

Murray City Municipal Council Chambers Murray City, Utah

The Municipal Council of Murray City, Utah, met on Tuesday, the 24th day of June, 2014 at 6:30 p.m., for a meeting held in the Murray City Council Chambers, 5025 South State Street, Murray, Utah.

Roll Call consisted of the following:

Brett Hales,	Council Chair – Conducted
Jim Brass,	Council Member
Blair Camp,	Council Member
Diane Turner,	Council Member
Dave Nicponski,	Council Member

Others who attended:

Ted Eyre,	Mayor
Jan Wells,	Chief Administrative Officer
Brent Davidson,	Deputy City Recorder
Frank Nakamura,	City Attorney
Janet Lopez,	Council Administrator
Kellie Challburg,	Council Office
Janet Towers,	Executive Assistant to the Mayor
Mike Dykman,	Battalion Chief
Doug Hill,	Public Services Director
Blaine Haacke,	Power Department General Manager
Lynn Potter,	Storm Water Supervisor
Marilyn Potter,	DEA
Robert White,	Network Administrator
Ryan Madsen,	Senior IS Technician
Citizens	

1. **Pledge of Allegiance**

Pledge of Allegiance – Mike Fernandez

Mr. Hales thanked everyone for being at this meeting. He reminded everyone that there had been several focus groups and a Public Hearing that was held on June 5, 2014 over at the Doty Education Center at the Intermountain Medical Center. Approximately 370 people came to that meeting. It was great and the Council appreciates all those that attended.

There have been focus groups with citizens, business owners and employee residents. There was also a survey done at the June 5th meeting as well as an online survey which had a total response of 1,079. There were 300 “yes” votes to go forward with the Macquarie proposal of Phase 2. There were 632 “no” votes and 114 undecided.

Mr. Hales said the Councilmembers decisions tonight have been made completely independent of outside influences and are based solely on the Councilmembers own study and input from Murray citizens. That is the Council’s goal, to listen to the Murray citizens.

Mr. Hales remembers hearing someone once say to him that he was the person who was supposed to make a certain decision. Mr. Hales’ response was that is incorrect. The citizens voted him in to represent them. He reiterated that the Council’s goal is to listen to the citizens and then respond how they have been asked to.

2. **New Business**

2.1 Consider a Resolution directing the City’s representatives to the Board of Directors of the Utah Telecommunication Open Infrastructure Agency (“UTOPIA”) and the Utah Infrastructure Agency (“UIA”) to vote that UTOPIA and UIA continue to Milestone 2 under the Predevelopment Agreement with Macquarie Capital.

OR

2.2 Consider a Resolution directing the City’s representatives to the Board of Directors of the Utah Telecommunication Open Infrastructure Agency (“UTOPIA”) and the Utah Infrastructure Agency (“UIA”) to vote that UTOPIA and UIA not continue to Milestone 2 under the Predevelopment Agreement with Macquarie Capital.

Mr. Hales stated this is not a Public Hearing and it is not open for public comment. That was done at the June 5, 2014 meeting.

Mr. Nakamura stated he wanted to clarify that the formal name for Macquarie Capital is Macquarie Infrastructure Developments LLC. That is who the

agreement is with; between UTOPIA, UIA, and Macquarie Infrastructure Developments LLC.

Mr. Hales said they wanted to add to the Resolution to make sure it is very clear that based on the material provided in Milestone 1, there is no need for the agencies to proceed to Milestone 2 under the PDA. He added that an “aye” vote is saying that you do not want to proceed forward with the Macquarie. He asked Mr. Nakamura if that was correct.

Mr. Nakamura responded that it depends on which directive the Council takes.

Mr. Hales said he would open this up for discussion amongst the Council.

Mr. Camp said he knows they are not here as a Council tonight to debate whether fiber optic is good or not. They know it is good and fast. They are also not here to debate on whether Macquarie is a good company. What they are here to vote on is whether or not this proposed agreement is in the best interest of the City and if it is the right thing to do.

He continued saying no matter what the Council does tonight they are going to be called “crazy” or worse because there are those that have already said, “You’d be an idiot if you did not go forward with this” and there are those that have said, “You’d be an idiot if you do.” It has been interesting to see how passionate both sides of this issue have been, right down to the websites that would have been published by gofiberutah.org as well as unopia.org. He thinks both of them have done their share of distorting facts and publishing deceitful information and some of the information that citizens received in the mail was very deceitful.

Mr. Camp said that aside, when he looked over this; and he has been studying this very closely for the last two months; he thinks what it really boils down to for him and for his constituents is that this is not a proven business model. In the U.S. there are few communities where public networks have been successful in an open structure. In fact, there is no experience in the United States that he knows of, for a utility fee on an open access network.

Mr. Camp stated his biggest concern is this 30 year commitment that we would be locked into as a city. Call it what you want. Some will say that it is not debt, it is an obligation. He originally thought he was not smart enough to know the difference, but he was told by an accountant that he was. A debt is an obligation and an obligation is a debt. We would be locked in for 30 years on this. He has heard the analogy that it is the same thing as garbage collection; it is not the same thing as garbage collection. We would never sign a 30 year contract for a provider for garbage collection. Secondly, we do not charge businesses, PUDs, apartment houses and condominiums for garbage collection. They pick their own providers and pay for it themselves, directly to the provider. So it is really not the same.

Mr. Camp said he does not believe it is in the best interest of the City to risk another 5.5 to 6 million dollars a year in these collection fees because the City is responsible to collect those and to remit them to Macquarie. We have risk; significant risk in his opinion. He understands the ISPs enthusiasm for this proposal, but they can come and go on the network if they would like. We are locked in for 30 years if we go forward.

Mr. Camp said he knows that this before them tonight is to move forward to Milestone 2 and not necessarily lock the City into the contract. However, Milestone 2 is an additional, throughout the UTOPIA cities, a substantial amount of money; close to one million dollars more to get additional information. With the information that Mr. Camp has studied and that the Council has looked at he believes it is in the City's best interest to not move forward. The sooner we get out of this agreement; we can look at other options. Right now if we go forward, we would be locked in to this agreement throughout Milestone 2 with the inability to talk to anyone else about other options. Mr. Camp said he is not comfortable with that either.

Mr. Camp said under this proposal, Macquarie is isolated from the customers, from the tax payers and from the ISPs. As he mentioned earlier, the City would be responsible for collection and the private investors are guaranteed a 13% return while the cities are guaranteed a low return on the investment. He thinks that is a real risk for the City.

He added that throughout this process there has been a lot of reference and questions about the Provo deal. Although it is very different, Mr. Camp thinks it is worth pointing out that before Google came in Provo sold their network, iProvo, to a private provider, Broadweave and they later merged with Veracity. They were unable to make the bond payments and defaulted the network back to Provo because they were not able to get the revenues to make the payments. There is a history of this in this municipal broadband; it is just one of the lessons we have learned from the past.

Mr. Camp said he has a number of concerns about this proposal that he did not bring up tonight but for him, the reasons for not moving to Milestone 2 are more compelling than those to move forward. It is not about the ability to stream movies faster; it is about the risk, the 30 year commitment, and the imposition of a new fee to cover that new debt.

Mr. Camp said he believes the sooner the City terminates this relationship, the sooner we can look at other options and opportunities. He thinks that represents the view of the majority of the citizens in his district.

Mr. Hales told Mayor Eyre he wanted him to be included in this and to speak up anytime he wanted to.

Ms. Turner said first she would like to thank everyone who helped educate her and this community regarding the UTOPIA/Macquarie proposal, Specifically, Janet Lopez, Council Administrator as she has been incredible. She also thanked Mayor Eyre and his staff, and the Murray City Department Directors and their staffs. They are part of the reason that Murray is such a great city.

Ms. Turner said the other part is the Murray citizens. Since they began this education, she has received over 200 emails from her constituents and other Murray citizens. Most of them were thoughtful and concerned which is what makes Murray such a great community; we care very deeply.

Ms. Turner stated after all the input she has received about 80% was not in favor of this agreement and 20% was favorable, give or take 10%. With the research she has done, she truly believes wide-band internet access is important for the growth of Murray. However, she said she has great concerns regarding this proposal and whether it is the right one for Murray and for her district.

Ms. Turner added she shares many of the concerns that Mr. Camp just spoke about.

Mr. Brass said he was here 10 years ago when the City started down this path. He expressed his concerns about it then. The biggest issue he had then was that the model did not cover the cost of connecting a home at the time on their spreadsheets. He told the director at that time that if he proves him wrong, he would be more than happy to vote for this. It was the third month of his very first term on the Council and he had a lot of good people saying to vote for this.

Mr. Brass said you can look at a spreadsheet and have 5,000 cells and it is really neat. It is like the old Bill Cosby thing with the radio that had 200 knobs but the only two that worked were on/off/volume and the channel selector. In this spreadsheet the only two cells that mattered were what did it cost to hookup a home and how much money did they make on the home and they did not make enough money to pay for the cost of the hookup.

He continued saying here we are 10 years later and the number that keeps getting lost is the \$350,000,000 that has been spent and he is reluctant to add to that number. He is on UTOPIA; he uses it for his business. It is blazingly fast. He transfers large files and he gets that people need it for that. This is not a vote against UTOPIA; it is simply saying is this the best way to proceed to salvage this network.

Mr. Brass said it is \$20 a month on every home and that is just homes. It is \$40 on businesses and \$10 on apartments. If any of those are vacant and their owners choose not to pay then the City gets to pay. Using very conservative numbers that the Mayor was kind enough to put together, that could rise as high as another \$300,000 to \$400,000 against the City's General Fund at a time when we are still

struggling to pave roads. That bothers Mr. Brass a lot. It is the equivalent of a substantial property tax increase as a fee.

Mr. Brass said he goes to Rite-Aid a lot to get prescriptions. He stands and watches people decide if they can afford their prescriptions this month or not. There are a lot of people in this City that make the decision every day on whether they pay for their medication or eat and he does not want to put a \$20 fee on them either. He wants to find a solution to this because he likes the network and would rather not give it up.

For him, this is not about UTOPIA. It is simply about did we get enough in Milestone 1 to make this look good and that will be how he will vote tonight.

Mr. Nicponski said he thinks it was a mistake for the public sector to compete with the private sector years ago. It is a bigger mistake to pursue that today. He thinks it has proven itself to have been a mistake and he would definitely vote against pursuing the UTOPIA matter.

Mr. Hales said when the Council very first started getting into this five or six months ago the first thing he heard was a fee upon each household. He started thinking about all the people as some of the Councilmembers have said that \$240 per year that they will have a fee whether they use the fiber optic or not. He said he has never been able to stomach that. He reiterated he has never been able to stomach a \$240 fee a year whether you use it or not; it just has never, ever made sense.

He continued saying Macquarie is an investment group that have come in. It just has never jived. Fiber optic, he does not have it, but Mr. Brass has it and speaks very highly of it. However, just plain and simple, he said he has never been able to stomach it.

Mr. Hales added that if people want it then they should be able to have it and choose it. But to force it upon everyone has never felt right and that never changed from day one.

Mayor Eyre said he is sure the citizens appreciate, even though they might not know the exact magnitude of it, but he knows they appreciate the countless hours that this City Council has put in on this. He said he does not have to flatter any of them but for the last four months they have spent probably more time on this than most anyone can imagine The Department Heads and senior staff have done so also. They have taken this information extremely seriously. They have studied it and studied it and have had meeting after meeting.

Even if you do not agree with the decision of the Council tonight, you cannot disagree with the effort that they have put forth in this decision. He knows it is sincere and based honestly on what they feel in their heart and has not been

influenced by other outside sources.

Mayor Eyre reiterated that if the Council were to vote to go forward with the Macquarie proposal that would not mean that we are locked into the Macquarie deal. That would simply mean that we have agreed to move to the next Milestone and to discover more information. It does not mean that we would be a Macquarie city.

If the Council were to vote against this; it does not mean that UTOPIA will go away. This vote is simply on whether we should move forward or whether we should go back to where we were at the beginning as far as Murray is concerned, to try to keep UTOPIA viable and a wonderful option to those 2,000 plus citizens and businesses that use it in our City. He reiterated he just wanted to make it perfectly clear on what the vote was about.

Mayor Eyre said he has been so impressed with this City and the way they handle themselves in such a manner of decorum. He said if any of the citizens had the opportunity to be at the Doty Education Center on June 5, 2014 they saw 370 plus people that did not cheer, boo, clap or anything. They treated each other with total respect regardless of whether they agreed with that person's position or not. That is uncommon. It is uncommon for a lot of cities, but it is not uncommon for Murray. Murray has a sense of unity, a sense of pride in the community, and a sense of dignity among themselves that is uncommon in other places.

Mayor Eyre congratulated the Council for all they have done and congratulated the City and the citizens of Murray for the way they have written emails, letters and made telephone calls and the respect they showed to the Mayor, staff, the City Council and fellow citizens. Regardless of the decision, he feels very confident that this City will be united behind one thing and that is to find the best and proper solution to this issue.

Mr. Hales asked for a motion.

Mr. Brass made a motion to approve the Resolution directing the City's representatives to the Board of Directors of the Utah Telecommunication Open Infrastructure Agency ("UTOPIA") and the Utah Infrastructure Agency ("UIA") to vote that UTOPIA and UIA not continue to Milestone 2 under the Predevelopment Agreement with Macquarie Capital.

Mr. Nicponski seconded the motion.

Mr. Nakamura stated that based on the conversation he wants to make sure it is clarified that, as the Mayor said, we are basing this upon the material terms that we found in Milestone 1 and that we are determining there is no need to proceed to Milestone 2. That is what we are deciding tonight. It is not on the Macquarie proposal itself, but based upon the terms that we know, there is no need to

proceed to Milestone 2.

Mr. Nicponski thanked the citizens for their input. He said it has renewed his faith in his constituents. He has had some good phone calls and email conversations.

Mr. Hales stated that it was great to get to know the citizens better through all of his texts and phone calls. He said citizens were intense with what they felt but they were all courteous. It was amazing and he was very impressed. He received about 200 and it was impressive. He also thanked the citizens.

Ms. Turner thanked the citizens for being involved in their City's government and for being here.

Mr. Camp reiterated that an "aye" vote would be to not move forward.

Mr. Hales and Mr. Nakamura both stated that was correct.

Call vote recorded by Brent Davidson

 A Mr. Nicponski
 A Mr. Camp
 A Mr. Brass
 A Ms. Turner
 A Mr. Hales

Motion passed 5-0

3. Mayor

3.1 Report

No report was given.

3.2 Questions for the Mayor

No questions for the Mayor.

4. Adjournment