

**Adopted Minutes  
Spanish Fork City Council Meeting  
March 4, 2008**

Elected Officials Present: Mayor Pro Tem G. Wayne Andersen, Councilmember's Rod Dart, Richard M. Davis, and Jens P. Nielson. Mayor Joe L Thomas and Councilmember Steven M. Leifson were excused

Staff Present: Seth Perrins, Assistant City Manager; Junior Baker, City Attorney; Richard Heap, Public Works Director; Kent Clark, Finance Director; Dee Rosenbaum, Public Safety Director; Kimberly Robinson, City Recorder

Citizens Present: Derek Lounsbury, Rod Warren, Marty Warren, Ryan Lundell, Dawson Haycock, Whitney Bingham, Annalicia Fregozo, Kanasha Bitsinnie, Eileen Quintana, Tyler Durden, Lola Belula, Adrienne Ballif, Bjorn Pendleton, Dana Robinson, Jack Tobiasson, Velma Boothe, Carol Pepperdine, Madison Evans, Lance Coomes, Ali Greenwood, Amy Foote, Alma UMBER, Carl Bowcut, Anna Murdock, Carolyn Sorensen, Steven Twede, Jackie Robinson, Jamie Evans, Heather Anderson

**CALL TO ORDER, PLEDGE:**

Mayor Pro Tem Andersen called the meeting to order at 6:00 p.m.

Boy Scout Zack Phillips led in the pledge of allegiance.

**Employee of the Quarter**

Mayor Pro Tem Andersen recognized the Employee of the Quarter. Marty Warren was presented with the Employee of the Quarter award. He stated they appreciate all she does. The employees of the city are wonderful and the Council appreciates it, thank you.

**PUBLIC COMMENTS:**

Eileen Quintana is here for two programs. She is part of the Nebo School District Indian Education Program and she invited all to the pow wow there will be two sessions one starting at 2:00 and one at 6:00 p.m. They are the only program in the state and in the western area that has given away 20 scholarships.

Annalicia Fregozo is a member of the Cheyenne Sue River Tribe and she will be the head dancer at the Pow-wow on April 12, 2008.

Kanasha Bitsinnie is part of the Navajo tribe and stated this is a great program.

**COUNCIL COMMENTS:**

Councilman Dart attended the Library Board meeting there are some great things going on at the Library. Some upcoming programs are Family Night Story Time on March 10, 2008 and Mother Daughter Book Club March 20, Dads and Dudes March 22, and an Early Literacy Workshop on April 10, 2008. He commended the grounds crews at the ball complexes for doing a great job, he also commended the recreation department for offering the spring soccer program.

Councilman Davis commented on Fiesta Days. They are working on stakes in the city to build floats this year to be more float oriented, the theme is to celebrate traditions. He would love to see the covered wagons and things come in the stock parade. The activities will be a baby contest, movie night, children's parade, flag ceremony, softball and golf tournament, street dance, program at the park, sidewalk sales, stock parade, Fiesta Days Rodeo, grand parade and all the activities in the park. The windmills are moving forward, the generators are there and they are building the crane. He thanked the employees and staff for their help keeping the city clean, he also thanked the citizens for cleaning the sidewalks and churches and keeping them clean. By helping each other it keeps our town a small town community. The DUP will be removing the memorial and would love to have help getting the headstones out, if anyone has an idea how they can do that please let him know.

Mayor Pro Tem Andersen excused the Mayor and Councilman Leifson tonight. He noted in the last utility bill there was an announcement about the Rabies Clinic on March 22<sup>nd</sup>, it has been moved to March 29<sup>th</sup> at the Spanish Fork fairgrounds.

### **CONSENT ITEMS:**

**Animal Pick Up Fee Resolution**  
**Amended Interlocal Agreement – Salem, Payson, Spanish Fork**  
**Resolution Authorizing IS Director to Enter Into Program Contracts**  
**UVCCC Funding Matrix Resolution**

Councilman Nielson made a **Motion** to approve the consent items. Councilman Davis **Seconded** and the motion **Passed** all in favor.

### **NEW BUSINESS:**

#### **Arts Council Presentation**

Bjorn Pendleton

Mr. Pendleton gave a handout for the presentation. He is president of the Arts Council and acting chairman of the Nebo Cultural Arts and Heritage Center Committee. He then gave a presentation regarding the Nebo Cultural Arts and Heritage Center.

Dana Robinson

Mr. Robinson gave part of the presentation.

Eileen Quintana

Ms. Quintana explained a lot of times they are unable to hold their events because of scheduling conflicts. She is looking forward to a cultural arts center.

Anna Murdock

Ms. Murdock discussed theater options and stated why she feels the educational theater experiences are important for the children. They are having a hard time with facilities being available. As the population continues to grow they continue to need a place.

Carl Bowcut

Mr. Bowcut discussed the Utah Valley Children's Choir, and the need for facilities to help enhance the arts.

Jack Tobiasson

Mr. Tobiasson is with the Icelandic Association. They would love to have a facility for their events, it is getting increasingly difficult to find facilities to hold their events.

Mr. Pendleton stated there is representation for many groups here tonight.

Scott Ward

Mr. Ward said they are working on putting together project implementation and project strategy. He presented information regarding how they plan to obtain their goal. They would like to look for big money donors to help raise the funds even if they are not from Utah. They want this to be a multi used facility and the more groups they can get involved the more they can fund the operation and maintenance of the facility.

Councilman Davis clarified they are looking at \$15 million, how much do they project they can raise.

Mr. Ward stated they plan on raising the funds with the city donating the ground.

Councilman Davis asked who this would affect.

Mr. Pendleton said this would affect the south county area.

Mayor Pro Tem Andersen asked how they would do fundraising, collect money and keep track of it.

Mr. Baker feels there are better ways to go about handling the fundraising, and that it needs to stay under the umbrella of the city or be a separate non-profit.

Councilman Nielson said if this project is part of the city then the city is responsible for all the funds raised, it is critical whether this is under the umbrella of the city or not. He likes the idea of the city being able to take on a significant roll but if it is under the umbrella of the city they are on the hook, and there is the ongoing oversight of the building. He would rather see this as a non-profit and the city helping out where they can.

Councilman Dart asked about the care tax.

Mr. Clark stated they are called a ZAP or RAP tax and it is a sales tax the Council can impose, the cap max is 1/10 of 1% approximately \$400,000 a year. He stated that the tax will grow as the sales tax grows.

Mr. Perrins stated Orem is the only city that has the tax in Utah County it is a process to go through but it can be done.

Mr. Ward stated they hope to not have to have the tax imposed, that they can raise the funds.

Mr. Pendleton stated there is software to track the donations and it was done in Provo City for \$8 million.

Mr. Robinson said Norm Nielson, with Scera, has stated he would sit down and teach them how to set up an organization such as Scera at any time. It is going to take a tremendous amount of effort.

Randy Boothe

Mr. Boothe talked at great length with the manager of the Covey Center, he was charged by Provo City to have a certain percentage of use. He believes strongly there is more than enough interest and talent in this area and that it would be a tremendous thing to have this as a part of Spanish Fork City.

Mr. Ward said the \$15 million dollar amount could use part of parks and recreation impact fees. He would like to see the impact fees shared with the arts.

Councilman Nielson supports the arts and would like to see a center like this. His concern is can the city afford to do it. He feels the first step would be to explore how the others have done this if the support is in the community there should not be a problem raising funds to make this feasible. He will volunteer to find out how Provo did it and so on.

Councilman Davis feels this will be a wonderful thing for the community. There are a lot of issues in the city and he needs to know what we can do as a city.

Mr. Ward stated they are not looking for a motion they are just wanting support.

Councilman Davis would love to have a home for the DUP and have it stay there. His issue is how to fund it.

Mr. Pendleton stated the Utah Arts Council teaches how to get the funds, they will pursue all ways to get funds public and private.

Mayor Pro Tem Andersen feels there needs to be more homework done and a timeline created so the Council can see how they propose this project to progress with guides they can look at. He needs to do more homework on this issue and would like to table this with an opportunity to check it out and do more research, to be discussed at the next meeting. He encouraged the Arts Council to create a timeline of events so they can see.

Mr. Ward said they are here tonight to get the Councils blessing to move forward and look into this more.

Mayor Pro Tem Andersen would like a timeline of events and would support tabling this until they can understand more the issues that are going on. The city is already committed to several large projects. He would like to see the timeline and be able to study it more, with some options he feels comfortable with.

Councilman Dart said they are not against the project.

Mr. Pendleton would like to have Mr. Davis available so he can report back and make progress.

Councilman Davis promised to be there as much as he can.

Mayor Pro Tem Andersen feels they need to be comfortable in how they progress, Councilman Davis has committed to come to the meetings and work with them. He would like this to be on the agenda for the first meeting in April to give him time to see what else can be done.

Mr. Robinson stated this can happen and he firmly believes that it will.

Mr. Pendleton thanked all those supporting this project.

Councilman Davis made a **Motion** to continue this item to the April 1<sup>st</sup> meeting. Councilman Nielson **Seconded** and the motion **Passed** all in favor.

### **Main Street Plaza Parking Proposal**

Kevin Pritchett

Mr. Pritchett owns Main Street Plaza there are 12 different office spaces there, to keep business going they need more parking. They are proposing to move the Chamber into his property along with the DUP and would pay to demolish the home if the city will pave the parking.

Councilman Dart explained the Chamber gets \$16,000 a year and they have to pay salaries and operation costs out of that.

Mr. Perrins stated the only additional cost the Chamber incurs is approximately \$3,000 a year for operation and maintenance.

Councilman Davis stated the Council is tight on money and still need to keep that house for the Chamber, they are going to have to build a satellite system for the fire department. Right now they are not in a situation to tear the house down. His biggest concern is the traffic coming through the area. The city cannot afford to tear the house down. The figures to him are way off because they still have to fund the chamber \$16,000. Eventually they will tear that down and it will become parking, but the city cannot afford to do it right now.

Councilman Nielson asked if the city agreed to provide a paved area with parking stalls.

Mr. Baker does not think it spells it out.

Councilman Davis stated there is a safety issue that needs to be protected, but what is prioritized right now the money is not there. He understands the businesses need parking but Mr. Pritchett knew what he was buying into.

Mr. Perrins stated that in order to move the Chamber the city would have to come up with the additional costs.

Councilman Davis stated they are at \$20,000 to run the Chamber right now, and with this proposal they will be up to about \$40,000.

Councilman Nielson stated the first issue is parking, it is one thing we keep the agreement to provide parking, and the Chamber is another issue.

Councilman Dart suggest the city make this a better parking area as soon as possible.

Councilman Neilson asked if Mr. Pritchett feels good about the plan if they make the corner parking.

Mr. Pritchett stated he hoped for the Chamber, but he thought they would pave it and now they will just provide the parking.

Discussion was made regarding the parking area.

Mayor Pro Tem Andersen suggested allowing them to have their discussion on other projects so they can prioritize, they will try to help out and make the area a place where people can park but at least it will be substantial enough they won't sink.

### **NEPA Compliance on the River Study- Richard Heap**

Mr. Heap said they received a grant last year to do a river study, and design a trail. There is \$100,000 budgeted from the grant to have a consultant come in to ensure we meet the compliance. They would like to go with North Wind engineering who was the lowest, they checked with previous clients and are pleased with the work they have done.

Councilman Nielson made a **Motion** to approve the contract with North Wind Engineering for a NEPA compliance study and authorize the mayor to sign the agreement. Councilman Davis **Seconded** and the motion **Passed** all in favor.

### **Transportation Master Plan Consultant Selection**

Mr. Heap stated they sent out RFP's for a city transportation study they propose going with Horrocks Engineers they were also the lowest cost, the firm will be on a retainer as new plans come in they can go to that firm with the information. They will also provide an engineer twice a week for ½ day to answer questions anyone may have.

Councilman Davis made a **Motion** to accept Horrocks engineering for the City Transportation study and authorize the mayor to sign the agreement. Councilman Dart **Seconded** and the motion **Passed** all in favor.

Mr. Heap noted they are still working on bringing the recycling RFP's until the first meeting in April.

### **Annual Contribution Agreement Between SUVMWA & Spanish Fork City**

Mr. Baker stated South Utah Valley Municipal Water Association has some property under contract in order to build a regional wastewater treatment facility. Bond council has asked that each city enter into some form of participation agreement. He received the actual agreement today and feels the resolution needs to be approved subject to changes to the actual agreement. There are two payments we will need to make, we may need to front the one time contribution until SUVMWA pays it back.

Mayor Pro Tem Andersen talked to Dave Tuckett who is acting as SUVMWA's legal council and the Mayor of Elk Ridge will most likely make a payment of at least \$500,000 from the purchase of the water and our portion of that goes towards the one time payment.

Mr. Baker stated the surprise has been the upfront cost and it will be repaid.

Councilman Nielson disclosed anytime we buy and sell property there is a title company involved, his company is doing the title work for this.

Councilman Davis made a **Motion** to accept the Resolution 08-05 and the annual contribution agreement between SUVMWA and Spanish Fork City subject to the review and approval of the legal council. Councilman Nielson **Seconded** and the motion **Passed** all in favor.

### **OLD BUSINESS:**

#### **Kite Festival Follow Up**

Steven Money

Mr. Money stated the concerns on the kite festival. Edison does not want to do the ribbon cutting until the windmills are in operation they want to be a big part of it but they want to move the dates to September 5-6, 2008. All facilities are available for those times, and for the California kite flyers it worked better for their schedule. They have informed the Governors office of the change and have some small windmills coming that will be displayed in the lobby. Elaine and Dale have an interview with KSL for sponsorship. He thanked the Daily Herald they have already pledged a sponsorship, Edison have indicated they want to be a big sponsor in it. They are asking for more time before they update the Council on the cost.

#### **Appeal Authority – Staff Denial of Billboard Building Permit – Jamie Evans**

Mr. Baker explained we as the city have to make the best decision to protect our legal interest.

Councilman Nielson feels the biggest factor is within 500 ft, if it is valid they cannot build their own sign he has a hard view about their argument.

### **EXECUTIVE SESSION:**

Councilman Davis made a **Motion** to recess the meeting to executive session for Jamie Evans Deliberation and Land Purchase. Councilman Dart **Seconded** and the motion **Passed** all in favor at 8:38 p.m.

The meeting was called back to order at 9:00 p.m.

Mayor Pro Tem Andersen denied based on the following findings:

#### **FINDINGS OF FACT**

1. There is an existing billboard within 500 feet of Mr. Evans proposed billboard. That billboard is owned by Simmons Outdoor Media ( SOM).
2. Setbacks for structures in the I-2 zone require a fifty (50) foot setback. The size and shape of the parcel on which the SOM sign sits makes it impossible to meet the setback requirements. It is a legal, non-conforming sign, having been in place at that location for several decades.
3. SOM had to remove the guy wires from the existing sign because they were crossing the property line onto property currently owned by Staker-Parsons.

Without the guy wires, this sign would blow over with the wind velocities in that area. Mr. Evans acknowledged that fact when he told the council he has been waiting since 2001 for this sign to blow down. SOM claims the sign was damaged by the wind and needed to be taken down before it blew down. Mr. Evans disputes that the sign was damaged before it was taken down. In either event, SOM took down the sign before it blew over.

4. SOM has no intent to abandon the billboard.
5. Without the guy wires it was just a matter of time before the sign blew over. SOM does not need to wait for a disaster to happen in order to take measures to prevent the disaster.
6. The provisions of Utah Code Annotated §10-9a-513 come into play. Section 513(a)(a)(i) and (iii) reads as follows:  
(1)(a) A municipality is considered to have initiated the acquisition of a billboard structure by eminent domain if the municipality prevents a billboard owner from:  
(i) rebuilding, maintaining, repairing, or restoring a billboard structure that is damaged by casualty, an act of God, or vandalism;  
(iii) structurally modifying or upgrading a billboard;
7. This state law provision takes precedence over the city ordinance dealing with setbacks or nonconforming uses.
8. The state law is applicable, requiring the city to allow SOM to rebuild the sign or pay SOM the value of the sign as though it had been condemned.
9. The faces of the back to back sign were sixteen (16) inches apart on the original sign, and now are five feet apart. However, the guy wires on the original sign extended onto the neighboring property, making the footprint of the sign much larger than the new sign, with a monopole and faces five feet apart.
10. The billboard which was removed had a copy area, or area of display, of 675 square feet. The new billboard has a copy area of 672 square feet.
11. The city requires all new billboards to be constructed on a monopole (see Spanish Fork Municipal Code §5.36.060(8)). A sixteen inch separation cannot be maintained with a monopole.
12. Spanish Fork Municipal Code §15.3.24.020(5) allows billboards to be double faced or back to back if the separation of panels does not exceed five feet, the exact distance on the new billboard.
13. The current building code would not allow the identical sign to be rebuilt. Since UCA §10-9a-513(1)(a)(iii) allows a billboard to be structurally modified or upgraded, the state law will also mandate the sign meet current standards, despite a wider distance between the panels.
14. These facts do not constitute an expansion of a nonconforming use.
15. Spanish Fork Municipal Code §15.4.08,020 spells out what type of development requires a site plan. They are spelled out very specifically as all proposed new commercial or industrial developments, all additions to commercial or industrial buildings or structures, all multi-family developments with more than 3 units, and all conditional use permits or uses subject to conditions.
16. A billboard is not considered to be in any of these classes requiring a site plan
17. The City issues a billboard sign permit for a billboard, but requires a building permit for a building or structure. Indeed, the document submitted by SOM was a sign permit application.
18. Footing and structure details were furnished to the building official by SOM with the plans for the billboard under the 2006 building code.

19. The initial plans submitted by SOM showed the 2002 building code. When that was caught, before construction, the correct, 2006 building code plans were required. Consistent with city practice, a new application was not required, but 2006 plans were required prior to allowing construction. Construction was allowed to proceed when the correct plans were received, which included the footing and structure details.
20. SOM has produced to the city a copy of a sign permit for its location issued by UDOT. The sign being a legal, nonconforming use, it meets all other requirements. The city must presume that a UDOT issued permit is valid and honor it until either UDOT or the courts indicate otherwise.
21. Mr. Evans has not produced anything from UDOT indicating it has approved the location requested by Mr. Evans.
22. UDOT approval is required prior to our issuance of a permit. See Spanish Fork Municipal Code §5.36.060(9). Since no UDOT approval has been provided, at the very least, a permit could not be granted until that approval is provided.

The Spanish Fork City Council having made its Findings of Fact, now hereby

### **ORDERS**

- I. The appeal of Jamie Evans for a billboard building permit near the Price/Manti exit of I-15 is hereby denied.
- II. The decision of the planning department to deny the permit is hereby affirmed.  
DATED this 4<sup>th</sup> day of March, 2008

The Council appreciates Mr. Evans civility in this matter and his good attitude.

Mr. Perrins suggested the Arts Council create an ad-hoc committee to study this issue. He also stated they should have members of the committee that have strengths in many areas not just the Arts Council.

The Council agreed that it was a good idea and that it gives a broader spectrum of members of the community.

Mayor Pro Tem Andersen suggested the Council think of who they want to serve on this committee. They would like each Councilmember to bring back about five names they want to serve on the committee, then as a Council they can decide who they want to ask.

Mr. Rosenbaum talked regarding the parking lot discussion follow up. He handed out the agreement. They want the public to utilize the parking and they want to ensure the accesses are there.

Councilman Davis made a **Motion** to adjourn. Councilman Dart **Seconded** and the motion **Passed** all in favor at 9:27 p.m.

ADOPTED: April 1, 2008

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Kimberly Robinson, Deputy Recorder