

Minutes of the Salem City Council Meeting held on October 3, 2012 in the Salem City Council Chambers.

Worksession 6:00 p.m.

The council had a discussion on home occupation ordinance dealing with private schools and other issues with home occupations.

A discussion on variances and if the person requesting a variance does not meet the criteria, that the zoning ordinance would need to change in order to make a variance in compliance or the council would need to deny the variance.

Don Cole began talking to the council about the flood zone in Salem around the pond.

Kendyl Bell from Allied Waste, now Republic Services, came and talked to the council about recycling, and some of the different options the city has. She will get some numbers together about the cost of recycling in Salem.

**MEETING CONVENED AT:** 7:00 p.m.

**CONDUCTING:** Mayor Randy A. Brailsford

**COUNCIL PRESENT:**

Mayor Randy A. Brailsford  
Councilperson Janie Christensen  
Councilperson Aaron Cloward  
Councilperson Sid Jorgensen  
Councilperson Sterling Rees  
Councilperson Craig Warren

**STAFF PRESENT:**

Jeffrey Nielson, Finance/Recorder  
Chief Brad James, Police Chief  
Junior Baker, City Attorney  
David Johnson, Building Dept.  
Bruce Ward, Public Works/Engineer

Excused:

**OTHERS PRESENT**

Whitney Ferguson, Jared Ferguson, Robert Palfreyman, Chase Dietz, Spencer Jack, Jessica Craner, Caitlin Smith, Paige Robison, Alyssa Shepherd, Jaysha Jarrett, Tia Daniels, Eric Belliston, Taylor Warr, Penny Morrell, Lura Prospical, Tyler Christensen, TJ Bills, Wyatt Nicosia, Quincy Callister, Krissy Olsen, Mallory Warren, Braiden Wilson, Sierra Smith, Markelle Hansen, Davis McKee, Logan Devel, Mick Stones, Alexis Larsen, Jenna Grass

## **1. VOLUNTEER MOTIVATIONAL/INSPIRATIONAL MESSAGE**

Mayor Brailsford asked if anyone would like to give a motivational or inspirational message. Councilperson Janie Christensen stated she would like to offer a motivational message in the form of a prayer.

## **2. INVITATION TO SAY PLEDGE OF ALLEGIANCE**

Councilperson Craig Warren invited those who wish to participate, to stand and say the pledge of allegiance with him. He then led the pledge of allegiance for those who wanted to participate.

## **3. YOUTH COUNCIL REPORT**

Chase Dietz reported about activities they have coming up, which included helping out with Pond Town Christmas (donuts and hot chocolate), Sub for Santa, and Luminaries for Christmas Eve.

## **4. JARED FERGUSON – Request for Variance on Carport Setbacks at 810 South 300 West.**

Jared Ferguson presented to the council a packet that had photos, an explanation of why it is hardship, and why he is requesting a variance. He explained to them that he also emailed this to them the other day. He stated that he has a carport that was installed next to a home that he owns. He stated that he purchased the home last June, the prior owners really cleaned the property up, and he has continued to improve the property. After the carport was installed he was contacted by the building inspector letting him know it was not in compliance with the zoning law. He is still not sure which code he is in violation of, as it was not made clear to him. He was told that if the carport was to stay that he would need to have a variance from the council. He is asking tonight for a variance request. He went over the criteria's for a variance and why he should qualify for the variance (he read this from the hand out that he had given to the council):

- 1. Describe the hardship that you will incur if the variance is not granted.  
Economic hardship is not sufficient to obtain a variance under the law.***

*The hardships faced if the variance is not granted include, but are not limited to:*

- An additional 22-25 feet of the backyard will be lost in landscaping and replaced with concrete.*
- The new concrete will then create a zone of shaded area in between the house and the car cover that will have to be graded so that water sheds back under the car cover to avoid water shedding against the home and basement. The home has*

*had a history of water coming in through the back of the home into the basement area and this now will be an even larger concern.*

*- There is no outside lighting in the area the car cover is proposed being moved into, creating an area where it will be unsafe to exit the vehicles parked under, especially in winter when water and runoff from the carport roof may flow back under the car cover and freeze after sunset.*

*- The cost for pouring and reinstalling the car cover will exceed the cost of car cover and the car cover may incur damage or instability from the move.*

*- The aesthetic look of the long driveway across the back of the home and sticking out the opposite side of the home will look very out-of-place. This will make cars visible from the 300 West view of the backyard and place the vehicles under the car cover directly in front of all the rear windows of the home.*

*- The longer driveway will allow for more storage items to be paced along the driveway and additional cars to be parked in the backyard of the home. Making the view of the home from 800 South more unappealing.*

*- The car cover will be left completely exposed and open to the wind that moves across this property. Approximately 18 months ago a wind gust tipped over a 35 foot X 2 foot trunk diameter juniper that was located less than 6 feet from the proposed new location for the car cover. There is a very real concern that the cover will be lost or damaged if there is not some proximity and protection from the home itself. Wind gusts in storms near the corner of 300 West and 800 South, have a history of breaking mature large diameter trees and taking shingles off of homes.*

*-The exhaust from cars warming up or left idling under the carport in the new location places the fumes from the cars just ten feet away from the master bedroom window, downstairs bedroom window and living room windows of the home.*

*- More snow will need to be removed from a long driveway creating increased economic strain and or physical stress in removing snow and applying chemicals to a much longer driveway. These added stresses add the discrimination of some residents and make the home even less accessible to people with disabilities, and physical challenges. The current resident will likely not be able to remove the snow from this extend driveway.*

*-A sewer clean out for the home is now located in the cement under the carport. There may be concerns with water, ice, and snow accumulating on top of the sewer clean out causing damage to the sewer system in the home.*

*-Cars backing out, or pulling into the carport from the proposed new carport location, maybe likely to slide into the home on an icy newly extended drive way.*

*- If the carport is moved this older home will look very different from other homes in the area with their attached garages and carports. The appearance of vehicles and buildings being placed in the backyard of this home are reminiscent of a cluttered history. Removal of old damaged structures stretched across the yard and the concrete associated with them has already cost the homeowner over \$2,500.00*

**2- Describe how this property is different from the other property in the vicinity.**

The home on this property was built in the 1940's and was modified just a year or two after to include the entrance to the home the carport now sits next to. The zoning ordinances of this time are not the same as current and so making the home appear to "fit into" the current way of building homes with attached car parking and quickly accessible entrance into the home is a challenge. The current ordinances discriminate against the modification of this home in attempts to modify it to a current home design with good accessibility. No homes in the area are built without unattached garages or covered parking and no primary parking for these homes is more than 20 feet away from the entrance to the home.

**3- Describe what benefit other properties in the vicinity have that this property will not have without a variance.**

Other properties in the area may once again be more disturbed by the appearance of more vehicles, equipment outdoor gear and other things that will accumulate around driveways and under the covered area. This material will now be visible from both roadways and across the entire back of the home. The home will appear as it, is an old home being compelled to meet new ordinances which are not in accordance with the way homes are built in the surrounding area and disconnected with the older home itself. The unusual appearance of cars across the backyard of the home will seem out of place and may be a source of annoyance to neighbors. The placement of vehicles across the back lot of the home may lead to some neighbors feeling the appeal of and value of their own homes is less than if the cars were allowed to park near the street and side of the home.

**4- Describe how a variance will not deviate from the general scheme of the zoning laws.**

The current placement of this car cover does meet a setback requirement for an accessory building on a non-corner lot with its 5 feet of setback. Because the home was built in a time of different zoning ordinances it does not meet current standards. As such when the city planned for the road around this home, the road was curved away from the home itself, this allows for better visibility of the intersection near the home. The current structure is then located behind the home so that it does not further block the view of the nearby intersection.

**5- Describe how a variance conforms to the overall intent of the zoning laws and why it is fair that the variance be granted.**

The ordinance of corner lot setback seems to be to, protect the view of the intersection for safe traffic flow. Because the roadway actually bends away from this home and the car cover has been placed in back of the home, it does not further block the view of the intersection. The other reason for the zoning

*ordinance would be to keep buildings unified in their construction and not allow for nuisance placement of odd structures around the home. The placement of this carport meets the norm of the homes surrounding it of having an attached parking area for the resident's vehicle(s).*

Jared stated he is asking for the variance of the building, he also handed out photos of other buildings in Salem that are about the same and do not meet city ordinances. He felt that if he does not qualify for a variance, that maybe the code could be changed. He stated if he were to move the carport back three feet that it would be lined up with the home. He stated that the home was built in the 1940's and was in the county at the time. When it was annexed into the city, it is considered a non-conforming lot, because the home does not meet city requirements.

Penny Morrell, who is a neighbor, stated she does not have a problem with the carport.

Jared stated that he has a list of some of the other neighbors, which was given to the council, who are okay with the carport.

Mayor Brailsford thanked Jared for cleaning up the home and the property; it has really improved that corner lot. He asked Attorney Baker to address the variance.

Attorney Baker stated that back in 2005 the Utah State Legislative changed the law that eliminated the Board of Adjustments and allowed the city council to do variances. Variances are dictated by the State Law and in order for someone to qualify for a variance they have to meet all five of the criteria set by the state. He stated that he feels that Jared could meet criteria 4 and 5, but criteria 1 – 3 he does not feel they meet. He stated that the setbacks are in the zoning ordinances. With the home being annexed into the city and being non-conforming any addition to the home or property would need to meet current zoning code. He also stated that if a shed is under 200 square feet that they are not in violation of the zone.

Mayor Brailsford asked what would be the options. Attorney Baker stated that the council could change the zoning ordinance, if they decide to go that direction; maybe they would look at property that has been annexed and are now non-conforming lots.

Jared feels that the ordinance is unreasonable, especially with older homes that have been annexed into the city. He is concerned about moving the shed, and went over some of the reasons of why it is a hardship; he also feels that it could become unsafe if moved.

Councilperson Rees asked why Jared did not check for building codes when he built the carport. He stated that he worked with a company and felt that they would take care of the permits. He also felt that it would be helping the home and wanted it to look like it was part of the home, and not just some random carport in the middle of the lot.

Councilperson Janie Christensen attended a land use meeting put on by the League of Cities and Towns. She asked them what would be the options. They told her the

options would be to deny it if the criteria are not met or change the zone ordinance to allow the encroachment of setbacks. She also appreciates the neighbors coming in and when she went out and talked to them to get their feelings on the situation.

Jared stated that when he asked the building inspector back in March, after he was informed that it did not meet the code, he was told that if he moved the carport back so it was even with the home he should be okay. Then he received a letter from the building inspector that he does not meet the code and if he were to move it back to line up with the home it would still not meet the code.

Attorney Baker stated that if the council wants to relook at the zoning that it would have to go back to Planning and Zoning for review then to city council.

Councilperson Cloward and Warren asked how it would affect the general plan if we amended the zoning for some of the annexed homes. Attorney Baker stated that it could affect the yards so they would be very narrow yards or it might cause a problem if we change the roads.

Councilperson Warren asked Chief James about safety issues. Chief James stated that it would affect some of the areas and could be a potential problem.

Attorney Baker also mentioned that we have required some home owners to remove their sheds. What happens when we allow one and don't allow another.

Jared asked about the possibility of moving the building so it is in line with the home.

Councilperson Rees stated that if the building is moved that it would still not be in compliance with the law and as the council we need to abide by our laws.

Councilperson Jorgensen feels that if there is an option of moving the building so it is lined up with the home that with this situation it would work.

Councilperson Warren stated that we either need to deny the request or change the ordinance.

Councilperson Cloward feels that we could look at the ordinance and address these lots that are non-conforming because they were annexed into the city.

Councilperson Rees stated that a few years ago we had a big discussion on setbacks for accessory buildings and feels that doing it all over again may cause problems.

**MOTION BY:** Councilperson Aaron Cloward to deny the variance request, but to address the zoning ordinance dealing with setbacks and annexed properties.

**SECONDED BY:** Councilperson Janie Christensen.

**VOTE:** All Affirmative (5-0).

Jared asked what he needs to do then. Mayor Brailsford told him that for right now to do nothing, but will have the city council and planning and zoning review the zoning ordinance.

## **5. REQUEST FROM DON COLE ON CITY FLOOD MAP**

Don Cole presented to the council a packet regarding the city flood zone map around Salem Pond, the map was last updated in 1979 by FEMA. He stated that a lot has changed since then, 300 West has been raised because of the sewer line that was installed, the culvert under the highway has been increased in size, and there are a few more factors that need to be taken into consideration. The people who live in the flood zone are required to purchase flood protection insurance. He has been asked by a couple of people who live in the area to have the flood zone relooked at. He stated that he has done it before a few years ago for another resident. He stated that it is not a simple matter and it is a big process.

He went over the process with the council, which was included in the packet he handed out to them. He is coming to the council because the city is going to have to initiate the request. He will work with the city engineer and get the paper work done that needs to be completed. He would start by doing a survey around the pond to see what property would be affected. Before he started the process he wants to make sure the city is okay with it and willing to initiate the request.

Mayor Brailsford feels that this should be looked at. He also asked Don about the costs of the report and who would pay for it.

Don stated that once he figures out what property would be affected, he would then propose that each of the property owners pay for it. Some of the commercial businesses would save a lot of money each year if they could have the flood insurance taken off, and the home owners would see a reduction too. He would work out the cost with the home owners. He feels that if a home owner does not want to pay, and then look at doing a special improvement district. Mayor Brailsford stated that it would cost more to do a special improvement district than it would to pay for it. He thinks Don needs to look at other options for those that do not want to pay.

Attorney Baker stated that what Don has outlined is great, but if the city gets involved financially, then we would have to go out to bid on the engineering work. He stated that the request to FEMA to look at the flood zone does need to come from the city though.

Council feels that it would be good for Don to proceed.

**6. RESOLUTION – Designation a Representative for Federal Surplus Property**

Mayor Brailsford stated that we have been approached by the Utah Surplus that a federal building is closing down and how they have property that they are going to surplus. Because they are a federal agency if we are interested in any of the property we have to do a resolution designating a representative for the city. This resolution is designating Jeff Nielson, the city recorder, as the representative.

**MOTION BY:** Councilperson Craig Warren to approve resolution 100312.

**SECONDED BY:** Councilperson Sterling Rees.

**VOTE:** All Affirmative (5-0).

**7. PUBLIC COMMENT**

Mayor Brailsford asked if there were any comments from the public. There were no comments at this time.

**8. APPROVE MINUTES OF SEPTEMBER 5 AND SEPTEMBER 19, 2012.**

**MOTION BY:** Councilperson Sterling Rees to approve minutes of September 5, 2012 as written.

**SECONDED BY:** Councilperson Aaron Cloward.

**VOTE:** All Affirmative (5-0).

**MOTION BY:** Councilperson Craig Warren to approve minutes of September 19, 2012 as written.

**SECONDED BY:** Councilperson Janie Christensen.

**VOTE:** All Affirmative (5-0).

**9. APPROVE BILLS FOR PAYMENT**

**MOTION BY:** Councilperson Sterling Rees to approve the bills for payment.

**SECONDED BY:** Councilperson Craig Warren.

**VOTE:** All Affirmative (5-0).

Mayor Brailsford stated that the amount of the bills being approved is \$287,109.

## **COUNCIL REPORTS**

### **10. MAYOR RANDY BRAILSFORD**

Mayor Brailsford reported on our water usage this year. He stated that we used 400 more acre feet of PI water than last year. He has been working with the Highline Canal to try and get a better rate for the water. Because we used more water than we have shares for, it could cost us a lot more money. He thanked Bartell Mortensen from the Salem Canal Company for his willingness to work with us in trying to get water. He stated that the water we are trying to get is on paper. He figures that he has been able to save us about \$19,000 in water costs this year by working with the canal companies. We need to figure out what would be the most effective way of getting water into our PI ponds. We also need to work with some of the other cities and figure out a cost for delivery fees from Highline Canal. We want to make sure we are being charged fairly for the water that we use. This year we figured it was cheaper to pump our own water rather than paying what Highline was going to charge us for the overage on water. The other thing that the Highline does, is they charge farmers \$16 an acre foot for delivery, but they charge cities \$82 an acre foot. We have not been able to figure out why the difference. There is a lot of work that needs to be done with the water and water shares.

In Supervisors meeting yesterday, Chris Averett who is over the water, asked about getting a set date to shut the PI off each year. It was recommended that we do it on the 15<sup>th</sup> of October and to have that as a set date. Wondered if the council was okay with that and if we have Attorney Baker write up a policy on it. Councilperson Rees was wondering if we need a policy/law for it, or if it could just be an administrative decision each year. He feels that sometimes we get too many laws that govern us. Attorney Baker stated that it could be a law or an administrative decision.

Mayor Brailsford told the council that we will have a council retreat on Saturday November 17<sup>th</sup> at 7:00 a.m.

Mayor Brailsford talked about the swan that died. He had Chief James take it to Nephi to the Division of Wildlife to have a necropsy on it. The cost was \$38 and we have narrowed it down to one of three things, pesticide, lead poisoning, or botchulism. We will know on Friday. Robert Palfreyman is getting us another swan.

### **11. COUNCILPERSON AARON CLOWARD**

Mayor Brailsford had Councilperson Cloward go first since he needed to leave early.

Councilperson Aaron Cloward reported that Trent Cloward, our cemetery sexton, has laid out the gazebo for the Lamb family, they hope to start next week. The excavation for the roads in the new section has been done by Robert Nelson. He has been getting topsoil

up there in trade for work. We also have an Eagle Scout who wants to replace some of the trees on the East side of the cemetery.

The parks department has been trimming out the willows in the wetland park; they have also started on the Christmas Lights. The city shop replacement is also coming along for the parks department.

With the recreation department, soccer is going well at the new field and the lights at the Veteran Ball Park have really helped out this year. Football is going well.

## **12. COUNCILPERSON STERLING REES**

Councilperson Rees reported that on November 16<sup>th</sup>, UMPA will have their informational meeting and dinner. It will be held at our Community Center.

He also reported on the Eagle Project at the Rodeo Arena that is now completed. The scout was working on a practice arena.

## **13. COUNCILPERSON SID JORGENSEN**

Councilperson Jorgensen thanked the youth council for all that they do.

## **14. COUNCILPERSON CRAIG WARREN**

Councilperson Warren did not have anything to report tonight.

## **15. PUBLIC SAFETY – CHIEF BRAD JAMES**

Chief James went over the 3<sup>rd</sup> quarter police statistics and reports.

Councilperson Cloward was excused at 8:45 p.m.

## **16. COUNCILPERSON JANIE CHRISTENSEN**

Councilperson Christensen reported that the library chair will be having a meeting on the following night.

## **17. DAVE JOHNSON, BUILDING DEPARTMENT/PUBLIC WORKS**

Dave Johnson did not have anything to report tonight.

**18. BRUCE WARD, CITY ENGINEER/ PUBLIC WORKS DIRECTOR**

Bruce Ward discussed a little bit more about the water issue. Mayor Brailsford talked about doing a draw down test on the water wells.

**19. ATTORNEY S. JUNIOR BAKER.**

Attorney Baker made the comment that while Don Cole is doing a flood zone report, it may be worthwhile to have him even look at doing a report for the north end of city and some of the newly annexed areas. We might want to budget for that.

Julie Ann Curtis came to the council to talk about a business license that she would like to have. She owns the home that has a barn behind the home, just behind Shirl Hanks' house. She would like to have a private school there. Mayor asked if she would be able to meet with him and Attorney Baker next Wednesday at 3:00 p.m. Julie stated that she could, but was wondering what to do until then. Attorney Baker suggested that she may want to look for an alternative place to have the school.

**ADJOURN CITY COUNCIL MEETING**

**MOTION BY:** Councilperson Sid Jorgensen to adjourn city council meeting.

**SECONDED BY:** Councilperson Janie Christensen.

**VOTE:** All Affirmative (4-0).

**MEETING ADJOURNED AT:** 8:55 p.m.

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Jeffrey Nielson, City Recorder