle, Property Manager, to comment. Ms. Riddle said Fairway II, LLC acquired property south of City property, and, in the process of obtaining project approve, determined an additional 30 feet was needed to accommodate parking. In addition to purchasing from Provo City the 30-foot strip at fair market value, Fairway LLC has agreed to a landscape maintenance agreement with the City to maintain the hillside beyond the strip up to 1813 South.

Responding to Mr. Acheson, Ms. Riddle said the sale price for the property is \$2.50 a square foot for a total of \$12,000. Responding to Ms. Richards, Ms. Riddle said the proposed use is allowed within the current zone. Landscaping will be considered when the landscaping agreement is completed. Mayor Billings said the business is ready to begin construction, and the landscaping would coincide with the development, pending weather conditions.

Council Member Richards moved to adopt the following resolution, noting that generally landscaping is required within a year, an action seconded by Council Member Hall Everett and approved 7:0.

**RESOLUTION 2009-08**

**A RESOLUTION ADDING APPROXIMATELY 0.11 ACRE OF REAL PROPERTY LOCATED GENERALLY NORTH OF THE PROPERTY OWNED BY FAIRWAY II,**

**LLC, LOCATED AT 933 EAST 1910 SOUTH, TO THE SURPLUS PROPERTY LIST AND AUTHORIZING THE MAYOR TO DISPOSE OF THE PROPERTY.**

D. LAND USE

*D1. A public hearing to consider an ordinance enacting Chapter 14.23 (Interim Transit Oriented Development Zone) of the Provo City Code. 08-00120A.*

*D2. A public hearing to consider an ordinance changing the zone classification of approximately 62 acres of real property located generally between 400 South and 920 South, and between University Avenue and 450 West from CM (Heavy Commercial) and CBD (Central Business District) to ITOD (Interim Transit Oriented Development). City-wide Impact. 08-00120A.*

Dayton introduced both ordinances and noted continuance is anticipated to meet legal public notice requirements to expand the ITOD zone as recommended by the Planning Commission.

Mayor Billings said the Planning Commission recommended the addition of two parcels and no action could be taken on those two additions. However, the Council could adopt the portions of the zone identified in the public notice already given. Mr. Lindberg said Item E1 could be approved because it was legally noticed. The addition applies to the map amendment connected with Item E2.

Gary McGinn, Community Development Director, agreed to review the information provided at the earlier Study Meeting. This proposal is based on the future transit opportunities coming to Provo, including the plan for commuter rail (scheduled for the year 2012) and an intermodal station at approximately Freedom Boulevard and 600 South. Additionally, the Bus Rapid Transit, (BRT) is anticipated to provide a bus system from the Orem commuter rail intermodal center, past BYU, over to 100 West and to the Provo intermodal station at 600 South. A steering committee for transit oriented development was created, and a work group of the steering committee reviewed types of development to go in and around an intermodal station. The proposed zone is the result of the work of these groups. The proposal was submitted to the Planning Commission where two hearings were held, modifications were made, and a recommendation advanced to the Council.

Brent Wilde, Assistant Community Development Director, reviewed the map identifying the original boundaries and the two areas proposed to be added by the Planning Commission. A meeting was held with property owners in the original proposal and a meeting on January 27 will be held with property owners in the two additional areas. The focus of the Planning Commission was on commercially zoned property that was undeveloped or underdevelopment, and not on residential properties at this time. The purpose is to encourage housing and residential development, and retail type development to support the neighborhood and not compete with businesses on Center Street or the mall. A recommendation of the Planning Commission was that all nonresidential uses exceeding 2,500 be subject to conditional use approval to evaluate compatibility with the surrounding neighborhood and district. Temporary uses will be allowed in the TOD zone to keep the area viable in the interim. Another concept is a residential mixed use where at least 50% of all new construction or major additions exceeding 5,000 square feet would be residential, either within the same building or in another building in the TOD zone. He briefly discussed front yard setbacks, building height, building step backs on upper floors, transitional building height, reductions in parking requirements, building materials, window and door requirements, roof pitch, etc.

Ms. Richards asked what is being done to attract long-term residents and build a quality development, particularly the floor plan options. She asked what residential housing options would be provided in addition to apartments. Mr. Wilde said perhaps "multiple family dwellings" would be a better representation of what is proposed. While a variety of different strategies were incorporated to produce a quality project, specific floor plans have not been mandated. The design standard and other elements provide the expectation of quality. Ms. Richards suggested that time be spent on the "feel" of the inside of the units that would be durable and sustainable. She felt developers should know more specifically what is expected in terms of amenities, inside layout, etc., and suggested

using terminology other than “apartment.” Responding to a question from Ms. Richards, Mr. Wilde said about 10+ acres of the 63 acres will be included in the intermodal station; the remaining acreage housetop numbers will depend on the packaging of a development. He believed the projects would be larger than half acre developments. He said the final ordinance would look at more detail for onsite amenities, unit layout, etc., and a combination of all elements should achieve the sustainability and longevity Ms. Richards supported. Staff is developing a list of additional items to address in the final ordinance. This interim ordinance would provide an easy transition to the final zone and was proposed in order to not lose a key parcel of property. Ms. Richards suggested staff look at the elements that made the Gateway Center in Salt Lake City so successful.

Responding to Ms. Hall Everett, Mr. Wilde said the interim zone would likely be in effect six to twelve months before a final ordinance is adopted.

Responding to Mr. Turley, Mr. Wilde said there is no minimum acreage required by the ordinance, but the nature of the development would not be conducive to small lot developments. Assemblage of properties for a larger development is expected. Mr. Turley supported including a minimum parcel size in the final ordinance.

Ms. Richards suggested removing the word “apartment” from classifications 1140 and 1150 under Permitted Uses, using “residential” instead, and supported a minimum development size requirement. Mr. McGinn said this language is from the Land Use Code. The language could be changed to “residential dwelling units.”

Chair Dayton suggested the final zone proposal be discussed in a work session in the next six months. Mr. Turley requested language consistency in the R4 zone regarding apartments and multiple family dwelling. Ms. Richards said some of the neighborhood chairs felt they needed an additional two weeks to study this issue.

Public comment was invited. Lindsay Wiblin, Carterville Neighborhood chair, said he understood the issue to be the purchase of the property for an intermodal transit hub. Then the discussion went to “who would build what on the land and why.” He questioned why an “elaborate, expensive” development in the south end of Provo was proposed prior to cleaning up the area. He said the Alpine Village development is currently struggling to fill the retail components of the project. He wondered how the new zone would impact existing businesses. He supported proceeding with the proposal, but felt the detail of tonight’s discussion should be a separate item.

Bob Allen, Franklin Neighborhood Chair, said this project will have a great impact on the Franklin Neighborhood, and there is much interest in the proposal as this may be one of the most blighted areas in Provo. His biggest concern was the reduced parking requirement; he doesn’t want parking on the streets.

Don Allphin, Lakeview North Neighborhood Chair, gave three philosophical problems to be faced with this project. First, a great plan can be adopted, but he felt developers would have to be “convinced” to develop in Provo because “it takes so long to get things done.” He felt better administration was needed to expedite solid development coming to Provo. Second, existing transportation corridors do not connect well to the west and southwest of Provo. Any plan should help develop roads in these directions. Third, every resident with a home and family close to this development needs to “buy in” to this project in the planning stage. However, he felt “money talks” and a sizeable company could present a different proposal and override all the supported proposals. Residents should be aware of that scenario. Since everything is in flux and he supported not making promises that can’t be committed to for years to come.

Council Member Johnson was excused from the meeting at 8:56 p.m.

Responding to Melanie McCoard, Provo, Mayor Billings said he could provide her the names of those serving on the steering committee and the work group. There are two council members, City staff, business representatives, planners, developers and BYU. Ms. McCoard volunteered to serve on that committee. Mayor Billings said the meetings are public and anyone is invited to attend. Ms. McCoard felt some missing pieces were bicycle friendly elements, provisions for those with disabilities and the elderly, shared cars, common areas for service providers, and amenity space. She also suggested an assisted living element to the project and charging Economic Development to recruit for such a business. She said one purpose of the interim zone is to indicate the

Council's intent to provide the kind of incentives to spark a development and to protect the uses. If that is the case, she felt a similar zone may be advisable for the protected area around the airport.

Nick Lydsman said, because of personal experience renting next to a train track, infrastructure needs to be addressed before any development occurs. When he purchased his condo, he wanted it as far from the tracks as possible. As long as the trains are there, he felt the land value would stay down, which would cause lower end developments with more units rented than owned. Infrastructure is needed to quiet train noise. Amenities won't make a difference to those who don't want to live with the trains. There is only one chance to do this right and he encouraged looking at similar amazing developments in Murray and Salt Lake City.

There was no other public comment and the public hearing was closed.

Council Member Richards moved to continue both items to the February 3 meeting, an action seconded by Chair Dayton.

Responding to Ms. Richards, Mr. McGinn said the "Clifford property" had been purchased by the Provo Housing Authority. Originally, Doug Carlson, Housing Authority Executive Director, did not want to be involved in the proposal. However, after understanding it better, he was OK with participating. Ms. Richards asked what types of design and materials have been recommended in this zone to deal with the issues of train noise and the noise of the traffic generated by the 800 parking spots for the front runner. Mr. McGinn said the purpose of the interim ordinance was to protect the long term viability of the area from incompatible uses. Issues such as soundproofing walls and windows, amassing of property, etc. were not included in the interim proposal because more study is needed before inclusion in the final ordinance.

Mr. McGinn said the proposed interim ordinance has been pending for four months and, since only two months remain of the six month pending legislation requirement, the interim ordinance should be passed in the next two months to prohibit the possible forthcoming of uses allowed in the CM zone which would be contrary to the intent of the TOD. He listed off numerous items such as accessibility requirements, senior emphasis, bicycle accessibility, disability requirements, common area amenities, and building code requirements which will be addressed, but couldn't be done in six months. Ms. Richards was concerned about building a beautiful project with 300 units which becomes a big mistake because of the noise in the area and no one wanting to live there. Mr. McGinn said it is not likely that an application for a project in this area will come in the next year. The greater risk would be forthcoming incompatible CM uses in the area. Ms. Richards said this action "prezones" a property with such standards and guidelines that, when the property is sold or bought, the thresholds for the design standards, materials, etc. are there so the applicant can know how to approach the development. She wanted more information on critical issues, such as sound, that could be addressed within two weeks to a month, that would then be added to the interim TOD. She wondered if there would be possible amendments between the interim TOD and the final TOD, so standards could be added as they are researched and recommended.

Mayor Billings noted two of the finest land use planners in the west were involved in this process—Peter Calthorp and John Fregonese. This project has been under consideration for 12 years. Groups have visited areas in the northwest with similar heavy rail and high traffic issues where workable and attractive projects have been built. Provo will incorporate those successful principles and practices. The hope is that people living in the residential area will use the transit system and reduce traffic. This area could provide many opportunities for people in various life cycles. The proposed retail would be minimal and for the use of those living in the area. The intent is not to compete with the retail of the mall and the downtown, but to provide transit connectivity to those retail centers so they can thrive. Ms. Richards said she was not against this proposal, but wanted the project to be successful. She also wanted additional time for area residents to become more familiar with the interim proposal.

Responding to Ms. Richards, Mr. McGinn said there is no risk in continuing the items for two weeks. However, the only thing that could not legally be acted on is the inclusion of the two properties recommended by the Planning Commission.

Mr. Wilde said noise issues can be resolved through building code requirements.

Ms. Clark said she would support “being bold” and moving forward with this proposal.

Chair Dayton stated the purpose of the two-week continuance was to add the pieces of property not included in the notice and answer questions so all are comfortable with moving forward.

Mr. Acheson said this is an opportunity to build a community from scratch and it causes some consternation and brings much promise, so it is important to get it right. It is “more of an art than a science at this point.” There are intangible things that now need to be moved to a “quantifying” position, from the outside to the inside.

Mr. McGinn reemphasized the meeting on January 27, at 5:30 p.m. in the Community Development Offices, for anyone interested in commenting on or learning more about the ITOD proposal.

Ms. Hall Everett expressed excitement for this proposal. The City is trying to manage the consequences of such a proposal through an ordinance to obtain the best outcome, which would be a vibrant and dynamic project similar to the Gateway in Salt Lake City. While she was anxious to move forward, she felt discussion on language helps to further clarify the vision.

The motion to continue both items to the February 3, 2009, Council Meeting, passed 6:0 with Council Member Johnson excused.

***E Adjourn.*** Council Member Turley moved to adjourn the meeting, an action seconded by Council Member Clark and approved 6:0 with Council Member Johnson excused.

The meeting adjourned at 9:37.