

SMITHFIELD CITY COUNCIL

FEBRUARY 25, 2016

The Smithfield City Council met in a specially scheduled workshop meeting at 96 South Main Street, Smithfield, Utah on Thursday, February 25, 2016. The meeting began at 6:00 P.M. and Mayor Darrell G. Simmons was in the chair.

The following council members were in attendance: Deon Hunsaker, Barbara Kent, Kris Monson, Jeff Barnes and Curtis Wall.

City Manager Craig Giles, City Engineer Clay Bodily, and City Recorder Justin Lewis were also in attendance.

VISITORS: Jeffry Gittins, Bob Fotheringham, Pat Draper, Dave Schow, Dex Schow, Tate Schow, Payton Busenbark, Chris C. Chambers, Scott Archibald

DISCUSSION WITH BOB FOTHERINGHAM ON WATER RIGHTS, IRRIGATION SHARES, A WATER CONSERVANCY DISTRICT AND OTHER WATER RELATED TOPICS.

Bob Fotheringham introduced himself and gave a brief history of his background. Bob worked for the Utah Division of Water Rights as a Regional Engineer for 29 years. After retiring from the State of Utah, Bob has worked for Cache County Corporation as the Water Manager for the last 8 years.

Jeff asked Bob who he reports to at the county? Bob stated his boss is Cache County Executive Craig Butters.

Deon asked for some clarification or guidance on how the city should determine how much water a commercial business or apartment complex needs to bring/dedicate to the city as the State of Utah formula is very complex. Bob stated the State of Utah does not have a formula but the Utah Division of Drinking Water would have something. The developer should be required to have their engineer determine the amount of water that will be used and the city engineer can review and agree or come up with his/her own number. The fee can then be determined at that point.

Deon mentioned the current city ordinance calls for a developer to bring one acre foot of water for commercial use but some commercial ventures will use more and some will use less. The city needs help in determining how much water the commercial project will use. Bob stated each business will vary but the new business and their engineer will be able to determine how much water they will use at the new location.

Deon stated he was not sure a developer would know how much water they would use for a fourplex or commercial project. Bob replied the Utah Division of Drinking Water would have a formula or be able to help the project engineer or city engineer determine the amount of water that would be used.

Clay mentioned per current city ordinance a commercial developer pays the same fee as a residential user if they use a ¾” meter like a normal home. If the commercial user needs a larger sized meter then the size is determined and the fee is based off the change in meter size. The water dedication amount paid to the city is then determined at that point.

Jeff asked for clarification on what the ordinance specifically states about the commercial water dedication fee. Clay remarked the assessment is based off of a ¾” meter and the dedication is a higher amount if a larger meter size is required.

Jeff asked, for example, how the fee for the Hansen-Keller Subdivision that was recently approved for the four new homes would be determined. Clay stated each unit pays a separate fee for their ¾” meter. The fee is \$2,000 or 1/3 of a water share or equivalent water right.

Kris asked for clarification on the difference between a water right and water share. Bob stated a water share is the interest owned in a company by the shareholder. The company is the owner of the water right and the shareholder owns a portion of the water right based on the number of shares they have in the system. A water right is the owner who has ability to use the water. The water right owner has the ability to use, sale or trade the right to others.

Barbara asked if the state has the ability to allocate the shares? Bob stated that is correct as the State Engineer will look at water rights in an area and determine if they can be allocated. There are diligence claims as well as groundwater claims. A water right owner has a document from the state showing the rights they have in a specific area. Rights are based on priority as well.

Jeff mentioned the city has been accepting Smithfield Irrigation Company shares for water dedication purposes for a number of years and has accumulated quite a number of shares. Clay mentioned the city has shares in the system but holds more shares in the Cache Highline Canal Company than in the Smithfield Irrigation Company. The shares owned by the city are used in the exchange agreement with the Smithfield Irrigation Company.

Bob informed the council the State of Utah has focused on making sure the water rights show beneficial use or they can be forfeited. Prior to 2008 if a water right was acquired the owner had to show a 40 year written plan of the intent to use the water right. Shares acquired after 2008 need to file a change application and can be subject to forfeiture if they are not used. The state is currently monitoring beneficial use and will continue to in the future as well. If the shares are forfeited they are then lost forever.

Mayor Simmons asked if the state has made a common practice of taking shares for lack of beneficial use? Bob mentioned it is not common practice for the state to take the shares but beneficial use is being monitored more closely and new laws are being passed in this regard. People or entities cannot just hold their water right they must use it.

Barbara asked if the exchange agreement the city has for culinary water is considered beneficial use? Bob stated that would be considered beneficial use. The city needs to show where the water is being used and an exchange agreement needs to be filed. The beneficial use needs to be

documented and shown. If a method to document the beneficial use of the shares is not done the shares can lapse.

Barbara asked if a city can require a developer to install and utilize a secondary water system? Bob replied that he does not know state law on this question but his opinion was that as part of the subdivision approval process requiring the use of the secondary water should be required by the city. Clay mentioned the water dedication fee is reduced from \$2,000 per unit down to \$500 per unit if a secondary water system is installed during the completion of the project.

Barbara asked if the city can require at least the secondary water infrastructure to be installed? Scott Archibald mentioned Hyde Park City requires the installation of secondary water systems below the canal for all new developments.

Barbara stated she wants the city to require secondary water infrastructure be installed on new projects. Bob stated that would have to be a city requirement as it is not a state requirement. Barbara mentioned it could only be required in certain areas of the city as some areas do not have access to the secondary water system. Bob agreed but mentioned the majority of new subdivisions are building in agricultural areas where secondary water has been utilized or is still being utilized.

Barbara expressed concern that secondary water systems had not been mandatory on the west side of town where the system is available.

Deon mentioned that a new residence needs to bring in ½ acre foot of water for indoor use. The city could consider changing the ordinance to allow the builder to only bring in a ½ acre foot rather than one acre foot for the water dedication if they have access to the secondary water system and use it. The city could still get the water they need for indoor use and the property owner would be able to use the secondary water system. Barbara agreed and mentioned the current ordinance is a work in progress and needs to be changed so the use of the secondary water system is more efficient and a better use of water resources.

Pat Draper, President of the Smithfield Irrigation Company, informed the council the irrigation board is not opposed to the city accepting the shares in the irrigation company if they are going to be utilized. The board is concerned if the shares are not used they will be forfeited to the state and that would hurt the irrigation company and the city. Forrester Acres is a good place for the shares to be utilized in the areas that are currently being irrigated with culinary water. Clay mentioned the city staff is working on a plan to water all of the grounds with irrigation water.

Mayor Simmons asked Clay if the city had done an audit or review of areas that could be watered with irrigation water that are currently not being watered that way? Clay remarked that J-U-B Engineers had done the last water model for the city and is in the process of doing a new water model that would show the areas changes could be made.

Barbara mentioned there are areas of the city the secondary water system does not go to and would it be possible to expand into these areas? Pat mentioned the original service area was a gravity flow system. There are areas that could be expanded into but the cost would be very

high. Capacity would need to be reviewed as well. The capacity of the system might now allow for expansion in certain areas.

Curtis mentioned some irrigation water system users ran out of irrigation water last year half way through the summer and an expansion of the system could possibly lead to others running out as well. Curtis mentioned Dave Wilde and Mark Andraesen as two people he was aware of that had an irrigation system but it went dry. Pat responded that he did not think Dave or Mark were on the Smithfield Irrigation Company system and they are on another irrigation system.

Deon mentioned the city is not allowed per state law to sell the water shares they acquire. Bob concurred.

Deon asked if the shares owned by the city could be traded from one source to another? Bob mentioned it is allowed if they are of equal value.

Kris asked Bob what other local communities are doing with the irrigation water shares they own? Bob stated they are doing what Smithfield is doing and have exchange agreements in place.

Bob informed the council the old water model no longer works and there is a new way of dealing with water. The old water model was based off of the concept if someone needs more water in this area they just drill a new well. The State of Utah will no longer allow this to happen because they say it affects the Bear River. The new water model calls for entities to get creative in managing their water rights. A plan needs to be developed for the entities that acquire the water shares. A strategy is needed for the future and is why a local water conservation district is being considered. The old model of drilling a well won't work any longer. All communities in Cache Valley will run out of water rights and shares. The area of focus will become the agricultural to urban water use conversion. Drilling wells is no longer the answer. Groundwater will dry up in the future. Reservoir and tank structures will be the future. The Wasatch Front is after all the water they can get. They have a smart plan and are working on current use and future development. They are taking water from the Bear River as well as Lake Powell. The area will continue to grow and they have to keep acquiring water rights for it to happen. Local entities need to make sure their rights are properly appropriated.

Mayor Simmons asked Bob to update the council on any changes or updates on the proposed water conservancy district since the last time he visited with the council. The county is interested in forming a district and has put together the Bridgerland Working Group to come up with the bylaws for the proposed district. The district would be created to meet the needs of the residents. Former Smithfield City Manager Jim Gass is a member of the working group. There are 12 members in the group. They are tasked with creating the guiding principles of the district for the valley. The group will meet bi-weekly for the next three months and so far they have had two meetings. One important part of the bylaws is to make sure the district does not interfere with the local cities development of water. The district should not be a protester when a local city wants to develop water. This needs to be one of the guiding principles. The district should not be another layer of government but they are a governmental agency. The purpose of the district is to make sure the prosperity of the people living in Cache Valley continues to grow.

The district would be its own entity. The district would create a strategy for water development for the entire valley. A plan is needed for the next 50 to 60 years. There are two new high schools being built and they are being built because of growth. Sky View and Mountain Crest High School have been outgrown and can no longer meet demand.

Kris mentioned that Sky View opened in 1965. Bob mentioned he did not have the exact numbers but he estimated the valley had doubled in size since 1965 and is projected to double again in the next 50 years.

Barbara asked if each municipality is its own water manager and who would be if a district is formed? Bob stated each city will still manage their water rights even if they are part of a district.

Barbara asked what happens if a new reservoir is needed? Bob informed the council the Bear River Development Act says the county must have a district to build a reservoir and right now there is not a district so it cannot happen.

Bob mentioned groundwater is eventually going to run out and municipalities will have to consider other sources. Right now it is harder to get a water right change application granted than it has been in the past. The state does not want to approve change applications. Growth is inevitable and needs to be planned for.

Bob informed the council the district would be approved or denied by a vote of the people. Water does not have to be developed but it will be harder in the future for a municipality to develop water than it will be for a district.

Kris asked Pat what the feel of the irrigation board is on the creation of the district? Pat stated generally the board is in favor of the district being created.

Mayor Simmons mentioned if the district is not created the local feeling is the local water rights will be transferred to the Salt Lake City area. Bob responded the rights could be transferred south to the Wasatch Front but the bottom line locally should be prosperity. The vast majority of the local growth is from babies not families moving in from other states or areas.

Mayor Simmons mentioned in the meetings he has attended the fear is the water shares are open game to be taken elsewhere if a district is not created as the Salt Lake area is desperate for water. Bob mentioned the state will put the shares in areas of need but the local area needs to be more concerned about having a strategy for the future and right now there is not a strategy for water development in Cache Valley.

Jeff asked why there is not already a local district when there are districts basically everywhere else in the state but Cache Valley? Bob mentioned the local mentality has always been a district is not needed since a new well can be drilled. If water is needed just drill another well has been the thought process of the past but it is no longer allowed because of the effect on the Bear River. The sources of supply for the local area are gone. Water in the ground has always been considered a reservoir that could be utilized with a new well but that is no longer the case.

People don't realize the value or availability of water until it is gone. People don't like districts because they cost money to run. There is a cost to developing a water source. The valley is going to continue to grow and water needs to be developed. Washington County charges a substantial fee for new growth. The Washington County area used to have a tax basis of around 120 million dollars and now the tax base is 5.12 billion dollars. As the tax base grows water needs to be developed and there is a cost to develop water sources.

Deon mentioned the two concerns he hears from local residents about the proposed district is another layer of government being added without appropriate representation and the cost to establish the district. Bob mentioned state law has changed and taxation cannot happen without representation. The majority of the board members for the district would have to be elected officials from the valley. The structure of the board is still being discussed. There is the possibility a couple of the board members won't be elected officials. The district would have the ability to levy two mils which equates to around \$2.00 per household per month. The district can levy up to three mils if they are bonding for a project. Residents of Cache Valley struggle with the concept of paying for and planning for future water development. In the past there has not been a need since wells could be drilled; now that is not possible or very unlikely. The county has the ability to levy more than two mils if they overspend but the district cannot. The district has to be fiscally sound. There is not a dedicated source of water funding right now.

Barbara asked if the municipal water rates would increase because of the district? Bob mentioned the focus of the district is for planning. The district is there to help manage water. The city can still develop the water as it is currently doing. A concern by some people is the district will automatically oppose development of water by any local community. The district should not do this and it should be written in the bylaws. The economy is growing and growth is happening but no planning is being done. The district can help to balance supply and demand. When irrigation water use decreases culinary water use will increase and the district can help plan for that change.

Barbara asked Deon if people were saying they did not want to pay for water development and planning? Deon remarked people are worried about paying another fee to the government.

Bob mentioned the local district would not be like the Weber Basin district but would be like the Bear River Water Conservancy District. The district would look at the needs of the valley. The money generated by the district would help to plan and develop water in the future. Several districts down south have millions of dollars in the bank but that would not be the purpose of this district.

Bob cautioned the council to be cautious about accepting water rights until the city has a good plan of how to put them to beneficial use. Shares should not just be acquired because the ordinance requires them as part of the development process. The shares must be managed for beneficial use or they will be lost.

Deon mentioned he had read an article in the Deseret News that shows the Great Salt Lake has shrunk 47% in size since the lake level started to be documented. A dam is being proposed on the Bear River that would shrink the lake even more. Bob felt climate is a big factor in the Great

Salt Lake water level going up and down as back in the 1980's the lake was so full it had to be pumped. Right now it is in a down cycle.

Mayor Simmons mentioned on the last water rights map he had seen showed Smithfield was in the best shape in the valley for the next 50 years in regards to water rights. Residents see the same map and feel a district is not needed since Smithfield is in good shape for so many more years. Bob mentioned the map is just a projection and the council must have a concern or they would not be holding this meeting.

Mayor Simmons mentioned local residents are concerned the city might have to share their rights with other communities if part of a district. Bob said he had heard the same concern and that local municipalities are not good at sharing in most cases based on past history.

Mayor Simmons stated he also hears people think the city has been very diligent to get in good shape for the next 50 years and the district could possibly change that if created. Bob responded the district would not take away any existing rights. The district would help the city plan for future growth and water development. The city has water rights currently and they need to be managed properly. The map looks good at this time but is just a projection and many factors can change in the next few decades.

Deon asked if a vote would be held in November on the creation of the district? Bob stated the intent is to have the creation of the district on the November ballot.

Mayor Simmons thanked Bob for coming before the council to discussion questions and make comments.

****Kris made a motion to adjourn at 7:01 P.M.****

SMITHFIELD CITY CORPORATION

Darrell G. Simmons, Mayor

ATTEST:

Justin B. Lewis, City Recorder

SMITHFIELD CITY CORPORATION
96 South Main
Smithfield, Utah 84335

AGENDA

Public Notice is given that the Smithfield City Council will meet in a specially scheduled workshop meeting at 96 South Main, Smithfield, Utah on Thursday, **February 25, 2016**. The meeting will begin at 6:00 P.M.

1. Discussion with Bob Fotheringham on water rights, irrigation shares, a water conservancy district and other water related topics.

Adjournment

Items on the agenda may be considered earlier than shown on the agenda.

In accordance with the Americans with Disabilities Act, individuals needed special accommodation for this meeting should contact the City Recorder at (435) 792-7990, at least (3) days before the date of this meeting.

Prepared, posted in the City Office and library, emailed to each Council Member, emailed to the Herald Journal, Smithfield Sun, and forwarded to be posted on the City Web Site on 02/23/16, and the Utah Public Meeting Notice website.