

ELK RIDGE
CITY COUNCIL MEETING
January 27, 2009

TIME & PLACE
OF MEETING

This Regularly Scheduled Meeting of the Elk Ridge City Council, was scheduled for Tuesday, January 13, 2009, at 7:00 PM; this was preceded by a City Council Work Session at 5:00 PM. The meetings were held at the Elk Ridge City Hall, 80 East Park Drive, Elk Ridge, Utah.

Notice of the time, place and Agenda of these Meetings were provided to the Payson Chronicle, 145 E Utah Ave, Payson, UT, and to the members of the Governing Body, on January 23, 2009; and an Amended Agenda on 1-25-09.

6:00 PM –

CITY COUNCIL WORK SESSION

ROLL

Mayor: Dennis A. Dunn; City Council: Nelson Abbott, Raymond Brown, Julie Haskell & Sean Royslance & Derrek Johnson; City Attorney: David Church; City Planner: Shawn Eliot; Planning Commission Vice-Chair: Dayna Hughes; Building Official: Corbett Stephens; and the City Recorder: Janice H. Davis

TRAINING WITH
CITY ATTORNEY

1. PUD Discussion:

Mayor Dunn: There are some interesting concerns regarding the PUD (referring to Elk Ridge Meadows); Not only has the bank taken over one Phase (Phase 2), but there are some issues with expiration dates on approvals for another Phase (Phase 4). It was the Council's desire to have the City Attorney (David Church) present for some discussion, questions and answers. With that brief introduction, the Mayor turned the time over to the City Planner, Shawn Eliot.

Shawn Eliot: Part of what has brought about this meeting with Mr. Church is the issues associated with the Town Home Project (Horizon View Farms...or Phase 4 of the PUD). The Project has been approved twice, if not three times; the last time it came into the Planning Commission, the developer wanted to make more changes to the Project. (*Mr. Eliot presented a Concept Map of the entire PUD, which has changed over time.*) When the Town Home Project was part of the overall Concept, the only information the City had was that there would be 74 town homes; the understanding was that at Preliminary Approval, the details would be available. A note that no one caught back then: They were required to have 25% open space in the Development (*pointing the "hashed areas on the map*). The open space requirement for Phase 4 was taken care of from Phases 1 & 2...with Phase 3 being on its own. (*Mr. Eliot was on the Planning Commission at that time.*) There were discussions with the original developer, Randy Young, about landscaping, playground equipment, etc.; and his response was that these things would all come in with part of the Town Home Development. The Planning Commission was led to believe that there would be these amenities; but the note on the Plat says otherwise.

The Planning Commission met with Rick Salisbury (new developer of the Project) last November (2008) and turned down his latest request; which was changing from 74 town homes to a mixture of single family homes and town homes. The Planning Commission's concern was that the open space in Phase 4 went down to 16%.

He was proposing single family units; many of them with 10' back yards...the Planning Commission did not like the new plan and brought up that the Development had been approved on the basis of town homes. Since that time, Mr. Salisbury found the note on the Plat referred to above that says he does not have to give open space and this has placed the Planning Commission in a bit of a bind. The Planning Commission told Mr. Salisbury that they and the Planner want to work with him, and they gave him some suggestions...but he replied that he was going to talk to the Bank and look at actually purchasing the rest of the PUD and doing all of the Development. The City needs to figure out where we are with this whole Development; is the original Development Agreement still in tact? If so, who receives the impact fees for the up-front water project money? Who is responsible for fixing up the open space, so it doesn't die? Who is responsible for the road overlays, etc? Does the City have any leverage? It would not be prudent to continue to approve developments in this Subdivision when it is "up in the air", like it is currently. This is most of why Mr. Church was asked to come and meet with those present. Perhaps the Bank (Centennial Bank) should be included in further talks; there have been phone calls to the Bank, but not much progress has been made so far.

Mayor Dunn: Nebo School District has control of Phase 3 of the PUD; the Phases that Randy Young still has control over would be Phases 4 & 5.

Important issue to consider:

1. Since the Bank has taken over there has been no amendment to the Impact Fee Reimbursement Agreement the City has with Elk Ridge Managers; Corbett Stephens had addressed the issue with them but they have yet to supply any documentation that there should be any change in who is the beneficiary of those reimbursements.

- It needs to be decided who the water impact fee reimbursements go to: the Bank or Elk Ridge Managers?
- The Park, as an amenity for the HOA, was to be cared for...this has been neglected; who is responsible and how do we protect the open space?

Shawn Eliot: Page 2-B of the Development Agreement refers to the water reimbursement and it is non-specific with wording that would encourage a separate Reimbursement Agreement to be made with each Phase responsible for payment of the up-front water system money.

Recorder: The Bank claims they should be reimbursed; but, in speaking to Bob Peavley, he feels it is Elk Ridge Managers who should still receive the money. Mr. Peavley says they still owe the Bank money.

David Church: The Bank could have foreclosed only on the property and it may not have a security interest in the City's obligation to them; "but that shouldn't change our obligation...we will owe it to somebody...there's no way that will just disappear...so if there's a question, what people would normally do (prudently) is if you couldn't decide between two claimants, you do what they call "interplead it" and just pay the money to a judge and have it determined". When they foreclosed on the property, whatever portion they acquired, they may or may not have acquired the rights to the reimbursement, depending on what their agreements we are not privy to, were. They may have a security interest in the property itself, or they may have a security interest in the property and of the contracts, the right to receive reimbursement...we don't know what their contracts are with the Bank. Unless we are convinced, we would not pay it to the Bank or to them and run the risk of being wrong." He does not feel this is a problem; we would pay the same as we would otherwise have paid, but in the absence of any proof of who is to be paid, we would pay to a neutral third party (the court).

Shawn Eliot: He still has a question on 2-B...the wording leads one to think that the reimbursement is to come from "future users of the water system improvements"...or every future development; is this what is meant?

Mayor Dunn: Every Phase involved in the payment of the up-front water system money, has a separate agreement, based on the number of lots in each Phase...leaving Phase 4 out of the agreements. Each agreement states that the reimbursement will come only from that particular phase of the Development.

David Church: This Agreement is "an Agreement to agree"; so you would anticipate that there would be other reimbursement agreements that come out of this; but he agreed that the wording is a bit confusing.

Shawn Eliot: RE "Defaults"...When can the City declare the development to be "in default"?

David Church: "Anytime they have defaulted...when I read through this, I can't see any provision in this where we could say the developer has defaulted on their obligations...of this Agreement. Their obligations are:

- 1-A: They are bound by the ordinances
- They are paying the \$700,000
- They are going to pay the normal Project Fees
- They are going to install a dry secondary system
- The entry-way corridor (I guess that has been done)"

(Mayor Dunn added that, no it hadn't because it is attached to Phase 3.)

Mr. Church continued that they could be considered "in default" on that...but he could not see that there is a time line attached to that.

Shawn Eliot: The Agreement just states that they will do it.

David Church: (Referring to the City's obligations to the developer) "Our obligation is just to allow base density of 3.6 dwelling units and then give them the bonus, according to the open space. If they are not entitled to the bonus because of the open space, that affects your question on what is due of Salisbury when he buys Phase 4."

Shawn Eliot: "If he is claiming their (the other Phases) open space, do we have some leverage because the open space is all one?"

David Church: To see what is required for their open space, you need to look at your zone...I don't know what that code for the R-1-PUD Code Zone for that date required of the open space and what we required...whether it is just open or if it's improved and watered."

Shawn Eliot: (Read a prepared question) "Our code does say, 'Each planed unit development is required to contain at least 25% open space, which may contain recreation area, activity areas (picnic pavilions, gazebos, water features, playgrounds, parks, trails, steep slopes, stream or canal corridors, wetlands, open fields or landscaped areas). The Planning Commission and/or City Council shall ultimately determine what qualifies as open space.' That's all we say. So, when we went through that whole process, the issue was...do they have to landscape it or not, by those words. So, they landscaped the Park and they put in some trees; but the rest of it was 'natural grasses and flowers' and stuff."

David Church: The question you asked me on the 25%...are we treating the whole thing as the PUD, or (because it has been so long) whether we have the right to say that Phase 4 is to be treated as its own separate piece...whether the approval was done before, or whether this is a new application. "If there are people to ensure that the whole plat (PUD) is done, then we treat it as a whole plat; if we don't have someone responsible to see that the whole plat is done, then I don't know why we would say that Phase 4 gets a 'free ride'."

Raymond Brown: We did have discussions when they sold off the school property...because they wanted to claim the parking lots and driveways, etc. as "open space"; they were told they could not do that. The consideration was taking the PUD as a whole for the open space.

David Church: "We have to be internally consistent is all I am saying...if we are looking at it as a 'whole', we have to be consistent. If we are looking at it by Phases, then we need to be consistent on that...we can't pick and choose which way we're going to look at it."

Raymond Brown: "They did try to push the open space onto the school, using all the parking lot, basketball courts and so on...and we said absolutely not; that's not the intent and that's not the way we want it. We did argue at that point...because they were going to try to gain all that open space with the school, and put in...I think 13 more houses in the other open space."

David Church: "So, what is our conclusion? Are we treating it as a 'whole' or 'by phase'?"

Raymond Brown: "We told them that we are treating it as 'phases', because they were trying to gain a lot of the open space from that school...meaning part asphalt; and we said absolutely not...that was never the intent...that we had this 'scattered' throughout the whole 122 acres."

David Church: "So, it we are consistent with that, we'd be telling the Phase 4 people, whoever they are...you have to have 25% open space."

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Shawn Eliot: The Concept came in as a 'whole'...and the open space was divided up as a 'whole'; but then as each Phase has come in...the first few Phases went by that plan; then the third Phase, we did a lot of rearranging...the 4th Phase came in, and the first two developments required 25% open space...nobody knew there was that 'little note' in the Concept that said otherwise.

Raymond Brown: But, they approached us, and said that they had this 'deal' where they had the opportunity to sell the property to the School District...we had some concerns about the open space and we ended up having to get a separate agreement with the School District to address this and not allow them to put 13 or 14 more homes in the rest of the plat...it was negotiated down to 9 new lots. But, the point Councilmember Brown made was that they came to the City; we did not seek to change the Agreement...they asked us to. With this agreement to change the terms, he feels that we are now addressing the PUD in phases.

Shawn Eliot: The question he had asked Mr. Church was, at what point is the Concept null and void...because their Preliminaries have expired?

David Church: "The Agreement is 'open ended', so we have to live by the Annexation & Development Agreement; we don't have to live by the plats and concepts...those are going to lapse under your ordinances...just the way they have lapsed. But, you give them certain rights under this ordinance, even if you lapse those plats...the new people could come back in and say, 'Alright, those plats are lapsed; I'm going to develop and I get my 3.63 dwelling units per acre base, and I get to develop under those ordinances that are listed.' So, my question would be...What benefit to we get by having the plats lapse and making them start over on the plat? They don't have to develop under the current ordinances...they get to develop under those ordinances that were in existence at the time you signed the Development Agreement."

Mr. Church said that these Agreements usually will have a time limit saying you are "vested" for a period of time; he could not find that in this Agreement. He said that it is "pretty open-ended".

He feels that the only solution on this is that we have to get the owners of all four phases in one room and sit down and say, "Look, we have to sort out who's doing what ...who's responsible for what...whether you are going to follow through with the Development Agreement or not?"...and if they say they are not, then we have to say, "Alright, let's work out the default and bring it to a head and see who has to do what". The banks will be reluctant to do that because they don't want to be the "developer", they want to sell it to somebody...so they will not want to be in the room to make the decision. They will be looking for a buyer; and when they get a buyer, we'll have people who can sit down and make these decisions with us. "I think it is beneficial to all the owners of all the Phases, if they come in are able to complete the development the way it was originally agreed on...but if they can't..."

Raymond Brown: He pointed out that someone has a sign up selling lots at so much per lot...it says it is a "foreclosure" type company selling these.

David Church: So, the Bank is selling off the lots...are the lots platted? They can't sell them if they are not.

Mayor Dunn: He believes it is attached to Phase 2, but they have posted in the corner of 1600 West (entrance to Elk Ridge)...not on their own property for Phase 2. Phase 2 has been platted and lots sold.

David Church: Asked if there is still a bond left on that plat... (*Phase 2...and yes there is.*)

Mayor Dunn: He said he was sensing a bit of confusion; he tried to recount the events of the development process for the PUD: When Phases 1 & 2 finalized their plans, Phase 2 came first...the open space calculation was based on the sum of the two Phases. As he recalls, in the beginning, Phases 1, 2, 3 combined the open space, leaving Phase 4 without much open space obligation (the "note" referred to by Mr. Eliot). When Phases 1 & 2 were constructed, the open space was combined; and Phase 3 stood alone. When there was an addendum to the Development Agreement to consider the School District; 5.5 acres remains open space.

David Church: Phase 4, if it only takes the 74 units shown, is fine; but if Mr. Salisbury wants to build more than 74 units...well, he has cut the number of units, but the open space is in backyards by going to single family dwellings instead of twin homes.

Corbett Stephens: He does have a sports court and other amenities in the middle; with a road going around...and houses fronting the road...in the backyards, he has an area for certain amenities.

(*Derrek Johnson: Does he meet the opens space requirement?*) But does he have to?

David Church: If we go by the whole plan, he meets the requirement; if we treat him separate as a new developer, he is short.

Raymond Brown: We changed to go by phases, but in the beginning, it was one whole piece.

Julie Haskell: wasn't that brought to us with the School District needing re-approval? Doesn't that change everything?

David Church: We need to pick a position and stick to it.

Raymond Brown: He feels it needs to be by phases; that is how we ended the last negotiations with the School District...the Amended Agreement with the School District followed, with the 5.5 acres of open space.

David Church: Because Phase 4 was still owned by the same developers back then.

Nelson Abbott: He feels it should be handled in phases. (*Councilmember Brown replied that it does now.*)

Raymond Brown: We have these separate Agreements with each Phase; now there are another 2 Phases and they need to follow the same guidelines.

David Church: If Phases 1, 2 & 4 had the same owner and he came to you and said he was ready to do Phase 4, would you be saying the same thing?

Raymond Brown: He feels that the City would be saying the same thing; both the Mayor and Councilmember Brown were on the Planning Commission when this Project annexed into the City.

David Church: It reads like he could have done it in one phase, two phases, three phases or four phases.

Raymond Brown: It may seem to read that way, but there were many meetings with the original developer, Randy Young, and the whole idea was that it would be going through the phases; in other words, to be shared.

David Church: “If Randy Young had come it and said, ‘I’m doing one phase...put all my open space right here’...”

Raymond Brown: Perhaps, if he had given the City a Ballpark and other amenities...but he didn't.

David Church: But the difference is now...Randy Young is gone, the Bank's got a piece of it, Salisbury may have a piece of it, and Wentworth still has a piece of it...the question is: Now that it is split up the way it is, do we treat it differently than if one guy had come in? There is logic in going both ways; we just have to decide and stick to an approach.

Raymond Brown: H feels that the plan is, and has been to have it spread out; with each section having an open space commitment.

David Church: Asked Shawn Eliot what open space is left and what is Mr. Salisbury's contribution to it?

Shawn Eliot: His development would dedicate 16%.

Mayor Dunn: The School is in the old Phase 3, and it had 25%.

David Church: So, we are saying we are short in Mr. Salisbury's Phase.

Shawn Eliot: Except that the original Concept said that his 25% was taken care of by all of the other Phases. This was in “concept”; it was never discussed that way.

Raymond Brown: All the negotiations since then and current, have been with 25% open space.

David Church: 25% is what gives him the bonus density. He does not have to have 25% if he doesn't want the density.

Corbett Stephens: He only has 10 acres. He was approved at 74 units.

David Church: If he come in and demands 3.63 dwelling units per acre and 16% open space; what bonus would he get beyond that?

Raymond Brown: There has to be something for the bonus density...perhaps streetlights and sidewalks.

David Church: If this is treated as a new phase, under the old Development Agreement, he gets 3.63 dwelling units per acre base...so with 10 acres, it would give him ½ what he is asking for. Then if he says he will try to meet the bonus requirements by giving a sports court and a “tot lot”, the open space...could he get up to what he wants with the City's bonus system? That would be his question.

Corbett Stephens: With all the bonuses, the most you can only get up to 5 units per acre.

Nelson Abbott: He would only hit 50 if it was just that one phase.

David Church: You have to make sure you are using the ordinance (code) when the Agreement was signed.

Shawn Eliot: The ordinance allowed more than the 3.63 units; but that was the agreement.

David Church: The Agreement sets the base density, then. So we get up to 50....

Nelson Abbott: Right, if we do this by phase...if he owns both of them, then it could change things; but if we have two separate owners and one want to put in 100 units on this property and takes away all the open space on the other guy's property...you can't do that. (*David Church: That's exactly right.*)

Raymond Brown: It would be foolish to turn down a 5-acre park.

Shawn Eliot: When we talked to him the other day, he did allude to the fact that if he (Mr. Salisbury) does take this over, he is going to try to get it all back to where it needs to be.

David Church: “That's the leverage; we've got to say that we want it all done as one, so that we don't have the parts that are left abandoned. You hope the Bank can sell off those lots so you can get an active homeowner's association going in there. The park is left in private ownership and it's going to be an eye-sore. When it is not maintained, it can become a “terrible thing”.

Shawn Eliot: So, two questions:

1. (Back to the “default”) Does the Agreement keep the developer from being considered “in default”?

David Church: We can certainly put somebody in default, but whom? The developers built a park and turned it over to a HOA...it was run by the developers because they owned all the lots and as they are sold off, you reached a point where a certain percentage of the lots are owned by private people and then eventually it “kicks it over”.

Corbett Stephens: You have to own a “home” to be in a HOA. The Bank only owns about 17 lots...Alpine Homes owns some of the lots.

Raymond Brown: Most of the lots are not owned by individuals; they are owned by the banks and other entities; so the HOA cannot be run by them.

Shawn Eliot: None of the Phases have been signed off as completed.

David Church: Always, in City business, you have to remember, that the sign-off is just the acceptance of their improvements; the day you allow that plat to be recorded, those are legal lots than can be sold to third parties...it is a subdivision and those will end up public improvements, where there are public roads. The bond is just a guarantee that we get the improvements done.

Shawn Eliot: I am just talking about the park...it was never signed off and it has gone “to pot”, basically.

David Church: It was to be a private park...was there a bond?

Recorder: Not for the park...it was to be the responsibility of the HOA.

Shawn Eliot: If we start to negotiate with Rick Salisbury, and he does take THIS ALLOVER...WHAT IS THE City's stance on negotiating the park?

David Church: The first thing you have to do is just dealing with actual owners.

Raymond Brown: The City has really not had a desire to own the park and maintain it.

Shawn Eliot: But, we have said that eventually the HOA will likely dissolve...then the City would inherit the park...

David Church: Just because an HOA dissolves, it doesn't necessarily mean the City gets the park. It means you get an argument...they always want to give you the roads; they don't necessarily want to give you the park; they usually want to sell the land off and put in new houses.

Mayor Dunn: How much attention should be shown to the consideration of the possible sale of that park land for added lots?

David Church: As far as we are concerned, there are no development rights for that park; it can only be used as a park. We need to make sure we are consistent on that; but there will be an argument with somebody who will come in and say that the only way they will be able to get enough money to fix up the development would be to sell off part of it...that is very common.

Mayor Dunn: He still expressed some concerns/confusion:

- Throughout the Concept and Preliminary on this PUD, Phase 4 was always identified as 74 units. That is not in the Development Agreement. He knows that as Pangea (developers of Phase 4) was involved, they used the number of 74 units. Rick Salisbury has used that number and it has been back and forth with the Planning Commission level with the 1st two project designs Pangea came in with. The reason he (the Mayor) brings it up is that he thinks it has been used as a “selling point” for someone to invest in that property, that it has that potential.

David Church: Shawn Eliot and Mr. Church have discussed this...and that sometime there was Concept approval, if not Preliminary approval of 74 units.

Shawn Eliot: They had Preliminary twice...they had Final approval last March (*It was actually May 27, 2008 that Final was granted by the Council*) and then they came in about August and re-did it and it was denied...November would have been the time the Final would have lapsed. They (Mr. Salisbury) are saying that they had Preliminary in May, 2008 as well and that even though the Final lapsed, the Preliminary is still good.

David Church: If this ended up in a legal battle, the City would be asked the following: If they developed according to what was approved at Preliminary and Final...the 74 units...would the City say no new? And if so, why? Why was it approved then and not now...what is the change? If he came back in with the same, exact thing and said, ‘I know the last one lapsed...I am re-filing with the identical plat...’ If the code changed, we normally would deny him...but in this case, we have an agreement that says the requirement will be what the code was when the Agreement was signed.

Shawn Eliot: But if the plat has lapsed, then the concept is not valid anymore...and we go back to the 3.63 units per acre + bonus amenities. *Councilmember Abbott said, that is what Mr. Church is saying*

David Church: He reiterated...if it was legal at 74 units under the all the codes why isn't it still legal now...with the same thing.

Corbett Stephens: It was only legal looking at the whole development.

David Church: That is what he meant when he says, if we appear to be inconsistent because we approved it for Preliminary twice, then why not now?

Shawn Eliot: It was approved twice for town-home units...because it was town-home units that was part of the approval...it is when it changed to ½ of the development as single-family and it ate up more of the open space...that was why it was denied.

Raymond Brown: The reason he got 74 units was due to the “give-backs” in the other sections.

David Church: He just feels the City had best be prepared to answer this question if he comes in with the same exact plan...but he doesn't want the same plan.

David Church: That is part of his argument...we allowed 74 town-homes...he suggests his plan is better than that...he proposed single-family because the City typically does not like town-homes...then we say “no”.

Shawn Eliot: That is the hard part; because the reason it was not better was because the open space went away; but now we find out that the open space is not an issue anyway.

Mayor Dunn: That is an important point to remember...Phase 4 open space was included in Phases 1 & 2...Phase 3 had its own.

David Church: In this economy, the way things are going...speaking generally, it is better for cities to have people building and to finish these developments up. You can't let them sit; even if they are not building the big, nice homes people were building when things were “rolling”...it is important to get lots sold...people building and families in them or else it just falls apart. The roads will fall apart; the water lines will have to be re-done...it is just a mess when subdivisions sit for 5 and 10 years without anybody living in them. It is even worse having two or three homes with people in them...then the city has to maintain things for 2 or 3, when there might be 30, 40 or 50 lots.

Corbett Stephens: Is there an advantage to declare them “in default”?

David Church: Only if it helps gets someone else building...people build as big as they can afford. From a city stand-point, we need people in to help with expenses in the city. We want to encourage the building of homes that people will buy and move into.

Mayor Dunn: In a meeting held with Mr. Salisbury, he made a comment that he is interested in “buying it all”; he wanted to talk to Centennial Bank (the Bank that took over most of the lots in Phase 2) about taking over those lots. When Mr. Salisbury was building his homes, he sold off the single family part of his business, with a 5-year non-compete clause...that clause has run out now. That is one of the reason his proposal has come to the City with single-family units... he is now in competition again. He stated at that meeting that he would love to take everything over and use this single-family opportunity as the catalyst for people to enter into the market and then roll over to one of the finer properties...meaning Phases 1 & 2.

Derrek Johnson: He said that he sees the argument in the short-term; but long-term for the City...he feels that Rick Salisbury may not be the right builder to have for this Community.

David Church: It will be more “affordable” housing...and that is the dilemma; because no one knows how long the economy will be like it is. People will build as big as they can afford.

Shawn Eliot: The question he had in trying to move forward: they left the meeting with Mr. Salisbury with the felling that the City is willing to “work with him”...Mr. Salisbury said he wanted to feel that the City wants what he has to offer. Question: Does the City have any leverage point with which to negotiate?

David Church: Yes, we do...but how does the City solve the issues without all of the property owners involved? Unless he wants to build exactly what has already been approved; which he does not.

Raymond Brown: There must be some “common ground” for what he and the other property owners want and what we want, without having to give away too many amenities. We can still get things that are important to the City, even with more affordable housing.

David Church: The obligation to pay on impact fees must be looked at; are there rate issues?

Nelson Abbott: Indirectly, yes...because money is budgeted for the depreciation of assets that have been put in place for development that is not occurring.

David Church: Depending on the city, generally the tax revenue is insufficient without the growth to pay for the services provided. Cities are experiencing these problems all across the Valley.

These are the tough decisions. The reimbursements through impact fees have to be paid, regardless of who finally collects the money.

Shawn Eliot: So, the next step...

David Church: We want to try to get a meeting with everybody involved, if we can...and sit down and figure out how to make this successful, before it gets worse. The economy is just not bringing in the taxes for revenue; sales tax has dropped.

Shawn Eliot: Is that something that you (David Church) would be willing to assist the City in? (Yes.)

Discussion on property taxes with regard to development:

Julie Haskell: She asked if Mr. Church would explain.

David Church: The big risk is with these big land owners...if they don't pay their property tax, it is like a “free loan” for 5 years. You can start to see a drop in property tax revenues from big land owners.

When you don't pay your property tax, the County does not put the land up for sale for 5 years...you have to be five years in arrears before it goes. So, for example...when Geneva Steel went into bankruptcy; they went five years without paying that big property tax to the County and the school districts. Some of these bigger land owners and developers...in tough times... that is the first thing they don't pay. So you figure, in five years, the money would be available to then pay the property taxes. Interest and penalties would also be applicable, but it is 5% interest. There are many big businesses that simply decide not to pay.

There are a lot of people that need homes; just there are not a lot of people that can afford the homes that people are selling.

Derrek Johnson: He asked how much the homes Mr. Salisbury proposes would sell for. There are lots going for about \$50,000 and they are not selling.

Mayor Dunn: He thinks Mr. Salisbury said around \$160,000 - \$190,000.

David Church: People from out of State are waiting for the economy to bottom-out...to purchase for investment, not to build. The people in the construction trades are really looking for work.

Summarizing: The next step would be to get all parties together to work out the issues. Mr. Church feels that the best thing for the city would be to do it all as one big Project and get it completed the way it was approved.

Dayna Hughes (Planning Commission): The Planning Commission had no problem with him coming in and finishing it under what had been approved (with the 74 units); but he wanted to come in with very small houses with zero lot lines and no back yards and we had a problem with that. Perhaps things have to be re-considered. She feels they are worse than a town-home...a person could not be on his property to wash the windows of his own house due to the zero-lot lines.

David Church: He related that he used to live in a big house in the “Avenues” (Salt Lake City) and he had a similar situation...people pay big money for those. It is the attitude of the neighborhood that makes the difference.

Dayna Hughes: They do not fit with the General Plan.

2. General Questions & Discussion:

Mayor Dunn: As the Mayor opened the Meeting up to questions for Mr. Church from the Council and the Planning Commission, he introduced him with a bit of background: Mr. Church is an authority on ethics and values...in fact teaches these things to various organizations in the State. He has written the manual that goes out to all municipalities on these issues.

Discussion and Comments:

Raymond Brown: (re: Codes) When dealing with developers, he feels the Council is good about requiring that they stay with the Code; but when it comes to some Codes in the City, he feels the Council is pretty lax in enforcement. That bothers him. When enforcement does occur, then citizens think the Council is “being selective” because there has been little or no enforcement in the past. The Council has to make decisions and they should be consistent...someone could challenge the Council for being selective. Where does the Council stand legally?

David Church: He would not worry about enforcement of development codes while not enforcing say an animal control code...that is not a valid argument. However, he felt that Councilmember Brown did make a good point: One of the things we do in cities is that we are invested with what is referred to as “police powers”...or the power consistent with State law to make laws and ordinances for the health, safety and welfare of the community. Every community has a bunch of ordinances. The question comes up as to how aggressive to be in enforcement? It is going to be up to the Council to choose an “enforcement philosophy”.

There is nothing inherently wrong with what people identify as “selective enforcement”. The purpose for enforcement is to get compliance...and you get compliance in two ways:

1. Compliance of the person that you are enforcing a law against.

You have a problem person...the problem comes to your attention in some way and you feel it is necessary to comply. The person in violation is identified and the “hammer of the law” is brought down on that person; and you get compliance.

2. You also get compliance by example: You selectively enforce to serve as an example to everyone else; that doesn’t mean that you have to go after everybody; it means that you have the right to pick and chose who you go after to get other people to comply.

Example: The Highway Patrol sees thousands of cars, many of which are going over 75 mph. They get to “select” one or two of those that they think are worse for whatever reason and give them tickets...and by doing that, everybody else slows down. But, it is not a defense to say: “everyone else was doing it and you only picked me”. It is not wrong that they make a “selective choice”...it could be everyone going over 85 mph...everybody believes they have the “right” to go 10 mph over the speed limit because most troopers pick the speeders that go over 85 mph. Well, you don’t have the “right” to go 10 mph over the speed limit...if they wanted to pick the people going two mph over, they could.

Advice: You have to have some enforcement. When you pass a law and you announce it out...like a dog ordinance or a nuisance ordinance. Or a yard-cleaning ordinance...you announce that out to everyone and you are going to get:

- 80% of the people that will read it and comply
- 5% of the people will read it and say, “It is *my* dog and I will do what I want and let it run wherever I want
- 15% will be in between those that say, “I really like to let my dog run, but I will see what they do”

If you don’t go after somebody, that 5% “bleeds” into the 15%...and then you get 20% that let their dogs run loose...then you start to lose the 80% that were willing to comply in the first place. You have to have some level of enforcement and it is alright to “pick” those 5% that are just thumbing their noses at the law and the Council to get to be the example to everyone else.

Now, if you want, you can have very aggressive enforcement. You can say, “Our policy is that we are not just going after the 5%, we are going after everybody”. The trouble with that is that it costs more money; and the cost may not be worth the benefit. You get the 80% for free that will comply; the other 20% costs you, if you what to get them to comply. But if you don’t do something, you start to lose the 80%.

That is the dilemma; if your ordinances are important enough, some minimum level of enforcement has to happen and it is alright to pick the loudest, most obnoxious person in violation and use them as an example.

Just remember, if you don’t want to enforce the laws, you will get the 80% compliance; but if you ignore the 20%, the 80% will go down to nothing...then it is hard to bring it back.

Derrek Johnson: You brought up in your example if that person is a “nuisance” or has been reported to be a “nuisance”...If a decision is made to go after a person that has never been called in as a nuisance, is it ethically right to go after this person? Councilmember Johnson said he would use as an example the issue of the miniature horse in a zone without animal rights.

David Church: If you are using the enforcement power for some other purpose... (*Councilmember Johnson interjected the work, “vendetta”*)...like a vendetta, then that is not right. It may be legally right; but you should not use your position on the Council for personal vendettas. For example, it is perfectly alright to say, “Our policy is that we enforce on complaint”.

Raymond Brown: Using that same example: (Councilmember Brown gave a brief history of the miniature horse issue) A few years ago the issue of miniature horses in a residential zone without animal rights came before the Council in the form of a proposed change in the code to allow it; the proposal was denied. One pony-owner moved to a zone that had animal rights; the other owner refused to comply. Is this “selective” enforcement or a “vendetta” to say, “Wait a minute, you took your shot”...

David Church: (Interjected)...in other words, “You asked us specifically, we told you no, and now you are ignoring us...and now we feel that we really have to enforce it”. That is a very common thing for cities to do.

Mayor Dunn: It boils down to the principle of the code...it is a code violation...it doesn’t have to be a “nuisance”.

Raymond Brown: It says to the 80%, you don’t have to obey the code.

David Church: That is the dilemma you have. Animal rights are a good issue...most cities have an ordinance that says a person can have no more than two dogs. We all know that there are a lot of people that have more than two dogs; eventually, if you don’t enforce that 2-0dog limit sometime...you are never going to be able to enforce it, it you every want to...with a complaint or without a complaint.

(Comments were made regarding how people think about their pets and how attached they get to them.)

Continuing, Mr. Church said, If you were starting fresh on pets...and you said, “Alright, nobody has a pet, let’s decide which pets we well allow...dogs would be the last on the list that anyone would approve...they go wild, they are messy, they make noise, they bite, there are dangerous breeds...perhaps a little horse or a goat would be way ahead of dogs...but, in fact we are not starting from that point. Dogs and cats are traditional pets and people are used to them and the “untraditional ones” have been written out of our codes. It is hard now to say that you will start adding to those...but, some cities are. The rule of law is important; if a city actually considers the issue and says, “Are we going to allow it or not?” and the city make the decision to not allow it...and then the people say that they will ignore the law, then that is a problem.

Derrek Johnson: “Don’t you think, in city government (I know the Mayor doesn’t because he like black & white) (*Mayor Dunn: “Thanks for speaking for me.”*) Your welcome...You say it yourself...Anyway, aren’t there some “gray areas” in government?

Frankly, we should not be concentrating so much energy on this since there are more worries like finances...aren't there some gray areas?" He made the point that the horse is not bothering the neighbors in any way...isn't there a point where government can say that it is really not worth our time?

David Church: Well, yes...but the other side of that is; if in fact all of that is true, why did the Council say; no you can't have small horses?

Raymond Brown: Another problem associated with this: Some time ago, Councilmember Abbott came before the City Council wanting to amend to code to allow pigeons. That went through the whole process and was approved. Will that decision now be endangered and will allowing pigeons be questioned?

David Church: He is not sure why the Council went one way or the other on miniature horses; some cities feel that a miniature horse is more like a dog than it is like "livestock"...but, if the process is gone through and a decision made to deny it; and the person doesn't care what eh Council says...that is a different issue. The question is how to respond to that...it becomes a public thing. If they had not come before the Council and it had never come up and there are no complaints...then he feels some leniency is understandable...but once they come in...it becomes a big issue to him...why else do we hold elections and vote for people, etc.?

Derrek Johnson: A survey has gone out and more people are in favor of it.

David Church: If you get three votes on the Council, then you can change it. That is the beautiful thing. But, ordinance enforcement is a tough issue. So, he is in violation...now what are we going to do?

Derrek Johnson: Doesn't the Planning Commission have the right to take this on if they want to address it? (*Mr. Church: "No."*) We don't have to tell them...

David Church: "No. You can let your Planning Commission do as much as they want; but what the Planning Commission has the 'right' to do has nothing to do with animal ordinances or nuisance ordinances. They are land-use ordinances...planning and zoning...and animal, nuisance and police matters and things like that are technically an ultimate City Council kind of issue."

Raymond Brown: (Concern) If you have a violation and you do nothing, then there are really no ordinances you can enforce. Another Council...they could get upset about something like "pigeons" and go back and re-consider it and end up taking away a right that has been granted...and Nelson's pigeons don't even fly."

Derrek Johnson: You could go to any house and find a code violation.

David Church: Yes, and if you want to, that is alright...some cities do that; but it gets very aggressive. One of the things you will notice is that HOA's will do that...they get very aggressive in enforcement. There are many more complaints in cities about non-enforcement than there about enforcement. (*Mayor Dunn agreed that the majority of the complaints that come through his office are regarding non-enforcement issues.*)

Raymond Brown: (Question) We have a problem with home that are not maintained and turn into junk-yards. About two years ago, and ordinance was passed that required residents to have their front and side yards in...but about four years ago, it was asked if the Council could require that same thing for existing homes and they were told no because they are "grandfathered" in under the old code. Now the Planning Commission seems to have gotten the okay to require this of existing homes. What has changed?

David Church: It is the difference between having a zoning control and a nuisance ordinance. We zone out nuisances; but not every zoning control is for the purpose of nuisances. You have a separate right outside zoning to define and control nuisances...public safety and health kind of issues. People are grandfathered in on zoning. For example: A messy yard...that is not a zoning ordinance kind of thing...so the day you pass it, you can start to enforce it. You are not "zoning out" junk cars...you are saying junk cars create a nuisance...they are a hazard...they're rat0infested, they attract vermin, they are bad for little kids to play in...so that is a whole different body of law...people can't be "grandfathered in" with their junk.

Raymond Brown: But, can we make them put in their front and side yards?

Raymond Brown: You can if you can justify it under the nuisance laws; which probably you can. The other thing you can do under the zoning ordinances is that you can say that the zoning ordinance requires everyone to have it in within so much time...that is not grandfathering anyone in...they have as much time as anyone else.

Raymond Brown: (To clarify) So, if I have been up here 20 years, and I have weeds in my front yard...not hazardous...just weeds...the City could now say that I have to put in a yard?

David Church: Depending on how you define "yard" and how much detail you have.

Raymond Brown: So I would have to put in a front and side yard, like all the new residents...within 18 months.

David Church: I do not know how that is defined.

Dayna Hughes: It is well defined in the ordinance...it does not define what you can put in.

David Church: As long as it is reasonable, you can do that and you can give them plenty of time. It doesn't matter how long a person has been here. You are not grandfathering in a use.

Dayna Hughes: (This is referring to another topic that will be brought up later in the meeting) In regards to what was said by Councilmember Johnson about the Planning Commission having the "right" or the "responsibility" or "in the interest of the City"...because the Planning Commission doesn't have a "constituency"; but we are to represent the City...

David Church: "No, you're not."

Dayna Hughes: That is what is says in the Handbook...

David Church: "I don't care...where does it say that? (*Mrs. Hughes was referring to the Handbook for officials written by David Church*) This keeps coming up and we keep going back and forth on this issue and she is tired of it. She felt that, with everyone here, it could be resolved. In the minutes of the May 22, 2008, Planning Commission Meeting...the Mayor did not feel that the Planning Commission should have looked into building heights...there was a big issue over building heights. Councilmember Roylance, who is the Planning Commission representative that comes to all the Commission's Meetings, reported that the City Council had

not officially asked the Planning Commission to review the building height code. (Mrs. Hughes read from the minutes) The minutes said that the City Attorney was consulted and that the code does imply that the Planning Commission can bring forward changes. She felt that what Mr. Church had told Councilmember Johnson earlier in the Meeting was the exact opposite of that.

David Church: No, I told the Mayor that if it is building heights, it is within the purview of the Planning Commission; but if it the number of dogs...it isn't. Land use control is the Planning Commission's purview; which means: subdivision ordinance, zoning map...uses of land.

Recorder: When one considers "permitted uses"...like the consideration of "household pets" and defining "household pets"...

David Church: A lot of people put those in their land-use ordinance...I am just saying that those should be over in the criminal code...the nuisance ordinance. You don't want to make those zoning issues for the reasons we talked about before...just like you would not want to put into your land-use ordinance...speed limits; those go in the traffic code. There are certain bodies of things that are just "crimes"...if you have too many dogs; it is a "crime".

Dayna Hughes: So why is the "chicken code" coming through the Planning Commission?

David Church: Because you wanted to make that a land-use ordinance; and you will have things in your land-use ordinance that say you can have animal rights in this section...they will overlap somewhat; but you will have something in your criminal code that says...

Shawn Eliot: Our criminal code section has the whole nuisance, rabies and licensing, etc. The actual land-use is what is permitted, the numbers the types, etc.

David Church: Your animal control ordinance is under your criminal code...dogs running at large, etc. If the Planning Commission want to "jump into any kind of land-use thing and the Planning Commission wants to do it on their own...feel free; make your recommendations. But, please don't think you have a constituency. You are not the Community Council. You are not there to protect the City from the City Council.

Julie Haskell: (ATV's) She asked that Mr. Church clarify the subject of "constitutional rights"...referring to the fact that the Council was advised that they could not be more restrictive than the State law in some things...like the age limit for an ATV operator.

David Church: There is not "constitutional right" The State Code says that a city can have an ordinance identical to the State law...and you cannot make it tougher. The Off-road Vehicle people have a big lobby and there are a huge number of people in the State that are in favor of ATV's. The State Legislature last year said that with a population of less than 7,500, street legal ATV's are legal on all of your roads; whether you want them or not. On the rest of your roads, you can make non-street legal ATV's legal if you want to...but you don't have to. You may not make it illegal to use ATV's on any private property...then the nuisance ordinance becomes involved.

Derrek Johnson: Since the State Code says 8 years old; we have to stay with 8 years old? (*David Church: yes.*)

David Church: There are sections in the State Code that says you may have an ordinance, but it has to be identical to the State law.

Nelson Abbott: (Regarding "extensions" on approvals for a development) He understood this that the code allows the Council to deny the extension based on substantial change in the code...we are fully within our rights to do that?

David Church: Yes. Everyone has ordinances similar to that. If you have changed the code and they have had their shot to develop...

Mayor Dunn: The code also states that if we do grant an extension, that it needs to be on the basis of the code they are vested under. (*Mr. Church: Yes.*) Questions:

1. (Directed to Shawn Eliot) Do you know what the differences would be between the old code and the new code, regarding Fairway Heights? How would that development change?

Shawn Eliot:

- Right now they could just do one-acre lots; the code states that you have to have 20 acres or more to fit into the cluster over-lay zone...they have 19.7 or something...assuming 20 acres is 20 acres. If they would be allowed to cluster, they would have to have an adjustment. Or they would need to have a bit more land.

- If they qualified for 1/2 acre lots, the Fitzgerald part of the development has 16 1/3 acre lots...it would lose 4 lots.

- The other portion (Ewell's): the issue would be the top of the hill...the ridge line. They would lose those lots (top of the hill) and gain one at the bottom of the hill if they did 1/2 acre lots. They have 8 lots now and they would drop to 5.

Mayor Dunn:

2. Could that be challenged as a "takings by restriction"?

David Church: Not if you give them time to record and that has lapsed...have they lapsed?

Recorder: They have Preliminary until May, 2009.

David Church: They probably came in early so they could plat if they are not granted the extension.

Sean Roylance: (Back to what the Planning Commission can and cannot do) The nuisance laws, in times when development is slow, could the Council authorize the Planning Commission to address this?

David Church: You can ask them to do what ever you want. There are certain things you must involve them in (Zoning Ordinances, Subdivision Ordinances, Zoning maps, General Plan) and anything else you want to delegate to them.

Derrek Johnson: How many Councilmember does it take to authorize this?

David Church: Three yes votes wins.

Dayna Hughes: We can also respond to a petition from a citizen.

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3 Sean Roylance: Another question he has is about way the Council can make money and charging fees for
4 boarding horses on city property.
5 David Church: There is nothing wrong with charging rent on your property.
6 Nelson Abbott: The concern had been whether the bond would allow it.
7 David Church: He does not think that matters as long as it is short-term and the ultimate purpose of the
8 property is still going to be used...it's just a "holding period".
9 Raymond Brown: What should be done with people that have horses on the City property without paying and
10 have a "homestead" attitude...they feel they will not pay until they are caught.
11 David Church: There is something in the State Code called an "adjister's" lien, which addresses feeding other
12 people's livestock...a lien can be put on them, if you want to go through all this.
13 Raymond Brown: He is simply opposed to people "asking for forgiveness instead of asking for permission".
14 Councilmember Brown asked if the City could back-charge for fees not collected.
15 David Church: You are just like any other land-owner and you have the right to control your property, and you
16 can negotiate for the use...or you can give the use away, if you want.
17 Sean Roylance: In general, what kind s of restrictions do we have on being able to make money? We are re-
18 doing the City's web site and we talked about having a business directory with ads on it..
19 David Church: You can theoretically do that; but you run a risk whenever you create a forum like that. You
20 would want to avoid any censorship; what happens if you get an ad you don't like, that qualifies...you would
21 have to accept it...you don't get to edit it out...so that can be risky. There are those that finance their web site
22 with ads or make the ads part of the business license fees.
23 Raymond Brown: The Fire Dept. wants a fire engine and they had to come up with a matching grant...
24 (perhaps 10%); are they allowed to have fund raisers on City property?
25 David Church: if you allow them, they can. It is very common for volunteer fire depts. to create a "foundation"
26 or auxiliary that they raise funds for things outside the fire dept. If they want to create that, there is no problem.
27 To do it right, they would have to have a separate bank account that they could have some control of. It would
28 be considered "off books" and there would be separate kinds of accounting; but it is fairly common. It may or
29 may not be worth the effort.
30 Shawn Eliot: (Public Hearings) It required that for subdivisions, a public hearing should be done at the
31 Planning Commission level; but the City Council can still hold a public hearing?
32 David Church: You can hold as many public hearings as you want; in the code or out of the code.
33 Shawn Eliot: How is that different than what we talked about regarding the ATV's? What code can you add to
34 and what code can you not add to?
35 David Church: There is a specific section in the State law on ATV's that says the City cannot alter the code.
36 The code will say...for example, there is a section that deals with tobacco section that says that cities may not
37 regulate tobacco sales any greater than the State regulates them. Fireworks: there is a State code that says
38 that cities may no longer pass ordinances to regulate the sale of fireworks...these are the laws.
39 There are a bunch of those types of laws.

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42 **ELK RIDGE**
43 **CITY COUNCIL MEETING**
44 **January 27, 2009**

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46 **TIME & PLACE**
47 **OF MEETING**

This Regularly Scheduled Meeting of the Elk Ridge City Council, was scheduled for **Tuesday, January 13, 2009, at 7:00 PM**; this was preceded by a **City Council Work Session at 5:00 PM**.
The meetings were held at the Elk Ridge City Hall, 80 East Park Drive, Elk Ridge, Utah.

Notice of the time, place and Agenda of these Meetings were provided to the Payson Chronicle, 145 E Utah Ave, Payson, UT, and to the members of the Governing Body, on January 23, 2009; and an Amended Agenda on 1-25-09.

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54 **7:10 PM -**

CITY COUNCIL MEETING – REGULAR SESSION AGENDA ITEMS

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56 **ROLL**

Mayor: Dennis A. Dunn; *City Council*: Nelson Abbott, Raymond Brown, Julie Haskell & Sean Roylance & Derrek Johnson; *City Planner*: Shawn Eliot; *Planning Commission Vice-Chair*: Dayna Hughes; *Building Official*: Corbett Stephens; *Public*: David & Brian Ewell, Lee Pope, Rodger Hardy; and the *City Recorder*: Janice H. Davis

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61 **OPENING REMARKS**
62 **& PLEDGE OF**
63 **ALLEGIANCE**

An invocation was offered by Julie Haskell and Raymond Brown led those present in the Pledge of Allegiance, for those willing to participate.

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65 **AGENDA TIME**
66 **FRAME**

MOTION WAS MADE BY SEAN ROYLANCE AND SECONDED BY JULIE HASKELL TO APPROVE THE AGENDA TIME FRAME; ADJUSTING THE START TIME TO 7:10 PM
VOTE: YES (5) NO (0)

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69 **PUBLIC FORUM**

No Public Comments.

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3 FAIRWAY HEIGHTS,
4 PLAT C –
5 EXTENSION REQUEST

Brian Ewell: He submitted a written request for an extension (included in Council packets):

“Elk Ridge City Council Members:

“The Fairway Heights Plat C & D was pre-approved by you on April 9, 2008. Since that time the United States economy has Entered into a recession causing an undesirable environment to develop and sell lots for the city and the developer.

As developers of the Fairway Heights plat, we request an extension of one year from the original final approval date resulting in a deadline of April 9, 2010.

The extension request is for the following reasons:

1. Current economy has decreased the interest of potential buyers
2. New lots sitting empty is less desirable than pristine raw land
3. Decreased land values have caused an unsuitable economic environment to develop land
4. Empty building lots are not aesthetically pleasing to the residents, city or developer

We feel it would be in the best interest of Elk Ridge City and its residents to consider and approve this extension.

Regards,

(Names listed: RL Yergensen, Brian Ewell, David Ewell, and Rob Fitzgerald & Lari Fitzgerald)

There were, however, no signatures on the request.

Mr. Ewell introduced his brother, David Ewell to address the Council first:

David Ewell: Though Brian Ewell has been the “voice” during the development process since he (David) lives much further north. We have been working with the City and the Planning Commission for the past approximately three years. They feel the process has had good “synergy” with Shawn Eliot assisting them to create a development that would be suitable for the City, not only meeting code but also the intent of that code. Through the process, they have reduced the number of lots from 13 lots down to 8 lots. They, as developers feel this subdivision will be a benefit to the City in that it will not only connect two major portions of the City as Salem Hills Drive is paved; but they also feel they are “treading lightly” in the CE-1 Zone, according to the Code. They also feel they are benefiting the City by deeding some property that is not necessarily a requirement, to assist in the wild life corridor and trails system. Because of these benefits and the current state of the economy, they feel this request is appropriate, to give them the opportunity to then put in a viable development that would benefit both parties (as stated in the letter).”

Brian Ewell: He appreciates the time to address the Council at this time. He feels there have been some good discussions and good meetings. He has contemplated the best way to address the Council and he has thought back on the events, as they have occurred during this development process. As a result of these thought and so he can better portray his thought; he wrote his thoughts down...which he proceeded to read:

“We feel we have been treated unfairly throughout our approval process. It has been driven by certain individuals’ selfish wants and desires. It all started three years ago, when we first approached the Planning Commission with a development plan. Since then, I have heard comments from City representatives such as, and I quote, ‘I don’t want a house behind me’ or, ‘That’s not going to work, I don’t want a house staring down in my back yard’ or, ‘A group of us residents have talked; and we don’t want houses on that hill. We are prepared to pool our money together and if you go to the City for approval on your development, we will sue and tie it up on litigation for years and cost you a lot of money’. I have heard all of these comments more than once. We feel this is very out-of-line for a City representative to say.

Elk Haven is very similar tour development; in fact Plat C is on a ridge line; it is long and very narrow; and it was granted an extension. When we first approached the Planning Commission three years ago about developing, we did not feel they gave us much direction...we were tabled many times, we heard a lot that they didn’t like our development...we did not feel we were given much direction on what they would like. As a result and out of some frustration, I approached Shawn and asked him, ‘What direction do you think we should take?’ We wanted to know what would make the City happy and what would make the residents happy. As many of you know...Dayna knows, I’m sure...she remembers all the residents that would come and express their feelings...and we wanted to do something that would be a little more pleasing to them. So, we went back and I discussed things with Shawn and we came up with our current plan; in fact Shawn basically designed our current plan...he penciled it in...and he was the one that came up with it and said, ‘Brian, this is something that I think will work’. So, as you can see, the City Planner has been a big part in the design of our development.

After that, we had it drawn up again...I actually went to all the neighbors in the area; I first went to Derrek’s house and I presented it to him...I showed him the old plans and then this new plan that we’ve got...and Derrek was very much more in favor of this one. He expressed that he liked it much more. All of the neighbors were thrilled that I was able to meet with...there wasn’t a one of them that told me they did not like it.

At the request of the City, we were asked to work with and include the Peterson’s on the development. As you know, we set up many meetings with them to try and get them on board. Even though it cost us a lot of money to have new plans drawn up to include the Peterson’s, we felt assured that we were doing a good thing for the City. One day they would be on board and, as you know, the next day they wouldn’t be on board with us...it was something that continued to delay us.

We feel that we did our due-diligence and at times, went the extra mile to do as the City requested of us. We have been told by more than one City official that we have been held to a higher standard than other developers have. A Planning Commission member told me, ‘In all the years I have been on the Planning Commission, ‘I have never seen a development treated more poorly’. We feel that this is a result of selfish individuals that want to push their own agenda. Even though we are developers, we have families that are important to us. Just like the rest of you, we are trying to support them and get through this terrible recession.

Just in closing, hopefully you have been able to get a glimpse of the work that we have done and what we have been through to make this a successful project for not only us, but the City. We have been reasonable and have followed your guidance. We are not asking for any special treatment, just an extension to allow us to weather this recession the Country and the world are in.

So, with that, on behalf of the Fitzgerald Family, the RL Yergensen Family, Dave’s family and mine; we ask that you please grant us this extension.”

(Brian Ewell asked that the Planner also address the Council.)

Shawn Eliot: The Planner said that he had gone over the comparison of changes that would be applied with the new code (HR-1 Code) for their development. Taking the ridgeline off...obviously, that is a bit issue with the hilltop...the Ewell’s portion of the subdivision is pretty close to fitting what the new code is, were it applied, if the ridgeline was not there...one-acre lots; there is the one lot we went back and forth on, on the west side. It is the Fitzgerald’s ½ with the 1/3-acre lots that hits hard against the new code.

One clarification with Elk Haven, Plat C: It is on a ridgeline, but their extension was approved before the

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3 “Ridgeline ordinance” was completed. That was not even part of the discussion when the extension for Elk
4 Haven was approved. Plat E (bottom area) has never had their Preliminary ...we are working with them
5 currently; but one of the things those developers were told was that they need to be looking at the new code.
6 The new HR-1 Code would preclude the lots on the hilltop of Ewell’s development, *if* the ridgeline is
7 considered. So the issue is, do you agree that the ridgeline should be there? (because we did go back and
8 forth a great deal on the ridgeline ordinance). Other than that, the one-acre lots on the hill are pretty close to
9 adhering to the new code, other than that one lot, which would have too steep a slope for the building
10 envelope. Under the new code, with the ridgeline, they would go from 8 lots to 5 lots...Mr. Yergensen’s original
11 proposal included 16 lots, if he recall correctly...with a road that started at Mr. Eliot’s house and went up from
12 there; meaning the whole ravine was filled in to the point that it was straight up to get to there.
13 So, with the new code (with the ridgeline in force) and an exception to the 20-acre requirement, the Fitzgerald
14 portion would lose about 4 lots and the Ewell’s portion would lose 3 lots.
15 The 13 lots that they started with; they did argue that it (the plan) did not fit that current code; that is why it
16 went to what is there now (8 lots).

17 So, when he worked with the Ewell’s on this plan, we were working under the code that was current at the
18 time...Mr. Yergensen’s first proposal was way off.

19 Brian Ewell: We had other plans that met the code; for example, we had a road that was going on the east
20 side of the hill, and that was a big issue for residents...and he agreed...it had a road that was right in the
21 backs of their yards, even though we were meeting code, it was redrawn again to accommodate the City and
22 the residents. This has delayed us; in reality, we could have been done with our development close to a
23 couple of years ago.

24 Raymond Brown: (Directed to the Ewell’s) How many of the neighbors were missed?

25 Brian Ewell: I missed one...I think it was Kelly Liddiard.

26 Derrek Johnson: (Sought to clarify) “You mentioned we were all happy with the plan; none of us were happy
27 with home being built up there. Since I was the target of the first 1/3 of your talk...I am a resident first; and I
28 have every right to disapprove of this. I declared my “conflict of interest”...so; I don’t appreciate that, to be
29 frank with you. Secondly, you came to us with this plan...we liked it because we felt like we had our backs up
30 against the wall. So, we liked that better than what had been proposed; none of us were happy that,
31 period...none of us. That is why we got together as residents and were talking about litigation...and I have
32 every right to do that, with the citizens. So, just to clarify...the citizens weren’t happy with that...the residents
33 weren’t...it looked better; but we felt we had our back up against the wall.”

34 Brian Ewell: (Clarifying) The residents were happier with the current plan than they were with the old plan.

35 Raymond Brown: (Questions) Were there were some things that needed to be done that have not been
36 done...and why? (*He asked the Recorder to explain.*)

37 Recorder: There were many delays; Fitzgerald’s do not have water rights.

38 Brian Ewell: “Right; but we are in two different phases, so we are prepared to move on without the Fitzgerald’s.
39 We are ready.

40 Raymond Brown: “So, you have done everything that you can do to get ready...”

41 Brian Ewell: “Absolutely. We have contacted utilities: phone, power...we bought our water shares...the day
42 they were available.

43 Raymond Brown: The Fitzgerald’s didn’t; but they are not connected to you?

44 Brian Ewell: They don’t *need* to be.

45 Derrek Johnson: “Was the Planning Commission and City Council serious when they passed this new code?
46 When they went to all this work and diligence...were they serious in passing that? Of was it just a game?”

47 Mayor Dunn: Asked what was meant.

48 Derrek Johnson: They were serious; that is why they passed that code with the new hillside development.

49 So, if we allow this to go on...as it states clearly in our code, if the code has been dramatically changed, then
50 we shouldn’t pass it, under that code.

51 Sean Roylance: (Seeking to perhaps further clarify what Councilmember is referring to) “In our code, where it
52 talks about extensions, it says, ‘The approval may be extended or reaffirmed by the City Council, for a period
53 not to exceed one year, following receipt of a written request...’, (which we have) ‘submitted in accordance with
54 the rules of operation of the City Council *and* (emphasis added) upon finding that the conditions applicable to
55 the project and the vicinity are substantially the same as at the time of initial approval.’

56 I understand your arguments, your point of view as far as saying that the City is partly responsible for the delay
57 and so now you are wanting us to extend because of that...to be honest, I think you have a bit of a point there.
58 But as far as the...approval *may* (emphasis added) be extended’...if we are looking at should we or should we
59 not? However, there is this caveat that says, we may extend it upon finding that conditions are substantial the
60 same as at the time of the initial approval. That is where I don’t know that I can find that they’re the same;
61 whether we want them to be the same or not, I don’t know that we can find that...and it is very clear what the
62 outcome should be in that case.”

63 Brian Ewell: “I and many others interpret that very differently. You are interpreting that as the code conditions
64 changing; I interpret that as our conditions of our development...if we were to come back to you now and had
65 changed many things...say now we had 14 lots...that is what I consider ‘conditions of our project’...”

66 Sean Roylance: “Actually, if you were going to change like that, you would have to go back to get re-
67 approval...so, that is something completely different. We were concerned about that, so we actually talked to
68 our lawyer to say, ‘okay, is this something that is substantially different?’ His response was pretty straight
69 forward that, ‘Yes, it is’.

70 Brian Ewell: “His response was that you may have reason not to extend...as I recall reading it.”

71 Sean Roylance: “I felt it was pretty straight forward, but maybe it wasn’t.”

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3 Mayor Dunn: “The first part of it said if an extension is granted, it has to be under the conditions that it exists in
4 now...then he went on to say that change in the code can be considered one of those ‘substantial changes’.
5 (Brian and I talked about this back in December.)

6 Sean Roylance: “I guess if that can be considered a ‘substantial change’, then I don’t see how I can find that
7 the conditions aren’t substantially different. We have to find that they are the same, and then if we find
8 that...then we can consider whether or not to do an extension. As for point number 1, I can’t find that.”

9 Derrek Johnson: “This is the development; keep in mind...that the Planning Commission re-did all the hillside
10 development...because people were not happy with homes on top of that hill.”

11 Sean Roylance: “I would say it is a lot more than just theirs.”

12 Shawn Eliot: “Yes, it was RL’s ‘rock wall’...”

13 Sean Roylance: “The ‘rock wall’ and Plats a through E...” (referring to Elk Haven Development)

14 Shawn Eliot: The Planner pointed out that the first time this plan came before the City...there was a meeting in
15 the Council room to review the plan and it was said that the plan was not adhering to the code...that was when
16 RL had 16 lots...at that time, they were told to go back and fix it and that the Planner (then on the Planning
17 Commission) would help them. What RL chose to do was to come to the Planning Commission with the exact
18 same plan...that was when Mr. Yergensen got upset. It was not until the developers and the City started
19 working to bring it closer to the code that things started to work out. He felt that from that time forward, the
20 Planning Commission did pretty good with the process. It is a hard thing; particularly when their development
21 comes right after the issues with the ‘rock wall’...at that point, the Planning Commission did not feel the code
22 met the needs of the Community...but, they were given the guidance to pass it through. But the Planning
23 Commission initiated changing the code, so certain issues would be taken care of for future development. It
24 was a lengthy process, but it was also a “two-way street”. “It wasn’t just the City or the Planning Commission
25 that made it a lengthy process.”

26 Brian Ewell: “I’m not saying it was...but, we would come in with a plan that we felt we were ‘treading lightly’
27 and that we were meeting the intent of the code, and because we thought we were meeting the intent of the
28 code didn’t mean that you guys felt that we were meeting the intent of the code. That is what we and the City
29 kept getting held up on, was, ‘what does it mean...the intent? As far as everything else, we were meeting
30 code...it was just that one little word...the ‘intent’...what was the ‘intent’? That is why we felt that we kept
31 getting tabled and required to re-draw it.”

32 Sean Roylance: (Referring to Mr. Eliot’s point) “It was roughly a year and ½ ago that we still had a whole ton of
33 lots that were not even close; so this two or three year window...the first ½ of it, I wouldn’t say it was the
34 Planning Commission or the City Council. The first year and 1/2 was not even in the right ballpark.”

35 Shawn Eliot: He admitted that they did try to use the ‘intent’ to try to clarify the code in places; but there were
36 other issues...like the road in the backyards, there was another part of the code that said you cannot have
37 roads with dual-lot frontage; which means having roads on both sides of it. It also said that the Planning
38 Commission is to use geographic calculations; which, in this case was true...but there was another way to put
39 the road up...and the developers did re-draw this...but it was better and it made it so that those neighbors did
40 not have a road in their backyards...which is what the code was trying to prevent. Everyone had to work
41 through all this.

42 Nelson Abbott: “Economy aside, is there any reason you would not be able to go forward now?”

43 Brian Ewell: “Absolutely not.”

44 Nelson Abbott: “So, if we denied you the extension, you would ‘go get your tools and go to work’...so to
45 speak? Am I understanding that?”

46 Brian Ewell: “That is something that we will have to analyze and figure if that is the best way for us...but, yes.”

47 Nelson Abbott: “I don’t want to feel like we have put you in a position where we have ‘short-changed’ you; but
48 at the same point in time, if you have the tools, the means and the ability to make it happen...then whether you
49 do it now or in a year, I honestly don’t think it’s going to make any difference...in terms of marketability or
50 anything else.”

51 Brian Ewell: He felt that it does make a difference; it would give them another year to see what the economy
52 does. They are “ready” from the aspect that they have met requirements, purchased water rights, they have
53 done the required work with the utility companies; but, they just do not feel it is feasible to break ground right
54 now and invest any more money into a development that may have to wait some time to sell any lots; they do
55 not want to place either themselves or the City in a situation where there are lots sitting, not being fully
56 developed or sold.

57 City recorder: She reviewed the time line, if an extension was not granted and the developers had to stay
58 within the approval times allotted for their current status:

- 59 - Preliminary: good until May 9, 2009
60 - Final would be granted and would be good until October 9, 2009 (Bonding and recording the plat must be
61 done within that 6 months)
62 - After that, they would have until the following October, 2010
63 Ground would not have to be broken now.

64 Brian Ewell: That is a good point and they have thought through these time lines, as well; but the extra time
65 would allow everyone to weather this economic “storm” we are all in.

66 City Recorder: An example of what the Ewell’s are talking about is Elk Ridge Meadows, Phase 2; a bank has
67 taken over most of their lots.

68 Brian Ewell: “That is the last thing we want to happen.”

69 Sean Roylance: (Also seeking to clarify timelines) It was about a year and ½ ago when the Planning
70 Commission started to see a serious plan that was “in the right ballpark”; and was last April when it got
71 Preliminary approval...really we are only talking about a 9-month window from when we first saw a serious

plan until the approval was granted. That is not three years.

Brian Ewell: “You keep referring to a ‘serious plan’...all along we felt that what we had was a ‘serious plan’. Before we could even approach the Planning Commission, we had to give them a ‘serious plan’. We had to meet with the City Planner, he had to approve us to go to the Planning Commission...so, in essence, we were told that what we had was a ‘serious plan’, as you say. Because of what you would tell us, we felt it was a ‘serious plan’.”

Sean Roylance: “The bottom line is...I was on the Planning Commission a year and ½ ago and at that point, we had a whole list of things wrong with it; it wasn’t even close. That was consistent until we got approximately to the plan we have now...and I don’t remember there ever being a deviation on that from the Planning Commission’s stand-point. Then, once we saw one that even came close to addressing a whole ‘laundry list’ of issues, then it took about 9 months or even less than 9 months (to get Preliminary). I don’t know...the whole argument that the City is at fault; I don’t know if we really were...so much. With that said, I think that the economic argument...everyone knows where we’re at economically...and so the question would be, does it warrant ignoring the code?” They felt like it was a joint effort to come up with a good plan.

He referenced how difficult it had been in trying to deal with the Peterson’s; they were very unpredictable and “on again, off again”. Even though they were difficult to deal with, they knew that the City preferred having them as part of the development, if possible.

Lee Pope: “Given that the consensus seems to be that they are very close to meeting code and whatever requirements you have had or have for them now...unless the Council just doesn’t want development...what possible reason would there be, or sense would there be in not extending their plan?”

Sean Roylance: “The reason is because our code clearly states that we can grant them an extension upon our finding that conditions applicable to the project are substantially the same; and so the problem is that the code has completely changed, and so as a result, conditions are not substantially the same...and so, in order for us to grant this extension (at least from my view) I would basically have to say...I would have to turn a ‘blind eye’ to the fact that they are not substantially the same...which, according to our code, especially when it comes to development, that is not something that you typically want to do...is to start just ignoring pieces of the code.”

Derrek Johnson: “It was stated in our last meeting, that if we are going to crack down on development...that it is going to be ‘by the code’.”

Lee Pope: (Question) Mr. Pope commented that restrictions have continually increased on development, He mentioned a meeting on another development he was involved with wherein it was discussed whether it was possible to get 100 lots (one per acre) on 100 acres...with the new code. They had looked at the new code and could not see how a person could possibly do that. The restrictions were going to restrict them to maybe a 1/3 of the lots they thought they could get, which would require perhaps \$400,000 per lot to develop...this would potentially “kill” any development in the area south of the City. When he brought this up to the Planning Commission and to the Council, he asked if they believed, with the new code, that one could still get 100 building lots in that 100 acres? He said that the “definite answer” was “yes”.

Referring to restrictions, they also brought up that they had carefully looked through all the other codes of surrounding communities...and collectively, the development codes in Elk Ridge are more difficult than any other community they found, which they feel is very prohibitive to development. The consensus was that they want really “harsh” restrictions, but that developers can come back to the City and ask for a variance or an allowance or a “favor”...and that the City will listen; but it was felt that it was better to have a strict code and then make allowances. He went on to say, “Now I am hearing there is nothing like that.”

Sean Roylance: He disagreed that they never said a “variance”.

Nelson Abbott: (To clarify) They (Ewell’s) have 19.77 acres? Under our new code, we would have to grant him some leeway there...we *could* grant some leeway...” He felt that what was being said was the fact that conditions have changed substantially and based on our legal counsel, the Council has reason to deny this request.

Sean Roylance: To answer his (Mr. Pope’s) question: “Once a code is in place, we can’t go in to make it tighter after somebody has come to propose a development. We can come in and make it ‘looser’ through a process. That’s the point that was made; that is different than a ‘variance’...it’s different from starting to say we’re going to ignore the code. There is a process, though, for modifying it and making so that will work.”

Lee Pope: “You would rather have a hillside scarred for a year or more in order for him to comply right now; than to come up with some way to give him time that he needs to see what this economy is going to do?”

Sean Roylance: “No one knows how long we are talking...it could be 10 years...we could give him a one year extension and still have it scarred for nine years..so, I am not going to speculate on the future. But I am saying that if you start just ignoring pieces of the code in development, then that is a “slippery slope”. In fact, we just talked about that with our lawyer before we came in here and he distinguished...he said that there is development and there is the other side.”

Mr. Ewell: “The reason we are here is to remind you of the things that we have tried to do to work with the City Council and the Planning Commission...and in turn, see if you would be willing to work with us.”

Raymond Brown: He also recalls, in talking to the City attorney, that he said that the City needs to find some common ground, even if we would prefer another type of development (referring to Horizon View Farms); otherwise, we lessen our tax base...he felt that should also be taken into consideration as well.

Derrek Johnson: He felt the City recorder brought up a good point in that the Ewell’s still have over a year and ½ to develop under their current approvals.

Raymond Brown: He realizes that, but the attorney’s comments were influenced by the proposed homes that the Council is not too in favor of...that sometimes we have to modify a bit; otherwise we could be putting ourselves in a bind. He further made the point that “some of our developers don’t really care...they don’t live here...they don’t care, so they just do whatever...if you don’t like it, tough!

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3 It seems like they have been working closer to what we want (referring to the Ewell's). I look at 13 homes to 8
4 and I don't know that the new code taking them down to 5 is fair."

5 Brian Ewell: "We have nine acres...8 lots is less than one lot per acre."

6 Raymond Brown: He had also talked about the Fitzgerald's...he asked that if they cannot go on, can the
7 Ewell's go on? Do they have to stay tied to this portion of the development, if they continually cause delays?
8 Whether it is RL Yergensen or the Fitzgerald's, "if you see a way to go forward, can you go forward without
9 them?"

10 Brian Ewell: "Yes we can."

11 Raymond Brown: "That is what was behind my questions about the water rights and filing for Preliminaries and
12 so forth...if you are serious about this, and this extension gets you moving, and the other folks just don't want
13 to move...then can you move without them?"

14 Brian Ewell: Councilmember Abbott brought up a good point regarding the number of lots..."On our property,
15 we have nine acres and we are only asking for 8 lots...that is basically more than an acre per lot.
16 Another thing is that the City has in their plans, a trails system and a corridor that goes right down the ravine. If
17 we were to put a lot up against the Peterson's property; that would eliminate that trail and it would eliminate
18 access to that park that we have dedicated to the City as part of our plan."

19 They feel that they have been reasonable...so if they could move forward now, why not just grant them the
20 extension for a year? Why put them in the uncertain position of scaring the land up and perhaps having lots
21 sitting there?

22 Sean Roylance: Granting this extension would mean that any other developer could come back in and say that
23 the code was substantially changed, but there was an extension granted anyway...so as a result, they could
24 claim that the Council should grant an extension for them, as well.

25 Brian Ewell: "In our last meeting in December, you (referring to Councilmember Roylance) brought that exact
26 point up; and you said will we be held...since we extended...to other developers? And it was unanimously
27 said, 'no. (Councilmember Roylance questioned if the Council said, no.)

28 Shawn Eliot: He felt that it was Elk Haven Development that was being discussed.

29 Raymond Brown: "We have always said that what we do, like for this one...we don't have to do for the next
30 one...we have always said that."

31 Sean Roylance: "Certainly we don't have to, but will it be brought up every single time? Absolutely."

32 Raymond Brown: He maintained that an action taken regarding one development does not set precedence for
33 another development.

34 Sean Roylance: "There's precedence and there is actually following precedence...it definitely sets a
35 precedence, it doesn't mean you have to follow it. So, no it is not like we are actually changing the actual code,
36 but it does set precedence, and you have to explain that every time in the future."

37 Raymond Brown: He pointed out that the code does state that we "may" or we "may not"...

38 Sean Roylance: He continued that the code states that we "may upon finding...", and so you don't even get to
39 the "may"...you have to "find" first that the code is the same. Once you get to the "finding", then you can do the
40 "may or the "may not".

41 Mr. Ewell: The additions to the new code are tighter, so there may not have as many issues.

42 Nelson Abbott: "I have one final thing to say and that is, be careful what you ask for, because you might just
43 get it...one way or the other. We don't have a crystal ball...none of us do...none of us know...we have to
44 make a decision based on the information and the facts we have presented for this one time. With this in mind,
45 I think we need to make a decision...one way or the other."

46 Brian Ewell: "Nelson, why would you not grant us an extension?"

47 Nelson Abbott: "I will be very honest with you...I have wrestled with this since that time you came in
48 December. I did not have any peace with this issue until I got that email from our attorney. I did not feel like I
49 had the expertise or the knowledge to make a decision on something like that without input from somebody
50 who does that full time. Since that time I have looked at it...and I appreciate where you are coming from...one
51 of the thoughts I've had is that you are a developer; that's part of the risk vs. reward...that is part of what you
52 do. You have an opportunity to buy the ground for this much...you hope to develop it and make some money.
53 That is why you did it...that's your business...that's your risk that you took to do this. Everybody takes
54 risks...different types of risks on different types of things. I look at it and I feel like, honestly, if you meet the
55 code now...you've got a year and ½...we did give a one month extension to allow for our tires spinning. I don't
56 feel like we are in a position where we should have to give you an extension, when you can meet those
57 requirements."

58 Brian Ewell: "You're right, you don't have to...but with the economy...like we have talked about...it is not
59 feasible."

60 Nelson Abbott: He pointed out that he realizes that the risk in not granting the extension...he would have to
61 look at a road with no houses on it, if the lots do not sell...and he has had a hard time with that. The idea of a
62 "road to nowhere...which is what it will be until there are houses up there...he does not like that idea; but the
63 code is fairly black and white to him and he just does not see the other side.

64 Brian Ewell: The attorney's comments were that the Council would have good reason to deny the request, but
65 also he was specific in his email that the Council could grant the extension for a year. That is why he does not
66 understand why it is so "cut and clear" that an extension cannot be granted.

67 Nelson Abbott: "That is part of it; but Derrek (Councilmember Johnson) brought up the other part...we have a
68 Planning Commission...they re-wrote the code. Why did they re-write the code in the CE-1 Zone? Why did
69 they do that...because we asked them to? Why did we ask them to? Because we felt it needed to be done."

Councilmember Abbott felt that the Council cannot simply turn a blind eye to that fact and then grant an extension, which would allow the process to be circumvented. He was not comfortable with the message the Council would be sending.

Brian Ewell: "I am not sure you are sending any sort of message..." unless it would be that the Council understands what the developers are saying and that the economy is not suitable for development at this time. (*Mayor Dunn asked if Councilmember Haskell had any comments.*)

Julie Haskell: "I'm stuck...because I do sympathize; but the code has been totally re-written."

Raymond Brown: "I have said what I needed to say. I know that we have the right to approve or not approve and in this particular economic environment, I feel like what Dave (Davis Church) told us about the other folks (referring to Horizon View Farms); I don't like the idea of having town houses where you can reach out and touch both sides; but for our economic base and for the things that are going on...I don't think we can just shut out developers." He was not sure if this would "shut them out: or not because they have time to complete their approvals without an extension. He does feel that the Council should be working with them. He knows the Council has the right to deny the request; but he also knows they have the right to approve it.

Mayor Dunn: We have been working with them. He expressed that he also has some of the same concerns as expressed by Mr. Ewell. He has talked to the City attorney regarding the "lines of ethics and if they have been crossed...and if so, what should be done. He is concerned about the some of the actions of this Council, privately and publically. He did learn something: things said in private...holding a civic position...can be treated expressly in courts. You have to be very careful what you say.

(Referring to the Ewell's) "I think you have done a very good job with bringing things back and working with the Planning Commission...and you have spent an enormous amount of time...from concept up through to the plans you have now...it has taken a lot of work. I would hate to see all that work just be discarded." The Mayor gave direction that if an extension were not granted would be to move forward as best they can to look at the time line. An extension can only be given under the conditions in effect when the plat was submitted...that was part of what the attorney said. When a submittal is made by a developer, and there is "vesting"...it makes it difficult when there are code changes taking place that could affect the development. He feels that the Ewell's have shown "every intent" in integrity and honesty to do the best job you can. I think that is commendable."

"I think that our Planning Commission and our City Council, in addressing some of the issues with growth in that type of zoning, which created a new code...is also commendable, because it has shut some doors on some issues that we saw as a problem. It used to be that all you needed was an excavation permit in the most critical parts of town and you could cut it up..." The Mayor pointed out that this is no longer possible.

The Mayor felt that the Planner exercised wisdom separating the plats, in case one or the other of the parties were to slow down the process by indecision. When Mr. Peterson was involved, though he is a wonderful man, his desires were not really with the proposed development and there had been some offense in the past.

"In fairness, I do not see a problem with granting the extension." He feels the Ewells have worked hard and he also feels that they have "suffered some injustices" along the way. Usually, in development, things do not always go smoothly...things happen, things are overlooked...we want to make sure the outcome is good.

Part of the law says we can grant the extension; part of the law says we don't have to. The Mayor feels the City would benefit from someone who has shown the integrity that the Ewells have.

Derrek Johnson: Councilmember Johnson felt as if he was being though he was being thought of as the "fall guy" in the discussion that had taken place. He expressed that, "Three years ago you started this project. I have been on the Council for a year...so for two years I was a resident. I do not think there is a boundary crowd on ethics or anything like that...I just want to make that perfectly clear for the record. I said my piece, that I had a conflict of interest. I was a resident for two years before."

Brian Ewell: "I want to make it clear...on the record...that Derrek Johnson, as a City Councilmember...after he had been elected...it was the following January, so he was in office...called me on my cell phone and said, and I will read it again, 'we are prepared to pool our money together and if you go to the City for approval on your development, we will sue you and tie it up in litigation for years that will cost you a lot of money.'"

Derek Johnson: "I said litigation...but I never said 'the City'...but I did say litigation as residents and we did get together. And that is my right as a resident. If you don't like it, I make no apologies...none."

Brian Ewell: "But, as a City representative..."

Derrek Johnson: "I made my disclosure...did I not, Jan (referring to the City recorder)? (*He did disclose his conflict of interest on this matter.*)"

Sean Roylance: "As a City representative, we are residents in a City; and we are supposed to represent the people that we live with. He may represent a very small minority, but he still represents them. To criticize him for having an opinion...that is why we are elected...is to have opinions."

Brian Ewell: "What kind of City representative threatens a developer?"

Derrek Johnson: "I didn't threaten... that was collectively as our residents."

Mayor Dunn: (Called the meeting to order with his gavel) "Actually, it was a threat...it could be taken as a threat and that is part of the discussion I had with Dave (David Church) a year ago. I don't want to dwell on that point...all I am saying is, as Councilmembers...as anybody working with the City...you've got to be careful of what you say, because you do represent the City and if, for instance, this makes it into the newspaper...and the term is used...a member of the City Council threatened'...then we are all in that boat. I do not want to be in that boat. And I don't think that some of these other..."

Derrek Johnson: "Then, if he puts it in; then he needs to make sure he puts the whole discussion in..."

Mayor Dunn: "He will make sure the person that made the comments gets the credit for those comments."

Raymond Brown: "Being a public official for many years and having to go before cameras and newspapers, they aren't going to put the whole story in..."

Derrek Johnson: "That's fine, but I'm not going to back down as a resident."

Mayor Dunn: “You shouldn’t...you being a resident is fine...but we have to be careful.” He pointed out that City officials can be quoted when they least expect it...even from a casual comment made to a resident. Things can be taken out of context.

Sean Roylance: “I agree that we need to watch what we say...with that said, I don’t appreciate that this has been ‘harped on’ every single time these guys have come in...because this has been addressed...it was addressed a year ago and we don’t need to be continuing to talk about it. But, yes, I think we have definitely learned a lesson.”

Mayor Dunn: “I think we have and hopefully the lesson can be applied to what we do.” He then called for a vote on this topic.

Brian Ewell: “I just want to say one last thing...that is, we don’t think that we should have been treated this way. By a ...it was a flat out threat to instill fear in us to get us to stop our development...that was the sole purpose. With that said, we have contemplated and have talked about approaching the Attorney General’s Office and reporting this to the Attorney General’s Office, You laugh about it but this is a serious issue...”

Derrek Johnson: “This is ridiculous.”

Brian Ewell: “It is ridiculous that you said that.”

Mayor Dunn: “And it is a serious issue...”

Brian Ewell: “We shouldn’t have to put up with threats from a City Council Member because he doesn’t want a house built behind his house.”

Mayor Dunn: In fairness to Derrek (Councilmember Johnson), he stated he said that as a resident...please know that the rest of us don’t share those same anxious desires...and he can say certain things...but in fairness to Derrek, he didn’t represent me and I don’t think he represented other people on this Council...so he’s in that boat with a single oar...”

Derrek Johnson: “...And you comment is not entirely correct...”

Brian Ewell: “Correct me then.”

Derrek Johnson: “I just told you, I didn’t say anything about the City Council...I said, ‘we will do litigation and you knew we had met as residents...”

Brian Ewell: “Yes, you would do litigation...as a City Council...”

Derrek Johnson: “But, I did not say...‘if you go to the City Council’...”

Brian Ewell: “Yes, if we proceed with our development...”

Mayor Dunn: “Let’s move on...that is a sensitive argument.”

Shawn Eliot: “One thing to add...I will say that I was sort of shocked...watching this whole development of this project...and in the end, I think all of you voted yes for it for Preliminary...”

Sean Roylance: “Actually, I didn’t...because I didn’t feel that it met a particular requirement...”

Shawn Eliot: “But, Derrek voted yes...so that is quite shocking to me after everything we went through.”

Again, Mayor Dunn called for a motion...

MOTION WAS MADE BY RAYMOND BROWN THAT THE CITY COUNCIL APPROVE THE REQUEST FOR A ONE YEAR EXTENSION ON THE PRELIMINARY APPROVAL FOR THE FAIRWAY HEIGHTS, PLAT C; FOR THE EWELL’S SPECIFICALLY

Discussion:

Sean Roylance: He questioned if that is correct, since the request had other names listed.

(It was not signed by anyone...just the Ewell’s present themselves.)

Raymond Brown: “This is only for you guys...right?”

Brian Ewell: “Yes, they apparently don’t care about the extension, or they would probably be here.”

Shawn Eliot: “You can deny one and approve the other.”

Raymond Brown: Councilmember Brown decided to re-word his motion:

Brian Ewell: Their plat was referred to as Phase 2.

Shawn Eliot: The concern was that one would not pass without the other; but the recommendation was for Plats C & D. The letter said Plats C& D.

(This was checked on at this time.)

Nelson Abbott: “If we grant them a year extension, does that mean they will take a year longer to move the dirt and put the roads in; from start to finish...or does that mean that you will hold off and not do anything else for an additional year?”

Brian Ewell: “Yes.”

City Recorder: asked: Do RL Yergensen and Rob Lari Fitzgerald think that because of this request, that they are also included?

Raymond Brown: “Not if the motion doesn’t say that...”

Brian Ewell: “Here is the thing...I tried to call and contact them and invite them to the meetings...and I don’t know what else I can do...I explained to them that they need to show support for this if they want it to be extended.”

Raymond Brown: Their names are on the request...but no signatures at all are on it.

(There was not original with signatures.)

Shawn Eliot: “The Plat says C & D at the bottom and on the map, it says Phases 1 & 2...so, it should have been C & D...so if you want to say Phase 2 is the hillside...Ewell’s...”

(Further discussion and review of the map)

MOTION WAS MADE BY RAYMOND BROWN AND SECONDED BY JULIE HASKELL TO APPROVE THE REQUESTED ONE YEAR EXTENSION FOR THE FAIRWAY HEIGHTS SUBDIVISION, PLAT D; PHASE RWO (2); SPECIFICALLY THE BRIAN EWELL AND DAVID EWELL PROJECT; FROM APRIL 9, 2009 TO APRIL 9, 2010

VOTE (POLLED): DERREK JOHNSON-NAY, JULIE HASKELL-AYE, RAYMOND BROWN-AYE, NELSON ABBOTT-AYE & SEAN ROYLANCE-NAY

Passed 3-2

Reasons for votes for Councilmembers Abbott and Roylance:

Nelson Abbott: (Directed to Ewell's) "You are going to do what's right."

Sean Roylance: (This was a difficult decision for him to weigh) "On the one hand, I totally see the economic argument and I don't think you can factor that completely out of the equation. On the other hand, when I ran for City Council, nearly everyone I talked to and I talked to literally 1/2 the residents face-to-face...and the one consistent thing was complaints about development...and that we were not holding people to our code. I felt that was a very clear direction...that was important to me at the time...so, that is the other hand. I have been consistent the entire time I have been on the City Council...and I have to stay with that."

Raymond Brown: "I wouldn't come in and ask for another extension."

Mayor Dunn: He thanked the Council for a lively discussion. I think this was thorough and I understand both side of this issue.

Brian Ewell: "I just want to say, thank you. We want to continue to work with you as the City Council...and really implement a plan that will beautify the City and make it better. We appreciate it."

Mayor Dunn suggested moving to the next agenda item.

Sean Roylance: He suggested that someone get in touch with the Fitzgerald's to see if they wanted to be included with this request. He was concerned that they may have been under the impression that they were part of it, since their names were on the written request.

Raymond Brown: He felt they are on their own; they were contacted by Ewell's and the Fitzgerald's did not contact them back.

Sean Roylance: "Why is their name on this, then?"

Shawn Eliot: "They came to the last meeting."

Sean Roylance: "There has been no indication that they are not interested, and their name is here...so that leads me to believe that there might be a misunderstanding...perhaps Lari is out of town and Rob is off on an emergency."

Mayor Dunn: The Mayor asked that Shawn Eliot contact the Fitzgerald's and let them know what went on this evening.

Shawn Eliot: "You didn't deny theirs...they have until May." Mr. Yergensen has his land tied up with the other land; they have pooled all their land together.

Raymond Brown: He felt the best thing for them to do is to separate and move on, if they are going to; otherwise they are just going to get jammed up...Fitzgerald's do not have the water rights. If RL had been included in this, perhaps my vote would have been different."

Mayor Dunn: He pointed out that the Fitzgerald's were offered water rights with the same opportunity that Ewell's took advantage of. The do have some surface water that is located out be Genola of Goshen...somewhere out there. It has not been transferred to Elk Ridge.

Nelson Abbott: He asked if Fitzgerald's had gotten their water rights from Forrest Darling... (Yes) Councilmember Abbott was told that Mr. Darling could not get those transferred.

Shawn Eliot: When we worked on the hillside code and we had mostly the Shuler's coming in...and they would say that we are "the most restrictive"...they would pull one part of the code, but they would not look to see how that one part worked with all the other parts. Park City was brought up as an example...he has a problem with parts of the code being taken out of context and compared with other communities (like Park City); then the claim is made that we are "more restrictive than they are"...but they don't look at other parts of Park City's code that are more restrictive than our code. The Planning Commission felt that, in the end, our code was a 'balance'...it wasn't that we are the most restrictive in the entire State. He said they would feel pretty uncomfortable, if that were the case. Every time those arguments were brought up, they were able to suggest looking at the whole code.

Example: When Mr. Pope spoke of getting 100 lots on 100 acres; he could get 100 lots due to the variations in the steepness of his property. This property (Ewell's) is surrounded be 30% slope...it s a unique piece of land. "Some lands aren't going to fair as easy as others in this zone."

Raymond Brown: Referring to residents not wanting development and the City not following code...That is about 99% of the people up here. Many people just do not want others to move in.

Sean Roylance: He feels most people are more reasonable than that and they had reasons.

Raymond Brown: There are rights that allow people to develop their land, as long as they follow code. People still get angry.

Sean Roylance: He feels the catalyst for many people being upset was the "rock wall".

Mayor Dunn: "Actually, he did get permission; it was a backwards process."

Let's move on.

CONSIDERATION OF HOUSEHOLD PETS

Mayor Dunn asked Shawn Eliot to review and explain where the direction came from to allow more animals than chickens to be included in the Planning Commission's consideration of "household pets". The motion from the Council only included chickens...nothing else was involved. Now we are looking at many different things. He wanted to understand where that came from.

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3 Shawn Eliot: (He read from notes he wrote down) First of all we started reviewing the “cat code” in October.
4 There was a public hearing in November and there was some constructive input taken in and it did seem to
5 sway the Planning Commission, who then tabled the issue to give them a month or so to think about it. During
6 that time, we also started to review the chicken code (October); the survey went out in November and they had
7 a public hearing in December...with a large turn-out...with much comment on both sides of the issue. At that
8 meeting, the Planning Commission decided that due to the input from the public and from the surveys, they felt
9 there was a much larger issue than just cats and chickens...they wanted to look more as nuisance code and
10 find out if the issues could be fixed through that code. That is when they asked Mr. Eliot to look at what other
11 cities do. (He submitted a handout that he provided to the Planning Commission that is a summary and
12 comparison of various cities in Utah County and what they allow in the way of animals.) Someone at the public
13 hearing said that “you cannot just look at other cities; you have to do what is right for your city”. My opinion is
14 that we can look at other cities and learn from their experience. The Planning Commission reviewed all 15
15 cities over Christmas vacation. Mr. Eliot reviewed the findings of the comparisons with the Council. His
16 research was to look at the regular residential zones; not agricultural type lots.

17 He contacted the enforcement officers of these various cities and found that they generally did not have a
18 problem with chickens or most of the animals...it was dogs that create most of the problems.

19 They do have some animal issues; but they are usually like our other nuisance issues...based on complaints.
20 The feeling he got from them was that usually people would comply, once they started getting notified of
21 complaints...not always. Very few cases got into the legal process. All inspectors that he interviewed stated
22 that they do not go after animal violators unless there is a complaint filed.

23 To answer the question of why the Planning Commission working on this, or what their goal is...they wanted to
24 look at the nuisance code, as stated; feeling like that may be more important than worrying about numbers.
25 Many of the cities number dogs; probably ½ of them number cats; but some, like Eagle Mountain allow any
26 number...and according to the Inspector, he has not had any problems...the nuisance code would handle
27 them, should they arise.

28 He reviewed the Elk Ridge's nuisance code and it is actually Utah County's nuisance code, and our animal
29 control code simply references that we have Utah County's code on file. He got a copy of Utah County's
30 animal control code and found that there are things that do not apply to Elk Ridge at all. The contradictions
31 should be fixed and we should have in our code what the regulations should be. The thinking was that they
32 (Planning Commission) would review it and send the recommendation on to the Council.

33 Household pets: what should be considered and the numbers allowed; again, cats are part of that...but other
34 cities define other types of animals as “household pets”.

35 The County code allows for “hobby breeder permits”; most of the cities on the chart allow for some type of
36 “hobby breeding”...which is defined as someone having registered dogs, with some to sell. There are many
37 people that do that.

38 Nelson Abbott: Spanish Fork just adopted their code last year that allows for kennel permits.

39 Shawn Eliot: Kennels in Elk Ridge are only permitted in the Commercial Zone and it refers to a “commercial
40 kennel”. Many cities have kennels and hobby breeders and they are different. When I think of a kennel, I think
41 of a business where I board my dog; but a hobby breeder permit could either be a hobby or a business.

42 City Recorder: How would that fit with the City's “home occupation” code, if these are businesses...since those
43 businesses must be contained within the house?

44 Shawn Eliot: That is an issue. Under the Utah County Code, it talks about the kinds of living facilities must be
45 provided; but if our business license says in cannot be outside the house...there may be some things to review
46 regarding our home occupation code, as well.

47 City Recorder: One of the reasons “kennels” were placed in the commercial zone was due to the home
48 occupation regulations...since kennels are generally businesses.

49 Shawn Eliot: The difference is when you only allow 5 or 6 “hobby breeder” type poets; it is still a home-based,
50 “mom & pop” type business compared to a kennel in a commercial area. The fact that our code does not allow
51 home occupation type businesses, except within the main dwelling...is perhaps unique.

52 Our two current animal rights zones are confusing regarding the numbers of animals allowed etc. It took him
53 and Bob Allen (at Mountainland) a few times through the code to figure out what is meant. One concern is that
54 if we have a difficult time understanding our own code, then perhaps it should be a bit cleaner. After reviewing
55 the other cities, there are cleaner ways to present the material.

56 *Mr. Eliot explained some of the confusing parts of the animal zone.*

57 It was quite “telling” that Spanish Fork, throughout their city, allows animal rights on ½ acre lots...the entire
58 city.

59 Nelson Abbott: They do allow it, but they are fairly restrictive with regards to numbers...like they only allow 6 or
60 8 pigeons; unless a variance is granted.

61 Shawn Eliot: Many of the cities, like Springville...in their 1/3 acre zone...you still have to have a ½ acre or
62 larger for these animal rights. Lindon and Alpine allow smaller lots. If these cities that allow animal rights on
63 their ½ acre lots, are they telling us that, by their experience...that it is not as big of an issue in those areas?
64 Whatever we end up doing, other than with the nuisance code, you would still have to hold more public
65 hearings.

66 *Councilmember Brown asked for clarification on some of the numbers of animals, as brought forward in the
67 summary chart that Mr. Eliot provided.*

68 Shawn Eliot: It is interesting that Provo does not allow chickens, other than in their “ag” zones; but they do
69 have a process that allows ponies.

70 Dayna Hughes: (She was asked to attend the meeting by Shawn Eliot) This is a complicated issue. She had
71 some minutes from June 26th, where Councilmember Royslance was giving his City Council report...she read

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3 from those minutes: “It looks like there might be a proposal for code in the City which would allow for chickens;
4 since we have code for pigeons, it should not be a problem”. That is how it was started.

5 Once the Commission got into it, they were surprised that the “Cat” people came in and were adamant and
6 concerned about the limits on cats. So, after listening to these people, they realized they were faced with
7 looking into changing the zoning ordinance. That was the initial question, “Do we change the ordinance to
8 allow for chickens?” No one was comfortable with a zoning change.

9 It is very complicated when considering how many animals should make up an “animal unit”; it is not as “cut &
10 dried” as it appeared at the beginning.

11 The Planning Commission felt that it would be best approached through the nuisance ordinance because they
12 did not want to get into limiting other types of animals...where would it stop? So, rather than a code change;
13 after the Planner did all this “exhaustive” work that was very beneficial to them...they felt it would be better to
14 take the Code and write a specific code that would be “more than initially presented” and be more clear. They
15 did not want to open a “hornet’s nest” with individual animals.

16 A proposed ordinance will be discussed at the next Planning Commission meeting, make whatever changes
17 they find necessary; then they will schedule a public hearing.

18 Raymond Brown: When he was on the Planning Commission, they went through some of the same arguments
19 and aggravation of animal rights and the definition of a “unit”, etc., so he appreciates what the Commission is
20 facing; however he has concerns:

- We have a big issue with chickens and he feels if we mix it up, we may not be doing serving the
21 people in the best way. The other animals need to be dealt with, but perhaps as a separate issue.

22 He feels the chicken issues should be dealt with first; then consider the others later.

23 Dayna Hughes: “But how can we look at chickens specifically...there is just no possible way, realistically...”

24 Raymond Brown: “But you were given a direction to look at the chickens...not saying that this not a good
25 direction to go on further with; but we’ve got this issue on the table...we’ve got people violating our code and
26 we need to give them an answer.” He feels if the issues get clouded up, it could affect the vote.

27 Dayna Hughes: (Continuing) “we felt like we couldn’t address chickens and ordinances being broken without
28 addressing the number one complaint in the City, which is “dogs”. They felt that these other issue must be
29 addressed as well. She knows they were only directed to address chickens; but realistically, they felt it should
30 be broadened out.

31 Raymond Brown: He agreed that “dogs” are the number one complaint and options have been discussed that
32 would increase penalties for dogs “at large”...but, he feels we need to get the chicken issues off dead center.

33 Mayor Dunn: What makes a code “good” is balanced enforcement. The chicken issues came about due to two
34 codes being violated...one was a loose dog and one involved the keeping of chickens. The
35 “nuisance” was that the dog got into the chickens (which were in violation). Oddly enough, the dog has been
36 gotten rid of and the chickens kept.

37 Sean Roylance: He pointed out that the dog was the nuisance...if the dog had gone in and killed cats, it would
38 still be the dog that was the nuisance.

39 *Further discussion regarding dog problems in town:*

40 Mayor Dunn: The reason some dogs are considered nuisances is due to irresponsibility on the part of their
41 owners.

42 City Recorder: Initially, the issues concerning chickens were involved with zoning regulations in residential
43 zones. Since our animal control regulations are located outside of the zoning ordinance and cover the “control”
44 and numbers of animals allowed, how does the Planning Commission separate chickens off from other
45 animals?

46 Mayor Dunn: (Definition of a “Nuisance”): That can be defined by sight and sound, as well as smell and health
47 factors...theses qualify as nuisances.

48 Recorder: Neighbors typically will not file claims against their neighbors; then how does the City handle
49 enforcement?

50 Mayor Dunn: Councilmember Brown has even set up a forum wherein citizens could come in and have their
51 issues (complaints) arbitrated, but the citizens would not come in and even commit to this.

52 Shawn Eliot: After the proposed “chicken code” was written, the Planning Commission then looked at the other
53 cities and what their codes are...and that proposed code would be the most restrictive of any of the other
54 cities. Most cities have their animal control regulations under the nuisance code.

55 Mayor Dunn: There has been a lot of great information submitted and he has read over the guidelines that
56 accompany the various codes...some are very strict. The question is whether the codes that are in place in
57 these various cities are, in reality, working? For example, are there complaints in Alpine where they allow
58 chickens on a ¼ acre lot?

59 Shawn Eliot: He spoke with Alpine’s City Manager about it and he said there is like a “tale or two cities” going
60 on: 1) There are people that have lived there for ever; they moved there moved there when it was the “country”
61 and they want their animals & 2) There is another group that is all the Californians that have moved it and
62 don’t want a horse in their backyard, then 3) There are all those in the middle, who don’t care.

63 Linton is the other City that is quite liberal about animal issues, in that their City motto is “A little bit of country”.
64 Mr. Eliot mostly spoke to enforcement officers of these cities; and they typically “go after complaints”. It is true
65 that many do not actually file a formal complaint...either the situation does not escalate to that point, or they
66 just do not want to give their names and be identified.

67 Dayna Hughes: She respectfully requested that the City Council allow the Planning Commission to continue
68 the process they are in the middle of currently of reviewing the nuisance code and to bring forth a
69 recommendation to the Council for review and consideration, even though that was not the original order and
70

intent of the Council. She asked for the Council's full support in allowing the Planning Commission to try to find some "common ground" in these issues. The Planner is writing code according to the suggestions made. They would like the opportunity to review this code, schedule a public hearing and then to forward a proposed code with recommendations on to the Council. She feels debating the various issues at this point is premature.

Mayor Dunn wanted to know the feelings of the Council:

Raymond Brown: He had stated his feelings. He feels this is all good and that the Commission should continue forward with what they are doing; however, he still feels the issue with the chickens and zoning should be handled and be handled separately.

Dayna Hughes: She feels the Planning Commission's willingness to take the time to look at all the issues has actually calmed people in town down.

Sean Roylance: Two weeks ago, the Council already discussed allowing those with the various animals under consideration to keep their animals while the Planning Commission reviewed the code; and within this decision was the understanding that the Planning Commission is looking at the issues in a comprehensive manner.

Nelson Abbott: In the process of working through the nuisance code, he asked that certain considerations be given to a portion of the pigeon code that deals with nuisances, saying that it must be a "valid" complaint in order for action to be taken against the owner. Whatever the case may be, there should be a "valid" complaint.

Shawn Eliot: Most of the enforcers (Inspectors) say they almost always work it out with the assistance of the Inspector as a sort of "mediator".

MOTION WAS MADE BY SEAN ROYLANCE AND SECONDED BY NELSON ABBOTT THAT THE CITY COUNCIL INSTRUCTS THE PLANNING COMMISSION TO CONTINUE ON THE PATH THAT THEY ARE ON IN TAKING A MORE COMPREHENSIVE LOOK AT THE ANIMAL ISSUES THAT ELK RDIGE CITY IS CURENTLY FACING, THAT INCLUDESCHICKENS, CATS, DOGS, MINIATURE HORSES AND GOATS AND ANYTHING ELSE THAT SHOULD BE APPROPRIATELY BE ADDRESSED; AND THAT THE NUISANCE CODE IS CONSIDERED AS A POTENTIAL PART OF THE SOLUTION

VOTE: (3) NO (2) RAYMOND BROWN & JULIE HASKELL

Passes 3-2

(The Mayor also thanked Mrs. Hughes for filling in as Chairperson until a permanent appointment is made.)

ROCKY MOUNTIAN SUBDIVISION, PLAT B – RELEASE OF CONSTRUCTION PHASE & START DURABILITY RETAINER

According to the Aqua Engineering letter dated January 23, 2009 (Craig G. Neeley): "All of the punch list items have been addressed per our letter dated November 4, 2008. The project is recommended for final acceptance and the start of the one-year warranty period for this project is November 1, 2008. The temporary asphalt patch where differential settling had occurred will have to be replaced before the end of the durability period, along with any additional warranty issues."

Mr. Neeley, Corbett Stephens and the developer (Mike Dubois) thought this development had gone into the durability time period last fall; however, the letter was not written until now. There was a letter written by Aqua in November, but it still had some things on the list...but those things had actually been completed.

Nelson Abbott: Asked if the Council was locked into the one-year time period. *(That is what was recommended by Aqua Engineering and the Attorney also said we have to comply with the State.)*

City Recorder: Mr. Dubois agreed to provide a bid for the 1" overlay and to leave that money attached to the bond in place to cover that expense.

MOTION WAS MADE BY NELSON ABBOTT AND SECONDED BY JULIE HASKELL TO ACCEPT THE IMPROVEMENTS FOR ROCKY MOUNTAIN SUBDIVISION, PLAT B, AS COMPLETE AND TO BEGIN THE DURABILITY TIME PERIOD AS OF NOVEMBER 1, 2008; AS PER AQUA ENGINEERING RECOMMENDATION

VOTE: YES (5) NO (0)

Passes 5-0

IMPACT FEE STUDIES

Tabled for this meeting.

BOARDING HORSES ON CITY PROPERTY

Mayor Dunn: We found out from the City Attorney that the City can charge a fee for the boarding of horses. The Mayor also spoke to Curtis Roberts about the banking end of the rules; and he does not see a problem with charging a fee, but he gave the advice to consult with the City Attorney. The amount of the fee needs to be decided. Mr. Paxton is aware that the issue is being discussed.

Raymond Brown: He suggested that the current rate for boarding horses without feed and without care is \$40/month per horse; and that a certificate of liability insurance needs to be provided to the City.

MOTION WAS MADE BY RAYMOND BROWN AND SECONDED BY JULIE HASKELL TO GO WITH \$40 PER HORSE PER MONTH; AND THAT THE OWNER MUST PROVIDE A CERTIFICATE OF INSURANCE TO THE CITY, SHOWING THAT EQUINE LIABILITY INSURANCE HAS BEEN PROVIDED...AND UPON PROVIDING THE SAID CERTIFICATE OF INSURANCE, IT SHALL BE REVIEWED BY COUNCILMEMBER NELSON ABBOTT

VOTE: YES (5) NO (0)

NON-AGENDA ITEM

Sean Roylance: He asked for authorization to pursue ways to make money for the City from the City Web site. All the Council was in agreement; as long as the advice of the Attorney regarding "censorship" is taken into consideration.

SIERRA CLUB LETTER

Mayor Dunn: The City received a letter from the Sierra Club (Utah Valley Sierra Forum) asking municipalities establish "offices of sustainability" within the individual communities. The benefits were listed. (Copies of the letter were provided to the Council in their packets to review.)

It is the Mayor’s opinion that Elk Ridge is not big enough to establish an office and provide staff. In a time of economic discipline, the Council agreed that we cannot take advantage of this opportunity at this time.

EXPENDITURES:

General:

Check Registers & Payroll for November & December, 2008:
Discussion.

- Use of Mr. Haskell’s backhoe when the City’s was broken down.
- Money saved on the Loafer Canyon Project
- Reimbursement to Neria’s for garbage containers

Mayor Dunn said that they were reimbursed for two years of over payment of an extra container. The Mayor told Mr. Neria about David Church’s advice that the City only go back to the beginning of the current fiscal year for any reimbursement. The Mayor felt that two years would be better. He further explained to Mr. Neria that the City is a collection agency for Allied Waste and that money would come from tax-payers rather than money collected for that purpose, since it goes to Allied. Allied has been informed that they must clean up their record-keeping regarding their count of containers. Allied responded that they would send some supervisors to town to conduct an audit of the numbers of cans. (Have they shown up?)

MOTION WAS MADE BY RAYMOND BROWN AND SECONDED BY NELSON ABBOTT TO APPROVE THE CHECK REGISTERS AND PAYROLL REGISTERS FOR NOVEMBER & DECEMBER, 2008
VOTE: YES (5) NO (0)

NON-AGENDA ITEMS

Mayor Dunn:

- He met with Jill Spencer (Payson City) to arrange a meeting between the two Councils to discuss possible joint ventures and an amendment to the Annexation Boundary Agreement. He will keep the Council informed of dates.
- He will meet with a group of other mayors the following day (at the Capitol Building) with some of our Legislators; specifically on issues that would benefit South Utah County.

Media Player for Council Room:

Raymond Brown: He found a good deal on a media projector (Epson EX 70 Projector) at a discount of \$20 off and to include a screen. The total cost was \$679 and the CERT Team will pay for \$200 toward the purchase. It will be mounted on the ceiling.

MINUTES

City Council Minutes of 12-9-08:

Corrections: Pg 11 (line 22) Change “he went out with Chief Waite”...to “he accompanied Bob Van Parys...”

MOTION WAS MADE BY SEAN ROYLANCE AND SECONDED BY RAYMOND BROWN TO APPROVE THE CITY COUNCIL MINUTES OF 12-9-08, WITH CORRECTION
VOTE: YES (5) NO (0)

ADJOURNMENT

Mayor Dunn adjourned the Meeting at 9:35 PM.