

PERRY CITY COUNCIL MEETING  
PERRY CITY OFFICES  
NOVEMBER 18, 2010

7:00 PM

OFFICIALS PRESENT: Mayor Jerry Nelson presided and conducted the meeting.  
Tom Peterson, Karen Cronin (arrived at 7:07 PM), Bill Walker, Marci Satterthwaite

OFFICIALS ABSENT: Boyd Malan

CITY STAFF PRESENT: Duncan Murray, City Administrator  
Shanna Johnson, Chief Deputy Recorder  
Michael Jones, Chief of Police

OTHERS PRESENT: Sierra Anderson, Lani Braithwaite, Nate Keith, Ray Keith, Jordan Conover, Jay Newman, Joshua Fryer, Marissa Barton, Brady Anderson, Conner Gunderson, Leonard Barton, Briggs Anderson, Kelton Nelson, Cole Johnson, Dylan Julander, Josh Julander, Brad Hansen, Aaron Nielsen, Stephen Langston

**ITEM 1: CALL TO ORDER**

Mayor Nelson called the meeting to order.

**A. INVOCATION**

Council Member Peterson offered the invocation.

**B. PLEDGE OF ALLEGIANCE**

Mayor Nelson and the boy scouts in the audience led the Pledge of Allegiance.

**ITEM 2: NEW BUSINESS LICENSES, PROCEDURAL ISSUES, AND APPOINTMENTS**

**A. CONFLICT OF INTEREST DECLARATION**

No conflicts of interest.

**B. NEW BUSINESS LICENSE(S)**

Mayor Nelson advised there are two new business applications, one for Star Struck Dance and the other for Stoker Wholesale. Council Member Peterson questioned if the dance studio has had improvements, including heat and restrooms. He said he would like a representative present to ensure this.

**MOTION:** Council Member Peterson moved to approve the business license for Stoker Wholesale, but table the business license for Star Struck Dance until a representative can be present for questions.

Council Member Walker seconded the motion.

**ROLL CALL:** Council Member Peterson, Yes                      Council Member Satterthwaite, Yes

Council Member Walker, Yes

**Motion Approved.** 3 Yes, 0 No.

### **C. PASS OUT WARRANTS TO COUNCIL MEMBERS (AND POSSIBLE DISCUSSION)**

Shanna Johnson passed out the warrants.

Council Member Satterthwaite and Peterson questioned what the warrant to Fat Pot was for. Shanna Johnson advised this is for software used by the police.

### **D. APPOINT PLANNING COMMISSION AND/OR OTHER BOARD/COMMITTEE MEMBERS**

None.

### **ITEM 3: PUBLIC COMMENTS AND/OR PUBLIC HEARINGS**

#### **A. PUBLIC COMMENTS**

Mayor Nelson opened the meeting for public comments. He explained that Mr. Jay Newman has been granted extra time to address the council about his issue. Council Member Peterson addressed Mr. Newman stating he had been given a copy of what he would be talking about. He said the Council is not going any further with Utopia, the City will only pay what they have already committed and that is it. He said Mr. Newman has the right to address the council still if he would like.

**Jay Newman:** Mr. Newman thanked Council Member Peterson for his update but wanted to still address some concerns. He said he recently read an article in the Salt Lake Tribune dated October 20<sup>th</sup>, which said since 2002 Utopia has used public funds to build the infrastructure for high-speed Internet services. Mr. Newman said Utopia has failed to meet any of their objectives and has damaged numerous properties. He stated per the article they have spent \$500 million in public funds to provide service to 7600 people and/or businesses and now wants to obligate member cities to another \$62 million. Utopia has also called in the member cities sale tax obligations. He said they are now operating under a new agency called the Utah Infrastructure Agency (UIA) giving itself new bonding and taxing authority, thus taking the bonding and taxing decisions away from cities and residents. Mr. Newman said the article stated that there are currently 7600 connections and said if you do the math it costs \$700,000 each connection. He said people no longer want or can afford this failing venture. Mr. Newman said Utopia has taken on the appearance of a scam and recommended the attorney general audit and investigate this so called public enterprise; in addition Perry should be removed from this failed project. He said all Utopia managers and council members should resign as they have failed to protect public funds. Mr. Newman stated none of people in this room will see Utopia turn a profit.

Mr. Newman thanked a council member for taking care of a problem down on 1200 West.

**Lani Braithwaite:** Mrs. Braithwaite expressed concerns with 3450 South. She said the chuckholes and dips make it impossible to drive down the street at more than 15 miles per hour. Mrs. Braithwaite said 6 busses travel down the street daily and it is one of the few unpaved streets in Perry. She said in the past the response has been that the City is waiting for the sewer to be put down the street and then it would be paved. Mrs. Braithwaite said she has also been told that it would probably be ten years before the street would be paved. She requested the City look at paving the road.

### **ITEM 4: LAND USE ISSUES**

#### **A. DISCUSSION REGARDING THE OCTOBER 7, 2010 AND NOVEMBER 4, 2010 PLANNING COMMISSION MEETING**

Council Member Peterson discussed the zone change from ½ acre with animal rights to ¼ acre with no animal rights. He said the commission's duty was to decide whether or not to recommend the zone change, but instead the discussion turned to what was planned to be developed in the area. Council Member Peterson said this was off topic and was painful to watch. He said the Planning Commission minutes state it was tabled until a proposal could be submitted to the commission. He disagreed and said the commission requested information on what type of housing would be built in the area. Council

Member Peterson said this should not be the focus of the discussion. The discussion should be on the zone change. He explained the development should be discussed later, if the zone change is approved.

**B. DISCUSSION REGARDING AMENDING LAND USE CHART TO ADD STORAGE UNITS  
(NATE KEITH)**

Mayor Nelson advised Mr. Keith was present and requested the Council discuss and possibly reconsider allowing storage units in the Class C Commercial zone. Council Member Peterson said he has given it a lot of thought, he recommend the Council reconsider allowing storage bays in the commercial zone south of 3000 South only. Council Member Cronin said she contacted 8 other cities about how they handle storage bays. She said all cities including Smithfield, Ogden, Roy, Syracuse, Layton and Brigham City said in hind site they wished they would have kept storage bays in more industrial areas because they would like to use the areas for something other than storage bays, but once you have storage bays that is all it can be used for. She said the only city that allows storage bays outside of a manufacturing industrial zone is Ogden City, they have a zone called heavy commercial which allows storage bays if they have a coded fence, landscaping etc. Council Member Cronin said the city states there is theft associated with these bays and the city said they would not recommend putting the storage bays in any kind of a residential zone. Council Member Walker said he has also done some checking and the problems with placing storage bays in industrial areas. He said storage bays have burned down because people manufacture in the storage bays. He said he does not foresee any commercial in the area requesting storage bays. Council Member Walker recommended allowing storage bays in the Commercial Zone South of 3000 South. Mayor Nelson said there is already light manufacturing taking place in the area and a high traffic commercial business. He said he agrees with Council Member Peterson. Mayor Nelson stated there have been a lot of problems with people manufacturing in storage bays and causing fires. He said the area being questioned is very low density for homes. Council Member Peterson said the commercial zone in question is a remnant from the old commercial area and if done again would not be commercial. Council Member Satterthwaite questioned what would the city zone it if they had this to do again. Council Member Peterson said it would have been residential. Council Member Satterthwaite and Cronin questioned if this would have been zoned residential, why not zone it this way. Council Member Peterson said that he does not see there being a problem with allowing the storage bays as long as the development is done by design review to ensure that there is security, landscaping and fences. Council Member Cronin did not think the storage bays should be allowed in commercial zones. Mayor Nelson said changing the area to residential zone would affect current business and farming in the area. He said the options are to accept or reject storage bays in the commercial zone, rezone the area to manufacturing industrial, come up with a completely different zone, or allow the storage bays in a zone restricted to a certain area. Council Member Satterthwaite said she has a concern that this same issue has been brought before the Council before by Shirlene Peck and was denied. Council Member Peterson said this was based on the area she requested, which was prime commercial ground. Duncan Murray said this land was in a different zone. Council Member Cronin asked if this sets precedence. Duncan Murray said not if we change the zone to allow the storage bays in a restricted area.

**MOTION:** Council Member Peterson made a motion to reconsider amending the land use chart and to change the ordinance to allow storage bays in Commercial Zone South of 3000 South by design review. Council Member Walker seconded the motion.

**ROLL CALL:** Council Member Peterson, Yes                      Council Member Cronin, No

Council Member Satterthwaite, Yes      Council Member Walker, Yes  
**Motion Approved.** 3 Yes, 1 No.

**C. ORDINANCE 10-T REGARDING RESIDENTIAL IN-FILL REVISION FOR THE NC2/NC3 ZONES**

Mayor Nelson questioned paragraph 9 because it discusses CCRs and it has been the policy of Perry City not to get involved with CCRs. Duncan Murray said this is also a concern Council Member Malan brought up. Duncan Murray recommended removing the last half of paragraph 9, striking any reference to adopting CCRs. Mr. Murray advised the only other substantive change is instead of only allowing single family or 2 family dwellings next to existing single family or 2 family homes, expand this to allow 3 and 4 family dwellings. Mr. Murray advised the Planning Commission's thought on this is that the City already has four-plexes on the highway; this would allow the City to approve more four-plexes to be placed in small parcels that already have similar buildings located around it. Mr. Murray recommended changing the last sentence of paragraph 10 from "adjacent to the restricted lot" to "in which the restricted lots are located". Council Member Cronin advised on infill lots there needs to be an "R" listed on the plat and there cannot be two infill lots adjacent to each other.

**MOTION:** Council Member Walker moved to approve Ordinance 10-T Regarding Residential In-Fill Revisions for the NC2/NC3 Zones with the recommended changes to remove half of paragraph 9 and change the last sentence in paragraph 10 as stated by Duncan Murray. Council Member Satterthwaite seconded the motion.

**ROLL CALL:** Council Member Peterson, Yes      Council Member Cronin, Yes  
                    Council Member Satterthwaite, Yes      Council Member Walker, Yes  
**Motion Approved.** 4 Yes, 0 No.

**D. ORDINANCE 10-U TO AMEND THE DEFINITION OF "ACCESSORY USE/BUILDING" To INCLUDE STORAGE CONTAINERS AND OTHER CONTAINERS**

Duncan Murray advised this is a short ordinance change, which addresses cargo containers and restricts residents to placing these where storage sheds and other accessory buildings are allowed. If the container covers more than a 5x5 area, and is not a garbage container, it would be listed as a storage container and would be required to follow the setbacks and areas listed for an accessory use/building.

**MOTION:** Council Member Cronin made a motion to accept the changes to Ordinance 10-U to amend the Definition of "Accessory Use/Building" to Include Storage Containers and Other Containers. Council Member Peterson seconded the motion.

**ROLL CALL:** Council Member Peterson, Yes      Council Member Cronin, Yes  
                    Council Member Satterthwaite, Yes      Council Member Walker, Yes  
**Motion Approved.** 4 Yes, 0 No.

**E. WIDTH OF ROAD FOR COMMERCE WAY NEAR 1500 SOUTH STREET**

Duncan Murray said the Council has some options on what width they would require of the proposed street.

- Option 1 would taper the street down from the existing 100-foot road to a 60 or 66-foot road so it matches the future road across from the intersection.

- Option 2 would taper one side of the street to the 60 or 66 foot future road across from the location
- Option 3 would be to keep the road at 100 feet through the intersection.

Duncan Said the developer would not be required to cover the expense of keeping the road at 100 feet. This would be a City expense, because the developer can comply with public works standards with Option 1. Council Member Cronin questioned why this would be a city expense, a high traffic business is planned to be placed there and Shirlene Peck owns both sides of the street. Council Member Walker said he feels that the road should be approved and the cost can be discussed at a later time. Duncan said in order to require the wider street four requirements must be met.

1. There has a legitimate public purpose. Duncan said this has been met; there is a safety concern with turning left and right.
2. Must address some burden created by the development. Duncan said in aggregate this could be covered because the developer owns multiple lots that could be developed.
3. Must be roughly proportionate to the burden imposed on the development. Duncan said it is arguable that she is not causing the need for a full 100-foot road, with what she currently has planned.
4. Must solve the problem with in a manner, which is the least intrusive of other property rights.

Duncan said this could be submitted to the property ombudsman and he can review to see if the developer is responsible to pay for the 100-foot road, but if an exaction is granted the city would be required to pay for the road to be 100-feet wide. He said the total exposure is \$6,000.

**MOTION:** Council Member Peterson made a motion to recommend Option 3 for 1500 South to the Planning Commission. Council Member Cronin seconded the motion.

**ROLL CALL:** Council Member Peterson, Yes                      Council Member Cronin, Yes  
                                  Council Member Satterthwaite, Yes                      Council Member Walker, Yes

**Motion Approved.** 4 Yes, 0 No.

**ITEM 5: FINANCIAL, PUBLIC UTILITIES AND TECHNOLOGY ISSUES**

**A. FINANCIAL APPEAL BY BRAD HANSEN REGARDING AN ANIMAL**

Council Member Peterson questioned the total of \$180.00 stating it seemed expensive. Mr. Hansen said this would be to cover another cat to be neutered and the first year worth of shots. Council Member Peterson asked Chief Jones what took place. Chief Jones advised the animal was picked up and got away from the officer during the transition to a kennel. Council Member Cronin questioned if the city would be liable. Duncan Murray said he did not find any wrong doing by the police officer and in his opinion there is no liability. Council Member Walker asked if the animal was at large. Duncan Murray said it was caught in a trap. Council Member Walker questioned if this was on Mr. Hansen’s property or another property. Mr. Hansen said on another property. Council Member Peterson said you can go to the shelter and get another cat for cheaper than what is being requested. Council Member Cronin said that she is a cat lover and responsibility comes with being an animal owner. She does not see that there was negligence from the city staff. Council Member Peterson questioned if the cat had a collar on. Mr. Hansen said no.

**MOTION:** Council Member Cronin made a motion to deny the financial appeal submitted by Brad Hansen for restitution for a cat, in the amount of \$180.00. Council Member Peterson seconded the motion.

**ROLL CALL:** Council Member Peterson, Yes                      Council Member Cronin, Yes  
                    Council Member Satterthwaite, Yes                      Council Member Walker, Yes

**Motion Approved.** 4 Yes, 0 No.

**B. APPROVAL OF WARRANTS**

Council Member Walker questioned the equipment rental in the amount of \$2,000. Shanna Johnson said this was for rental of a street sweeper.

**MOTION:** Council Member Walker made a motion to approve the warrants. Council Member Peterson seconded the motion.

**ROLL CALL:** Council Member Peterson, Yes                      Council Member Cronin, Yes  
                    Council Member Satterthwaite, Yes                      Council Member Walker, Yes

**Motion Approved.** 4 Yes, 0 No.

**C. REPORTS AND/OR CHANGE ORDERS REGARDING THE WASTEWATER FACILITY**

Tyson Knudsen gave an update on the Perry-Willard Wastewater Treatment Facility. He stated the Division of Water Quality submitted a new draft of the permit and both cities have some concerns, which they shared with the State and they are currently working on new draft. Mayor Nelson said it looks as if the State is trying to set policy and make Perry City accountable, when law does not yet mandate the regulations. Duncan Murray advised there is State statute that says they cannot require us to follow these additional requirements, they can however get us to voluntary do so, and that is what they are trying to do. Duncan said a letter has been sent to the State declining to voluntary agree to the regulations. Tyson presented documents for signatures. He said Spindler Construction has been paid 100% (minus retainage) of all bid items except for the discharge ditch. Tyson said a tentative list of items still needed or needing work is being put together and will be presented to the contractor. He said anything left unfinished will be deducted from the final payment of retainage. Tyson said when he meets with the Council in December he would have all the final paperwork and checklists for closeout of the contract with Spindler. He said with that he would have an evaluation of funds that should be withheld for items not complete. He stated the in October the State approved to pay for the chemical treatment, funding for a planning strategy to integrate the Perry Lagoons into the treatment facility, which will affect how to finish with Johansen Constructions portion of the project. Tyson said Westech came to the site this week and reviewed the IFAS system. They are 100% satisfied with the way it is set up. He said Westech wanted them to continue to watch the nuts and bolts that keep loosening. If this continues Westech will send chief mechanical engineer to review and correct this. Tyson reviewed a timeline forecasting December for a possible Discharge Permit comment period and January for the possible granting of the Discharge permit. He said the project is under budget and the work is complete. Tyson presented the community acceptance letter to the Mayor and Council for signature, to accept the work completed by Spindler Construction. He explained this does not give final payment or release any retained funds. Duncan Murray recommended Jeff Hollingsworth to sign the document. Council Member Walker asked for an update on ditch clean up on Arnell Wells' property. Tyson said a plan for clean up and restoration of the land was submitted to the attorneys, they have not yet heard back from the attorneys at this time. He said planting of seed would not take place until next spring. Tyson said Johansen Construction is asking for a

letter of substantial completion on the work they have completed on the collection system. He said it does not release final payment, but does start the clock on the warranty. Tyson said there are not any concerns with the work and there is 0 to minimal infiltration to the lines. Mayor Nelson said he has no concerns with signing on substantial completion for Johansen Construction. Tyson stated by the December 9<sup>th</sup> council meeting he would like to deliver as built records for the treatment plant, submittal binders for the construction of the plant, and operation and maintenance manuals for the plant.

**MOTION:** Council Member Cronin made a motion to allow the Mayor to sign a substantial completion letter for work completed by Johansen Construction, with the understanding that the State will hold the City harmless on any warranty issues that take place past the warranty period, which would have been covered had the State not caused permitting delays. Council Member Walker seconded the motion.

**ROLL CALL:** Council Member Peterson, Yes                      Council Member Cronin, Yes  
                    Council Member Satterthwaite, Yes                      Council Member Walker, Yes

**Motion Approved.** 4 Yes, 0 No.

Tyson said in October the State agreed to fund chemical treatment at the plant. He said he is working on a contract for this and will try to present this at the next council meeting.

**D. CONSIDER A MOTION TO ELIMINATE THE PERRY CITY DROP BOX LOCATED AT APPROX. 2450 S. ON 500 W.**

Duncan Murray advised this drop box has limited use and creates an issue with timely delivery of payments, because it is not checked everyday. He recommended removing the box.

**MOTION:** Council Member Cronin made a motion to eliminate the Perry City drop box located at approximately 2450 South on 500 West. Council Member Peterson seconded the motion.

**ROLL CALL:** Council Member Peterson, Yes                      Council Member Cronin, Yes  
                    Council Member Satterthwaite, Yes                      Council Member Walker, Yes

**Motion Approved.** 4 Yes, 0 No.

**E. MONTHLY FINANCIAL AND BUDGET REPORT**

Shanna Johnson gave a Budget Update as of October 2010. She stated the current report shows 34% of the year has elapsed, the General Fund has received 9% of planned revenues, 38% of revenues have been received by the Utility Fund, 26% of revenues have been received by the Sewer Fund, she said Willard has paid some payments to cover their portions of the plant that are not reflected in this update and a switch in fees from garbage to sewer has just taken place, which will help to bring the revenues up. Shanna advised current figures show 10.92% of non-operating revenues have been collected. She reported 33.5% of the General fund budget has been expended. Shanna stated the Utility Fund has spent 26.3% of their budget and 15.4% of the Sewer budget has been expended. She said expenses incurred by the wastewater treatment plant should be reimbursed by the State as part of the hold harmless clause approved by the Division of Water Quality Board. Shanna reported that Sales Tax revenues for September were 13% down. This would equate to approximately \$91,000 if this trend continues through the end of the year. Shanna stated budget cuts of around \$107,000 will be needed in order to balance the current year's budget and an amendment will be needed. She said she has already identified \$46,000 in funds but \$61,000 in cuts that will still need to be identified. Shanna said she forwarded this message to the managers and asked them to identify possible cuts by November 29th. She recommended a work



- B. BOYD MALAN:** Absent.
- C. MARCI SATTERTHWAITE:** Council Member Satterthwaite reminded everyone to get tickets for the Christmas movie, which will take place on December 4<sup>th</sup>.
- D. KAREN CRONIN:** Council Member Cronin said the Youth Council will be putting together some gift baskets for people in the community that are need or who deserve a thank you and asked for any suggestions. She said the Economic Development Committee met before the Council meeting and discussed building impact fees and discussed how business impact fees are tailored to each business. She said she had a concern brought from a citizen in reference to an accident on 1200 West where someone hit a cow. She suggested some reflective signs be placed on the street to help warn drivers about cattle.
- E. BILL WALKER:** None.
- F. TOM PETERSON:** Council Member Peterson advised the time period for the Literary Contest has been extended to the end of the month. He said plans are being made of the Health Fair at the Peak, which will take place in January and the beard and mustache contest will also begin in January. He reported that a request for funds to help with Centennial events has been submitted to Rocky Mountain Power. He said the Centennial Committee would like to have a basketball tournament in March and requested for suggestions on someone to be over this. Mayor Nelson recommended getting in touch with Becca Johnson, who is over the leading women’s basketball team in the State. Mayor Nelson said he would ask her if she is interested. Council Member Peterson stated he has been given concern from a citizen in reference to the condition of the sidewalks between 2400 and 2600 South on the east side. He said it is a disgrace to the city and needs to be cleaned up. There is overgrown plants, and when mowed it is not cleaned up. He recommended this be addressed with City staff and the Theater.
- G. MAYOR NELSON:** Mayor Nelson advised Rocky Mountain Power has donated the old substation land to the city to be used for a future park. Duncan Murray advised that Rocky Mountain Power has submitted a written report showing that there is no contamination of the land. He said the City would need to clean up any remaining materials on the land. There are some concrete pads and some fencing. Duncan said the council will need to agree to allow the Mayor to sign the land transfer documents.

**MOTION:** Council Member Peterson made a motion to approve the Mayor to sign the land transfer agreement with Rocky Mountain Power for the abandoned Power Station on 3000 South. Council Member Walker seconded the motion.

**ROLL CALL:** Council Member Peterson, Yes                      Council Member Cronin, Yes  
    Council Member Satterthwaite, Yes                      Council Member Walker, Yes  
**Motion Approved.** 4 Yes, 0 No.

**H. ITEMS FOR NEXT CITY NEWSLETTER:**

- No items suggested.

**ITEM 10: UPCOMING MEETINGS AND ADJOURNMENT (THURSDAY, DECEMBER 9, 2010 7:00 PM, FOR THE NEXT REGULAR CITY COUNCIL MEETING)**

**A. MOTION TO ADJOURN**

**MOTION:** Council Member Cronin made a motion to adjourn. Council Member Satterthwaite seconded the motion.

**ROLL CALL:** Council Member Peterson, Yes                      Council Member Cronin, Yes  
    Council Member Satterthwaite, Yes                      Council Member Walker, Yes  
**Motion Approved.** 4 Yes, 0 No.

The meeting adjourned at 10:00 PM.

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Susan O'Bray, City Recorder

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Jerry Nelson, Mayor

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Shanna Johnson, Chief Deputy Recorder