

**Adopted Minutes  
Special Meeting of the Spanish Fork City Council  
May 27, 1997**

The meeting was called to order at 7:07 pm by Mayor Marie W. Huff.

Elected Officials Present: Mayor Marie W. Huff, and Councilmembers Matthew D. Barber, Sherman E. Huff, Thora L. Shaw, Rex Woodhouse, and Clyde A. Swenson.

Staff Members Present: David A. Oyler, City Manager; Richard J. Heap, Engineer/Public Works Director; S. Junior Baker, City Attorney; Kent R. Clark, Recorder/Finance Director; and Gina Peterson, Deputy Recorder.

Citizens Present: Diane Butler, J. Lee Butler, Roxanna Johnson, Spanish Fork Press; Angella Bennett, Ellis Taylor, Diane Reid, Roger Reid, Kevin Kuhni, Sharlee Kuhni, Carin Green, Daily Herald; John Bennett, Jeanette Taylor, and Rodger Hardy, Deseret News.

**Scenic Drive Landslide**

Mayor Huff addressed those present and stated the purpose of the special meeting was to come to a resolution regarding the Scenic Drive landslide. Mayor Huff turned the time over to Mr. John Bennett, representing the citizens who requested the meeting. Mr. Bennett stated he and the other citizens were under the impression the City would appropriate funds to pay for the repairs to the hillside.

Mayor Huff then asked each Councilmember to comment on the situation. Councilmember Barber asked if the citizens were willing to participate financially. Mr. Bennett stated the citizens have worked on a number of solutions to present to the Council. Councilmember Huff explained a previous motion made at the City Council meeting on May 20, 1997, stated money would be fronted by the City, but a portion of that money would need to be reimbursed by the citizens or by other means. Councilmember Shaw stated the City's budget would have to be revisited to find money to allocate for the property restoration. She feels the City can use taxpayer dollars for the situation, only if a contract for reimbursement is entered into with the affected property owners. Mr. Bennett stated the citizens do not want to sign contracts.

Councilmember Woodhouse said he felt the citizens should be willing to pay a maximum \$12,500 to save their homes. He stated as a humanitarian effort, the City has already paid \$50,000 which has not been reimbursed. Councilmember Swenson stated there is an urgency to get the hillside stabilized.

Ms. Jeanette Taylor stated the homeowners would like to proceed with work on the hillside, but without the monetary commitment. Mr. Ellis Taylor asked what measures the City was taking to determine liability. Councilmember Shaw answered it is not the City's responsibility to determine liability because the City is not directly affected.

Discussion continued regarding the slide and possible solutions. The Council viewed a slide show of the Scenic Drive slide area. Mr. Bennett stated the residents are requesting restoration of the hill to a secure state, including: 1) a drainage system to assure no future problems; 2) replacement of dirt, including topsoil down to the toe of the hill, without any sheared areas remaining. The area should be properly buttressed with retaining walls; 3) An assurance of no future excavation by Mr. Butler; 4) Placement of vegetation to stabilize the hill; and, 5) Maintenance of the drainage system and an ongoing survey of erosion until the vegetation can mature sufficient to provide stabilization to the hillside. The Council discussed various types of vegetation that could be used. Mr. Bennett presented eight potential scenarios depicting what would happen if money was disbursed by the City and litigation were pursued. The scenarios also speculated results if money was not paid to stabilize the hillside.

*\*\*Note: Deputy Recorder Gina Peterson was excused at 8:00 pm.*

Councilmember Woodhouse asked the residents if they want to wait to do the construction repair or do the work now. The residents confirmed they would like repair work to be done now.

Issues regarding the landslide were discussed by Mr. Butler and the Scenic Drive residents. Mr. Butler feels his building's foundation actually strengthened the stability of the hillside. He stated he has spent thousands of dollars to keep the residential property from sliding onto his property. Mr. Butler explained he does not want to have to go through litigation, and has agreed to pay \$12,500.

Attorney Baker proposed the following option: The City pays for the repair costs up front and the work begins as soon as possible. The residents and Mr. Butler will sign a release of liability toward the City, as well as a contract to pursue legal remedies for reimbursement of the City's disbursed funds. The City Council and residents reviewed each of the items presented by Attorney Baker, after which, a **motion** was made by Councilmember Woodhouse as follows:

1. The City will pay repair costs up front with work scheduled to begin as soon as possible;
2. The affected property owners and Mr. Butler will sign a contract specifying repayment to the City in the sum of \$10,000 each (\$50,000 total) over the next ten years at rate of 75% of prime interest rate; and,
3. The City will plant needed trees and vegetation.

The motion was **seconded** by Councilmember Swenson. The motion **failed** with a vote of 2:3. Councilmembers Woodhouse and Swenson voted in favor, with Councilmembers Barber, Huff, and Shaw voting against the motion.

After a brief discussion Councilmember Barber **moved** the following:

1. The City will pay repair costs up front with work scheduled to begin as soon as possible;
2. The affected property owners and Mr. Butler will sign a contract repaying the City the entire amount of expenses incurred by the City to date;
3. The City will plant needed trees and vegetation;
4. The affected property owners and Mr. Butler will sign a release of liability toward the City; and,
5. The affected property owners and Mr. Butler will sign a contract to pursue legal remedies

for reimbursement of City funds.

Members of the Council and the Scenic Drive property owners voiced disagreement with requiring the residents to repay the City the entire costs associated with repair of the hillside. The motion **died** for lack of a second. Further discussion took place among the City Council, residents and Mr. Butler.

Councilmember Woodhouse made a **motion** stating:

1. The City will pay repair costs up front with work scheduled to begin as soon as possible;
2. The affected property owners and Mr. Butler will sign a contract specifying repayment to the City of the sum of \$10,000 each (\$50,000 total) over the next ten years at rate of 75% of prime interest rate;
3. The City will plant vegetation on the hillside following the recommendation of the Geologist and Geotechnical engineers on type and quantity;
4. The affected property owners and Mr. Butler will sign a release of all liability claims against the City;
5. Spanish Fork City agrees not to sue Ellis/Jeanette Taylor, Roger/Diane Reid, John/Angella Bennett, Kevin/Sharlee Kuhni, and/or Mr. J. Lee Butler for City monies spent in regard to stabilization and repair of the hillside;
6. The City will follow the design of Terracon regarding the installation of the project including the grading of the hillside to the toe of the hill. If Terracon is negligent in the design & construction of the project, Spanish Fork City will seek legal remedies;
7. Mr. Butler will grant access to the hillside by involved parties and agrees to full cooperation with the Spanish Fork City, the affected property owners and the construction contractor;
8. Mr. Butler covenants not to remove additional dirt from the hillside and further agrees to sign a recorded statement similar to the "Frazier" document (recorded in 1984).

Councilmember Swenson **seconded** the motion, and it **carried** with a **majority** vote of 4:1.

Ayes were heard from Councilmembers Huff, Shaw, Woodhouse, and Swenson.

Councilmember Barber voted nay.

### **Purchase of Land - Bill Creer**

Mr. Bill Creer was present to discuss the purchase of his property near the new Canyon Elementary for use as a park/retention area. Mr. Creer is willing to sell his the 2.76 acres requested by the City at \$35,000 an acre. The total purchase price of the property would be \$92,750. Mr. Creer understands the City will not rezone his remaining property at this time. The zoning will be addressed in the future when the Strawberry Electric Service District lawsuit is resolved. Mr. Oyler reviewed issues with the Council regarding the purchase of this land. After discussion, Councilmember Swenson **moved** the City purchase 2.76 acres from Mr. Bill Creer in the amount of \$92,750.00 for use as a park/retention area subject to the following conditions:

1. The City will install curb, gutter, and sidewalk;
2. Mr. Creer has ownership of the road, but will give the City an easement. The City will pay for installation of the half of the road that fronts the 2.76 acres, and will release Mr. Creer from liability on all of the road;

3. The City will pay rollback taxes on the property purchased;
4. The City will help Mr. Creer keep the greenbelt on the remaining portion of his property; and,
5. The City will not guarantee a zone change on Mr. Creer's property, but indicates it is in the General Plan to be changed in the future if adequate services and utilities are available, and the Strawberry lawsuit is resolved.

Councilmember Woodhouse **seconded** the motion, and it **passed** with a unanimous vote.

Mr. Creer wants the Council to recommend his development be the next one approved after the Strawberry lawsuit is settled regardless of the decision of the lawsuit.

### **Adjournment**

Councilmember Shaw **motioned** to adjourn the meeting at 10:30 pm. The **second** was made by Councilmember Barber, and the motion **passed** with a unanimous vote.