

MINUTES of the regular City Council meeting of Wellsville City held Wednesday, December 7, 2011, at the Wellsville City Offices at 75 East Main. City officials present were Mayor Thomas G. Bailey, Councilmen Gary Bates, Ron Case, Colin Harrison, and Carl Leatham. City Manager/Recorder Don Hartle was also present. A copy of the Notice and Agenda was mailed to the Mayor and Council members and emailed and faxed to the Herald Journal on December 2, 2011. The meeting was called to order at 6:00 p.m. by Mayor Thomas G. Bailey.

<u>Others Present:</u>	Jennifer Leishman	Dianna Cannell	Leesa Cooper
	Michael Tueller	Stacey Prescott	Kari Prescott
	Chrisann Smith	Earl Glenn	Sam Winward
	Jim McCaugley	Mike Howard	Bryant White
	Tom Maughan	Glenna Petersen	Arlyn Brenchley
	Bevan Higbee	Laurel Maughan	Daniel Erikson
	Shanna Burningham	Regan Burningham	Sharon Cook
	Rich White	Adam Brandt	Dave Bell
	Ann Bell	John Kerr	
	Wendy Egbert	Paul Egbert	Kent Larsen
	John Spence	Jeremie Poppleton	Clint Kerr
	Jonathan Cook	Paul Todd	Troy Law
	Dawson Law	James Bowen	Tyler Robertson

Opening Ceremony: Gary Bates

Jackie D. Orton was excused from this meeting due to surgery.

The Council reviewed the agenda. Colin Harrison made a motion, seconded by Gary Bates, to approve the agenda as presented.

<u>YEA 4</u>	<u>NAY 0</u>
Gary Bates	
Ron Case	
Colin Harrison	
Carl Leatham	

The Council reviewed the minutes of the November 16, 2011 regular City Council meeting. Gary Bates made a motion, seconded by Colin Harrison, to approve the minutes of the November 16, 2011 regular City Council meeting as presented.

<u>YEA 4</u>	<u>NAY 0</u>
Gary Bates	
Ron Case	
Colin Harrison	
Carl Leatham	

Don Hartle gave the Council a copy of the Warrant Register showing bills submitted to the Council for approval. After review and discussion, Colin Harrison made a motion, seconded by Carl Leatham, to approve the City's bills for payment, represented by check number 13752 through 13862.

<u>YEA 4</u>	<u>NAY 0</u>
Gary Bates	
Ron Case	
Colin Harrison	
Carl Leatham	

Glenna Petersen thanked the Wellsville City Youth Council for their work with the Pennies by the Inch drive.

Dianna Cannell of Allred Jackson CPA's presented the 2010/2011 audit report. Ms. Cannell stated that there was 1 finding. Ms. Cannell stated that Utah State law says that the General Fund balance cannot exceed 18% of the next year's projected revenues. Because of a change in the law, Wellsville City is at about 20%. Ms. Cannell stated that it is a very easy fix. Mayor Thomas G. Bailey asked if it hadn't been for the change in the law, there would have been no findings. Ms. Cannell stated that is correct. Ms. Cannell stated that she is very pleased with the audit. Ms. Cannell stated that Wellsville City didn't exceed their budget. Ms. Cannell stated that Wellsville City has very detailed records and wonderful documentation. Mayor Thomas G. Bailey stated that Wellsville City appreciates Dianna Cannell and her staff at Allred Jackson. Mayor Bailey stated that he and the City Council appreciates all of the hard work that Don Hartle, Leesa Cooper, and the other staff members do. After discussion, Ron Case made a motion, seconded by Colin Harrison, to accept the 2010/2011 audit report presented by Dianna Cannell of Allred Jackson CPA's.

YEA 4

NAY 0

Gary Bates

Ron Case

Colin Harrison

Carl Leatham

Lt. Michael Tueller, representing Utah Highway Patrol, met with the City Council to discuss options Wellsville City has in regards to livestock trucks leaking manure on roads. Lt. Tueller stated that he is over Commercial Vehicle Patrol for the northern part of Utah. Lt. Tueller believes that the reason Wellsville City is having this problem is because of the construction that is taking place on 10th West in Logan. Lt. Tueller stated that he is not here to give legal advice, and that Wellsville City needs to involve their City Attorney and Judge in this decision. Lt. Tueller referred to federal code 393-100 and state code 72-7409. Sub part 4 of state code 72-7409 exempts agriculture. Lt. Tueller told of a case that took place about 10 years ago where the judge found in favor of the defense because of sub part 4 of state code 72-7409. Lt. Tueller suggested the following solutions: 1) discuss the issue with Miller's, 2) review the law with the City Attorney and Judge to see if they would like to pursue the issue, and 3) as a City, create an ordinance that restricts manure on City streets. Mayor Thomas G. Bailey stated that the streets that the manure is being leaked on are state highways. Mayor Bailey asked if a city ordinance would cover state highways. Lt. Tueller stated yes. Gary Bates stated that the City Council has alerted Miller's of the problem, and didn't get very far with the truck drivers. Mr. Bates asked if the state code has been amended in the last 10 years. Lt. Tueller stated that he is not aware of the state code being amended. Lt. Tueller stated that the question to ask is if the manure leaking on the roads creates a hazard. Lt. Tueller stated that it can cause accidents, as well as being unsightly and people are being affected by it. Mr. Bates stated that the leakage is happening in a crosswalk, and if enough citations are issued, the word may get around. Lt. Tueller stated that the issue should be discussed with the City Attorney. Lt. Tueller stated that city officers, county deputies, and state troopers can issue citations. Lt. Tueller stated that at the state level, they can perform an inspection on the truck, and the inspection can affect the company and driver ratings. Mayor Bailey stated that Wellsville City had a citizen that reported a truck. Kent Larsen stated that he followed a truck and took pictures. Mr. Larsen called the Sheriff's office, and they told him that they would send someone out. Mr. Larsen stated that he never heard back from anyone. Lt. Tueller stated that he thinks that manure on the roads is a hazard and a mess, and is not opposed to putting it to the test to have a state trooper patrol and issue citations. Mayor Bailey asked if Lt. Tueller would put together a list of the laws that he quoted so that City Attorney doesn't have to find them in the books. Mayor Bailey asked what the best way is to get the City Attorney and Lt. Tueller talking. Ron Case stated that the City Council needs to meet with the legislatures to tighten the laws. Arlyn Brenchley asked about the laws on straight pipes. Lt. Tueller stated that straight pipes are a noise ordinance issue. Lt. Tueller asked if Wellsville City has a noise ordinance. Mayor Bailey stated yes. Lt. Tueller asked if it was posted. Don Hartle stated yes. Mr. Larsen thanked Lt. Tueller for helping with this situation, and thanked the City Council for pursuing the issue. Mr. Larsen stated that another avenue is that he discussed the issue with the Bear River Health Department, and asked if this issue is a health hazard. BRHD stated yes. Mr. Larsen asked if people could be exposed to e coli, and BRHD stated yes. Mayor Bailey stated that Councilman Gary Bates and Lt. Tueller stay in contact, and a list of federal and state references be forwarded to the City Attorney. Mr. Bates stated that he will get the information to Mr. Hartle so that the City Attorney can review it, and then the City Council should meet with Judge Terry Moore.

Chrisann Smith met with the City Council for a business license. Ms. Smith would like to start a small business from her home making gourmet cookies, brownies, and bars. Ms. Smith will sell the items on-line and in Cache Valley. Ms. Smith will do local deliveries and ship with UPS or FedEx. There will be no customers coming to her home. Carl Leatham asked if Ms. Smith will be obtaining a food handler's permit. Ms. Smith stated that she is working with the BRHD on that issue. Mr. Leatham stated that the Planning Commission approved the conditional use permit with no restriction. Gary Bates asked about shipments coming to her home. Ms. Smith stated that she will purchase all of her ingredients in bulk from a local store. After discussion, Carl Leatham made a motion, seconded by Colin Harrison, to approve the business license for Chrisann Smith.

YEA 4

Gary Bates
Ron Case
Colin Harrison
Carl Leatham

NAY 0

The City Council reviewed for approval the final plat for the Glenn Family Trust subdivision consisting of a total of 4 lots (2 additional building lots) on property at 381 South Center Street. City Engineer Chris Breinholt issued the following memorandum concerning the Glenn Family subdivision. Our office has completed a review of the Final Plat for the above mentioned subdivision. Prior to granting approval to this project, we recommend the following issues be addressed: 1) Overhead Power, Cable, and Telephone Easement: a) the location of the easements must be identified on the plat by showing distances and bearings, including distances from the property corners, b) since the easement is for utilities serving Lot 2 to cross Lot 1, it is only necessary to show them across Lot 1, c) the owner's dedication should dedicate this easement specifically to the owner of Lot 2 for their use for power, cable, and telephone. This easement should not be dedicated to Wellsville City, d) do not label these easements as Public Utility Easements. Don Hartle stated that City Engineer Chris Breinholt stated in the last memorandum issued that the existing buildings needed to be shown on the final plat. Mr. Hartle asked County Recorder Mike Gleed about this issue. Mr. Gleed stated that it doesn't make any difference. Mr. Hartle stated that he has instructed City Engineer Chris Breinholt that existing buildings should be shown on all final plats. Carl Leatham stated that the Planning Commission had some concerns. The existing buildings needed to be shown on the final plat and the irrigation shares needed to be resolved. Arlyn Brenchley stated that Russell Glenn and he have been working on the irrigation shares issues. After discussion, Ron Case made a motion, seconded by Gary Bates, to approve the final plat for the Glenn Family Trust subdivision consisting of a total of 4 lots (2 additional building lots) on property at 381 South Center Street.

YEA 4

Gary Bates
Ron Case
Colin Harrison
Carl Leatham

NAY 0

The City Council reviewed for approval, and to authorize the signatures of all documents associate with the Red Slide Subdivision including the Red Slide Subdivision West Park and open space agreement, lot owners' assessment reimbursement agreements, special warranty deeds, and any other documents required. Sam Winward, representing Red Slide Home Owner's Association, stated that he still lacked 2 signatures and 1 resident of Red Slide still has concerns. Mr. Winward asked if it was possible to have a brief discussion concerning the 22 acres of open space that the Red Slide HOA owns. Mr. Winward also asked if a few hundred dollars was going to be spent on a master plan of the park. Mr. Winward stated that the HOA can act with 2/3 majority vote, but that the City Council requested that all 23 residents sign the documents. Colin Harrison stated that he thought the concerns had been resolved, and now the HOA is back with more concerns. Gary Bates stated that having enough slope to have a sledding hill is kind of self-serving. Mike Howard is the individual who is having concerns with the park. Mr. Howard wants to be assured that the park will have useable space. Mr. Howard stated that if the park follows the slope of the sidewalk, an individual will not be able to have a picnic or sit in a chair, or have a sledding hill. Mr. Howard stated that he is against the contract at this point. Mayor Thomas G. Bailey stated that many people

have worked for 2 years on this project and they either move forward or forget the whole thing. Gary Bates stated that there needs to be an idea as to where they want to go with this park, and so he can support spending some money on a master plan. Mr. Winward stated that they met last night as a Park Design team. Don Hartle stated that there are funds in the budget for grading of dirt. There are no funds to level the park. Mr. Bates stated at the last City Council meeting, that the concerns were a dangerous catch basin and the possibility of flooding adjacent to the park. Mr. Bates feels that the City Council has been good neighbors and helped with the situation. No one has drowned and no one has been flooded. Mr. Bates stated that the City Council and Parks and Recreation Committee wanted more than just a weed patch. They have secured a grant that has to be used, or it is lost. Money has been set aside in the budget to complete this park. Mr. Bates stated that there is some frustration on the City Council's part. Mayor Bailey asked if the HOA has 2/3 majority of signatures. Mr. Winward stated yes, well over that mark. Mr. Bates stated that City Attorney Bruce Jorgensen asked that there be participation by all lot owners, and this may need to be run by City Attorney Bruce Jorgensen. Mr. Winward stated that the HOA is content with the decision if City Attorney Bruce Jorgensen is content to move forward with over 2/3 majority of signatures. Mr. Harrison stated that it would be nice to have everyone in agreement, but can move forward with 2/3 majority of signatures. Mr. Winward asked for some clarification concerning the fees. Mr. Winward asked if the 3 residents do not sign the agreements, will the fees be assessed to the HOA. Mr. Harrison stated that he is surprised that the agreements are not completed. Mayor Bailey stated that with 23 property owners, there will be 23 different opinions. Bryant White stated that everyone that is part of the HOA is as different as they can be. Mr. White agrees with Mr. Harrison. Don Hartle stated that he will contact City Attorney Bruce Jorgensen and ask about moving forward with 2/3 majority of signatures. Ron Case asked why Mr. Howard doesn't want to move forward with this project. Mr. Howard stated that he won't fight it in court, but he doesn't like the agreement. Mr. Case asked what he expects to see in the park. Mr. Howard stated that he doesn't know what the future will hold. Mr. Howard stated that he is tired of discussing the agreement. Mr. Howard stated that he feels a lot of pressure to sign the agreement. Mr. Case stated that the deal that is on the table is the best deal that the Red Slide HOA is going to get. There is no more money in the budget to do anything else. Mr. Case stated that it is now or never. Mr. Bates stated that if they back away from the grant, the park will never happen. Mayor Bailey stated that Don Hartle will discuss the issue with City Attorney Bruce Jorgensen.

Mayor Thomas G. Bailey stated that the fire department held elections. Clint Kerr has been elected the new Fire Chief, effective January 1, 2012. Mayor Bailey thanked Jeremie Poppleton for his 2 years of service to the fire department by serving as Fire Chief. Mayor Bailey appreciated Mr. Poppleton's time and effort. Mayor Bailey thanked Mr. Poppleton for his efforts concerning the new fire engine. Mayor Bailey appreciated Clint Kerr for throwing his hat into the ring for Fire Chief. Jeremie Poppleton thanked the City Council for their support.

At 7:30 p.m., Mayor Thomas G. Bailey conducted a public hearing to receive public input and consider for possible approval the purchase of 15.85 acres from Tom Maughan, a City Employee, of property to remain in open space. Said property is located on both sides of Main Street at approximately 550 East Main. Mayor Thomas G. Bailey stated that the purpose of this public hearing is for the citizens of Wellsville City to understand exactly where the money is coming from to purchase this property, and what is in store for the property. Mayor Bailey stated that the proposal is to purchase the property with money from the fee in lieu of open space account. Subdivisions have the option to pay a fee for a greater density within the subdivision, and Wellsville City can then purchase open space in another area of the City. Don Hartle stated that in 1998, a subdivision code was adopted that required open space in subdivisions. In some subdivisions, the open space works. In other subdivisions, the open space has a lot to be desired. The City Council has discussed properties that may be advantageous for Wellsville City to own. In 2008, the fee in lieu of open space code was adopted. The only subdivision that has participated so far is the Sterling Ridge subdivision. The property has been appraised, and the subdivision has chosen to pay the fee instead of developing the open space. Mr. Hartle stated that the City Council has discussed many different properties. The property that is being discussed tonight is owned by Tom Maughan. It is the property on both sides of Main Street as you are headed west into Wellsville on Main Street and cross the Little Bear River. The City has been discussing this property with Tom Maughan since 2008. This is not something that has been taken lightly. The City Council has had mixed feelings. At the last City Council meeting on November 16, 2011, the vote was unanimous to support proceeding on this project. The intent is to purchase this property

without raising property taxes. The purchase price is \$295,867.00. Wellsville City has \$171,532.67 as a down payment. Sterling Ridge has an additional 21 lots that they pay Wellsville City \$6,666.00 per lot, which is \$139,986.00 that they will still owe Wellsville City. Wellsville City will finance approximately \$124,000.00 for 5 years at \$27,434 per year, or 10 years at \$14,893 per year. Mr. Hartle handed out copies of a map that shows an aerial view of the property. There are 5.17 acres on the east side of Main Street, and 10.68 acres on the west side of Main Street. Part of the deal that has been worked out between Wellsville City and Tom Maughan is that the property has to remain in open space. In lieu of the water shares, Tom Maughan will retain and manage the property on the east side of Main Street for 10 years. After 10 years, it will be up to the Wellsville City to decide what to do with the property. The property on the west side of Main Street will remain as open space. The property will not change, and will continue to be farmed. Tom Maughan will use the property on the west side of Main Street for the rest of his life. Colin Harrison stated that this money can't be used for anything else other than purchasing property for open space. Rich White asked why Wellsville City would purchase this property if it can't be developed anyways. Ron Case stated that the City Council wants to maintain certain vistas within the City, and wants Wellsville City to remain a rural town. Mr. White asked if there are areas that are more valuable. Mr. Case stated that it is his opinion that this property is the most valuable when maintaining vistas within Wellsville City. Dave Bell stated that all property has value, and he agrees with the City Council. This open space property will add value to everyone's property. Mr. Bell believes that this is an important step that the City Council is taking. John Kerr asked if this property has been annexed into Wellsville City. Mayor Bailey stated that part of it is, and the rest will be annexed in time. Paul Egbert stated that he agrees that this is very beautiful property, but bullets from the Wellsville City code already protects property that is in a floodplain. The General Use Plan shows an aerial picture of this property that is under water. There will be limited use of this property. The concern is to protect this property from adding fill. The land use and zoning maps already label the area as open space. Mr. Egbert asked if this property is the best property to purchase. There are a lot of things to consider when making this decision. Mr. Egbert asked if this is the best use for the funds. Mr. Egbert asked if this purchase will maximize the benefit without the floodplain. Bevan Higbee stated that he supports the City Council's decision. However, this property will go off the tax rolls. Mayor Bailey stated that this property is greenbelt designation, which doesn't generate a lot of tax revenue. Dan Erikson asked about the open space rules, and what stops a developer from approaching the City to develop on the property. Mayor Bailey stated that this property will be purchased for open space in perpetuity, and the property will have to stay in open space. Mr. Hartle stated that it will be recorded on the deed that this property is open space. Earl Glenn asked about a conservation easement being placed on the property. Mr. Hartle stated that either Wellsville City purchases the property, or they don't. Mayor Bailey stated that it is something to consider. Laurel Maughan asked how the price per acre was determined. Mayor Bailey stated that the property was appraised by an appraiser from Orem. Mr. Egbert asked what usage was used. Mr. Hartle stated the usage that was used was best usage. Sam Winward asked if the property comes with water shares. Mayor Bailey stated yes. Wendy Egbert asked what other areas the City Council looked at. Mr. Case stated that in his opinion, they have looked at any other areas, but they want to protect the vista of Wellsville City. Ms. Egbert stated that as a mom living in a growing community, she would like to see property purchased to develop parks and sports fields. Mr. Case stated that the property east of Wellsville Dam will take care of those needs. Mr. Hartle stated that this issue has been discussed with City Attorney Bruce Jorgensen. Open space property and recreation property are 2 separate issues, and they need to be kept separate. Carl Leatham stated that in 2007, the City Council and Parks & Recreation Committee held a workshop. They invited several people from the community. They split into groups, and every group wanted to see this property stay as open space in Wellsville City. Mr. Case stated that the code states that the fee in lieu of open space monies can't be used for development, only for the purchase of property. Mayor Bailey stated that keep in mind that the more subdivisions that are developed in Wellsville City, the more fee in lieu of money. Mr. Case stated that he supports this project 100% and can't see any better property to purchase with this money. Mr. Harrison stated that he has struggled with this issue since day 1. If the citizens of Wellsville City look at this property as a valuable piece of property, than he agrees with the rest of the City Council to purchase the property. Mr. Erikson stated that he struggles with this decision because it is a lot of money, and that the property would probably remain in open space because it is in a floodplain. Mayor Bailey stated that he hears all the time that it is up to the land owner to preserve open space. Mayor Bailey stated that it is not up to Tom Maughan to preserve the property. Mayor Bailey stated that \$18,000 per acre is drop in the bucket compared to the price of land. Mayor Bailey stated that no one should expect this property to be given to Wellsville City. Someone should have to pay for the property.

Laurel Maughan stated that she wished Wellsville City would have purchased the property around the west side of Wellsville Dam. Mayor Bailey stated that opportunities that are passed up may never come around again. Gary Bates stated that there will be other opportunities to purchase more property. Jeremie Poppleton stated that Wellsville City is trying to preserve the corridor to Wellsville City, and asked if property from Clark Maughan and Margaret Maughan will be purchased. Mr. Hartle stated that there is no reason to purchase Clark Maughan's property if Wellsville City is not going to purchase Tom Maughan's property. Arlyn Brenchley stated that there will be maintenance required on this property. Mr. Brenchley stated that the area has been flooded, but if the Little Bear River was cleaned out, it would solve a lot of the problems. Mr. Brenchley stated that the property is not worthless by any means. Adam Brandt asked if the property would be open for public use. Mayor Bailey stated that the property would be rented out, and it would be up to the individual that rents the property if it is opened for public use. Laurel Maughan asked after 10 years of the property on the east side being rented, would the individual rent from the City. Mayor Bailey stated yes. Tom Maughan stated that he is selling the property so that it stays as open space. John Spence stated that a majority of the Planning Commission is in attendance. Mr. Spence understands that the City Council is trying to protect the vistas of Wellsville City. Mr. Spence stated that the Planning Commission has never heard once that this issue was being discussed. Carl Leatham stated that the discussion was held in an executive session, and by law, the issue is not to be discussed outside of executive session.

At 8:44 p.m., Mayor Thomas G. Bailey closed the public hearing. Gary Bates stated that he appreciated all of the citizens for attending this meeting. Ron Case stated that he appreciated all of the comments on both sides of this issue.

After discussion, Ron Case made a motion, seconded by Gary Bates, to approve the purchase of 15.85 acres from Tom Maughan, a City Employee, of property to remain in open space. Said property is located on both sides of Main Street at approximately 550 East Main. An approximate down payment of \$172,000.00 with approximately \$124,000.00 being financed at 3 ½% interest for 5 to 10 years. The City Council authorizes Mayor Thomas G. Bailey and City Manager Don Hartle to sign any and all necessary documents.

YEA 4

Gary Bates
Ron Case
Colin Harrison
Carl Leatham

NAY 0

Department Reports:
None

City Manager/Recorder Report:
None

At 8:57 p.m., Colin Harrison made a motion, seconded by Gary Bates, to adjourn the meeting.

YEA 4

Gary Bates
Ron Case
Colin Harrison
Carl Leatham

NAY 0

Thomas G. Bailey
Mayor

Don Hartle
City Manager/Recorder