

2 The Lindon City Council held a Special Meeting on **Wednesday, February 27, 2013**
beginning at 5:30 p.m. in the Lindon City Center, City Council Chambers, 100 North
4 State Street, Lindon, Utah.

6 **SPECIAL SESSION** – 5:30 P.M.

8 Call to Order: James Dain, Mayor

10 **PRESENT**

ABSENT

10 James A. Dain, Mayor
12 Mark L. Walker, Councilmember
12 Bret Frampton, Councilmember
14 Matt Bean, Councilmember
14 Randi Powell, Councilmember
16 Jeff Acerson, Councilmember
16 Adam Cowie, City Administrator
18 Cody Cullimore, Chief of Police
18 Kathryn Moosman, City Recorder

20 The meeting was called to order at 5:30 p.m.

22 **CURRENT BUSINESS** –

- 24 1. **Review and Action** – *This item was continued from the February 19, 2013 City*
26 *Council Meeting. Utah Infrastructure Agency (UIA) Assessments (Resolution*
28 *#2013-5-R). The Council will review and possibly take action on the assessments*
30 *by the Utah Infrastructure Agency (UIA) requesting member participation in*
monthly operating costs in order to eliminate such expenses from being funded by
UIA bond proceeds.

32 Mayor Dain welcomed everyone in attendance. He commented on the many
34 hours of deliberation the Council has spent on this issue, including the many hours of
independent research by the Councilmember's; this has been a culmination of a lot of
36 work and discussions in past meetings. He pointed out that he is aware that there are
audience members who have opinions on this subject, but due to time constraints he
would ask that the comments be capsulated in a one or two minute time frame. Mayor
Dain then turned the time over to Lindon City Administrator, Adam Cowie. Mr. Cowie
38 identified Roger Timmerman, who was in attendance to represent Utopia at this meeting,
and added that Mr. Timmerman came voluntarily and expressed his appreciation for his
40 attendance. Mr. Cowie mentioned that there are also two representatives from Orem City
in attendance as well to answer any questions (Orem Assistant City Administrator, Jamie
42 Davidson, and Orem Administrative Services Director – and current Chair of UIA Board
of Directors, Richard Manning).

44 At this time, Mr. Cowie reviewed the general history of the last few months in
46 which UIA had been discussing the OpEx assessments with the member cities. Mr.
Cowie then presented a PowerPoint presentation and presented a map depicting the

2 Utopia service areas in Lindon City. Mr. Cowie explained that approximately 60% of the
community is built out, and 40 % of the serviceable properties have signed up for Utopia
4 services. He noted there are 1,068 addresses in Lindon currently served by the network
including 69 businesses and 999 residential or other institutions. He added that 1,600
6 additional addresses could be serviced. Mr. Cowie also mentioned that Lindon City
subscribers make up 10% of the entire network of Utopia/UIA customers across all
8 member cities. Mr. Cowie then presented graphs depicting the history of Utopia/UIA
subscriber and customer base. He added that the trend is showing that UIA is increasing
10 in customers and revenues. He also presented a graph showing UIA month by month
revenues since its inception through December of 2012. He explained that the City is
12 paying the backstop commitments on the original Utopia bonds, but that Lindon is not
currently paying on the UIA bond backstop commitments which would come from
14 franchise taxes. As was shown in the graphs, UIA has so far been able to cover the costs
of its bond payments but is experiencing shortfalls in operational costs.

16 Mr. Cowie then gave a brief overview of the UIA OpEx assessments (operational
expenses). He explained that UIA needs approximately \$220,000 to \$225,000 per month
to make up for the operational shortfall. He further discussed that this issue was brought
18 to the participating member cities in order to illuminate use of construction bond money
for the operational shortfalls. Continued use of bond proceeds for payment of OpEx
20 needs increases the debt of the organization without adding assets to the network or any
return on investment. Mr. Cowie reviewed that pending legislation would prohibit the use
22 of bond proceeds for continued coverage of OpEx needs and that the Cities hoped to get
ahead of the legislation.

24 Mr. Cowie stated that the UIA Board of Directors passed a resolution to require
assessments of each member city to cover OpEx needs. Lindon City's assessment from
26 UIA is based on its share of deployed infrastructure and potential addresses served. The
assessment amount is for \$11,162.00 per month. The City has received an invoice from
28 UIA for the first three months of OpEx participation. After the next phase of
infrastructure deployment in other cities that have the highest return on investment, there
30 will be a gradual decrease in Lindon's assessment amount. UIA will review and amend
the assessments quarterly. He added that this is technically a loan and requires a payback
32 with interest based on the Public Treasurers Investment Fund (PTIF) interest rate at the
time of payback. He explained that the payments will continue until an OpEx reserve
34 fund is established. Once the reserve is complete they are obligated to pay the city back.
Mr. Cowie estimated it will take 3-5 years for UIA to reach the OpEx break even point.

36 Mr. Cowie noted that approval of the resolution would authorize staff to pay the
invoice received by the City, but the resolution does not address the draw down on the
38 next bond funding for additional infrastructure deployment. The Council had previously
approved a total amount of bonding for UIA and needs to provide direction on whether
40 they should proceed with that past commitment to backstop UIA bonds. Mr. Cowie stated
there are two items to consider as follows:

- 42 1. The consideration of whether to pay the assessments from UIA;
- 44 2. Provide direction Councilmember Acerson, who is on the
46 UIA Board of Directors, as to how he should vote with the anticipation
that the UIA Board will soon act on the next round of bonding.

Mr. Cowie then discussed possible outcomes of the vote as follows:

Outcomes of **NO VOTE** on Assessment Participation:

1. Potential network failure
2. Continued payment of bonds with no assets
3. Litigation – contracts, member cities
4. Political ramifications
5. Potential loss of stimulus funding
6. Increased costs to operate city facilities

Outcomes of **YES VOTE** on Assessment Participation:

1. Increase financial impacts with no guarantee of UIA/Utopia success
2. Increased network stability
3. Increased potential for revenue
4. Additional build out in member cities
5. Able to meet contract and member agreement commitments

Mayor Dain thanked Mr. Cowie for the presentation and called for any public input at this time. Several residents in attendance approached the Council with comments as follows:

Matt Anderson – Mr. Anderson noted that he was previously with Utopia and now is back with Utopia because of the lack of service from the other provider. He noted one of the things he sees moving forward is the amount of band width and amount of necessity with this type of infrastructure will only increase over time and will provide both entertainment and educational opportunities. Mr. Anderson commented that it does not make sense to have an infrastructure in place and move backward from that. It only makes sense to move forward and strengthen the network which is the best possibility for the City.

Bret Nickles – Mr. Nickles stated that he was an original Utopia member and has never left Utopia service. He noted that Utopia has been very tantamount for his business; using it all day, every day. He added that he also had a request from his friend, Wayne Corbridge, to voice his desires to see Utopia’s continued use in place, and who relies on it for his business also. Mr. Nickles feels this opportunity, from a utility standpoint, is through expansion rather than retraction, and not taking a utility that is already installed and dropping it. He also feels this is an opportunity for those who have not yet had the service to gain more enlightenment. This is also an opportunity for those who have not connected to Utopia, but have it available to them, to know more about it and what it provides and utilize it to their betterment.

Marlin Sharpe – Mr. Sharpe commented that he signed up immediately when Utopia became available and he knows the value of the speed offered by Utopia; it has been a great thing. He noted that he is worried about the citizens who have paid over \$2,000 to have it installed and commented that the apparent choice is to move forward on this. Mr.

2 Sharpe pointed out that the marketing effort for Utopia is terrible and it should be looked at.

4 **Bob French** — Mr. French noted that he recently signed up with Utopia, and prior to
6 signing up, the only viable alternative that was available to him was cellular to get
8 internet access, which was not a good opportunity for them. Mr. French added that he is
10 currently very happy with Utopia and noted that there are four residents in his
12 neighborhood that are subscribers now and the numbers are growing. He commented that
no one else would come out and run cable in his area and had he known what a hard time
he would have just to get access, he probably would not have moved to Lindon. Mr.
French added that it is an important piece of his life to be able to have access to the
internet.

14 **James Taft** — Mr. Taft stated that he ran a wireless network connection on the hill for
16 some time. He added that when Utopia first moved in he was angry that something that
18 quasi state was coming in and doing what he was doing as a private enterprise. He was
20 actually was a caller on the Rod Arquette show, and while he was on hold he listened to
22 all of the comments from listeners, and was converted and realized that this type of thing
24 can make a big difference in Utah. He noted that there is no argument as to who is better
i.e., Comcast or Qwest; Utopia is by far the best. Mr. Taft suggested to take into account
that the other providers will raise their rates and lower their service the second Utopia is
gone and the quality will go down, this should be a consideration at least on an individual
level. Mr. Taft was in agreement to “shake it up” and get the marketing going, to let the
public know what fiber going into your house can provide. He added that losing your
fiber capabilities is like losing your water or sewer service.

26 **Royce Van Tassel** — Mr. Van Tassel, Vice President with the Utah Taxpayer’s
28 Association, commented that the debate is not a question of whether one technology is
30 better than another or not, the reality is that this is a question of who should pay. He
32 commented if you look back over the past decade it will show that the pattern is clear that
34 the taxpayers are told “if we do this, things will be good” and the cities have agreed. He
36 pointed out that at some point it is appropriate, as stewards of the taxpayer’s money, to
say there is a stopping point. He stated that there is an open ended commitment to
maintain operating funds in addition to the open ended commitment on the bonds, on the
hope that something will change. He further stated that it is very difficult to recognize
that there is a track record that suggests it will change and this is a message, as stewards
of the taxpayer’s dollars, which we have heard for a long time, and it is difficult to
understand why we should expect a different outcome going forward.

38 **John Williams** — Mr. Williams stated that he is a business owner and has had Utopia’s
40 service since it first came in and he is very pleased with the service. He noted that the
42 city is paying for a product that only 60 percent of the City has the capability to utilize.
44 He also questioned how many of the citizens of Lindon know about Utopia asking for the
new increase, and why is the government doing it in a private business sector. He added
that this is a great program and a private sector will step in if it does fail and take over
and make money with it. Mr. Williams also questioned if a program is going that well

2 and continues to look good why has over half of the participating cities dropped out? He
also questioned if this were a private business how many of the councilmember's would
invest in it.

4
6 **Jay Ekstrom** – Mr. Ekstrom commented that there is a part of this issue that he hasn't
heard discussed. He questioned if anyone has looked at the rates for Comcast in all of
8 the cities who do not use Utopia. He noted that Lindon pays less for Qwest and Comcast
than any of the other cities that don't have it. Mr. Ekstrom stated that when he first
10 started on Utopia broadband was unavailable in the City. He noted as soon as Lindon
approved Utopia, Comcast and Qwest came in at lower rates than other cities and the
12 competition was out there. Mr. Ekstrom also pointed out that Comcast and Qwest have
invested significant money advertising where Utopia hasn't had the money to invest for
advertising.

14
16 **Coby Anderson** – Mr. Anderson stated that he has been on Utopia since the beginning
and noted that Utopia has the right technology for the right time, but it needs to be funded
in the proper way. Mr. Anderson noted that Utopia has been giving the same story for
18 years now and people have been asking the same questions about who funds Utopia and
who funds the advertising. He stated that in the end, Utopia doesn't have an advertising
20 budget and they shouldn't be responsible. Mr. Anderson added that Utopia is an
infrastructure provider and the service providers should have an advertising budget and
22 be doing the advertising, not Utopia, and they are not motivated in any way to do so. He
noted that there are no answers on the internet.

24
26 **Reg Stumpy** – Mr. Stumpy pointed out that Utopia is a great technology and it would be
a big step backward if we didn't have it. Mr. Stumpy noted at some point in time if they
don't deliver then the city should get out. He added that it looks like things are heading
28 in the right direction and he hopes that it does succeed as it is a great product. He added
that Utopia has the right band width and it is consistent.

30
32 **Jeff Lloyd** – Mr. Lloyd noted that fiber is the future, and it is Utopia's time and place for
limited government, and there is a time and place for government to step up and help
where it is needed. He added that he left Utopia at one point and then came back to
34 Utopia after discovering how disastrous the other providers were. He commented that it
does matter which provider is better or worse in the long run, and eventually we need to
36 get a much better message out as to how much better the service is and how much money
we have already spent on the infrastructure, and what we can get out of it if we stick to
38 the commitments that we have made at this point. Mr. Lloyd concluded that there are
needs of the City and we have made strong commitments and it would be a major step
40 backwards to back out now.

42 **Kurt Jolley** – Mayor Dain read a letter submitted by Kurt Jolley.

44 Mayor Dain thanked the audience members for their comments. He then brought
the discussion back to the Council for comments.

2 **COUNCILMEMBER WALKER** – Councilmember Walker mentioned that the Council
4 had a similar meeting last week and he was prepared to vote. He noted that this
6 discussion has gone on for some time. Councilmember Walker stated that he has been
8 intimately involved in the Utopia issue and he has some strong feelings and has watched
10 this issue closely and listened to the comments made. He would encourage everyone to
12 look at the minutes that include his submitted statement listing his five points of why he
14 is voting the way he is. Councilmember Walker noted that he understands the need for
16 technology, which is wonderful, but he also understands that this is not about the
18 technology but about the financial well being of the City; the City will have to pay
20 whether Utopia works or fails. He believes, from a business standpoint, that Utopia has
22 been in the red for the past 10 years. Councilmember Walker noted he has to have
24 something to hang his hat on as a City Council member, and feel comfortable with his
26 decision that he has represented the citizens of the Lindon.

14 Councilmember Walker expressed his hope that Utopia survives, and he also
16 believes the costs will keep going up, but there are other things in the city that need
18 funding also. Councilmember Walker asked the question “is ten years long enough?” He
20 stated that as a business person, there comes a time when you have to say enough is
22 enough and not follow what the other member cities are doing. Councilmember Walker
24 noted that his vote tonight is not based on technology but on sound financial reasons.

22 **COUNCILMEMBER BEAN** – Councilmember Bean noted that he appreciates
24 everyone in attendance tonight, along with the representatives from Orem City. He
26 noted, as Councilmember Walker mentioned, that this has been a difficult situation for a
long time for Lindon City and other member cities of Utopia and UIA. Councilmember
Bean stated that he has never felt that an interlocal agency like Utopia or UIA was ever
the right vehicle to put fiber in the ground. He then noted four points as follows:

- 28 1. The main reason the interlocal agency was created was simply so the
30 bonding could be done more easily and at a better interest rate.
- 32 2. Bonding arrangements have been in large measure one sided in favor of
34 the interlocal agencies.
- 36 3. He questions some of the current fees Utopia and UIA are charging. He
38 questions why they would expect significant subscriber fee increases when
40 they have already asked subscribers to pay an upfront fee of \$2,750
42 dollars, especially when it is tied as a lien to the property. Councilmember
44 Bean further stated that he feels to ignore an effort by Utopia to try to
46 recoup some of the capital costs and trenching costs by the upfront
fee may significantly hurt the ability to get new subscribers.
4. He stated the need to buy some time for the city, given that Utopia and
UIA now seem to be pressured by the Legislature, with legislation
that will probably pass, we, as a city, are also being pressured.
Councilmember Bean expressed that he feels, as a councilmember, that in
order to buy enough time to really assess the risks involved to the city, to
the network, for potential litigation, and other factors, that more time is
needed to do an assessment and do it properly as a city. Councilmember
Bean commented that his vote will represent these points and also more
time for a proper assessment. He added that he respects the decisions of

the other member cities, and the makeup of their Councils and representatives to the boards

COUNCILMEMBER FRAMPTON – Councilmember Frampton commented that he also appreciates the comments from the audience and Councilmembers. Councilmember Frampton noted that he has been on the Council for the past three years and has also heard a lot of discussion on this issue. Councilmember Frampton commented that he voted no for the last UIA assessment, from listening to his constituents and comments from the other Councilmembers. Councilmember Frampton noted that Lindon has 10 percent of all of the Utopia takers, which says a lot for the citizens of Lindon who use Utopia; he added that he has to also represent those who are against Utopia. Councilmember Frampton stated that he appreciates the Council and all of the hours spent researching this issue. He also expressed his appreciation for Mr. Cowie’s work on this issue.

COUNCILMEMBER POWELL - Councilmember Powell stated that she also appreciates the efforts of the Council, and echoes most of the sentiments mentioned tonight, even though there are diverse feelings on both sides of the issue. Councilmember Powell noted that she also read a prepared statement last week that is included in the minutes. She stated that where there is knowledge of other member cities who have voted against this, there is also knowledge that some of the Councils are thinking of revisiting this in some fashion or another. Councilmember Powell commented that even though we may make a decision, many of the Councilmembers are hoping that Utopia will work and we will still be responsible member cities with each other in the interlocal agreement.

Councilmember Powell then read her prepared statement. Councilmember Powell expressed that she feels we are at a potential positive tipping point where this could work because of the resolution before them that gives the opportunity to opt out. She added that if approved, the city will be making a three month payment. Councilmember Powell expressed that she feels the Council has a responsibility to not only the citizens of Lindon but also to the member cities that we have contracted with, and if the contract is broken we will be held as irresponsible and perceived as not trying to see this succeed. In conclusion, Councilmember Powell thanked the Council for doing their due diligence and thanked Mr. Cowie for presenting the information to the Council in a digestible fashion.

COUNCILMEMBER ACERSON – Councilmember Acerson echoed Councilmember Powell’s comments, in that once you have made a commitment you must honor it. Having said that, he stated that he does not want to give Utopia more money, but he would prefer the original bonding that is in place and that we continue, for the interim period, to fund those operating expenses through the bond. Councilmember Acerson stated that Senator Valentine does not agree, which is his priority, but he feels it does not make good financial sense. He noted that it does not make sense to use bonding funds for operational costs. He concluded that he stands by the commitments that were made before.

2 Mayor Dain called for any further comments or discussion from the Council.
Hearing none he called for a motion.

4 COUNCILMEMBER POWELL MOVED TO APPROVE RESOLUTION #2013-
5-R, UTAH INFRASTRUCTURE AGENCY ASSESSMENTS AND GIVE
6 COUNCILMEMBER JEFF ACERSON DIRECTION TO VOTE IN FAVOR OF
CONTINUED BONDING BY UIA ACCORDING TO PREVIOUS COMMITMENTS
8 BY THE CITY. COUNCILMEMBER BEAN SECONDED THE MOTION. THE
VOTE WAS RECORDED AS FOLLOWS:

10 COUNCILMEMBER WALKER	NAY
COUNCILMEMBER FRAMPTON	NAY
12 COUNCILMEMBER ACERSON	ABSTAIN
COUNCILMEMBER BEAN	AYE
14 COUNCILMEMBER POWELL	AYE
MAYOR DAIN	AYE

16 THE MOTION CARRIED 3 TO 2 WITH ONE ABSTAINING.

18 *Mayor Dain voted to break the tie vote of 2 Aye votes and 2 Nay votes. Mayor
Dain voted in favor with an Aye vote. The motion carried with a 3 to 2 vote with one
20 abstaining. Councilmember Acerson abstained from voting due to his vote as a UIA
Board member and thought it best to go in as neutral.*

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24 Mayor Dain commented that the vote of approval will move this item forward
with the idea that they will look very carefully at the performance level of UTOPIA and
if the performance level is not achieved the City will cut off further funding.

26 **ADJOURN** –

28
30 COUNCILMEMBER POWELL MOVED TO ADJOURN THE MEETING AT
6:35 P.M. COUNCILMEMBER WALKER SECONDED THE MOTION. ALL
PRESENT VOTED IN FAVOR. THE MOTION CARRIED.

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38 Approved – April 2, 2013

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Kathryn A. Moosman, City Recorder

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James A. Dain, Mayor