

**Adopted Minutes  
Spanish Fork City Council Meeting  
September 5, 2000**

The meeting was called to order at 6:30 pm by Mayor Dale R. Barney for a preliminary review of the agenda. At 7:00 pm, those present recited the Pledge of Allegiance.

Elected Officials Present: Dale R. Barney, Mayor, and Councilmembers Sherman E. Huff, Glenn A. James, Roy L. Johns, Everett Kelepolo, and Lillian J. Shepherd.

Staff Members Present: David A. Oyler, City Manager; Richard J. Heap, Engineer/Public Works Director; S. Junior Baker, City Attorney; Kent R. Clark, Finance Director/Recorder; Emil Pierson, City Planner; Nate Crow, GIS Specialist; Dee Rosenbaum, Public Safety Director; and Gina Peterson, Deputy Recorder.

Citizens Present: Jana Vance, Cheryl Evans, Janis Nielsen, *Spanish Fork Press*; Mary Myler, Erin Dodge, Melissa Winder, David R. Boyer, Randall K. Spencer, Selene Strickland, Miguel Yamanaka, Priscilla Wall, Karen Payne, *Spanish Fork Area Chamber of Commerce*; Rodger L. Hardy, *Deseret News*; Mike Latimer, Allen Carter, Ken Larsen, Steve Kesler, Charles Barkey, Kevin L. Barrett, Dorothy M. Barrett, Louis J. Frank, Donna Frank, Beverly Kendall, Jim Nielsen, Jena Hancock, Richard Hancock, Travis Taylor, Chris Wagner, Stephen Swenson, Mel Morrow, Walter Heyman, Vonnie L. Girard, and Randy S. Girard.

### **Agenda Review**

The Mayor reviewed with the City Council each item on the agenda. There was no general discussion.

### **Minutes**

Councilmember Johns made a **motion** to approve the minutes of the August 1, 2000 meeting of the Spanish Fork City Council meeting as presented. Councilmember Shepherd **seconded**, and the motion **passed** with a unanimous vote.

### **Agenda Request - Vonnie Girard for Residents of Spanish Fork Ranch**

Randy Spencer, an attorney representing citizens at Spanish Fork Ranch (1250 East 1060 North), addressed the Council. He expressed concerns regarding the development including several uncompleted amenities promised by the developer. The City holds a bond from the developer for site improvements. The bond expires today, and the developer has requested an extension on the bond.

Mr. Spencer stated residents are also concerned about health issues since the homes are located on an old landfill. On a brief walk through the property, Mr. Spencer said he found old medicine bottles,

antifreeze containers and other hazardous materials which indicate possible health concerns. The residents do not believe proper regulations were followed to clean up the landfill before development took place. Mr. Spencer noted the health department is scheduled to do testing which will determine if hazardous material exists on the property. He also stated the property has an odor at certain times. Mr. Spencer discussed the problem with settling of the ground which is shifting homes. He requested the bond not be released or extended, and the bond money be used to clean up the area or relocate the residents while clean-up of the area takes place.

Mayor Barney thanked Mr. Spencer and the residents for their time and guaranteed the City is looking out for the best interest of the citizens. He asked City Engineer Richard Heap to address the bonding issue.

Mr. Heap stated the bond includes enough money to finish the City's required site improvements and approximately two-thirds of the fencing. When the property was initially developed, the developer agreed to cover the area with a three foot cap of soil. It appears as if the cap may have been disturbed when trenching was done to install utilities. The City has been working to get a soils engineer to review the issue. The City also needs to obtain verification from contractors that did the original work whether the necessary specifications were met. Mr. Heap proposed the necessary work be completed with the City fronting the money. After the work is done, the City can go back on the developer to be reimbursed for the additional costs of fencing and landscaping.

### **Agenda Request - Spanish Fork Ranch, L.L.C. (R.W. Jones)**

In November 1999, the developer of Spanish Fork Ranch, R.W. Jones petitioned and received an extension of his bond to complete work on the development by September 5, 2000. The developer had missed the first deadline for completing the items specified by the bond.

Representatives from Spanish Fork Ranch, L.L.C. were not present. Their attorney, Bruce Jenkins sent a letter via facsimile and requested it be read into the record. Councilmember Kelepolo read the letter as follows:

*Dear Councilmembers:*

*As legal counsel for Spanish Fork Ranch, L.L.C. ("SFR"), the developer of the Spanish Fork Ranch Manufactured Home Community (the "Ranch"), I am submitting this letter in relation to SFR's request for a reasonable extension of the bond (Letter of Credit #65-53690-6). First, I would like to thank you for placing SFR's bond extension request on the agenda for your meeting this evening. This letter will serve as SFR's formal request for the extension. The managing member of SFR, R. W. Jones, has informed me that he will not be able to attend in person as his commitments no longer allow. However, this is a very important issue to the City, to the residents of the Ranch, and to SFR, and thus I have been engaged to present to you herein the basis for the requested extension.*

*As of the date of the Bond's maturity, this September 5<sup>th</sup>, all of the work covered by the bond has been completed. Unfortunately, some of the work, through no fault of SFR, was not properly performed by the contractors. As a result the City's engineering department has developed a "Punch List" identifying the work that must be done; for example, some of the meters were set too high, some irrigation boxes were not set to grade, backfilling along the curb, etc.*

*SFR and the provider of the Bond, Central Bank and Trust (“CB&T”), have been diligently working to remedy this situation and provide for the completion of the items identified on the “Punch List.” These efforts have included, but are not limited to, myself meeting on-site with City officials (engineering department and city planner), and Glen Roach of CB&T and Dave Grant (a reputable contractor) meeting with City officials on-site and at the City office. Attached is the bid from D.P.G. Construction, Inc. (Dave Grant)[not attached to minutes]for completion of all the work on the “Punch List” for a total of \$14,000.00. SFR and CB&T believe this is a fair and reasonable bid and Mr. Grant has assured that he can complete the work within a reasonable period of time.*

*I believe it is fair and reasonable to extend the Bond for a period of thirty (30) days so that D.P.G. Construction, Inc. (“DPG”) can perform the work it has contracted to do pursuant to its bid. I do not believe that it makes sense for the city to call the Bond due and then hire and supervise a contractor to complete the work identified in the “Punch List.” In all likelihood the city would hire DPG to perform the work. Further, CB&T is only committed to release an additional \$14,000.00 to complete the work originally bonded for the Ranch. Thus, whether DPG performs the work pursuant to a bid furnished to SFR and CB&T or the City elects to call the Bond and oversee the work, there is only \$14,000.00 available. Given this set of circumstances, it seems reasonable and prudent to extend the Bond for a period of thirty (30) days to allow DPG to perform under its contract with SFR and CB&T. This request for a thirty (30) day extension is consistent with the extension requested by CB&T in a letter to Mr. Heap. Calling the Bond and requiring City officials to contract for and oversee the construction will place an additional unnecessary burden upon the city’s engineering department. Finally, the City can be assured that the items on the “Punch List” will be properly completed because CB&T has informed DPG that it will only be paid when the City has “signed off” on the work completed under the “Punch List.” When the “Punch List” work has been signed off, the 1-year warranty/retention period should begin to run.*

*It is also important at this time to clarify some misunderstandings concerning the Bond and perimeter landscaping and fencing. During my meeting with City officials and also during the meeting with Mr. Roach and City officials, the engineering department and the planner were claiming that the bond would only be released and the 1-year retention period begin to run when the “Punch List” was completed and the perimeter fencing and landscaping were completed. (The perimeter landscaping has, in fact, been completed, but some of the trees have died. SFR is presently working with the landscaper to correct this problem.) However, neither of these items are a part of the Bond. Proceeds from the Bond cannot be drawn upon to complete these projects and CB&T has made this point very clear. The perimeter landscaping and fencing will be addressed as the development of the Ranch continues.*

*On behalf of SFR, I would like to thank you for your consideration of this matter. Please read this letter into the record of the meeting and also include a copy with the minutes of the meeting.*

*Bruce C. Jenkins*

The Council and staff reviewed items needing completion at Spanish Fork Ranch.

Attorney Randy Spencer feels accepting Mr. Jenkins proposal would be very detrimental to the residents. He does not feel landscaping should be completed in an area that is very likely contaminated, because the landscaping may have to be redone later. Mr. Spencer also feels the facts in the letter are not correct.

Mr. Heap stated there are two issues surrounding the development: 1) Property owners have been promised improvements and the bond to fund those improvements is expiring; and 2) The City needs to

investigate issues regarding the soil cap on the property. Mr. Heap reviewed that the site was heavily graded in conjunction with the development. The soils report required the developer to use a soil cap to contain any landfill material. Landfill material appeared when the gas, phone, and power trenches were dug. The City told the developer a soils certification was required before they would sign off on the development.

Mayor Barney stated he would like to see the homeowners association and residents involved with what happens to the development. He expressed disappointment that the developer was not interested enough to attend the meeting and address the problems in person.

City Attorney Junior Baker stated if the Council does not grant the bond extension, the Engineering Department will call the bond.

Councilmember James made a **motion** to deny the request from Spanish Fork Ranch, L.L.C. for extension of their bond, and to direct staff to work with the Spanish Fork Ranch Homeowners Association to resolve issues regarding the development. Councilmember Kelepolo **seconded**, and the motion **passed** with a unanimous vote.

### **Public Hearing - Ordinance Z07-00: The Walter Heyman Zone Change from R-R to R-1-9, and the Heritage Cove Preliminary Plat**

Councilmember Shepherd made a **motion** to open the public hearings at 7:38 pm. Councilmember Johns **seconded**, and the motion **passed** with a unanimous vote.

Mayor Barney outlined the rules for public hearing.

Walter Heyman and Melvin Morrow are requesting a zone change from R-R, Rural Residential to R-1-9, Standard Residential on 10.88 acres at 1400 South 1700 East. Preliminary Plat approval for the Heritage Cove Preliminary Plat will create 32 lots for a density of 2.94 units per acre. The property has been used for agricultural purposes and has an existing home owned by John Burt.

Lots in the Heritage Cove development will range in size from 9,000 to 17,000 square feet, with a majority of the lots being 9,000 square feet. Access to the lots will be from 2300 East and the road which accesses Absalom Court. John Burt's property (Lot 32) will continue to have a circular driveway from 2300 East. A six foot masonry wall will be constructed to match the wall along the Absalom Court and Esther Ridge subdivisions.

The Development Review Committee and Planning Commission recommended approval of the zone change and preliminary plat

Mayor Barney opened the meeting for public input. None was received.

Councilmember Johns made a **motion** to adopt The Walter Heyman Zone Change from R-R to R-1-9

by Ordinance Z07-00, and the Heritage Cove Preliminary Plat subject to the following conditions:

1. All plans and profiles stamped and approved by the Engineering Department;
2. Preliminary Title report submitted prior to final Development Review Committee approval;
3. A soils report must be submitted prior to final plat approval;
4. Lots 1 and 31 will have no access onto 2300 East from. Driveways for these lots must be located on the east property line;
5. Setbacks will be as follows: Front - 20 feet to living area, 25 feet to garage; Rear - 25 feet; and Side - 10 feet. Corner lots - 15 feet to living area and 25 feet to garages;
6. No duplicate home style will be developed within 120 feet of each other;
7. Minimum finished size requirements as follows: rambler - 1200 square feet; two-story - 1400 square feet; split level - 1300 square feet;
8. Masonry wall installed along 2300 East to be approved by the City Planner. The wall must match the walls along the Esther Ridge and Absalom Court subdivisions;
9. Front home elevations shall be 50% masonry product (brick or stone), or 100% stucco.
10. Installation of a 20 foot asphalted drive at the south end of Lots 12 and 13. No parking is allowed on the road, and the plat will show the drive as a public access easement;
11. No nuisance strip is allowed on the edge of the roads going south.

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

### **Public Hearing - Ordinance 09-00: James Nielsen General Plan Amendment (Medium Urban Residential to General Commercial)**

Jim Nielsen is requesting to amend the general plan from Residential, 3.5 to 5 units per acre, to General Commercial on a small piece of property located at 100 South 1500 East. This request was brought before the Planning Commission previously in May 1998. After review, the petitioner requested that this property be removed from his request. Mr. Nielsen would now like the zoning designation for the property changed to accommodate a commercial center. If the amendment is approved, the petitioner will proceed with rezoning the property.

The Development Review Committee discussed the request at length including what effect the change could have on surrounding property. Approval was recommended by both the Development Review Committee and Planning Commission.

Mayor Barney opened the meeting for public input.

Mr. Charles Barkey, 1413 East 100 South, indicated his home is directly adjacent to the existing commercial property on the north, and adjacent to the proposed commercial property to the east. Mr. Barkey expressed his approval of the proposed change. He reported residents have been told 100 South will remain a cul-de-sac if this property becomes commercial. He stated he does not want a through street or pedestrian access off 100 South.

Mr. Richard Hancock, 1428 East 100 South, stated he is the owner of property adjacent to Mr. Nielsen's property. He voiced his support of a change to commercial solely to have a cul-de-sac at the end of 100 South for the safety of his children. He indicated he is sensitive to the concerns of residents on 150 South, and something should be done about the speeding traffic on this street.

Mr. Ken Larsen, 1362 East 100 South, stated the sound wall along U.S. Highway 6 will not be installed at this location if the property is commercial. He expressed concern with the low visibility of the corner attracting trouble and not being a secure area.

Mr. Allan Carter, 1389 East 100 South, expressed opposition to the change. He asked if the property could remain residential and 100 South remain a cul-de-sac. Mr. Heap stated the cul-de-sac would then be too long to meet standards. Mr. Carter felt the area may attract "no-gooders".

Mr. Mike Latimer, 1405 East 100 South, stated he would like to see the property remain residential. He feels it makes sense to leave the property residential and 100 South as a cul-de-sac. He stated Mr. Nielsen bought the property on the risk that he would either make or lose money, and Mr. Nielsen doesn't need to make money.

Mr. Richard Griffin, 1458 East 150 South, informed the Council that for safety reasons he would like the property to stay residential. If the property is made commercial, he would like it to be designated as neighborhood commercial.

Mr. Neal Anderson, 1427 and 150 South, expressed opposition to the change. He feels he will see significant loss in his property value if the area is made commercial. He cautioned the Council to avoid spot zoning, which is evidenced when the proposed use is more intensive and upgraded. He stated the change does not serve the community or public good. Mr. Anderson also expressed concerns about the traffic on 150 South.

Jana Vance, 119 South 1300 East, indicated she would like the area to remain residential.

Travis Taylor, 1287 East 100 South, stated he does not want a through street on 100 South because of safety issues and the number of children in the area. He also feels the property should remain residential.

After hearing no more public comments, Mayor Barney closed the public hearing portion of the meeting.

Councilmember Kelepolo noted that although the 12 foot sound wall along U.S. Highway 6 will not be constructed if the property is commercial, City ordinance requires a 6 foot wall along commercial property when it abuts a residential use. He also felt the building would be a buffer from the Highway noise.

Attorney Baker indicated the Council should be aware of possible takings issues. The Council should

not deny a reasonable option to develop property just because a few property owners do not want traffic in front of their house. Mr. Heap stated the maximum length of a *permanent* dead end road is 400 feet. The temporary dead-end on 100 South is currently at 438 feet. Mr. Heap 100 South was never designed to be a cul-de-sac.

Mayor Barney stated the issue for the Council to consider is the proposed General Plan amendment from residential to commercial. The cul-de-sac on 100 South can be reviewed during approval of the site plan.

Ms. Jena Hancock stated during the Planning Commission meeting in August, there were several residents who were in favor of the change to commercial. Many of the residents that supported commercial did not attend the Council meeting because they thought it was approved by the Planning Commission. A citizen spoke, saying there are many not present from both sides.

Councilmember Kelepolo stated it is difficult for the Council to determine what uses will work best in the area. He feels commercial property would be a better enhancement for both the residents and Mr. Nielsen.

Councilmember James made a **motion** to adopt the James Nielsen general plan amendment from residential to general commercial by Ordinance 09-00 subject to the following conditions:

1. When the property is rezoned it will be Neighborhood Commercial (C-1);
2. The project go through the City's design review process;
3. The development continue the "theme" of the commercial development directly to the north;
4. The development must meet the Construction and Development Standards of the City;
5. During site plan approval, the buildings will be required to have up lighting approved by the City Planner.

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

Councilmember Huff made a **motion** to exit the public hearings at 8:33 pm. Councilmember Shepherd **seconded**, and the motion **passed** with a unanimous vote.

### **Interlocal Agreement with Nebo School District concerning the Technology Building**

Mr. Baker reviewed the proposed interlocal agreement with Nebo School District. The School District has expressed a desire to build on three additional classrooms with construction of the City's Technology Building. They will use the classrooms for various school classes which relate to TV industry. The School District will also provide a pro-rata share for their operation and maintenance costs. The City will have free use of classrooms as long as class is not in session. The architects anticipate construction costs for the building to be \$65 per square foot. Attorney Baker noted the School District has already approved the agreement.

Councilmember Kelepolo made a **motion** to approve the Interlocal Agreement with Nebo School

District for the Technology Building as presented. Councilmember Huff **seconded**, and the motion **passed** with a unanimous vote.

**Resolution 00-24: A Resolution Appointing Two Representatives to Serve on the Taxing Agency Committee for the Spanish Fork Redevelopment Agency**

Councilmember Kelepolo made a **motion** to adopt Resolution 00-24: A Resolution Appointing Two Representatives to Serve on the Taxing Agency Committee for the Spanish Fork Redevelopment Agency with Councilmembers Huff and Johns serving as the City's designees. Councilmember Shepherd **seconded**, and the motion **passed** with a unanimous vote.

**Adjournment**

Councilmember Shepherd made a **motion** to adjourn the Spanish Fork City Council meeting at 8:43 pm and convene the session of the Spanish Fork Redevelopment Agency. Councilmember Johns **seconded**, and the motion **passed** with a unanimous vote.