

Murray City Municipal Council Chambers Murray City, Utah

The Municipal Council of Murray City, Utah, met on Tuesday, the 7th day of February, 2017 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:

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

Others who attended:

Ted Eyre,	Mayor
Jennifer Kennedy,	City Recorder
Frank Nakamura,	City Attorney
Janet Lopez,	Council Administrator
Janet Towers,	Executive Assistant to the Mayor
Craig Burnett,	Police Chief
Gil Rodriguez,	Fire Chief
Doug Hill,	Public Services Director
Justin Zollinger,	Finance Director
Tim Tingey,	Administrative and Development Services Director
Citizens	

5. Opening Ceremonies

5.1 Pledge of Allegiance – Scott Howell

5.2 Approval of Minutes

5.2.1 Council Meeting – January 24, 2017

Mr. Camp made a motion to approve the minutes

Mr. Brass seconded the motion

Voice vote taken, all “ayes.”

5.3 Special Recognition

5.3.1 None scheduled.

6. Citizen Comments (Comments are limited to 3 minutes unless otherwise approved by the Council.)

No citizen comments were given.

7. Consent Agenda

Mr. Nicponski asked that all items be taken together; no objections were made.

7.1 Consider confirmation of the Mayor’s appointment of Michael Wall to the Murray Arts Advisory Board in an At-Large position for a two-year term to expire January 15, 2019.

7.2 Consider confirmation of the Mayor’s appointment of Connie Gardner to the Murray Heritage Center Advisory Board in at At-Large position to complete the remainder of a three-year term to expire February 1, 2018.

7.3 Consider confirmation of the Mayor’s appointment of Sunshine Szedeli to the Murray Parks and Recreation Advisory Board in an At-Large position for a three-year term to expire January 17, 2020.

7.4 Consider confirmation of the Mayor’s appointment of Lisa Milkavich to the Murray Planning & Zoning Commission representing District 3 to complete the remainder of a three-year term to expire January 15, 2019.

Mr. Hales made a motion to approve the Consent Agenda

Mr. Brass seconded the motion

Call vote recorded by Jennifer Kennedy

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

Motion passed 5-0

8. Public Hearings

8.1 None scheduled.

9. Unfinished Business

9.1 None scheduled.

10. New Business

10.1 Consider a resolution indicating the City's intent to adjust a boundary that is common with the City and Midvale City resulting in a proposed area of the City being annexed into Midvale City.

Staff presentation: Doug Hill, Public Services Director

Mr. Hill said the City was recently contacted by Garbett Homes. They are interested in constructing single-family homes on about 27 ½ acres on the very south end of Murray City at approximately Winchester Street and 700 West. Because of the grade of the property, Garbett Homes would like to have the sewer and storm water drain into the Midvale sewer and storm drain system, thus avoiding having to have a lift station installed to pump the water uphill. They have requested that the City consider a boundary adjustment with Midvale City which, if approved, would move this property that is currently within Murray City's boundaries and place it within the Midvale City boundaries. Therefore, all services would then be provided by those organizations that provide services to Midvale City.

The vote tonight is not whether or not to approve the boundary adjustment, it is to approve a resolution of intent to study whether or not a boundary adjustment should be undertaken. The resolution also sets the Public Hearing date of April 18, 2017 at which time a final decision would be made by the City Council on the boundary adjustment.

Between now and April 18th will be a study period where the Council can receive comments from various city departments to understand the impacts of the boundary adjustment. The plan is to come back before the Council on April 18, 2017 to present a formal resolution to do the boundary adjustment. All of this is

contingent upon Midvale City approving their resolution of intent and a boundary adjustment as well.

Frank Nakamura, City Attorney, said this resolution also requires the Planning and Zoning Commission to look at the proposal, receive input, and provide a recommendation to the Council. He reiterated this is a resolution of intent; it is not a decision.

Mr. Brass asked if the public will have a chance to comment at the Planning and Zoning meeting.

Mr. Nakamura replied yes. The public will have the opportunity to file written protests with the City Recorder, the opportunity to present information at the next regularly scheduled Planning and Zoning Commission meeting, and then at the April 18, 2017 Public Hearing.

Mr. Camp asked if there was a vote not to approve the resolution tonight, then would that end the discussion.

Mr. Nakamura stated that was correct.

Ms. Turner made a motion to approve the resolution
Mr. Camp seconded the motion

Call vote recorded by Jennifer Kennedy

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

Motion passed 5-0

- 10.2 Consider a resolution authorizing and approving proceedings in eminent domain as necessary.

Staff presentation: Tim Tingey, Administrative and Development Services Director

Mr. Tingey said the Council will be considering a resolution authorizing approval of proceeding forward with eminent domain. The Council has been given copies of the offer letters that were sent to the property owners, letters and documentation from attorneys outlining some concerns and issues, and information on eminent domain and the State of Utah Ombudsman's office. This is a difficult and challenging issue, especially for property owners and it is not something the City takes lightly.

The definition of eminent domain is the taking of personal property for public purposes. Just compensation is an important element of that. The reasoning for this is the City is embarking on a significant public project in the area west of State Street from Vine Street to 4800 South and areas that move from State Street to the Trax line. That is the area that is being talked about.

There are ten parcels among six property owners that are being contemplated tonight for eminent domain and the purpose for this is for public improvements. These improvements include the City moving forward on building a new City Hall, building roads associated with the City Hall and other projects, parking structures for public use, and open space.

We have been in the current City Hall for a long time. It is an older facility that is deteriorating and requires a lot of maintenance. The building has structural issues that have caused us concerns for many years as well as aging infrastructure. In addition, this area has been designated for redevelopment for some time.

The process the City has gone through includes determining what just compensation or fair market value for the properties would be. The City hired an appraiser, J. Phillip Cook and his associates, who went out and appraised the properties. Offer letters, appraisals and information about the Ombudsman's office were sent to the property owners. Mr. Tingey said he recognizes this is a negotiation process. Even beyond tonight, it is still a negotiation process.

The City's interest is to move forward in negotiating in good faith and working with each of the property owners to determine just compensation and try to come to an agreement with the property owners for the sale of their property for these projects.

Mr. Tingey's intent, even if the Council decides to move forward with eminent domain, is to continue to negotiate, have discussions and work towards mutually agreeable solutions in the acquisition of these properties. The decision tonight doesn't mean there will be legal proceedings that will occur; negotiations will continue.

Tonight property owners, or a designee of a property owner, will have the opportunity to comment on this; it is not a formal public hearing.

Mr. Tingey added that he has been working closely with the Attorney's Office on this.

Mr. Nakamura said with this resolution the Council will have to determine that i) the project and the uses to which the subject properties will be put to are legitimate public purposes; ii) the acquisition of the subject properties is necessary for the construction of the project and authorized by law; and iii) bidding, construction and

use of the subject properties will commence within a reasonable time.

Mr. Camp said the resolution indicates six property owners, one of them is Norman Chow. Mr. Camp said it is his understanding that Mr. Chow is no longer one of the property owners.

Mr. Tingey said these names are the names of the designated property owners on the County records.

Property owners whose property is to be acquired provided public comment to the Council.

Christina Edwards – Fraternal Order of Eagles (FOE) 1760

Ms. Edwards said FOE is an international organization. Their motto is “People Helping People”. They promote the values of liberty, truth, justice, and equality for home, country and God. Although they are not a religious organization, they promote and stand by the Ten Commandments.

The Murray FOE 1760 was founded in Murray 115 years ago. They have been in their location, 10 West 4th Avenue, since 1960. The FOE is responsible and accredited for Mother’s Day, the Social Security Act and the Fair Labor Act. The FOE just built a 25 million dollar research center for the cure of diabetes. The Murray FOE prides themselves in raising money for many charities. They work with the Max Baer Heart Fund, the Jimmy Durante Fund, the Art Ehrmann Cancer Fund, and the Lew Reed Spinal Cord Fund.

In addition, the Murray FOE is active in the community. They contribute to the Boys and Girls Club or Murray and the Murray Animal Shelter. Their State Project of the Year is the Shriners Children’s Hospital. They also raise funds for guide dogs statewide. Over the years, the Murray FOE has commended the police, fire and EMT officers in Murray with awards and grants.

They have two independent working clubs within their group. They have 120 auxiliary members and 296 active members. They also have a growing number of transfers to their lodge. They have the largest growing membership in Utah and the highest amount of charitable contributions. Their organization is intertwined in Murray City’s history and they hope that can continue into the future.

Marlies Burns – Fraternal Order of Eagles (FOE) 1760

Ms. Burns said their facility is on over a half an acre of land and has approximately 75 maintained parking stalls. They have a unique facility with multiple entrances, two social areas, one formal and one social dance floor, a full-size commercial kitchen and four full restrooms. They have a Utah liquor license and an entertainment license. They have an enclosed outdoor patio and it will be hard for them to replace their facility.

They have looked within the Murray City limits and have not been able to find a

suitable location. They have also sought the assistance of a realtor, but to no avail. Their intent is to keep their club, their heart and their home within the Murray City limits.

Terry Carlson – Fraternal Order of Eagles (FOE) 1760

Mr. Carlson said the Murray FOE isn't trying to get rich off this. They want to continue as an active member of the Murray community. They need a place to go of equitable value. They know they will have to move for the City to grow according to the development plans. They are willing to relocate but their choice is to stay in the same city limits as their charter. Their charter is Murray 1760.

The Murray FOE is a valuable member of Murray City. They are a member of the Murray City Chamber of Commerce, they pay their bills, property tax and sales tax. They have been a good neighbor and provide good charity work. They support local businesses and cater to their local members. The Murray FOE is completely debt free and it is extremely hard for a non-profit to remain debt free. Because they are anon-profit group every dime they have to use to pay off a current mortgage, to move, or attorney's fees, comes out of their charity donations.

They haven't received any formal help or assistance from city leaders, the City Council, or the Redevelopment Agency. They need a workable, fair building of market value with special considerations. They hold a DABC liquor license that limits where they can be located. They need to maintain that liquor license and their entertainment license also as those are sources they use to pay their overhead and day to day bills. They only have one steward on duty, a bartender who receives minimum wage. All other officers and members collect no wage, everything is volunteer.

The Murray FOE would like a face to face meeting with city officials to come to a workable solution for both parties. The FOE is well respected throughout the United States and Canada. They donate tens of millions of dollars every year throughout their fraternal organization. They are asking the Council to refrain from voting for eminent domain tonight and give some consideration to go back to the drawing board for proper negotiations.

Mr. Carlson said his local aerie fought for their rights to promote and to stand a Ten Commandments monolith on public property. In 2008 they took this to the U.S. Supreme Court and won their cause. To date, one Ten Commandments monolith stands on public property in the State of Utah. Murray City had a Ten Commandments monolith that was in a park that was destroyed and stolen. The FOE wishes to bring that back to the community.

Justin Matkin – Attorney for the Fraternal Order of Eagles (FOE) 1760

Mr. Matkin said he has been practicing eminent domain law in the State of Utah for 16 years. These are difficult issues and they raise legal issues that cities are often unaware of because they are unusual situations. Mr. Matkin feels it would be a good

idea for everyone to take a month or so to think about this and make sure all the rules are being followed before authorizing the use of eminent domain.

In the Utah Eminent Domain Code, there is a requirement that before a city takes a final vote on eminent domain that it has used good faith negotiations with the property owners. The negotiation that has taken place so far is the FOE has received a letter stating the amount being offered for the property. In Mr. Matkin's view, that is not a negotiation, it's an ultimatum.

The FOE received an offer of \$500,000 for their property when the declared value of the property, according to the appraiser, was \$565,000. The offer was reduced by \$65,000. Not only does the FOE get their property taken, but they also pay for the City's demolition cost.

Mr. Matkin asked if sending one letter with one appraisal that reduces the value of the property by the city's cost for demolition is a good faith negotiation. In order to relocate a small business, the city must provide relocation benefits. The Relocation Assistance Act in Utah requires all the agencies that exercise eminent domain to have a protocol they follow. If they don't have a protocol they have to follow the state rules. The state rules essentially adopt the federal rules because the state gets federal money so they have to follow the Federal Relocation Assistance Act.

The Federal Relocation Assistance Act and the state rules require that in order to relocate a small business you have to provide them a replacement property within the jurisdiction of the agency. This is a unique building. It has dance floors, entertainment facilities and a commercial kitchen. The realtor that the FOE has hired has looked in the city and there is not a property for sale that is suitable. The FOE would like the City's assistance and no assistance has been offered.

The FOE is willing to move. They are not trying to stand in the way of the City's progress, but it has to be done fairly. This is a burden that is being placed on them that should be spread over the entire city. They want to have a mediation with the Property Rights Ombudsman and the City within the next month, before this vote is taken.

Colin Strasser – Strasser Organization

Mr. Strasser said they acquired their property about four years ago and have been very active in pursuing more property. They were able to acquire property from an adjacent landowner and got 33% more property. They were excited for that investment and were able to grow their property. They try to move their investments forward and grow them.

Mr. Strasser stated they never received an offer for their property. They feel this is pushing the envelope and seems a little bit fast; like the City is trying to take their property before they know what is going on. He asked the Council to delay the vote and give some more time to this process.

Fidel Crespin – Strasser Organization

Mr. Crespin said acquiring 18th West and 5th Avenue was his idea. At the time, he thought it would be a good long-term investment so he brought his idea to the Strasser Organization. This property is in a place where there is a lot going on. There are anchors like Intermountain Health Care and Cross Pointe shopping center that aren't too far from it.

Mr. Crespin said to the best of his knowledge, they never received an offer from Murray City. The City obviously has the same vision as they do as far as the property being a great investment, however, he feels they are being penalized for having that same vision. They don't want to stand in the way and they want the project to be successful, but they don't want to be penalized either. He asked the Council to refrain from voting until they have been given time to fairly negotiate with the City.

Blaine Walker – Walker and Company Real Estate

Mr. Walker is representing Danny Johnson who owns the property at 33 East 5th Avenue. Mr. Johnson has been in his property for about six years. Since moving there, Mr. Johnson has established a business, Contract Appliance, where he provides appliances for builders. He has increased his business by about 300% since he has been at this location.

This has been a great location for Mr. Johnson and he has made improvements to the building. He doesn't really have a desire to move, but he also realizes that progress is going to go on. They received an unsolicited offer from a developer that said they were working with the City. The developer gave them a short time to respond to the offer. The timeframe was not significant enough for them to review the offer properly, so they declined that offer.

Mr. Johnson received an updated appraisal and they are working with Mr. Tingey on reviewing offers and negotiating moving costs. Mr. Tingey supplied them information about the Ombudsman and rules and regulations that come into play when dealing with eminent domain. So far, they are negotiating.

Mr. Johnson does not want to be an impediment to the process. His concerns are the timing, replacing his business so that he doesn't lose business and being able to replace what he has now. He has been looking for another property, but hasn't been able to find anything in Murray City that fits what his needs are. He has had to put under contract a raw piece of ground and is going to have to build a new building. He will have some additional costs above what he will receive from the sale of his property. All they are asking is for fair treatment and timing is an issue because Mr. Johnson has to build another building.

Mr. Walker said he and Mr. Johnson have talked to Mr. Tingey about all this and they hope the City can work with them. He appreciates the approach the City is

taking and Mr. Tingey's willingness to sit down and talk with them. They just want to be certain they have the opportunity and enough time to make proper arrangements to move to another location and receive just compensation.

Mr. Nicponski asked what type of business Mr. Johnson is running.

Mr. Walker responded it is called Contract Appliance. They supply appliances for many businesses throughout the state. It's a good business and he wants to make sure his business isn't hurt by the move.

Mr. Nicponski asked if any other property owners were there to speak. No one had additional comments, so he asked Mr. Tingey to return to the podium.

Ms. Turner asked Mr. Tingey when the FOE was first contacted.

Mr. Tingey replied he had conversations with representatives of their organization prior to sending the letter. They also had conversations after the letter was sent. In which they indicated they were going to retain legal counsel, which they did. Mr. Tingey had at least two conversations with Mr. Carlson on the phone related to that.

Mr. Tingey stated they are willing to negotiate and are happy to have a meeting with the Ombudsman's office. He emphasized that moving forward with this resolution tonight is important. They can agree not to file court proceedings because they want to have time to work through these issues. The plan is to continue negotiations and try to work on facilities for relocation as well.

Mr. Tingey said he submitted all the letters that were sent out to property owners to the Council. Mr. Strasser indicated he did not see a letter. These letters were sent out certified mail and Mr. Tingey contacted and spoke with Mr. Strasser on the phone regarding that letter. That letter outlines the offer and he is surprised that Mr. Strasser indicated he did not receive it.

Mr. Nakamura said the letter is dated December 19, 2016. The City has to send it to the owner that is identified on the County Recorder's records. The letter reads, "Strasser Organization, Attention Colin Strasser, 1935 South 900 East, Salt Lake City, Utah, 84105."

Mr. Camp asked Mr. Tingey what would be the disadvantage of postponing the vote for a month as opposed to moving forward with it now.

Mr. Tingey replied the disadvantage is that there are processes that the City has to go through if we are unable to negotiate and come to an agreement with property owners. There are significant legal timeframes and if the decision is delayed, it delays possible court proceedings. They don't want to see a delay because there are projects that they want to move forward on.

Mr. Nicponski asked if approving this resolution tonight would authorize Mr. Tingey to engage these property owners.

Mr. Tingey said they have already started the process of engaging the property owners and will continue to negotiate with them. The resolution will not detract from those negotiations.

Mr. Brass said this area is in his district. He is concerned about relocating the Eagles. He doesn't know if it is geographically possible to relocate the Eagles in Murray and not come up against a park, school, city facility or any public property. He had a small business in Murray for 30 years so he feels for the small business owner because they are not always protected.

Mr. Brass said that eminent domain bothers him. We desperately need a new City Hall. He has been on the Council for 14 years and for 14 years there has been talk about a new City Hall. The redevelopment of downtown is a potential jewel for Murray but he doesn't want to start that redevelopment by forcing other people off of their property without taking a minute and thinking about it. That's all anybody today has asked the City to do; just take a minute and think about it.

Mr. Brass stated he understands Mr. Tingey's concerns, but he doesn't think 30 days is going to break anybody. The City has the tool of eminent domain and may have to use it, but it would be nice to see negotiations continue without that threat over people's heads.

Mr. Nicponski asked Mr. Nakamura to explain the process of eminent domain. Mr. Nakamura asked Jody Burnett, who is Murray City's outside legal counsel, to explain the process.

Mr. Burnett said he has been working with Mr. Tingey, Mr. Nakamura and staff with respect to this process. He understands and respects the viewpoints that have been expressed tonight, but he thinks sometimes there is a misunderstanding that once a condemnation resolution is passed, it's the equivalent of Cinderella's coach turning into a pumpkin at midnight and that's not how it works. Eminent domain is a lengthy process.

The Council is not here to determine property value. They are here to determine the public use and necessity for acquiring property for a new City Hall. Ultimately, every condemnation is a function of not having been able to resolve what a property's value is and the assistance of the courts is needed to do so. Everybody has the right to do that. Mr. Burnett encourages people to utilize the services of the Office of the Property Rights Ombudsman. That office isn't there to delay the process of the initiation of condemnation proceedings but to assist the parties in trying to come to a resolution.

Once the condemnation resolution is authorized, there is often a delay of several

months before formal condemnation proceedings are initiated. Once condemnation proceedings are initiated, a complaint would be filed in court. If the timetable is such that they are in a position to move forward on a shorter timeframe to actually begin construction, they would then file a motion for an order of needed occupancy that would ask the court for permission to occupy the property pending an ultimate determination of just compensation.

These are sensitive situations and they understand there are relocation obligations. At the end of the day, if they are unable to resolve the matter, they would go to court and a jury would decide the amount of just compensation to be paid.

Mr. Burnett reiterated they have already began to negotiate with the property owners and will continue to do that regardless if this resolution is passed tonight or not. The resolution is to authorize the initiation of the actual condemnation action in court. It's not unusual for condemning authorities to facilitate additional negotiations.

Mr. Brass said he has known Mr. Burnett for a long time, but he would still like another 30 days to continue to negotiate without this resolution.

Mr. Hales asked how long the negotiations had been going on.

Mr. Tingey said the letters were sent out in December and some of those letters were the first contact that the City had with some of the property owners. There have been conversations with almost all of the property owners, and at this point, all property owners have been contacted. He emphasized they still want to continue the negotiations; that is their intent.

Mr. Camp expressed his concern about the City doing everything that needs to be done fairly. He wonders what an additional 30 days will do. He thinks this gives Mr. Tingey and his staff some flexibility. If these things can't be worked out in less than 30 days then the Council can move forward with this.

Mr. Brass said he has seen the City rush into decisions that they regretted after the fact. He wants to make sure this is done right.

Mr. Brass made a motion to postpone a decision on this resolution for 30 days
Mr. Camp seconded the motion

Call vote recorded by Jennifer Kennedy

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

Motion passed 5-0

Mr. Tingey said this item will be brought back to the Council for a decision on March 7, 2017.

11. Mayor

11.1 Report

Mayor Eyre said the City's new website will be launched on Thursday and within the next few weeks there will also be a mobile app.

The State Legislature is now in session and the City has representatives up on the hill that communicate with staff daily. He told the Council if they have any concerns about any bills to let him know.

The Murray City Library has joined forces with the Utah County and the Salt Lake City Library for a program called, "United we Read."

Mr. Camp thanked the Mayor for his diligence in working on the new website.

11.2 Questions for the Mayor

12. Adjournment

Jennifer Kennedy, City Recorder