

CLEARFIELD CITY COUNCIL MEETING MINUTES  
6:30 P.M. WORK SESSION  
May 22, 2012

PRESIDING:	Don Wood	Mayor
PRESENT:	Mike LeBaron Kathryn Murray Mark Shepherd Bruce Young	Councilmember Councilmember Councilmember Councilmember
EXCUSED:	Kent Bush	Councilmember
STAFF PRESENT:	Adam Lenhard JJ Allen Brian Brower Greg Krusi Eric Howes Scott Hodge Valerie Claussen Bob Wylie Kim Read	City Manager Assistant City Manager City Attorney Police Chief Community Services Director Public Works Director Development Services Manager Administrative Services Director Deputy City Recorder
EXCUSED:	Nancy Dean	City Recorder

VISITORS: There were no visitors.

Mayor Wood called the meeting to order at 6:33 p.m.

DISCUSSION ON APPOINTING AN ADMINISTRATIVE HEARING OFFICER FOR APPEALS

Brian Brower, City Attorney, distributed a handout identifying the Land Use Authority and Appeal Authority specific to the role of the City Council. He stated different land use attorneys previously advised the City it would be in its best interest to remove the legislative body as the appeal authority on land use issues. He added he had also attended the Utah Municipal Attorneys Association conference during which the difficulty with the City Council, as a legislative body, acting in any way other than legislative had been explained.

Police Chief Greg Krusi arrived at 6:37 p.m.

He briefly reviewed some of the instances when the City Council acting as the appeal authority wouldn't expose the City to potential litigation; however, he suggested Conditional Use Permits and the Planning Commission's role in consideration of a variance be designated to a hearing officer. Mr. Brower briefly explained the procedure for an appeal process to be

considered by the hearing officer and pointed out that position would be an individual trained and familiar with land use law. He stated this would suggest a more objective appearance and would create a better record for any potential court proceeding in the future specific to the submission of the Findings, Conclusions and Determination on behalf of the hearing officer. He commented the implementation of the hearing officer would remove the City Council from the process on Conditional Uses.

Mr. Brower pointed out currently there was no land use authority designated by State code other than the appeal authority which the City had designated as the Planning Commission specific to a variance. He expressed his opinion variances should almost never be granted and should be considered as a legal issue as opposed to sympathetic circumstances. He believed the implementation of a hearing officer would be making a decision strictly based on law.

He clarified if the Council agreed with staffs' recommendations it would need approval from the Planning Commission prior to approval from the City Council and requested direction from the Council now rather than later.

Councilmember Murray inquired if the City would be hiring the hearing officer on a case by case basis or if the same individual would be designated for all appeals. Mr. Brower responded the City could do whatever the Council desired but believed the City could contract with an individual who was well educated in land use issues who could render a decision based upon the law for any appeal. Councilmember Murray clarified the contract for the hearing officer would be on an as needed hourly basis.

Mayor Wood requested further clarification on specific recent cases and whether the hearing officer would have been involved. Mr. Brower responded to the Mayor's concern and indicated the Council could appeal the hearing officer's Findings, Conclusions and Determinations if it were not in agreement. Mayor Wood inquired if the Council had to accept the Findings, Conclusions and Determinations or if the City Council as an elected body could reject them if it did not agree with them. Mr. Brower responded that verbiage could be included in the proposed ordinance which would be forwarded to the Planning Commission. Mayor Wood expressed concern the hearing officer wouldn't be impacted by the decision as he or she most likely wouldn't live within the City or have an understanding of the Council's desires or direction for the City. He suggested the Council have the option to accept or reject the findings.

Mr. Brower responded the Council would make the determination to either accept the findings as presented or make changes if necessary. He expressed confidence the safest rendered decisions would be based purely on legal questions. He pointed out the Council could decide not to make any changes to the appeal process at this time. Adam Lenhard, City Manager, emphasized the reason for the proposed change was based on the advice of outside legal counsel encouraging the changes for municipalities on a statewide level.

Mayor Wood inquired what possible circumstances would necessitate an appeal for a Conditional Use Permit. Mr. Brower explained if an applicant believed the imposed conditions associated with the issuance of the Conditional Use Permit were unreasonable, the applicant might appeal that decision which would then come before the hearing officer for a determination whether the potential imposed conditions were a fair condition.

Mayor Wood clarified if the Council would have input or approval of a Site Plan and Conditional Uses. Mr. Lenhard responded approval of a Site Plan was more of an administrative function because if it met the ordinance it would have to be approved. He added there was not much of an opportunity to use discretion in approval of a Site Plan. Mr. Brower emphasized a proposed Site Plan would need to be approved if it met City ordinance.

Councilmember Young expressed his opinion he would be in agreement with staffs' recommendations as long as the City Council had the opportunity to accept or reject the hearing officer's findings. The remaining members of the Council were in agreement with Councilmember Young's suggestion and directed Mr. Brower to proceed with those instructions.

DISCUSSION ON THE BID AWARD FOR THEATR SEATING AT THE COMMUNITY ARTS CENTER

Eric Howes, Community Services Director, reported the City had solicited bids for theatre seating at the Community Arts Center and had received five bids. He continued all five bids were deemed unresponsive due to a variety of issues and suggested the item be tabled during the City Council meeting immediately following the work session. He stated the City would then proceed with the bid process at a later date.

Bob Wylie, Administrative Services Director, indicated the funds appropriated in the budget for this purpose would go back to the fund balance and would be included in the fiscal year 2013 fund balance as a direct appropriation for the theatre seating purpose.

Mr. Howes pointed out the delay would result in the City using temporary seating for the summer performances.

**Councilmember LeBaron moved to adjourn the work session and reconvene in a City Council policy session at 6:56 p.m., seconded by Councilmember Young. The motion carried upon the following vote: Voting AYE – Councilmembers LeBaron, Murray, Shepherd and Young. Voting NAY – None.** Councilmember Bush was not present for the vote.

The work session reconvened at 7:44 p.m.

*Eric Howes, Community Services Director, Scott Hodge, Public Works Director and Valerie Claussen, Development Services Manager, were not present for the following portion of the work session.*

#### DISCUSSION ON AMENDMENTS TO BUSINESS LICENSE APPEAL PROCEDURES

Brian Brower, City Attorney, stated this discussion was specific to business licensing appeal procedures and believed it might be appropriate to amend the City Code. He directed the Council to the handout titled "Appeal Procedure," Paragraph B specific to the time limitation. He suggested the verbiage be changed from 'service' to 'receipt' as this would allow the City to make notification by certified mail as opposed to having someone serve the papers.

Mr. Brower directed the Council to the handout specific to Title 4, Chapter 1, Section 8, regarding the appeal of the Business License Official's decision. He suggested amending the ordinance to enlist the services of a hearing officer to serve as the appeal authority rather than the City Council. He believed this would avoid an inefficient use of the Council's time. He continued the hearing officer would easily determine if policy was followed and whether the Business License Official's decision was in compliance with City Code.

Mr. Brower pointed out a time limit had not been included in this portion of the Code and suggested the language reflect the appeal be filed in the City Recorder's Office within ten days of the Business License Official's decision. He continued the amendment would also reflect a hearing with the hearing officer within 20 days. Mr. Brower requested direction from the Council on the suggested changes to the City ordinance.

Councilmember LeBaron inquired if the proposed changes were also suggested by the recent training received by Mr. Brower. Mr. Brower responded his training was directed more toward land use and expressed his opinion it would be in the best interest of the Council's time by relieving it of this responsibility.

Mayor Wood expressed his opinion an appellant could view the implementation of a hearing officer as an advantage because a decision made by the City Council in favor of the Business License Official would result in additional revenue for the City in a situation specific to the Good Landlord Program. A discussion took place and the Council agreed the proposed language would be in the best interest of the City.

Mr. Brower asked whether the City Council would want to ratify the hearing officer's decision. Mayor Wood believed the elected officials should have the same opportunity to ratify the decision. Councilmember Shepherd believed the appellant would want the Council's approval of the decision.

A discussion took place specific to the proposed verbiage change. Mr. Brower responded staff would provide proposed language at a later date for the Council's input.

Councilmember Young inquired about possible repercussions if the Council didn't accept the findings of the hearing officer. Mr. Brower explained it would be dependent on the City Attorney's role or other staff on behalf of the City during the hearing. He believed the City Attorney could make a substantial record for legal staff representing the City Council to create its own findings because there would be potential for court proceedings.

Councilmember Murray believed the Council should have the final say in the business license appeal process and considered it part of her job as an elected official.

The Council was in support of the proposed ordinance amendments and directed staff to proceed.

**Councilmember Shepherd moved to adjourn to a Closed Session for the purpose of a strategy session to discuss pending or reasonably imminent litigation (Utah Code Ann. §52-4-205), seconded by Councilmember LeBaron. The motion carried upon the following vote: Voting AYE – Councilmembers LeBaron, Murray, Shepherd, and Young. Voting NO – None.** Councilmember Bush was not present for the vote.

*The minutes for the closed session are kept in a separate location.*

**APPROVED AND ADOPTED  
This 14<sup>th</sup> day of August, 2012**

**/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, May 22, 2012.

/s/Nancy R. Dean, City Recorder