

MINUTES
ENOCH CITY COUNCIL
September 2, 2015 at 6:00pm
City Council Chambers
City Offices, 900 E. Midvalley Road

Members present:

Mayor Robert Rasmussen
Council Member Destry Griffiths-absent
Council Member Steve Johnson
Council Member Kirk Lovell
Council Member Gary Wilcken
Council Member Mike Olenlager

Staff present:

Julie Watson, Recorder
Dan Jessen, Treasurer
Gary Kuhlmann, City Atty.
Earl Gibson, Public Works
Jackson Ames, PD Chief
Robert Dotson, City Manager

Public present: Donna & Michelle Pritchard, Dilworth Armstrong, Donna Crase, David Owens, Geoffrey Chesnut, Carolyn & Ken Bauer, Kay Ayers, Spencer Jones, Robert Jenson, Officer Shawn Higgins, Debra Ley, Michael O'Rourke, Brett Zufelt, Brian Johnson, Josh Killian, Alecia Jones, Jolene Lee, David Harris, David Benkert, Ryan Johnson, Worth Grimshaw, Jared & Lisa Baker, Milt & Roni Laub and Leslie Mower

1. CALL TO ORDER OF REGULAR COUNCIL MEETING-By Mayor Rasmussen at 6:00pm. He welcomed the audience and excused Council Member Griffiths.

- a. **Pledge of Allegiance-**Led by Council Member Johnson
- b. **Invocation-**Audience invited to participate-Given by Donna Crase
- c. **Inspirational thought on Freedom-**Given by Council Member Lovell
- d. **Approval of Agenda for September 2, 2015-Motion to approve agenda by Council Member Olenlager. Motion seconded by Council Member Lovell and all voted in favor**
- e. **Approval of Minutes for August 19, 2015-Motion to approve minutes by Council Member Johnson. Motion seconded by Council Member Olenlager and all voted in favor**
- f. **Conflict of Interest Declaration for this agenda-**none stated

2. APPOINT NEW MEMBER TO PLANNING COMMISSION

Mayor Rasmussen said he proposes the name of Joshua Killian to serve on the Planning Commission. Josh stood and introduced himself. Council Member Johnson asked about other candidates who applied. Mayor Rasmussen said he got an official application from Josh and considered all who said they were interested. Council Member Wilcken said he has no objections but did not know who was applying for the position. He said he would like to be made aware of applications in advance. Mayor Rasmussen asked for a motion to approve Josh Killian.

Council Member Johnson made a motion to table this until the next meeting. Motion was seconded by Council Member Wilcken with two no votes and two yes votes.

Spencer Jones interjected that he was concerned that the Council Member Wilcken might think he has some association with this nominee but he said he does not know him. Mayor Rasmussen said he did not want to get into that. For the record, Spencer said he does not know the nominee.

Due to a split vote Mayor Rasmussen voted no, not to table the nomination.

Council Member Olenlager made a motion to approve Josh Killian to the Planning Commission. Motion was seconded by Council Member Lovell. All voted in favor except Council Member Johnson who voted no. Motion passed 3-1.

Josh Killian was appointed to the Planning Commission. Council Member Wilcken restated his preference that they be advised in advance of who applies for these positions. Council Member Olenlager said Mayor Rasmussen is tasked with vetting people for these boards and he is fine with having him do that.

3. PUBLIC HEARING REGARDING APPLYING FOR CIB FUNDING FOR CULINARY WELL COMPLETION

Mayor Rasmussen said City Manager Dotson will give an update on the well. City Manager Dotson the point of the public hearing is so the public has a voice in the money we are applying for. The public hearing was advertised as required. He said he got the well house plans 20 minutes ago and the quote on the building is \$100,000. He is still waiting for a quote on the power and expects it will be about \$20,000 or less. So we will apply for \$120,000 to finish the well and get it into service. This includes all the pumps, motors and equipment.

Mayor Rasmussen asked for motion to enter the public hearing. **Council Member Lovell so moved to enter the public hearing for the CIB application for the well. Motion was seconded by Council Member Wilcken and all voted in favor.** Mayor Rasmussen invited public comments.

Kay Ayers asked if this well is for the entire city for water or just certain parts. *Mayor Rasmussen said this well feeds into all of the existing water system.*

Worth Grimshaw asked how much water the well is producing. *Earl said we don't know yet as it is scheduled for development. When we initially test pumped we got 600 gallons per minute. The camera showed mud so after cleaning that out we expect more water.* Worth asked how much money is in the well now. *Dan said about \$800,000 and when completed about one million.*

Donna Pritchard asked if the city has to match the funds. *City Manager Dotson said we are looking at a grant or a loan or a grant/loan combo. We will be working with Gary Zabriskie of the Five County Association of Governments and he says usually they will give a grant if you show you have a need.* She confirmed this money is in the budget if we have to do a match.

David Benkert asked how long the well has been in development. *City Manager Dotson said we started drilling that well last fall. We did a lot of pre-evaluation site studies on it before that.*

Ken Bauer asked if the \$800,000 into it so far was City money we had on hand adding they may give us a grant with what we have in it. *Mayor Rasmussen said we had saved for this well for several years and we don't know for sure about being awarded a grant. City Manager Dotson said we have the money to complete the well but will try for the grant.*

Carolyn Bauer said she wished she knew more about this before it went on the agenda. *Mayor Rasmussen said we have talked about this for several meetings and it was noticed as required. The public can always ask questions of staff in advance.*

Mayor Rasmussen asked for a motion to end the public hearing. **Council Member Wilcken made a motion to end the public hearing. Motion was seconded by Council Member Lovell and all voted in favor.** The public hearing was held per CIB requirements and the application process will proceed.

4. DISCUSS/TAKE ACTION ON TREE COMMITTEE GRANT-Daniel Allen

City Manager Dotson introduced Daniel Allen saying he is the Urban and Community Forester in Southern Utah. He took over from Danon Hulet who helped with our tree inventory. We use that study for maintenance and to assess the condition of the trees located on public property. Daniel has moved into Enoch City now and is a great resource for the City. He came to the last Tree Committee meeting and explained some possibilities for future funding to do some things in our parks. We did not know about these grants until he brought it up and one application has to be submitted next week. Daniel summarized saying as an urban forester his job is to be an extension of the State of Utah by helping the City to improve the urban forest which is made up of trees on public property. One tool we have is grants and the main one they encourage is the Community Forestry Partnership grant. That

can give qualifying communities up to \$8000. This is a matching grant so the City needs to come up with that match. He suggests applying for \$2500. This match can be in the form of volunteer labor at \$22 an hour or in kind donations. This works in reimbursement fashion so the original \$2500 has to be available up front. He is seeking approval from the City Council for funding of the match portion in order to apply for the grant.

There was more discussion that this grant is currently being aimed at Garden Park which has a project is in the works. The trees selected would be low maintenance such as Burr Oaks. The time frame for completion could be this fall but is more likely next spring, when a final report is completed and submitted for reimbursement. This can actually turn out to be free money by gathering volunteers to do the work. \$2500 would cover about 10 trees, irrigation and mulch rings. Council Member Wilcken said we have to apply next week and the decision to award the grant is made in November. No money will be spent until we get the grant approval although we need to approve the front money in order to apply. Most likely this will occur next spring and could be in conjunction with our Arbor Day event. The Tree Committee selected Garden Park because Jolene Lee has been very proactive to develop and improve that park which is an ongoing project right now. Council Member Olenslager asked Dan if we have any money for this. Dan said it is a wash to the City in the end but we have to expend the money out front so it has to be in the budget. He said we have a “supplies and materials” line item in the parks budget that could be used to cover this match.

Dan digressed briefly to say when this came up he was reminded that we also have a report due to the State regarding the projected use of impact fees. This budget year we had planned on spending money in parks using impact fees although that was earmarked for the Rec Complex and trails. Nothing says it has to be used there but we have to submit a report to the State every year and this may be something to think about in the next while. On the subject of spending money to upgrade the parks this is impact fee money which was collected as a result of new homes. You have to be careful spending it in an old park unless it can be justified. Iron Mountain Subdivision has many new homes being built now and there is a park area designated in that subdivision. The park could double as a storm drain retention basin which would also benefit the neighboring Garden Park area. We have \$38,464 to expend this year as we reported to the State in the past. We need to spend that or apply for an extension to use it in another year. He stressed he has a deadline to file the report however changes can be made to “when and where” and they don’t hold us to it. He gave more details of what could be done in Iron Mountain using impact fees.

Council Member Wilcken said if we do this he has no doubt that Jolene can get the volunteers to work towards the match. Council Member Johnson said he is in favor of turning the parks over to the people and there is no such thing as free money, although State grants are more palatable than Federal money is. He thinks this is tax money that should be refunded to the people and we should not favor one group over another. It is a basic law of human nature that we love what we sacrifice for and when we are given “free” government money we don’t love it as much. He favors growing slowly by personal contributions and the State should lower our taxes instead of funding things like this. Mayor Rasmussen asked for a motion again. Council Member Wilcken said he agrees with Council Member Johnson generally however we have the Garden Park people doing good things already and this would be a help to that project. **Council Member Wilcken made a motion to approve the \$2,500 matching front money for the grant. The motion was seconded by Council Member Lovell and all voted in favor except Council Member Johnson who voted no. Motion passed 3 to 1**

5. DISCUSS/TAKE ACTION ON SALE OF SURPLUS PROPERTY

City Manager Dotson said due to procurement standards the City Council has to approve the disposition of surplus property and staff put a list together. He read the list starting with cemetery house which is for sale for \$20,000 and has to be moved off the property. Although there have been many inquiries there are no buyers yet and he would like to auction it off. Earl added a 1977 Dodge pick-up to the list. City Manager Dotson went on with the list saying he is asking for approval to

dispose of this property. Council Member Wilcken asked where the money goes when things are sold? City Manager Dotson said it goes into the general fund or to whatever company owned the property. Mayor Rasmussen said we need a motion to approve this request. **Council Member Lovell made a motion to approve the list of property to be disposed of. Council Member Wilcken seconded the motion and all voted in favor.**

6. DISCUSS SIGN ORDINANCE

Mayor Rasmussen asked for discussion. Council Member Johnson said we talked about whether it would be legal to distribute flyers without a permit. City Manager Dotson said we are taking out the permit part per the last discussion. There was a reference to signs in public parks so we added that section in order to delete the part about signs found in 8-309. Essentially anyone can place any sign they want anywhere on public property.

7. ORDINANCE NO. 2015-09-02 AN ORDINANCE AMENDING THE ENOCH CITY CODE OF REVISED ORDINANCES, CHAPTER 10-449 AND CHAPTER 8-300 REGARDING SIGNS ON PUBLIC PROPERTY

Council Member Johnson made a motion to approve Ordinance 2015-09-02, an ordinance amending the Enoch City Code of Revised Ordinances, Chapter 10-449 and Chapter 8-300 regarding signs on public property. The motion was seconded by Council Member Wilcken and a roll call vote was held as follows:

Council Member Griffiths-absent	Council Member Olenslager-no
Council Member Johnson-yes	Council Member Wilcken-yes
Council Member Lovell-yes	Motion passed 3 to 1

8. ORDINANCE NO. 2015-08-05-B AN ORDINANCE AMENDING THE ENOCH CITY ZONING ORDINANCE, CHAPTERS 17 AND 18 TO FURTHER DEFINE REQUIREMENTS IN COMMERCIAL ZONES

Council Member Wilcken said he talked to David Owens about discussing his questions and will meet with him to understand the changes being recommended. He invited other Council Members to do the same. **Council Member Wilcken made a motion to table this item until September 16, 2015. Motion was seconded by Council Member Johnson and all voted in favor.**

9. DISCUSS AND TAKE ACTION REGARDING RAVINE ROAD

City Manager Dotson gave the history of this issue recapping the City Council meeting of December 13, 2014. He said the City Council has received a letter from Mr. Worth Grimshaw contending that Ravine Road has the same circumstances that North Enoch Road has and it too should be an open and unobstructed public road. Mr. Grimshaw contends it is discrimination to treat him one way on North Enoch Road and to treat Spencer Jones another way on Ravine Road as both roads had proscriptive use for many years. The City Council has discussed this matter in closed sessions because litigation was implied so now it is on the agenda to come to some decision on this road. Mayor Rasmussen asked Worth Grimshaw and then Spencer Jones to each give a condensed version of this matter.

Worth said Ravine Road was a public thoroughfare for many years. About 10-12 years ago it was open although gated with access. That was how it was on North Enoch Road too because he never said he would lock the gates. Ravine Road is the same situation and should be open also. He has property there as do others. They would like access to go up Ravine Road and it is shut off now. That is his contention.

Spencer Jones came up with his attorney Robert Jensen who said he would address the issues. He compared the differences between Enoch Road and Ravine Road. There are statistics related to Enoch Road regarding the numbers of people using it and that road had been improved substantially

by the County and the City. It is graveled with barrow pits. It was evident it was an active road. Ravine Road is more complicated. He appreciates the fact that we are talking about this and he cautions about ending the discussion prematurely. Ravine Road has no recent history of use. He referred to the Ridge Subdivision map and pointed out Ravine Road in the subdivision. If we look at the East end of Ravine Road it is not even a typical fire road with some tracks but has grown over completely. It is evidently different than Enoch Road. The second difference is that previous City Councils had an understanding that the road had been abandoned and the developer believed that too. Actions were taken such as approvals of projects assuming the road was abandoned. The question is what affect would opening the road have on actions already taken.

Mr. Jensen went on with considerable more discussion of the assumption that Ravine Road was abandoned although those County records have not yet been found. The question being recommended is to change the direction we have had with Ravine Road not keeping it as it always was. This action would have many serious impacts. The first point is there is a belief it is abandoned and they hope to prove that it was formally abandoned. Utah recognizes an exception to this. Abandonment should be a formal process where it is declared what is abandoned. This is different than what happened on Enoch Road. The history of Ravine Road is that it is a dirt road, never graveled or paved. It was made to go out to the east end of the City to connect with Highway 91 going to the northern communities. With the development of the frontage road and other connections any need for Ravine Road has been obviated. The general understanding is that Ravine Road was abandoned and with that in mind Enoch, assuming it was an unused road, has signed agreements between the developer and City. It is stated specifically in the agreement and the road is referred to as the "old abandoned" Ravine Road so all believed it to be abandoned. The agreement goes a step further recognizing that City utilities are sitting there without an easement and made an agreement with respect to the utilities. Putting a church on Ravine Road now has Heather Hue terminating at Ravine Road as a smooth turn into the church. On the other end of Ravine Road the City permitted a home and allowed it to be built on top of Ravine Road on a section of the road. In most places the traces of any road are 10-15 feet wide. In the subdivision roads are 50 feet wide. Mr. Jensen gave more examples of things the City has given permits for that interrupt what was known as Ravine Road making it into other roads such as Scenic Drive. For the City Council to blindly force this issue like Enoch Road would present real problems and involve condemning property to open this road.

Mayor Rasmussen asked if the City Council has questions. Council Member Johnson asked if both Worth and Spencer were informed of the opportunity to make statements. City Manager Dotson said they had agendas emailed to them.

Worth said he wanted to explain things Mr. Jensen did not get right. He said first with respect to North Enoch Road it is about 20 feet wide and is not graveled enough to maintain. In past rain storms the road was too muddy to go through so vehicles went out around the road onto private property. The second thing he brings to the Council's attention is when Ravine Road was first shut off City Manager Larry Brough ordered Spencer Jones to open the road and the City Council at that time chose not to follow up and make that happen. Ravine Road is oiled for all of about 200 yards. It is oiled to the City well just feet from the gate installed by Mr. Jones. Mr. Jones hauls dirt with trucks through this area to dump in the ravine wash to the west of where the road is closed. It is not closed to him but only to everyone else. Ravine Road was graveled and in good shape in the past and was not as represented.

Spencer Jones said to clarify he encouraged the Council to go look at the road saying there is no gate. He encouraged them to look at the abandoned Ravine Road east of the Stake Center and they will see there is no gravel or any improvements. Mayor Rasmussen asked City Attorney Kuhlmann for any comments. City Attorney Kuhlmann said the issue of whether the road was used recently is not an issue. If it was ever used for ten years by the public at any period of time then ceasing use does not abandon the road. To the extent that "implied abandonment" exists because things are built over the road now applies to that location on the road only. Anything to the east and west is still a road if it was

used for ten years. It is too general to say everyone knew it was abandoned. There are other issues under the law if it was used for ten years and they are not necessarily limited to historic use like width of the road. If it goes to court the court will determine the width.

City Manager Dotson asked, what is the issue? If somebody had not said it, it would not be an issue. It is the same as anything else. It comes up when a problem is stated and that is why we have an issue. When it comes to access there is not one owner of property pertinent to Ravine Road that has lost access to that property. Some perceive this as an issue but is it an issue to the City only because it is being argued over by two parties who have involved the City.

Council Member Olenslager asked if there is a benefit to taking any action. City Manager Dotson said one challenge is emergency vehicles look at maps and it appears Ravine Road goes through and that can delay response times when they find they have to go around. That is a concern but it is fixable by communication with them. Do we need it open for people? We can get to the well with no problem. It is an issue because some have made it so. If the Council asserts it is a road you have to do something with it. City Attorney Kuhlmann said the Council can determine it is a public street if they want it to be one.

There was a discussion of the action taken on North Enoch Road and the manner in which that came about. Council Member Wilcken said they did not act last time. The Council had our attorney state that according to law it is a road. Things were brought up tonight and he sees no way this City Council can be the judges. This involves two individuals who want to have it out and we can't do anything about that. Council Member Johnson said there are private conversations going on that are not helpful in this decision. Worth said Spencer is dumping material into the ravine. It is in an agreement that the City has also done that. Earl confirmed they have permission to dump there. Council Member Johnson said there are mixed signals being sent from the City. We have a sign posted that says Ravine Road. Is there a dead end sign? No. We give building permits right in Ravine Road. Spencer said there is a sign that says "not a through street". City Manager Dotson said we actually get Class C road funds for that road. We have allowed a Stake Center to be built on it and homes too. Council Member Olenslager said he is hearing one saying it was not fair to me so he should not have his way. The City Council should not have to decide anything. To the extent these individuals want to have it out they can do that. Council Member Lovell said Ravine Road has had a ten year period when it was used and whatever mismanagement took place in between happened. The ten year thing is uninterrupted use Spencer said. The road has been fenced periodically all the time in the past. The fence still sits there all mangled up Spencer said.

Mayor Rasmussen asked where they want to go with this tonight. Council Member Wilcken said no field trip will bring any light to this. There are issues on both roads. He would like to see these two gentlemen sit down and work this out so it is not an issue. He understands property protections but can't see how we can treat these two roads separately with a right of way established by use in the past as stated by City Attorney Kuhlmann. No one can find abandonment documents so what do we do.

Attorney Robert Jensen said the issue is not that it is a road and no one is trying to abandon the used part of the road. The question is whether formally abandoned or not the City has taken so much affirmative action with permitting other uses that it is now implied to be abandoned. Think of the havoc you create if you declare it a road or if there is a "work around" existing structures. Council Member Lovell said the matter is does a road exist or not. If they say the road goes thru to Highway 91 then they negate the other preexisting actions. Council Member Johnson said personally he thinks we should let them do what they want. Let Worth gate off his road and acknowledge the City has given permits on Ravine Road. Those who have property can just go around.

City Manager Dotson said it is the individuals in this debate that care about this however the outcome could alter B and C road funds. Mayor Rasmussen asked City Attorney Kuhlmann for options. He said they can determine it is a public street due to use with the exception of where structures are or they can do nothing. Mayor Rasmussen asked if we do nothing what happens. City Manager Dotson said if we are collecting Class C road funds on it then we should maintain it. We

adjust our road list every two years he added, and we send that to the State for adjustments. We still get Class C road funds for Parkview Subdivision although those roads are not maintained. Council Member Wilcken said he has been on City Council on and off over the years and this is not a new discussion. We have talked about it before many times. What is to be gained by doing anything? The two parties involved should go at it, not the City. It was noted that if we act then actions could be taken against the City. City Manager Dotson said the City has been informed that attorneys for the parties will be involved if no action is taken. He said he does not feel threatened however consequences take place after actions. Definitive statements were made by the parties that attorneys would be involved. Council Member Lovell suggested this be handled the same as Enoch Road was. Council Member Wilcken reminded the Council that our attorney made a statement, not the City Council and we should do the same on this issue.

City Attorney Kuhlmann summed up the decision of the City Council on North Enoch Road saying that through ten years of use it is a public road and Enoch City's jurisdiction stops at the end of the Enoch City limits. It constitutes a public road to remain unobstructed and that was what was stated. They could do the same thing with Ravine Road however he would make an exception for where structures are located.

Mayor Rasmussen asked for a motion to do the same as before. Council Member Wilcken said we did not tell Mr. Grimshaw what to do but to leave it unobstructed. The parties need to work together to make this go away. The City has no interest in one or the other.

The action taken by the City Council was that they did not vote but had a consensus to do what we did in the issue with North Enoch Road. They will declare Ravine Road a public road and counsel the parties with grievances to work it out. To the extent that Ravine Road has been used by the public for ten years or more during anytime, it is a public road except where buildings are now located. City Attorney Kuhlmann concurred they can do this by consensus or motion. The Council Members confirmed they did this last time by consensus and want to do the same now. Mayor Rasmussen confirmed that there was a consensus and that they want City Attorney Kuhlmann to write the same letter in this case.

11. PUBLIC COMMENTS-Mayor Rasmussen invited three minute comments.

David Benkert Sr. said regarding the Planning Commission appointments he thinks it should be better discussed. He added he agreed on Ravine Road.

Alisha Jones and she built on Ravine Road and wanted the Council to know if it is opened to through traffic it will be a worse safety hazard than it already is. She said by the church there are no regulatory signs of any kind. Dogs have been hit there and kids play there. She is concerned for safety if there is more traffic than already exists.

Brian Johnson said he owns the home at the bottom of Ravine Road and if they say it is opened except where homes are it will be a mess. It is crazy that these individuals run to mommy with petty problems and the City Council is caught in the middle. There is access to any properties on Ravine Road and being obstructed in places does not keep anyone from their property.

Ryan Johnson said it is interesting to watch this as the public will be voting soon. He wants to see people who are running for office put the City's interests first and he is not sure he saw that today. He would like more comment from those running. He thanked the City Council.

Lisa Baker said in staff reports she would like to know when the City will be finished with Half Mile Road.

12. CORRESPONDENCE-Council Member Johnson said he hoped Chief Ames would be here. He said he advanced a proposal for the nuisance ordinance that was rejected and since then staff has been sending him nuisance complaints.

13. COUNCIL/STAFF REPORTS

Earl Gibson said he has no firm answer on Half Mile Road but it should be within the next two weeks to do the chip seal. After the chip seal is done then the weed block and rock will be put back adding there is no point to do that before the chip seal as they would mess it up again when brushing the road.

Dan Jessen said he still has to file the impact fee report and he needs to get direction from the Council about opening the budget to do something with park money or move it out to next year. He explained the deadlines for the State and the auditors. The challenge with impact fee money is it has to be used to mitigate the impact of growth or as a result of growth such as the new park in Iron Mountain Subdivision would be. Liberty Park was built with impact fees from Three Peaks Subdivision. If impact fees are not spent in six years we have to give them back to those who were charged. Dan expressed concerns with road and sewer impact fees. The upgrade to the Cedar City treatment plant was not as expensive as first thought and we had planned for a new outfall line to go there. We will need the outfall line for growth in the future so there are decisions to be made about aging fees that we need to use. City Manager Dotson said he would look at the CFP and get some ideas to suggest.

Council Member Wilcken suggested we discuss this at the next meeting.

Council Member Johnson said lets have each community do what they want with their parks.

Julie Watson reported on the next agenda saying we will have the CIB public hearing on the comprehensive drainage plan application and the impact fee discussion.

City Manager Dotson said they met with the County Rural Transportation Executive Council today and looked over the State transportation improvement plan. The plan is to widen Minersville Highway to five lanes in 2019. He said he wanted to make clear that Ashdown Brothers did a great job on Half Mile Road. There were some concerns about not saw cutting it but they did it right. It is what is under the road that counts and they redid that with road base and compaction to 90% plus. We use special oil and have proven the roads last longer. Now the county and Cedar City agree that oil is best to use and have switched. He said Half Mile Road got 12-13 feet of asphalt instead of eight and it will be chip sealed to finish. They also did the asphalt on Pioneer and Stagecoach. He reported we are negotiating with another landowner to the north for property for a pond.

Mayor Rasmussen thanked the Council for their hard work and tough decisions.

15. ADJOURN-Council Member Lovell made a motion to adjourn. The motion was seconded by Council Member Johnson and all voted in favor. The meeting ended at 8:10pm.

Julie Watson, Recorder **Date**