

CITY OF DELTA, UTAH
REGULAR CITY COUNCIL MEETING
MARCH 17, 2011

PRESENT

Gayle Bunker	Mayor
Robert Banks	Council Member
Bruce Curtis	Council Member
John Niles	Council Member
Betty Jo Western	Council Member

ABSENT

Tom Stephenson	Council Member
----------------	----------------

ALSO PRESENT

Todd Anderson	City Attorney
Alan Riding	Public Works Director
Ken Clark	Assistant Public Works Director
Gregory Jay Schafer	City Recorder
Lorie Skeem	Delta Area Chamber of Commerce
Adam Lake	Contractor
Russell Webb	City Resident
Kory & Jenny Morris	City Residents

Mayor Bunker called the meeting to order at 7:00 p.m. He stated that notice of the meeting time, place and agenda had been posted at the City Building and on the Utah Public Notice website, mailed to the Millard County Chronicle/Progress, and provided to each member of the City Council at least two days prior to the meeting. City Recorder Gregory Schafer acted as secretary.

Council Member Betty Jo Western provided opening remarks, following which Mayor Bunker led those in attendance in the Pledge of Allegiance.

MINUTES

The proposed minutes of a Regular City Council Meeting held March 3, 2011 were presented for consideration and approval. Council Member Bruce Curtis MOVED to approve the minutes of the Regular City Council Meeting held March 3, 2011, as presented. The motion was SECONDED by Council Member John Niles. Mayor Bunker asked if there were any comments or questions

regarding the motion. There being none, he called for a vote. The motion passed with Council Members Robert Banks, Bruce Curtis, John Niles, and Betty Jo Western voting in favor and Council Member Tom Stephenson being absent.

ACCOUNTS PAYABLE

The Council reviewed the accounts payable, a copy of which had been given to them two days prior to the meeting. Following review, Council Member Betty Jo Western MOVED to approve the accounts payable dated March 17, 2011, in the amount of \$42,071.45. The motion was SECONDED by Council Member Robert Banks. Mayor Bunker asked if there were any comments or questions regarding the motion. There being none, he called for a vote. The motion passed with Council Members Robert Banks, Bruce Curtis, John Niles, and Betty Jo Western voting in favor and Council Member Tom Stephenson being absent.

PUBLIC COMMENT PERIOD

There were no comments from the public.

UNFINISHED BUSINESS

There were no items of unfinished business on the agenda.

NEW BUSINESS

MAYOR GAYLE BUNKER: BASEMENT CONSTRUCTED IN VIOLATION OF DELTA CITY ZONING ORDINANCE, LOCATED AT APPROXIMATELY 35 WEST 100 NORTH

Mayor Bunker noted that the Council will not make any decision on this matter but will discuss possible solutions to the problem. Public Works Director Alan Riding advised Council Members that, during the week of February 28th through March 3rd, he and Assistant Public Works Director Ken Clark were attending a rural water conference in St. George. Prior to that time, Dan Harris and Contractor Adam Lake contacted Ken Clark and Alan Riding to locate the sewer line on the property located at approximately 35 West 100 North. The individuals met and located the sewer manhole, were advised where the sewer line ran, and Mr. Harris and Mr. Lake were advised that they would need to verify the depth of the sewer line. Mr. Riding asked if the individuals had a building permit prepared and signed and Mr. Lake stated that they were working on obtaining a building permit.

Mr. Riding advised Mr. Lake that he and Mr. Clark would be out of town the following week so they needed to get the building permit to them for review as soon as possible or other arrangements for approval could be made. Upon return from the rural water conference, Mr. Clark and Mayor Bunker found that a building permit had been brought into the office for review but it had not been reviewed or signed by Delta City, nor had the fees been paid. The Delta City review, signature and payment

of fees must take place prior to issuing the building permit and the building permit must be issued prior to any construction taking place. At that time, basement footings and walls had been poured without obtaining a building permit. Assistant Public Works Director Ken Clark went to talk to Dan Harris, a sub-contractor on site doing concrete, and told Mr. Harris to cease any further construction until a building permit had been issued. A quick review of the property made it very apparent that the set backs were in error. The property is located on a corner lot in the R-4 zone, which requires a front set back of twenty-five feet and the required set back facing the adjacent street is twenty feet. The required side yard set back is ten feet. The plot plan provided with the building permit application shows a set back of twelve feet from the side street and a nine foot set back for the side yard.

Contractor Adam Lake contacted Public Works Director Riding to find out what could be done with the situation. Council Members were in possession of the letter mailed to Mr. Lake notifying him that the building permit application had been denied and the reasons for the denial.

Contractor Adam Lake advised Council Members that he had submitted the building permit application the same day they were locating the sewer line; the plot plan was laid out according to the set back information provided by the building inspector, Darrell Owens. When the building application was taken to the City office, Mr. Riding and Mr. Clark were out of town and the concrete contractor, Dan Harris was in a rush to pour concrete prior to a storm coming into the area. Mr. Harris dug the basement and footings and walls were inspected by the building inspector. Mr. Lake again stated that the set backs were laid out as stated by the building inspector.

Mayor Bunker indicated that the building inspector does not have a copy of our zoning ordinance and does not know our set back requirements. Council Member Betty Jo Western asked Mr. Lake how many homes he has constructed in Delta City. Mr. Lake stated that he has probably constructed four homes in Delta City. Council Member Betty Jo Western asked if Mr. Lake was aware of the set back requirements when he built those other homes. Mr. Lake stated that he set backs were different because this was a corner lot and he has not previously constructed a house on a corner lot. Council Member Western asked if he had been aware of the set back requirements when he constructed the home on the corner lot in Notch Peak View Estates. Mr. Lake stated that he did not draw the plot plan because the home owner already had it drawn. Mr. Lake advised Council Members that Mr. Harris had gone ahead without the building permit so he is not trying to justify that action he is just stating this is what the situation is at this time. Council Member Western asked Mr. Lake if he had asked Mr. Owens for the set back requirements. Mr. Lake responded that he had called Mr. Owens to find out what set backs were required on the property and Mr. Owens told him the set backs were eighteen feet on one side, on the lot-to-lot basis, and as small as ten feet on the other side.

Mayor Bunker stated that there is a problem with the set backs and felt that there was a lack of investigation to find out what the set backs were. Mayor Bunker felt that some assumptions were made that were not correct. Mayor Bunker noted that our contract with Millard County for building inspections specifically states that Delta City acts as the zoning officer and makes the determination

whether plans comply with zoning regulations. Mayor Bunker indicated that, at this point, we are not assessing blame, we are trying to determine what to do from here forward. A variance can be requested but the legislature has provided narrow criteria to be met in order to grant a variance. Delta City wants to do the right thing but we must follow state and local laws.

Kory Morris, property owner, advised Council Members that the type of loan they have for construction of the house is a known as a U.S.D.A. Rural Development loan, which required six to seven months to get the loan. The concern now is that, if plans are changed, they will have to start the loan process over and go through the entire process again. There has been discussion about making an adjustment to the home or requesting street vacation. They have obtained signatures from adjacent property owners in support of their construction project, with the exception of one who has said that if there was no other solution other than ripping out the basement, he would sign in support of the project, as is. Mr. Morris does not want to request vacation of a street but feels that they are in a situation where they will do just about anything to keep the house where it is.

Jenny Morris reiterated that they have spent seven months getting to the point where they are now and they are growing out of the house they are in. She realizes that people have made errors but that those errors are affecting them and their family and it is not their fault. Mrs. Morris does not want to prolong the process because it has taken so long to get to this point.

Council Member Bruce Curtis noted that the prospect of getting into a new home is an exciting situation but it is also a daunting situation. Council Member Curtis recalled that he had gone through the experience a few years ago and it was difficult to get through all the paperwork and details but, ultimately, you have a new home. People choose a contractor and expect the contractor to take care of the construction details. Council Member Curtis put the blame for the error on the contractor, Adam Lake, because he should have been taking care of the owners' interest. Council Member Curtis was dismayed that the contractor had put both the Morrises and the City in this difficult situation in order to save a few days. Council Member Curtis stated that the contractor should have followed the rules and regulations and none of us would be in this situation. Council Member Curtis felt that there were a few options, one of which is to remove the basement and start over. This is not the best option for the property owners but it is, by law, what needs to be done. No matter what is done, it is going to cost the property owners and the contractors some time and money. Another option may be to leave the home where it is located at present, leave 50 West Street open and require the contractor to install curb, gutter and sidewalk and asphalt in front of the property at his own expense. Council Member Curtis stated that his reasoning for this idea is to not punish the property owners further for the errors by the contractor but to punish the contractor monetarily for not following the rules and regulations.

City Attorney Todd Anderson stated that allowing the house to stay where it is will require a variance from the Board of Adjustment because the house will remain out of compliance. Council Member Western outlined the requirements to be met in order to grant a variance.

Mayor Bunker advised Mr. Lake that the plot, as recorded in the Millard County Recorder's office is 82 ½ feet by 120 feet, but Mr. Lake's map shows the property to be 159 feet by 83 feet. Mayor Bunker felt that Mr. Lake did not pay attention to details because he was in a big hurry to get the project completed, with no consideration for the people who would be affected by errors. Mayor Bunker stated that the Council is in a difficult situation because they want to do what is right for the property owners but must be careful that they do not set a precedent.

City Attorney Anderson asked the Morrisises and Contractor Adam Lake if they had received the zoning officer's determination regarding the basement constructed on the property located at 43 West 100 North and they responded that they had received the notification. City Attorney Anderson reiterated that the zoning officer has made a determination that the building is not in compliance and there is a time frame of thirty days to make some sort of application. An application needs to be made to the Board of Adjustment so they know what action is being requested and, once the application is made we can determine what notice is required.

Mayor Bunker stated that Mr. & Mrs. Morris and Mr. Lake know what options are available and it is up to them to initiate any action. Council Members discussed the process for applying for a variance. Mr. & Mrs. Morris will complete paperwork to request a variance on Monday morning, March 21st.

PUBLIC WORKS DIRECTOR ALAN RIDING: UPDATE ON PUBLIC WORKS PROJECTS

Public Works Director Alan Riding reported that the Public Works Department needs to set the irrigation rates for the coming season. He provided Council Members with a report showing expenses for irrigation last year. He noted that we had reduced costs as far as possible last year and the system is still operating at a loss. Public Works Director Riding requested that the user fee be set at \$200 and water rental set at \$45 / acre foot for the 2011 irrigation year. These are the same rates that were used last year. Public Works Director Alan Riding requested verbal approval so the can prepare letters for irrigation users to advise them of what the fees will be for use of the system this year. The letters will be prepared but will not be mailed until the Council officially adopts the rates for this irrigation year.

Public works employees have been working on the Ridge Top Well fence and have removed the rocks from the waterfall stream in preparation for upgrades to the stream bed, including concrete to hold the rocks in place. They are also repairing the water line that feeds the waterfall.

Council Member Western asked about getting the streets swept. Public Works Director Riding indicated that the sweeper is being prepared for sweeping and will be out soon.

OTHER BUSINESS

Council Member Western asked how much we had received from use of water on the UNEV

pipeline and where the funds go. Mayor Bunker responded that the funds go into the water fund, the same as all funds for water use, but we do not have a report showing the current amount that has been received to date. We will obtain a report for the next Council Meeting.

Mayor Bunker asked if Council Member Banks and his family would be in charge of the Easter Egg Hunt on April 23rd. Council Member Banks stated that he will take care of it.

Mayor Bunker felt that the building inspector caused some problems with the Morris home and for this reason, along with some others, he has notified Millard County Commissioner Daron Smith that we want the current building inspector to be replaced. Our contract with Millard County requires that we provide a ninety-day notice of intent to cancel the contract. Mayor Bunker would like to provide a letter to Millard County Commissioners providing the ninety-day notice of intent to cancel the contract. Mayor Bunker stated that the building inspector should not have inspected the Morris project without a building permit having been issued. Council Member Western indicated that she would like to invite Commissioner Smith and the building inspector to the next meeting to discuss the matter prior to sending a ninety-day notice. Mayor Bunker was in favor of putting the matter on the agenda for the next meeting and inviting Commissioner Smith to the meeting. It is the choice of Council Members whether or not we want to continue our contract with Millard County. Public Works Director Riding noted that the building inspector has his cellular telephone number and has, on a number of occasions, contacted Public Works Director Riding to ask about set backs. Public Works Director Riding has reminded the building inspector several times that it is the zoning officer's responsibility to review set backs and not the responsibility of the building inspector.

Mayor Bunker stated that we will be holding our Fourth of July Celebration on Monday, July 4th. The Demolition Derby will also be held on Monday evening.

City Attorney Anderson asked if it was worth his time to provide a report of activities to the Council at each meeting. Council Members felt the report is a valuable tool for them.


Mayor Bunker asked if there were any comments, questions or other items to be discussed. There being none, Council Member Robert Banks MOVED to adjourn the meeting. The motion was

SECONDED by Council Member John Niles. Mayor Bunker asked if there were any comments or questions regarding the motion. There being none, he called for a vote. The motion passed with Council Members Robert Banks, Bruce Curtis, John Niles and Betty Jo Western voting in favor and Council Member Tom Stephenson being absent.

Mayor Bunker declared the meeting adjourned at 8:00 p.m.



GAYLE BUNKER, Mayor



GREGORY JAY SCHAFFER, MMC, City Recorder

MINUTES APPROVED: RCCM 04-07-11