

MINUTES OF THE EAGLE MOUNTAIN CITY COUNCIL
March 2, 2004
Eagle Mountain City Council Chambers
1680 East Heritage Drive
Eagle Mountain, Utah 84043

Prayer by Invitation of the Mayor

The prayer was offered by Linn Strouse.

POLICY SESSION – 7:00 PM

Mayor Kelvin Bailey called the meeting to order at 7:03 PM.

1. Roll Call:

Council Members Present: Mayor Kelvin Bailey, David Blackburn, Diane Jacob, Vincent Liddiard, Mark Madsen, Linn Strouse

City Staff:

City Administrator:	Chris Hillman
City Attorney:	Gerald Kinghorn
City Engineer:	Korey Walker
City Recorder:	Janet Valentine
Deputy Recorder:	DeAnna Whitney
Finance Director:	Gordon Burt
Planning Director:	Shawn Warnke
City Planner:	Adam Lenhard
Public Works Director:	Mark Sovine
Fire Chief:	Robert DeKorver
Utah County Sheriff:	Deputies John Mulder and Shawn Radmall

Others Present: Jeremy Simmons, Family Solutions Consulting; residents Mark Lofgren, Ryan Borneman, David Lifferth, Henry Graham Kicklighter, Wendy Minks, Harry Bakken; Greg Nash, GIS representative from the University of Utah; Lisa Holland, Fire Fighters Ladies Auxiliary; Scott Hazard, the Ranches, L.C..

2. Pledge of Allegiance:

The Pledge of Allegiance was lead by David Blackburn.

3. Approval of Minutes (February 17, 2004):

MOTION: *Linn Strouse moved to approve the Minutes of February 17, 2003. Diane Jacob seconded the motion. Ayes: 5 – Linn Strouse, David Blackburn, Vincent Liddiard, Diane Jacob, Mark Madsen; Nays: 0. Motion passed.*

4. **General Discussion/Questions/Announcements:**

Mayor Bailey announced that under Item 17, "Other Business", he and the staff would be bringing the Council and the public up to date on information regarding the proposed purchase of a five-acre parcel for the expansion of public works building.

5. **Appointments:**

A. Finance Director / Treasurer

Mayor Bailey recommended that Gordon S. Burt be appointed Finance Director/Treasurer for the City.

MOTION: *Vincent Liddiard moved to approve Gordon S. Burt as Finance Director/Treasurer for the City. Diane Jacob seconded the motion. Ayes: 5 – Linn Strouse, David Blackburn, Vincent Liddiard, Diane Jacob, Mark Madsen; Nays: 0. Motion passed.*

The Oath of Office was administered by Janet Valentine to Mr. Burt during Item 6.

B. Economic Development Board

Mayor Bailey recommended that Kendle Salisbury be appointed to the Economic Development Board for a term from February 17 through December 31, 2004, to fill the position vacated by Wendy Komoroskpi.

MOTION: *Vincent Liddiard moved that Kendle Salisbury be appointed to the Economic Development Board filling the remainder of the term for Wendy Komoroskpi. Linn Strouse seconded the motion. Ayes: 5 – Linn Strouse, David Blackburn, Vincent Liddiard, Diane Jacob, Mark Madsen; Nays: 0. Motion passed.*

The Oath of Office was administered to Ms. Salisbury by Janet Valentine after Item 10 had been discussed.

6. **Public Notices:**

Janet Valentine announced a Public Hearing on the Amendment to the City Impact Fee Ordinance to be held on March 16, 2004, at 7:00 PM in the City Council Chambers.

Janet Valentine administered the Oath of Office to Gordon Burt.

7. **Public Comment:**

Jeremy Simmons, Family Solutions Consulting, introduced his company, which is full service IT consulting company with a chain of retail storefronts. He advised that one of his stores would be located at Saratoga Springs within the next 60 days. He introduced other members of his firm and advised that Chris Hillman had all of the contact information for the company.

Chris Hillman advised that Family Solutions Consulting was one of the firms bidding for the new IS contract to be discussed later in the meeting.

Mark Lofgren, resident, expressed concern that State Statute Chapter 10.6.157 states that the finance director of a city of the third class cannot be the same person as the treasurer. He was informed that Eagle Mountain City is a fifth class city and does not fall under this statute.

Ryan Borneman, resident, referred to an article in the North County News regarding the Development Code and asked that there be clarification on the taking of private land. He asked if any parts of the Development Code were not constitutional.

Dave Lifferth, resident, offered a Power Point presentation regarding the negative and obscene content on some local websites. He spoke against what he called "hate speech" and negative comments against current public officials. He recommended the Council pass a resolution denouncing hate speech without treading on First Amendment rights. He requested the Council write a letter to law enforcement officials requesting the removal of Greg Kehl's concealed carry permit. Copies of his presentation are part of the public record

8. **Council Comments:**

Mark Madsen addressed the questions from Ryan Borneman regarding unconstitutional provisions in the Development Code. He explained there are two provisions in the Development Code he believes are against the constitutional takings provision in the Fifth Amendment.

Linn Strouse clarified that Mr. Madsen was referring to the present Development Code.

Mr. Madsen referred to a case involving a city in Oregon where the Supreme Court ruled there had to be an essential nexus between the benefit to the applicant or the burden placed on the infrastructure by the applicant in order to justify a taking of property. He described the taking of property is public use or restriction of the use of property for public purpose. He advised that the Supreme Court ruled that that was unconstitutional. He stated that because of the way the current Development Code is written, a developer or landowner could be allowed to use the argument that this does not meet the case articulated by the Supreme Court and thereby take the City to court.

Mr. Madsen also referred to the architectural requirements imposed by the Development Code, calling out features like porches, garage orientation, roof pitches, etc. He expressed his concern that this restricts the person's ability to use the property as desired.

David Blackburn asked how HOA's are impacted by the ruling explained by Mr. Madsen. Mr. Madsen advised that since HOA's are the result of covenants on property entered into voluntarily by property owners, they are not impacted in the same way as municipal government.

Mayor Bailey read a statement regarding information appearing in news articles during the past few weeks. A copy of this statement is attached.

Linn Strouse announced that plans for Pony Express Days are moving forward. She stated there are many exciting things planned and that the planning committee planning would be looking for many volunteers. She advised that Mark Trotter from Camp Floyd and entertainer Peter Breinholdt would again be involved. She encouraged all citizens to participate and invite their friends and neighbors to this event.

9. **Recognition of Military Service:**

Vincent Liddiard explained that this recognition was for all those serving in the military who have left their homes and families for extended periods of time to put their lives in harms way to protect our country. He offered thanks and appreciation to all those serving and presented Recognition Certificates to Zachary Sibio, Greg Okesen, Henry Graham Kicklighter, and the Kicklighter family. Mr. Liddiard indicated that recognition certificates would be presented to other soldiers as the Council becomes aware of their return.

Mayor Bailey returned to Item 8 for a Council Comment from Linn Strouse.

10. **GIS Presentation by Greg Nash:**

Greg Nash presented an update on GIS (Geographic Information System) in Eagle Mountain and explained to new Council members the information provided through the GIS process. He stated that Eagle Mountain

has been active in the GIS process for about two and a half years and presented his recommendations for immediate and long-range plans to improve GIS and bring it in house.

David Blackburn asked when the GIS process would be complete.

Mr. Nash advised that this type of process is never really complete but that there is enough data now entered into the system to allow for the development of simple models, especially on the planning side. He indicated there is still a lot of data that needs to be input on public works.

Mayor Bailey thanked Mr. Nash for his voluntary efforts in GIS and expressed the hope that the City would be able to upgrade the use of GIS.

Linn Strouse expressed her appreciation to Mr. Nash for the fine citizen he is and the service he has provided for the City. She asked if GIS has the capability to explore mine shafts and cave systems. Mr. Nash stated GIS would not address this type of exploration.

Vincent Liddiard thanked Mr. Nash and asked him to prepare a list of costs for suggested improvements. Mayor Bailey stated that cost information would be provided by Shawn Warnke and would be discussed at the budget retreat.

Mark Madsen asked for an analysis showing how this would save the City money and improve the efficiency of each department. Chris Hillman stated that this information would be forthcoming.

Vincent Liddiard asked for a list of top priorities that should be implemented.

Mayor Bailey stated that staff had looked into bringing the as-builts in house to improve accuracy.

Mayor Bailey returned to Item 5 to allow Janet Valentine to administer the Oath of Office to Kendle Salisbury.

11. Consideration and Approval of Agreement with the Eagle Mountain City Fire Fighters Auxiliary to Provide an Easter Egg Hunt:

Chris Hillman explained that he was contacted by Lisa Holland, Fire Fighters Ladies Auxiliary, regarding the City's participation in an Easter Egg Hunt. He indicated they had discussed several options.

Mayor Bailey stated that John Walden, Eagle Mountain Properties, had pledged \$250 toward this event. He stated the City would like to find volunteers to donate funds without having to use taxpayer funding.

Lisa Holland discussed how the event had been funded in the past.

The Council discussed ways of raising funds without having to use taxpayer funding. They asked questions about how the funds would be spent.

Chris Hillman clarified that the City could contract with an outside organization, such as the Ladies Auxiliary, to have a quid pro quo for its \$500. He stated that, in effect, the City would give the \$500 for the service and request information showing what the City would receive in return for that amount.

The Council suggested ways for the Auxiliary to raise funds for this event, such as a picture-taking activity.

MOTION: *David Blackburn moved to approve an agreement with the Eagle Mountain City Fire Fighters Ladies Auxiliary to Provide an Easter Egg Hunt. Vincent Liddiard seconded the motion. Ayes: 5 – Linn Strouse, David Blackburn, Vincent Liddiard, Diane Jacob, Mark Madsen; Nays: 0. Motion passed.*

Chris Hillman explained that approving the agreement makes the event a City-sponsored event requiring that all monies are run through the City financial system following purchasing policies and procedures.

Lisa Holland stated she did not want to run the money through the City and would like to have creative control of this event.

Gerald Kinghorn stated there would be a way for the City to sponsor the activity as far as providing the space by setting aside a park and then letting the Fire Fighters Ladies Auxiliary privately purchase and own all supplies.

MOTION: *Diane Jacob moved to reconsider the motion. Vincent Liddiard seconded the motion. Ayes: 5 – Linn Strouse, David Blackburn, Vincent Liddiard, Diane Jacob, Mark Madsen; Nays: 0. Motion passed.*

MOTION: *Mark Madsen moved that the City co-sponsor the event of the Easter Egg Hunt to the extent of providing the space for the event in cooperation with the Fire Fighter Ladies Auxiliary who will collect the money, own the prizes, distribute them, and have complete creative license in putting the event together. Diane Jacob seconded the motion. Ayes: 5 – Linn Strouse, David Blackburn, Vincent Liddiard, Diane Jacob, Mark Madsen; Nays: 0. Motion passed.*

12. Discussion on Telecommunication Fees Related to T-1 Lines:

Mayor Bailey explained that the City became aware recently of some services being provided for which it was not receiving reimbursement.

Gerald Kinghorn explained there are two or three services in the City using the Telecom system that have required the output of a couple thousand dollars for expenditures to provide fiber space, for which the City receives no compensation. He explained this occurred in early 2002 when the City received a request from an entity called Broadwing Communications to provision a T-1 line to a private residence in the City. He indicated the City was not set up to do this and there was a problem with Qwest because the City had not done filings with NECA, which is a large contract clearinghouse for the telecommunications industry. He stated the City had only been allowed to join NECA to receive telephone prefixes.

Mr. Kinghorn advised that in order to provide the T-1 line requested above, the City was required to make a filing with NECA so that Broadwing Communications could charge its customer fees and provide service through Qwest and Eagle Mountain to the customer. He explained that the City now provides T-1 service to the private residence, to the Nextel wireless site, and some service to the Ranches broadband, which uses the City internet provider service that allows the City to receive compensation for the service. He described the other first two as an anomaly because the City spent several hundred dollars making filings to NECA to allow these T-1 lines to be provisioned, expecting that the City would be reimbursed for the \$1,500 to \$2,000 of outlay spent putting the services in place. He stated that because Eagle Mountain telecom services fall in a special status of municipal local exchange carrier, the City is not allowed any reimbursement of any funds. He explained this means the City is providing ongoing service without any way to recover revenues. He clarified, however, that the customers involved are paying their full share of fees for their service.

The Council discussed possible solutions but determined that the problem would automatically be resolved when the Telecommunications Department was sold to Direct Communications in a couple of months.

Mark Lofgren, resident and former member of the Telecom Board, advised the Council that the rules governing this type of set up are very expansive. He advised that GVNW should have picked up on the inability of the City to collect revenues and should have advised the City of the problem.

Harry Bakken, resident receiving T-1 service, asked the Council not to make him out as the “bad guy” because he had no idea it would cost the City to provide this service.

Mayor Bailey reminded Mr. Bakken that no one had mentioned his name.

Mr. Bakken stated he understood that the City was suggesting that the end user was "getting services for free from the City."

Mayor Bailey explained that this was never intimated.

Mr. Bakken complained that the City's fees are excessive and that it would cost him at least \$300 more per month than he is currently paying with Broadwing.

Mark Madsen verified with Mr. Bakken that he is saving money by going with Broadwing services.

Mr. Bakken answered in the affirmative. He also stated that different providers charge different rates over which he has no control. He explained he shopped around when he needed a T-1 connection for his business and the lowest bid came from Broadwing. He advised that he would use the City's T-1 service if the price were competitive.

Vincent Liddiard asked Mr. Bakken if he were running a business out of his home and whether he had a business license.

Mr. Bakken replied, "I filed my application this morning."

Gerald Kinghorn told Mr. Bakken, "I never said that we thought you were exploiting the system. I said you were paying the full freight for it and that the problem is with NECA, not with you and not with Broadwing."

Mr. Bakken stated he understood but that the comments made intimated that "somehow this person who's receiving these services is getting free service from the City."

Mayor Bailey stated that no one had said that and that "it was very clear that the end user was not getting anything for free. He was paying full fee."

Linn Strouse informed those present that when she is asking questions, it is nothing personal. She indicated it is important to learn from mistakes so that the City does not repeat them.

Mayor Bailey asked for clarification from Gerald Kinghorn that at this point there is not much the City can do about this problem.

Mr. Kinghorn stated the City could look into making their rates more competitive.

Mark Lofgren advised the Council that the rates for the T-1 were set when he was a member of the Telecom Board and indicated that the rate was set at the exact amount paid by the City and allowed no profit.

Scott Hazard, the Ranches, stated the Ranches no longer use the T-1 service through the City. He found it was cheaper for him to build his own infrastructure that allows him to beam wireless service from Saratoga Springs. He stated he took this action because Eagle Mountain City was not competitive. As Chairman of the Eagle Mountain Economic Development Board, Mr. Hazard recommended that the City continue to provide high-speed data telecom services demanded by businesses in order to encourage economic development in the City. He stated adding any other fees to this service would act as a barrier in bringing businesses to Eagle Mountain.

Mayor Bailey acknowledged that this is a moot issue because of the planned sale of Telecom to Direct Communications. At the recommendation from Council, the Mayor directed Gerald Kinghorn to write a letter to NECA requesting reimbursement of funds.

The Council questioned why the original agreement had not been approved by the Council. Mr. Kinghorn advised that during the time of this agreement, all of the various actions between the City and Qwest were signed off and filed by Telecom as part of a technical compliance issue. He advised that even though this agreement was different, in fairness to Telecom personnel, they probably did not see the distinction.

Mark Madsen asked if there were now safeguards in place to prevent this in the future. Mr. Kinghorn assured him that these safeguards are now in place.

13. Presentation by Fire Chief Robert DeKorver regarding Paramedic License:

Chief DeKorver updated the Council on the paramedic license application. He read a statement; copy attached, and thanked Deputy Chief Kevin McCarthy for his efforts to procure this license.

Mayor Bailey asked Chief DeKorver to submit a copy of his statement to the local news agencies and thanked the Fire Department for their efforts in this matter.

Chris Hillman stated that Lone Peak Fire Department offered to meet our City ambulance in Lehi and provide a paramedic when we do not have one available. He indicated that this had a great influence with the sub-committee in recommending that our City receive the license. He also stated that the strong support from the Mayor and Council had a very positive influence on the sub-committee.

Vincent Liddiard recommended the City write a letter of appreciation to Lone Peak Fire Department.

14. Discussion on Renewing/Re-bidding Information Systems Contract:

Chris Hillman explained that the contract for information systems support would expire in mid-March and that new bids had been received from six companies. He explained the City would create a committee of staff members to review the bids, select two or three to interview, and present the information to Council for a decision.

Diane Jacob asked how the bid process was advertised. Chris Hillman advised that "word of mouth" was used, that the City was not required to advertise for this service, and that six bids were received.

15. Discussion of a Resolution regarding the Naming of New City Streets in a Fundraising Effort for Public Safety (the auctioning of not-yet-named streets):

Gerald Kinghorn advised that this type of fundraising could be done legally by the City; however, it would have to be reviewed by those who review street names. He expressed concerns about the public image and feasibility issues that could arise.

Vincent Liddiard explained that he hoped this idea of occasionally auctioning new street names could be used as a fundraiser for public safety. He stated he felt this could work in our City because, with the growth, there are always new streets needing names. He recommended that 75% of any sale would go to public safety and the remaining 25% to the General Fund. He explained that his plan would be to auction off a name for a City street, subject to approval of the Council, to raise money for public service. He stated that this idea would require the support of builders and landowners.

Mayor Bailey asked Mike Wren, a local developer, if he had any opposition to this idea. Mr. Wren advised he had no opposition to this plan.

Chris Hillman expressed his concern about the public image of selling city streets. He recommended that fundraisers for public safety be conducted by auxiliary organizations, which could then donate the money or equipment to the City.

Vince Liddiard advised that Mr. Hillman's suggestion would be his preference as well.

Mayor Bailey instructed staff to investigate what it would take to have an independent organization, such as the Fire Department Ladies Auxiliary, conduct such a fundraiser.

Chief DeKorver indicated this type of fundraiser would be a great idea. He explained that the Fire Department and its auxiliary already hold several fundraisers throughout the year to purchase equipment. Linn Strouse referred to the great volunteer spirit that exists in Eagle Mountain and suggested that this fundraiser idea could be used to honor some of those volunteers. She stated this could add value to the public image of Eagle Mountain.

16. Consent Agenda:

A. Check Register for February 2004

Linn Strouse commented on the funds paid to send Jeff Weber, Public Works, to attend a tree workshop. She recommended that the information received by Mr. Weber be made available to citizens of the City.

Mark Sovine explained there were already plans to make this information available through the City newsletter.

MOTION: *Vincent Liddiard moved to approve the Consent Agenda. Diane Jacob seconded the motion. Ayes: 5 – Linn Strouse, David Blackburn, Vincent Liddiard, Diane Jacob, Mark Madsen; Nays: 0. Motion passed.*

17. Other Business:

Mayor Bailey advised that an item to approve the purchase of five acres of land for the expansion of the public works facility had been removed from the Agenda because a question arose regarding the appraisal of the land. He indicated the question had been resolved, and he recommended a review for Council and an update for the public on this issue.

Mark Sovine explained the process he used to research possible sites for the expansion of the public works facility. He identified locations that had been considered and explained that the five-acre site proposed for purchase was considered the best choice because the infrastructure is available, it is accessible to a road, and is adjacent to the current wastewater treatment plant.

Mayor Bailey explained that City staff explored all available avenues to determine a suitable site for this expansion and spent considerable time on this project.

Korey Walker showed a map explaining the current site of the wastewater treatment plant and the proposed expansion area. He referred to a 23-acre parcel to the west of the site, which the City needs to have for winter storage. He indicated this has always been an issue and that Eagle Mountain Properties and the City have discussed this expansion.

Mayor Bailey stated that information on this proposed purchase had been available to Council for some time. He advised that the selection of this five-acre parcel had nothing to do with ownership but was determined to be the best site because it met the current and future needs for public works facility and the wastewater treatment plant. He also explained that the City must abide by the Land Use Map for the proper location of an industrial-use facility.

Shawn Warnke referred to the City's Future Land Use Map and advised he had looked at properties zoned for certain land uses. He stated the proposed land is consistent with light industrial use and is currently shown as land with an "absolute allow use" for light industrial and service operations.

The Mayor discussed the process used for the appraisal of the property using that used appraisals for like property near the proposed site. He indicated that the City had an appraisal of the specific property completed and it came back at \$40,000 per acre. He stated that even though approval of this purchase had

been tabled at the last meeting because an easement document was not available, he was proposing that the purchase be brought up for a vote at the next Council meeting for approval so the City could move forward on the needed expansion. Mayor Bailey asked Council to express concerns so they could be discussed and resolved.

Diane Jacob stated that because this item had been pulled from the Agenda, she left all her notes at home. She indicated she had no problem with the location but was concerned with the point price.

Mayor Bailey asked Council Member Jacob to meet with him and Chris Hillman so they could discuss her concerns. He indicated that these concerns would be made public at the next City Council meeting.

Vincent Liddiard asked if there were any building height restrictions involved.

Mayor Bailey advised there had been some concerns, but that Mr. Kinghorn had worked out the wording with the seller to eliminate these concerns.

Linn Strouse expressed appreciation to staff for all work done in this matter by the staff generally and by Mark Sovine specifically

David Blackburn asked about the time frame for plans to expand the sewer system. The Mayor explained that this is currently a funding issue and that staff is working on some possible solutions.

Linn Strouse clarified that expediting the expansion of the public works facility would allow for the expansion of the sewer system, which would decrease future rates. Mayor Bailey acknowledged that this was correct.

Mayor Bailey presented an update on the purchase of a two-acre parcel for the construction of a City office building. He explained how the City's .91 acres was traded with Eagle Mountain Properties for two acres, with the agreement that the City would pay approximately \$6,600 for the SID and the greenbelt taxes.

18. Motion to recess in to a Closed Executive Session for the purpose of discussing personnel issues, potential litigation and/or public safety/security:

No Closed Executive Session was called.

19. Motion to Close the Closed Executive Session and Reconvene in to Open Session:

Not applicable.

20. Any Actions from the Closed Executive Session:

None

21. Adjournment:

Diane Jacob moved to adjourn the meeting at 9:25 PM.

APPROVED: _____

Mayor Kelvin E. Bailey

DATE: _____

3-16-04

This certifies that the minutes of
2-Mar 2004 are a true, full and
correct copy as approved by the
City Council on 16-Mar 2004

Signed: Jane B. Valentine, CMC
City Recorder

Right Makes Might

I find it disappointing that there has been a more than the usual level of misleading information put out to the public lately. While during this same time there have been many more good things that have occurred and goals that have been achieved. Instead of being excited about the progress that is going on some would rather stoop to misleading others. There are probably a number of reasons for this, but this is not the time to go into that.

Rather, it is a time to make clear that we are moving forward in a positive direction and that Eagle Mountain is doing better each and every day. No matter how we are portrayed with erroneous facts by those who are in opposition to our progress, we will continue to make Eagle Mountain a better place than it was yesterday. That is what progress is all about. We must progress not just for the next two years but for each and every year of our future, and not just as a city, but more importantly collectively and as individuals.

I would like to reassure the citizens of our community and our neighboring communities that we have many wonderful people here. We have many who are engaged in various good causes; however, do not let the handful of misguided individuals detract from the good that is going on all around us. The wonderful people of this community far outweigh those few who are very vocal and sad examples of who we really are as a community. We must stand firm in our beliefs and determination to move forward and do the things we know to be right.

I would conclude my thoughts with a quote from one of my favorite heroes, Abraham Lincoln. He has done a much better job of expressing my views and sentiments than I ever could. He said the following, "Neither let us be slandered from our duty by false accusations against us, nor frightened from it by menaces of destruction to the government, nor of dungeons to ourselves. Let us have faith that right makes might; and in that faith let us to the end dare to do our duty as we understand it."

May God bless each of us with this kind determination to make a difference and stand for what is right.

Thank you and God Bless,
Mayor Kelvin Bailey