

CLEARFIELD CITY COUNCIL MEETING MINUTES  
6:00 P.M. WORK SESSION  
August 30, 2011

PRESIDING:	Don Wood	Mayor
PRESENT:	Marilyn Fryer	Councilmember
	Kathryn Murray	Councilmember
	Mark Shepherd	Councilmember
	Doyle Sprague	Councilmember
	Bruce Young	Councilmember
STAFF PRESENT:	Adam Lenhard	City Manager
	Brian Brower	City Attorney
	Greg Krusi	Police Chief
	Kelly Bennett	Police Detective Sergeant
	Kim Dabb	Operations Manager
	Valerie Claussen	Acting Community Development Director
	Eric Howes	Community Services Director
	Bob Wylie	Administrative Services Director
	Summer Palmer	Human Resource Manager
	Jessica Hardy	Accountant Technician
	Nancy Dean	City Recorder
	Kim Read	Deputy City Recorder
EXCUSED:	Scott Hodge	Public Works Director

VISITORS: Lee Schaffer – Summer Place HOA, Mike LeBaron – Candidate, Shannon Anderson, Kent Bush – Candidate, Tricia Dryer

Mayor Wood called the meeting to order at 6:05 p.m.

DISCUSSION ON HOMEOWNERS ASSOCIATIONS (HOAs)

Adam Lenhard, City Manager, acknowledged the City was aware of current problems associated with open space areas throughout the City which needed to be better maintained by Homeowners Associations (HOAs). He commented staff recognized there were specific situations regarding open space maintenance and believed one solution might not fit all situations. He added staff understood everyone desired to live in a community which looked great and expressed a need for direction from the Council.

Valerie Claussen, Acting Community Development Director, distributed handouts and shared a visual presentation with the Council. She pointed out many issues brought to the attention of staff regarding HOAs were civil matters between residents and the HOA. She reviewed the subdivision open space inventory handout and stated apartments and townhomes were excluded

because those HOAs were professionally administered. Mr. Lenhard reported there was a condominium act which was now State Statute with specific regulations to open space. Ms. Claussen emphasized her handout and the following discussion would be specific to single family residential subdivision HOAs and explained staff had three alternatives for consideration.

Ms. Claussen explained the first option was the code enforcement alternative, which was the process currently used by the City. She reviewed that process with the Council pointing out the pros and cons associated with it. Mayor Wood inquired how a non-functioning HOA would be able to reimburse the City for abatement. Ms. Claussen responded contact had usually been made with the responsible HOA and abatement was the last resort. Councilmember Sprague believed the City should be assessing the developer for abatement because it was his/her responsibility to establish the HOA. Shannon Anderson, resident of Springfield Estates, stated the developer had told her it was economically more feasible to pay the City's fine than for him to maintain the property. Mayor Wood inquired if the citation process and court appearance had been exhausted prior to abatement by the City. Ms. Claussen indicated the citation and court process had been exhausted prior to abatement. Mr. Lenhard commented the City wanted to find a way to resolve the problems prior to abatement because when the City completed abatement on an HOA parcel it was unlikely the City would recover its costs. He continued the City could place a lien on the open space property; however, the HOA/developer would not care if that happened because there was no intention to sell that property. Councilmember Shepherd suggested the City consider beginning the foreclosure process on the abated property to encourage full restitution.

Ms. Claussen presented the second alternative, the creation of a special assessment area in which an assessment for each resident would be established and the City would become a clearinghouse in maintaining the property. She pointed out specific language was included in the development agreements as well as the City Code to allow this action. She explained the pros and cons with this option and commented this alternative had been successful in other municipalities. She expressed her opinion this would be a long term solution for the chronic maintenance problems.

Ms. Claussen presented the last alternative for consideration would be the City's acquisition and maintenance of the property without any assessment. She pointed out the problems associated with proceeding with this option and did not believe this would be in the best interest of the City.

Mayor Wood asked about the process for establishing a special assessment district and whether it would need to be voted on and passed by the affected residents. Brian Brower, City Attorney, distributed a handout with information taken from State Code explaining special assessment areas and reviewed it with the Council. He pointed out if fifty percent of the affected residents opposed the creation of the assessment district, the City would not be allowed to make that designation. He continued the process required noticing, a public hearing and protest periods and explained that specific portion of the handout. He expressed his opinion regarding the implementation of this option and believed it would only be applicable for publicly held areas or use. Mr. Lenhard clarified prior to the City proceeding with the alternative it would be necessary

for the open space to be conveyed to the City. Mr. Brower indicated that was correct and further explained the risk associated with the option if fifty percent of the residents protested the action.

Councilmember Murray asked if the residents had a clear understanding at the time of purchasing a home that the subdivision was required to participate in an HOA. Ms. Claussen explained the resident should have been made aware of the HOA with the purchasing documents. Councilmember Sprague believed the real estate agent and the title company should have been aware of the HOA requirement and believed both had the responsibility to inform the homebuyer. Councilmember Shepherd agreed. Councilmember Murray clarified Autumn Ridge Phases I-III was a single functioning HOA; however, the HOA for Phase IV had not been established. Councilmember Shepherd believed there had not been enough homes constructed and the builder still owned the open space. Ms. Claussen expressed her opinion the HOA for Phase IV had not been properly established. Mr. Brower responded specific language regarding HOA's was included in the City's development agreements. Ms. Anderson stated she had a copy of the development agreement specific to Springfield Estates and a discussion took place specific to its HOA requirement. She stated the warranty deed she received after closing was the only documentation which reflected the HOA requirement. Mr. Lenhard believed the HOA was formed after a number of residents had moved in. Ms. Anderson expressed her opinion there would be some homes excluded from being required to participate in the HOA or assessment district because of the lack of notification.

Brian Brower, City Attorney, commented although some HOA issues had been ongoing for a number of years; he believed the overall problem had been exacerbated by the economy and the downturn in the housing market affecting developers. Councilmember Sprague believed years ago the City included verbiage requiring HOAs; however, no provision specific to enforcement was included in the development agreement. He continued he specifically discussed this particular issue with then City Attorney, Larry Waggoner, expressing his concern. Mr. Brower stated there was the requirement of the HOA in the development agreement and pointed out in the case of Autumn Ridge, the City was no longer dealing with the initial developer, believing it would be more difficult to enforce the maintenance of the open space.

Councilmember Murray asked if the concern were specific to the open space areas which were not being maintained. Ms. Claussen responded some of the unmaintained areas were frontage with the majority being the retention basins and reported the entire cumulative area was less than two acres. Mr. Brower explained City ordinance specifically addressed weeds and he explained the difficulty in requiring the open space be watered. Ms. Anderson pointed out there was a section of open space property in her subdivision which had never been developed and encouraged the City to enforce what was agreed to by the developer. She added there was a circumstance in which a small area of open space was adjacent to a resident willing to purchase the undeveloped land. Ms. Claussen explained the problems associated with that option. Mr. Brower added those open space requirements were pursuant to the development agreement or City Code and shared

an example in which the City had deeded a small portion of open space to an adjacent property owner because of the maintenance issue and it still was not maintained and now the City is in possession of the property.

Councilmember Young declared he was a current resident of West Park Village and had a personal direct interest in the HOA discussion. He inquired why the City was requiring HOAs in developments and suggested the possible creation of an assessment area initially might be best in the long run. He inquired about the logic in subdivision development within the power corridor and the City strongly encouraging the development of that open space. Ms. Claussen responded zoning laws dictated the open space requirements based upon the density of the development. She continued property such as the power corridor could be included as open space in the development even though they couldn't be developed any other way. She commented the establishment of HOAs in single family subdivisions' main function was to maintain the open space, in addition to other restrictions of the residents or amenities. She mentioned in other areas of the country either the HOA or the creation of a special assessment area was initially established. She emphasized the only intent of the City requiring an HOA was strictly for maintenance of the open space.

Jessica Hardy left the meeting at 6:50 p.m.

A discussion took place specific to maintaining open space and drainage systems for HOAs in addition to the costs of implementing an HOA or special assessment district. Councilmember Young believed the City would be better positioned to maintain the open space by establishing the special assessment area as opposed to the creation of another bureaucracy. Councilmember Sprague believed that would be more costly than having a functioning HOA. Mayor Wood suggested contracting with a company to maintain all HOA open parcels as opposed to hiring seasonal staff to maintain the small parcels. Mr. Brower pointed out government contracting in the long run would be more expensive than having City staff complete the work. Mr. Brower reported on possible legislation which would be presented during the next legislative session specific to assessment areas and suggested the Council hold off until then to determine if that option would be in the best interest of the City. Mayor Wood suggested Mr. Brower communicate the obstacles in creating assessment areas to alleviate the HOA problem currently encountered by the City with the legislators. Mr. Brower indicated he would do so.

Councilmember Murray clarified if the open areas were implemented to allow a higher density subdivision; smaller homes on smaller lots. Ms. Claussen responded that was the case in some instances. Mr. Lenhard added in years past it was the City's philosophy that open space played an important role for its residents. He addressed Councilmember Young's question as to why HOAs were required in developments and reported the issue had been addressed with the update of the City Code which had been implemented in 2009. He explained the process currently used by the City to ensure the proper development options for the required open space and emphasized there were several alternatives available.

Councilmember Young inquired if the City could acquire open space property contingent upon approval of a special assessment area. Mr. Brower explained the potential problems associated with that option. Councilmember Sprague asked how the City would collect the fees associated with the special assessment area. Mr. Lenhard responded the fee would be included with the collected property tax by the County and then forwarded to the City. Mr. Lenhard believed the City could maintain the open space for what some residents were paying to their HOA.

Councilmember Shepherd expressed concern about what could be done with the existing situation and suggested a meeting take place with the respective developers. Ms. Claussen reported based on initial conversations with the developers there was a willingness to surrender the properties to the City alleviating their responsibility of maintaining them. She continued the important issue was the policy decision as to who should be paying for the maintenance at this time. Councilmember Shepherd inquired whether the residents should be advised as to what the City would be considering for the open space properties. Ms. Claussen believed the City should have some concrete figures of cost prior to presenting it to the homeowners. Councilmember Shepherd believed most of the residents wouldn't object due to the deterioration taking place within the neighborhoods.

Councilmember Murray cautioned the City about assuming the open space for some developments and not others with a functioning HOA. Councilmember Murray pointed out the potential problem with a functioning HOA coming to the City requesting it also take over the responsibility of maintenance on its open space property. A discussion took place regarding the different subdivisions. Councilmember Young believed the City should only be presenting the option to the non-functioning HOA(s). Ms. Claussen believed residents belonging to a functioning HOA would desire to remain as they were and would oppose the designation of a special assessment area and its accompanying fees. Councilmember Young stated he lived in a subdivision with a functioning HOA and expressed his opinion the larger issue was the management of the HOA. He reported seventy percent of the residents were covering the costs of the HOA and he recognized the benefit for homeowners if the fees were being collected one hundred percent through property taxes.

Ms. Claussen requested direction from the Council. Mr. Lenhard reviewed the three possible alternatives for Council's consideration: code enforcement, establishing a Special Assessment Area or acquisition of property. Councilmember Sprague emphasized the residents would need to realize that whatever direction the City decided there would be costs incurred for the assessment. Mayor Wood suggested the most practical approach would be to continue the code enforcement route at least until after the legislative session. Councilmember Sprague expressed his opinion the City should more aggressively enforce the issue with the developers and believed the current code enforcement route was not working. Mayor Wood pointed out a code

enforcement discussion would take place later on during this meeting which might better address those issues.

Councilmember Shepherd asked Mr. Brower if he were aware of what the proposed legislation might be. Mr. Brower responded he believed it would expand the opportunities to establish assessment areas. He stated he would gather specifics regarding the possible future legislation.

Mayor Wood clarified the Council would be willing to wait until Mr. Brower could forward additional information regarding possible future legislation while the City continued to compile data and proceed with code enforcement. He requested Mr. Brower assemble additional information.

#### DISCUSSION ON CONSENT AGENDA PROCEDURES

Mayor Wood stated work sessions took place where future agenda items were discussed at length prior to coming for Council approval. He continued during the regular meetings each item was addressed individually for approval. He pointed out all work sessions were open meetings which had been properly noticed for the public and was suggesting the implementation of a consent agenda. He requested Nancy Dean, City Recorder, explain how a consent agenda could be implemented.

Ms. Dean reviewed agenda items which could be considered for approval in one motion on the consent agenda. She emphasized public hearings would not be included in the consent agenda to allow for public comment and pointed out if there were an item in which a citizen desired to speak to or a councilmember desired further discussion, it could be removed from the consent agenda and addressed separately. Mayor Wood emphasized the background would still be included on each item. Brian Brower, City Attorney, reported Layton City used a consent agenda for its City Council meetings and distributed a copy for illustration purposes.

Councilmember Sprague expressed his opinion current meetings were not too lengthy. Mayor Wood commented there had been times in which a number of housekeeping items could have been consolidated for approval. A discussion took place regarding the use of a consent agenda.

Councilmember Sprague expressed concern residents might perceive the Council had made decisions prior to its policy session. Councilmember Murray agreed with Councilmember Sprague's concerns.

Mr. Brower stated if the Mayor desired the use of a consent agenda during the Council meeting it should be reflected on the printed agenda. Ms. Dean pointed out any item could be removed from the consent agenda during the meeting and addressed during the scheduled items. She stated a policy could be established specifically addressing the use of a consent agenda. A discussion

specific to the citizen's perception with the use of a consent agenda took place. Councilmember Murray appreciated the background and recommendation provided on the agenda and suggested that it continue to be included for the public. Councilmember Sprague expressed his opinion there should not be a consent agenda. The Council agreed to pursue the use of the consent agenda.

The Council took a break at 7:40 p.m.

The meeting resumed at 8:00 p.m.

#### DISCUSSION ON CODE ENFORCEMENT AND THE GOOD LANDLORD PROGRAM

Police Chief Krusi explained the code enforcement and Good Landlord Program discussions would be discussed and presented as one item. He reminded the Council that code enforcement was currently a community development function and stated Adam Lenhard, City Manager, had requested the police department complete some research considering code enforcement's future with the City. He proposed it be better served as a police department function.

Chief Krusi introduced Kelly Bennett, Police Sergeant, to the Council. Sergeant Bennett stated he had incorporated the Vision 2020 Plan in his research and presentation. He complimented the work code enforcement had accomplished in improving the aesthetics of the City; however, there was still a need for more enforcement. He believed if code enforcement were a priority for the Council there would need to be an increase in costs to result in a more efficient process.

He reviewed the proposal with the Council which identified the following:

- The need to hire two Special Functions Officers (SFO)
- Increase the efficiency of the code enforcement division by utilizing the police department reporting system, case management files, reporting ordinance violations through the dispatch center and modeling code enforcement reporting with the current police reporting
- Citizen interaction with the existing police department procedures
- Increase efficiency at the same time maintaining a balanced budget

Sergeant Bennett explained the benefits of implementing a SFO with code enforcement. He emphasized the officer would be Peace Officer Standards Training (POST) certified having police powers only while working. He stated the officer would wear a uniform and commented it would be similar to what Layton City's code enforcement officers' wear. He emphasized the officer would not carry a firearm. He pointed out the benefits that would be gained by the change in regards to records management, report writing and communications with the dispatch center. In addition, dispatch would also be available to receive complaint calls for the code enforcement officers. He commented the officers could also be used to assist with other calls in the police department such as traffic control, on-street parking, etc.

Sergeant Bennett reported Layton City officials believed the residents had a different perception in receiving a code violation citation from a uniformed officer just like any other criminal violation. He expressed the intent to incorporate "Community Oriented Policing" with code enforcement was still a desired approach; additionally, the division would separate community development from citing businesses who were working closely with zoning approvals and licensing.

Councilmember Murray inquired if the proposed positions would be full-time. Sergeant Bennett responded in the affirmative. Mayor Wood expressed his opinions regarding past challenges in the use of part-time code enforcement officers. Councilmember Murray questioned the costs associated with hiring two full-time officers and whether that could be sustained in the future. Mayor Wood believed the City would be better served by employing POST certified officers and emphasizing the seriousness of the unkempt properties within the City. He believed the City would experience a higher retention of the officers. Councilmember Shepherd commented a citation received from the police department might garner more respect. Sergeant Bennett emphasized the City would not want to be considered a training agency and would want to attract experienced officers.

Sergeant Bennett explained how efficiency would be recognized and reviewed the Spillman reporting program with the Council. He pointed out the process would mirror what takes place with the patrol officers.

Kim Dabb left the meeting at 8:10 p.m.

Councilmember Murray requested clarification as to what enforcement would be the responsibility of community development. Ms. Claussen explained Community Development would continue to enforce sign violations, zoning issues, etc. Sgt. Bennett believed communication would have to take place between both departments.

He reviewed the proposed code enforcement procedures with the Council and suggested meeting with Judge Sandberg stressing the City's desire to improve the aesthetics of the City and improved enforcement of the fee structure adopted by ordinance. Sergeant Bennett pointed out the change would also allow probationary status with the court for those individuals receiving violations who owned multiple properties. He reviewed the current costs compared to the proposed budget if the proposed code enforcement division was implemented.

Mr. Lenhard explained the proposal was an administrative function since it was a staffing matter and emphasized he was in favor of administering it; however, the Council would be required to approve future funding during the budget process. He believed the current structure did not foster qualified candidates and expressed his opinion if the City were serious about code enforcement this change was required. He informed the Council a recent recruitment had taken place for the part-time positions which received very little interest by under qualified applicants. Sergeant Bennett indicated abatement and administrative costs would also need to be

appropriated and explained how that would take place. He commented it was the City's desire to have a ninety percent compliance ratio.

A discussion took place and the Council directed staff to proceed with hiring two full-time SFOs and moving code enforcement to the police department.

Sergeant Bennett turned the discussion to the Good Landlord Program and stated the police department had assigned Carey Stricker, police detective, as a liaison with the community development department. He stated it was the goal to bridge the communication between apartment managers and the police department. He indicated the City's previous Crime Free Multi-Housing Program was successful because of the information shared between the apartment managers and the City and explained the challenges associated with the Good Landlord Program.

Mr. Lenhard expressed his opinion the Good Landlord Program should never have been under the community development department due to the loss of the direct connection with the police department. He expressed his opinion the City took a big step backward due to that organizational structure and believed better results would be recognized with the police department's involvement. Councilmember Sprague indicated he was not aware the Crime Free Multi-Housing Program had been eliminated with the implementation of the Good Landlord Program.

Sergeant Bennett reviewed the process which would be implemented by the police department and shared a recent success story with the Council.

#### DISCUSSION OF THE DISPOSAL OF AN INSIGNIFICANT PARCEL OF PROPERTY

Adam Lenhard, City Manager, displayed a map reflecting a triangular remnant parcel of property located in the vicinity of State Street and Center Street which staff believed to be an insignificant piece of property. He stated the City's definition of an insignificant parcel of property was that which was valued at less than \$75,000. He continued staff was proposing the property be quit claimed to UDOT (Utah Department of Transportation) as it was in their right-of-way. He explained formal action would require a resolution approved by the Council making the finding that the parcel was insignificant. He indicated professional consultation could take place prior to the quit claim deed being issued. He requested permission from the Council to proceed and pointed out there would be no cost or benefit to the City.

He emphasized this action would clean up the boundary lines with the County and believed it was in the best interest in the long term to clean up the property records to facilitate future development in the area.

The meeting adjourned at 8:45 p.m.

**APPROVED AND ADOPTED  
This 20<sup>th</sup> day of September, 2011**

**/s/Don Wood, Mayor**

**ATTEST:**

**/s/Nancy R. Dean, City Recorder**

I hereby certify that the foregoing represents a true, accurate, and complete record of the Clearfield City Council meeting held Tuesday, August 30, 2011.

/s/Nancy R. Dean, City Recorder