

**TREMONTON CITY CORPORATION
CITY COUNCIL MEETING
September 15, 2009**

Members Present:

David Deakin
Roger Fridal
Lyle Holmgren
Jeff Reese
Byron Wood
Max Weese, Mayor
Shawn Warnke, City Manager

CITY COUNCIL WORKSHOP

Mayor Weese called the September 15, 2009 City Council Workshop to order at 6:08 p.m. The meeting was held in the City Council Meeting Room at 102 South Tremont Street, Tremonton, Utah. Those in attendance were Mayor Weese, Councilmembers Deakin, Fridal, Reese, Holmgren, and Wood, City Manager/Deputy Recorder Shawn Warnke, Zoning Administrator Steve Bench, Public Works Director Paul Fulgham, Police Chief Dave Nance, and Treasurer Sharri Oyler. Recorder Darlene Hess was excused from the meeting. The Council reviewed the agenda and discussed the following items in detail.

1. Review of agenda items on the 7:00 p.m. Council Meeting:
 - ▶ Mayor Weese said Manager Warnke would be issuing the Oath of Office for the Youth City Council as Recorder Hess was not able to attend the meeting because her Mother had passed away.
 - ▶ Treasurer, Sharri Oyler, attended the meeting to answer any questions the Council may have regarding the Identity Theft Policy. The Council asked if this was a new policy? Treasurer Oyler said this policy is basically already in effect.

The meeting adjourned at 6:51 p.m. by consensus of the Council.

CITY COUNCIL MEETING

1. Opening Ceremony

Mayor Weese called the September 15, 2009 City Council Meeting to order at 7:03 p.m. The meeting was held in the Tremonton City Council Meeting Room at 102 South Tremont Street, Tremonton, Utah. Mayor Weese, Councilmembers Deakin, Fridal, Holmgren, Reese, and Wood, City Manager/Deputy Recorder Shawn Warnke, Zoning Administrator Steve Bench, Public Works Director Paul Fulgham, Police Chief Dave Nance, and Recreation Director Marc Christensen were in attendance. Recorder Darlene Hess was excused from the meeting.

Mayor Weese informed the audience that he had received no written or oral request to participate in the Opening Ceremony. He asked anyone who may be offended by listening to a prayer to step out into the lobby for this portion of the meeting. The prayer was given by Councilmember Fridal and the Pledge of Allegiance was led by Councilmember Holmgren.

2. Approval of agenda.

Mayor Weese asked if there were any changes to the agenda? Mayor Weese said there was an error in Item 10a. It should be “Country View Subdivision” not “Spring Acres Subdivision”.

Motion by Councilmember Wood to approve the September 15, 2009 Agenda with a correction to Item 10a to read “Country View Subdivision” and not “Spring Acres Subdivision.” Motion seconded by Councilmember Reese. Vote: Councilmember Deakin - aye, Councilmember Fridal - aye, Councilmember Holmgren - aye, Councilmember Reese - aye, and Councilmember Wood - aye. Motion approved.

3. Approval of Minutes - September 3, 2009.

Mayor Weese asked if there were any changes or corrections to the minutes? No comments were made.

Motion by Councilmember Reese to approve the minutes of September 3, 2009. Motion seconded by Councilmember Fridal. Vote: Councilmember Deakin - aye, Councilmember Fridal - aye, Councilmember Holmgren - aye, Councilmember Reese - aye, and Councilmember Wood - aye. Motion approved.

4. Oath of Office for Youth City Council.

Members of the Youth City Council were sworn in by City Manager Shawn Warnke:
Logan Fulgham - Mayor
Lacey Jensen - Historian

Councilmembers:
Sara Kerby
Courtney Jolley
Abby Payne
Lupe Patino
Dallin Spackman
Landon Fulgham

Absent from the meeting were Recorder Nick Francom, Councilmembers Brady Stuart, Caitlin Johnson, and Darcie Christensen.

Councilmember Wood thanked the Youth City Council and their leaders, Christy Asay and Diane Francom, for their service to the City. The Youth City Council will be holding a Food

Drive in the near future.

5. Public Hearing.

- a. To consider approving a written consent for a variance reducing the distance requirements with respect to a public or private school, church, public library, public playground, park or other licensee, club or establishment selling or vending alcoholic beverages for Western Billiards as provided by State Code for establishments selling or vending alcoholic beverages.

Mayor Weese opened the Public Hearing at 7:15 p.m. with 31 people in attendance.

Manager Warnke said he wanted to give the audience an overview of the process for the Public Hearing which allows the citizens to present their concerns, however, it is not a forum for dialog or debate. The Police Chief will present statistics on incidents related to this matter. The Council will hear each individual comment and base their decision on two specific findings: #1 - If compliance with the distance requirement would result in peculiar and exceptional practical difficulties or exceptional or undue hardships; and #2 - The variance will not cause substantial detriment to the public good. (Tremonton City Code 9-424.)

Mayor Weese asked those who wanted to make comments regarding this matter to step up to the pulpit, state their name, and present their views.

Don Anderson, owner of the Wester Billiards, informed the Council that Western Billiards has been in business for almost 100 years. He has customers who come in wanting a drink (alcoholic) after work or dinner and he has to tell those customers that they cannot get a drink at his establishment, other than beer. Some patrons do not like beer and would prefer other cocktails. Those customers then have to go out of town to purchase their drinks. Those customers that would have stayed in town may have also made other purchases in town. Alcohol is alcohol in any form.

Robin Kent said she has worked at Western Billiards for about four years now. Most of the customers leave the establishment between 7:00 p.m. and 8:00 p.m. The employees make sure none of the customers leave without a designated driver.

Sheila Huggins said she is a current bartender at Western Billiards and has also worked for twenty years in law enforcement. There has never been any trouble at the bar. The owner only hires responsible bartenders who know when a customer has had too much to drink. Serving hard liquor will not change the responsibility of the bar's employees or the expectations of the customers.

Ken McCaulley (Pastor of the Grace Bible Church) said he is not addressing the Council as a Pastor. We are not here to discuss this as a religious issue. Mr. McCaulley acknowledged and applauded Mr. Anderson's establishment and the care and concern they have taken thus far in operating his establishment, however, we are not here to discuss whether the establishment has been orderly, nor are we here to discuss public demand under the City ordinance. In this country we do not govern

by which group wants something. The law as it stands now does not allow for a variance. This request is not based on exceptional demand or because of a peculiar hardship. Statistics show an increase in crime around establishments which serve hard liquor. The Youth City Council was just sworn in to uphold the law. The Council should set an example to the youth by upholding the law.

Faye Clark asked the Council if the City has a law restricting liquor?

Mayor Weese read City Code # 9-424: Proximity Limitations. (1) No alcoholic beverage licensee, club or other establishment selling or vending alcoholic beverages shall be located within a radius of 650 feet of any public or private school, church, public library, public playground, park, unless the City Council finds after full investigation that compliance with the distance requirement would result in peculiar and exceptional practical difficulties or exceptional or undue hardships, in either of which events the Council may, after giving full consideration to the attending circumstances, following a public hearing in the City, authorize a variance from the distance requirement so as to relieve the difficulties or hardships, provided the variance may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this part.

Chief Nance said the walking distance from the front door of the Western Billiards to the front door of the Grace Bible Church is 299 feet. The Veterans Memorial Park is just across the street, east, of the Church.

Faye Clark asked why the City is not being progressive? She does not want to go to the Eagles Club where the young crowd hangs out. This liquor license will not harm the City and it will keep customers in town and possibly bring in more. The customers are responsible tax payers. Ms. Clark asked the Council to consider all these issues and to be progressive.

Councilmember Wood said the City receives profits from Western Billiards. Grace Bible Church is exempt from being taxed, however, the ordinance states specific restrictions.

Don Anderson said the hardship has been proven through his petitioners and customers. For his customers to be able to purchase the type of drinks they want, they would have to go to the Eagles Club and pay a membership fee just to get a drink, or go out of town. Mr. Anderson said this same issue was voted on in Brigham City recently and Pastor McCaulley, who lives in Brigham City, did not attend those meetings so why is he concerned about this issue in Tremonton?

Ron Clark said the Council should follow the law and be fair. The Church didn't have to get a variance to set up their services next to an existing bar. The Church has been at its current location for 18 months, and Western Billiards has been in business for almost 100 years.

Phillip Holcer said he is not questioning the responsibility of the bar's employees or its patrons. The intent of the ordinance is to protect facilities such as churches,

libraries, and parks. Denying the variance will not create a hardship to Western Billiards. If they have been in business for 100 years, it shows their business is doing fine. The City should want to invite tourists into Tremonton for other reasons than to purchase liquor.

Vince Bellon said he runs a small business just outside of Tremonton, however, he does most of his business in Tremonton. Mr. Bellon asked if any of the Councilmembers had ever been inside the Eagles Club or Western Billiards? Then he asked if anyone would take their wives or customers inside the Eagles? Mr. Bellon said he would not take his wife or any customers inside the Eagles. The concentration of drinking customers will not increase if the variance is granted.

Mayor Weese said the Chief of Police has collected data on incidents over the past six years at the Eagles and Western Billiards.

Chief Nance said the City's Police Department responded to one incident of disorderly conduct at the Western Billiards and 66 separate incidents at the Eagles Club during the past six years. Chief Nance said the officers asked the citizens who had been pulled over for DUI related incidents, where they had been drinking at, and a portion had been at the Eagles and a portion had be at the Western Billiards. The age of patrons can sometimes be a factor with these types of incidences. Hard liquor may or may not be a factor. The age of the customers may change at Western Billiards if the variance is granted.

Russell Scott said he is attending the meeting for another issue, however, he wanted to make a statement. How often does the City issue variances until the ordinance no longer exists?

Mandy Beckman said she is part of the younger crowd and has visited the Eagles Club but would rather go to Western Billiards. She stopped going to Western Billiards only because they had to quit selling malt beverages. Western Billiards is a quieter place.

Teia Lott said she is part of the younger crowd too. She is also the Secretary at the Eagles Club, however, she prefers to go to Western Billiards. There are always fights at the Eagles Club on Friday nights and those people give a bad name to other bar patrons. Western Billiards has to send customers away because of the new State Laws. Taking business away from Western Billiards is a hardship.

Kenneth McCaulley said it is a silly argument to say the church should have obtained a variance before setting up across from a bar. No one was ever pulled over for being under the influence of religion. The statement saying "alcohol is alcohol" is not true. Petitioners for the Western Billiards called it "hard" liquor. The secretary at the Eagles said the behavior is different at the Eagles where they serve hard liquor. There may not be any bad behavior at the Western Billiards now, however, what will it become if the variance is granted?

Councilmember Reese said the ordinance does not specify liquor content. Should

the Council require a specific definition? Councilmember Reese asked what days the Church holds services? Pastor McCaulley said he holds services on Sundays, Tuesdays, and Wednesdays.

Councilmember Holmgren said this issue boils down to whether or not a hardship or an exceptional situation exists. The Council has a responsibility to the citizens as well as the businesses in town. This is a very difficult decision.

Councilmember Fridal said he has not been in either facility. He has been in several public meetings where the public has been ignored. After hearing both sides of this issue Councilmember Fridal said he is leaning toward issuing the variance.

Councilmember Wood said this is a tough situation. The State Liquor Laws have changed for the whole state, and to him it seems that alcohol is alcohol. The Western Billiards is already selling alcohol.

Councilmember Fridal asked if food is served at the Western Billiards. Mr. Anderson said they serve snacks.

Max Huggins said they have occasional pot luck dinners at the Western Billiards.

Mayor Weese said the State Alcohol Laws are very confusing. The State has a limited amount of alcohol licenses which are issued to restaurants, and those with alcohol licenses must gain the majority of their income from food sales.

Councilmember Wood asked Mr. Anderson if the City were to allow the variance, would he still need to obtain a State License? Mayor Weese said if the City grants the City License then the State will allow him to apply for a State License. The State will set up and hold a Public Hearing as well.

Councilmember Deakin said Mr. Anderson needs to cross two hurdles. The first is to interpret the law and determine if this is a deterrent to his establishment. If the law is bad then that is another matter. The City still needs to address the proximity of the bar to the park. Maybe the bar could consider moving to another location.

Ralph Rhodes asked about the hardship to Mr. Anderson? Mr. Anderson will gain customers if the variance is granted, and will lose customers without it. The laws and the community are changing. This is no different from when the valley lost the Sugar Factory and the beet crops. The farmers had to find other crops to grow. Western Billiards and Don Anderson must adjust as well. It is a hardship to Mr. Anderson if he is not allowed to meet the changes set by the State.

Mayor Weese closed the Public Hearing at 8:06 p.m.

6. Variance from Tremonton City's distance requirements in Title 9, Licensing, Control and Regulation of Business and Construction, as they relate to proximity Limitations.
 - a. Discussion and consideration of approving a written consent for a variance reducing the distance requirements with respect to a public or private school, church, public

library, public playground, park or other licensee, club or establishment selling or vending alcoholic beverages for Western Billiards as provided by State Code for establishments selling or vending alcoholic beverages.

Councilmember Wood said the City receives revenue from Western Billiards and nothing from the Church, however, the ordinance is on the books.

Councilmember Holmgren said variances are a part of the City Ordinances to give option to the citizens. If this was a new establishment, would we grant the variance? The Western Billiards is an established and responsible business.

Councilmember Reese said he would like to find out the definition for alcohol content in the ordinance. Manager Warnke said the only definition is for beer.

Motion by Councilmember Fridal to allow a variance reducing the distance requirements with respect to a public or private school, church, public library, public playground, park or other licensee, club or establishment selling or vending alcoholic beverages for Western Billiards as provided by State Code for establishments selling or vending alcoholic beverages. Motion seconded by Councilmember Wood. Vote: Councilmember Deakin - nay, Councilmember Fridal - aye, Councilmember Holmgren - aye, Councilmember Reese - nay, and Councilmember Wood - aye. Motion approved by majority vote.

7. Introduction of guests.

This item was not addressed during the meeting.

8. Common Consent - Consent Agenda.

- a. Approval and authorization for the signature of an extension of the DynaQuest Technologies Managed Services Agreement for computer and network services.

Councilmember Fridal asked if this was an existing contract? Manager Warnke said that a few changes have been made, however, this is an existing contract the City has with DynaQuest Technologies.

Motion by Councilmember Reese to approve and authorize the signature of an extension of the DynaQuest Technologies Managed Services Agreement for computer and network services. Motion seconded by Councilmember Holmgren. Vote: Councilmember Deakin - aye, Councilmember Fridal - aye, Councilmember Holmgren - aye, Councilmember Reese - aye, and Councilmember Wood - aye. Motion approved.

- b. Approval and authorization for the signature of an amended Engagement Letter with Jones Simkins P.C. for the 2009 Audit.

Manager Warnke said the City has had a previous contract with Jones Simkins. This

is a clean up process of that contact.

Motion by Councilmember Reese to approve and authorize the signature of an amended Engagement Letter with Jones Simkins P.C. for the 2009 Audit.

Motion seconded by Councilmember Holmgren. Vote: Councilmember Deakin - aye, Councilmember Fridal - aye, Councilmember Holmgren - aye, Councilmember Reese - aye, and Councilmember Wood - aye. Motion approved.

9. New Council Business:

- a. Discussion and consideration of adopting Resolution 09-30 establishing an Identity Theft Policy in compliance with Federal and State Legislation and Regulation.

Mayor Weese said this is a program that Manager Warnke and City Treasurer, Sharri Oyler, have been working on for the City. If any indication of identity theft occurs, they immediately contact the authorities responsible in taking care of this offense.

Motion by Councilmember Holmgren to adopt Resolution 09-30 establishing an Identity Theft Policy in compliance with Federal and State Legislation and Regulation. Motion seconded by Councilmember Wood. Vote: Councilmember Deakin - aye, Councilmember Fridal - aye, Councilmember Holmgren - aye, Councilmember Reese - aye, and Councilmember Wood - aye. Motion approved.

- b. Discussion and consideration of adopting Resolution 09-31 on Municipal Wastewater Planning Program.

Director Fulgham said this is the only yearly report he has and it must be adopted by resolution by the City. The City averages four obstructions a year in the sewer lines which are due to the age of the system. Results on this year's report also showed the increase of waste from West Liberty Foods. This report is for information only for the State. This information is also sent to Garland City as they own 1/3 of Tremonton City's Wastewater Treatment Plant.

Motion by Councilmember Holmgren to adopt Resolution 09-31 on Municipal Wastewater Planning Program. Motion seconded by Councilmember Reese. Vote: Councilmember Deakin - aye, Councilmember Fridal - aye, Councilmember Holmgren - aye, Councilmember Reese - aye, and Councilmember Wood - aye. Motion approved.

- c. Discussion and consideration of adopting an Ordinance 09-19 repealing Title 4 Chapter 200, "Campaign Finance Disclosure" of the Tremonton City Corporation's Revised Ordinances.

Manager Warnke said this is a housekeeping item which allows the City to follow State Statues. A section of the existing Ordinance conflicted with the State Ordinance. The new City Ordinance will resolve the conflict.

Motion by Councilmember Wood to adopt Ordinance 09-19 repealing Title 4 Chapter 200, "Campaign Finance Disclosure" of the Tremonton City Corporation's Revised Ordinances. Motion seconded by Councilmember Fridal. Vote: Councilmember Deakin - aye, Councilmember Fridal - aye, Councilmember Holmgren - aye, Councilmember Reese - aye, and Councilmember Wood - aye. Motion approved.

- d. Discussion and consideration of awarding a bid for the construction of the Jeanie Stevens Park Trail.

Mayor Weese said the City received bids for the construction of the Jeannie Stevens Park Trail as follows:

Grover Excavation	\$54,605.00
Consolidating Paving	\$59,575.00
Staker Parson Co.	\$111,225.00
Rupp Trucking	\$52,103.00
Post Construction	\$71,100.00

The Engineer's Estimate for the project was \$72,500. Rupp's Trucking came in with the lowest bid of \$52,103.

Motion by Councilmember Deakin to award the Jeannie Stevens Park Trail Bid to Rupp's Trucking and authorize Mayor Weese to sign the contract for the construction of the Trail. Motion seconded by Councilmembers Reese and Wood simultaneously. Vote: Councilmember Deakin - aye, Councilmember Fridal - aye, Councilmember Holmgren - aye, Councilmember Reese - aye, and Councilmember Wood - aye. Motion approved.

10. Unfinished Business:

- a. Report from Public Works Director, Paul Fulgham, on water pressure issues in Country View Estates Subdivision.

Director Fulgham gave the Council copies of the test results he performed on September 5, 2009 and September 12, 2009 at Country View Estates, and informed the Council that the results did not show any significant problems. This time of year there is not as much of a demand on water use, therefore, no water pressure problems occur. The problem may occur again next year during the summer months. The City will be diligent in watching and checking on this issue next year.

Director Fulgham said the City had installed a sustaining valve to the water regulator at 2420 West 1000 North which has helped relieve the problem. The addition of the new well in the near future may also aid in relieving the draw on water, which may give some relief in pressure issues at this location.

The Mayor and Council asked Manager Warnke to write a letter to the developer of

Country View Estates, Randy Marriott, and inform him of the problems the residents had during this past summer and how upset they were. The City can vouch for the resident's comments and complaints. The Council suggested the residents also write letters to Mr. Marriott and include them with the City's letter.

11. Comments:

a. Administration/City Manager Advise and Consent.

1) Issues on Spring Acres Storm Water Pond and Harley Drive.

Manager Warnke said the developers of Spring Acres built a detention pond in the City's right-of-way at 2300 West 1000 North. It is too late to ask the developer to fix this error as the City had already approved the plans for the development. It will cost \$80,000 to correct the situation and the City's share of that amount will be \$30,000. Funds for this project will fall into next year's budget.

2) Overpayment on Personal Property Tax.

Manager Warnke informed the Council that the City received information from the County stating the City had received an overpayment in Personal Property Tax from the County. This was a result of an error by Autoliv declaring a portion of their property as being inside the Tremonton City limits when it is actually in Garland City. Autoliv has since issued an amended affidavit to the County. As a result, Box Elder County will withhold \$32,700 from the City's monthly property tax revenue payments until the amount is recovered in full by the County.

3) Joint City Council and Planning Commission Meeting.

Manager Warnke said the Council and Planning Commission will go on a joint field trip to Town and County Trailer Park on Wednesday, September 16, 2009. They will meet at the City office at 6:00 p.m. to discuss a planning issue. Mayor Weese asked that as many of the Council attend the field trip as were able.

b. Council Reports:

Councilmember Deakin said he had a conflict with the meeting on September 16, 2009.

Councilmember Wood said he is excited with the new City Youth Council. They will do a great job for the City.

Councilmember Holmgren said the Museum Board is considering putting together a memorandum to rent City property for a museum facility and hopes the Council

will support a long term lease. The Museum Board will work through the specifics with the Council and obtain a preliminary agreement.

Councilmember Holmgren said the petitioners in favor of issuing the variance for Western Billiards showed a good measure of responsibility.

Chief Nance reminded the Council that the Bradyville Training will be held on September 29, 2009 at 6:00 p.m.

12. Public comments: Comments limited to three minutes.

No public comments were made.

13. Adjournment.

Motion by Councilmember Wood to adjourn the meeting. Motion seconded by Councilmember Deakin. Vote: Councilmember Deakin - aye, Councilmember Fridal - aye, Councilmember Holmgren - aye, Councilmember Reese - aye, and Councilmember Wood - aye. Motion approved by majority vote. The meeting adjourned at 8:43 p.m.

The undersigned duly acting and appointed Recorder for Tremonton City Corporation hereby certifies that the foregoing is a true and correct copy of the minutes for the City Council Meeting held on the above referenced date. Minutes were taken by Shirley Colvin.

Dated this _____ day of _____, 2009.

Darlene Hess, Recorder