

AMERICAN FORK CITY COUNCIL  
JUNE 8, 2021  
REGULAR SESSION MINUTES

Members Present:

Bradley J. Frost	Mayor
Kevin Barnes	Council Member
Ryan Hunter	Council Member
Rob Shelton	Council Member
Clark Taylor	Council Member

Members Not Present:

Staci Carroll	Council Member
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Staff Present:

David Bunker	City Administrator
Wendelin Knobloch	Associate Planner
Terilyn Lurker	City Recorder
Anna Montoya	Finance Officer
George Schade	IT Director
Cherylyn Egner	Legal Counsel
Adam Olsen	Senior Planner
Darren Falslev	Police Chief
Scott Sensanbaugher	Public Works Director

Also present: John Woffinden, Carissa George, Lee Searle, Roger Dudley, Greg Livingston, Lance, David Bell, and three additional people.

The American Fork City Council met in a regular session on Tuesday, June 8, 2021, in the American Fork City Hall, 31 North Church Street, commencing at 7:00 p.m.

1. Pledge of Allegiance; Invocation by Council Member Ryan Hunter; Roll Call.

Mayor Bradley Frost welcomed everyone to the meeting. Those present recited the Pledge of Allegiance, and an invocation was offered by Council Member Hunter. Mayor Frost conducted a roll call.

2. Twenty-minute public comment period - limited to two minutes per person.

There were no public comments.

3. City Administrator's Report

City Administrator David Bunker stated he had only one item to report, which was that Utah's Governor Spencer Cox had issued an executive order limiting days on which State facilities could be irrigated. The limitation was that watering could occur only on two days per week. Furthermore, he asked cities and residents to follow suit—with northern Utah watering two times per week, and southern Utah watering three times per week. This comes on the heels of a poor precipitation month, with the drought worsening rather than improving. Mr. Bunker stated that the

governor had concerns about the water resources of the State. Furthermore, he mentioned that for many years American Fork had tried to conserve water by only watering on certain days, by address, and that the restriction was still in force. He mentioned the City was looking at a drought plan, which would be discussed at a future meeting. He stressed how important an issue this was.

#### 4. Council Reports

Council Member Ryan Hunter had nothing to report.

Council Member Kevin Barnes reported that he understood a neighboring city had someone driving around at night leaving notes on the doors of residents who were watering on days that was not approved. He thought that was a good idea and encouraged everyone to get together in conserving water.

Council Member Rob Shelton apologized for being tardy due to a long-running baseball game. He wanted to thank the cemetery crew for their hard work in making the American Fork cemetery outstanding. He stated it looked fabulous for Memorial Day, and after that day the crew cleaned it up to look fabulous that way, too. He stated the American Fork Cemetery had unique features, and a lot of people were there enjoying them for Memorial Day.

Council Member Clark Taylor echoed Council Member Shelton in praising the cemetery. Every year Memorial Day was special and the cemetery crew worked hard. He had noticed the cemeteries in neighboring communities, and he really liked the way American Fork's looked, and it was crowded. He acknowledged it was an important day for so many people. He also appreciated Governor Cox's call for a weekend of prayer (regardless of religious affiliation) for relief from the drought. Even though the weekend had passed, he urged ongoing prayer on behalf of rain. He pledged to do his part.

#### 5. Mayor's Report

Mayor Frost mentioned that the filing period for the election for Mayor had closed, and that there would be two candidates: Bradley Frost and Timothy Holley. Furthermore, he stated the City Council candidates would be Staci Carroll, Ryan Hunter, and Carissa George. He reminded all that there would not be a Primary election, but that it would go directly to the General election in November.

Mayor Frost also mentioned having attended the American Fork High School graduation where 811 of American Fork's wonderful young people graduated. He trusted that all of them had a good education courtesy of American Fork schools.

#### COMMON CONSENT AGENDA

(*Common Consent* is that class of Council action that requires no further discussion or which is routine in nature. All items on the Common Consent Agenda are adopted by a single motion unless removed from the Common Consent Agenda.)

1. Approval of the authorization to release the Improvements Durability Retainer of \$88,695.10 for Mount Timpanogos View Subdivision, located at 1500 North Alpine Highway.

2. Approval of the authorization to release the Improvements Construction Guarantee in the amount of \$ 12,500.00 and issue a Notice of Acceptance for the ROCKWELL RANCH BLOCK 1 PHASE 2 construction of public improvements located at 1060 West 420 South.
3. Approval of the authorization to release the Improvements Construction Guarantee in the amount of \$ 131,839.08 and issue a Notice of Acceptance for the ROCKWELL RANCH BLOCK 3 PHASE 1 construction of public improvements located at 1060 West 420 South.
4. Approval of the authorization to release the Improvements Construction Guarantee in the amount of \$ 108,522.68 and issue a Notice of Acceptance for the ROCKWELL RANCH BLOCK 5 PHASE 1 construction of public improvements located at 1050 West 600 South.
5. Approval of the authorization to release the Improvements Construction Guarantee in the amount of \$ 27,199.03 and issue a Notice of Acceptance for the TRUCK RANCH AMERICAN FORK construction of public improvements located at 525 East Automall Drive.
6. Ratification of City payments (May 19, 2021, to June 1, 2021) and approval of purchase requests over \$25,000.

**Council Member Taylor moved to approve the common consent agenda. Council Member Shelton seconded the motion. Voting was as follows:**

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	Clark Taylor, Council Member
<b>SECONDER:</b>	Rob Shelton, Council Member
<b>AYES:</b>	Barnes, Hunter, Shelton, Taylor

**ACTION ITEMS**

1. Review and action on the appointment of Scott Williamson to the Water Conservation Committee.

Mayor Frost stated that this was an important committee. He felt that Scott Williamson was an excellent fit for appointment as he was a well-rounded, responsible farmer, and acquainted with issues of the land. He acknowledged that Mr. Williamson was not in attendance on this night.

**Council Member Taylor moved to approve the appointment of Scott Williamson to the Water Conservation Committee. Council Member Shelton seconded the motion.**

**Voting was as follows:**

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	Clark Taylor, Council Member
<b>SECONDER:</b>	Rob Shelton, Council Member
<b>AYES:</b>	Barnes, Hunter, Shelton, Taylor

2. Review and action on an ordinance approving the Searle Annexation #3 consisting of 19.369 acres and located at approximately 950 North 650 West, including the ordinance of annexation, annexation agreement, and placement of the property in the R1-9000 and PF zones.

Council Member Taylor acknowledged the hard work of the Planning Commission on this action, and their documentation.

**Council Member Taylor moved to adopt Ordinance No. 2021-06-26 approving the Searle Annexation #3 consisting of 19.369 acres and located at approximately 950 North 650 West, including the ordinance of annexation, annexation agreement, and placement of the property in the R1-9000 and PF zone. Council Member Barnes seconded the motion. Voting was as follows:**

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Clark Taylor, Council Member
<b>SECONDER:</b>	Kevin Barnes, Council Member
<b>AYES:</b>	Barnes, Hunter, Shelton, Taylor

3. Review and action on an appeal by Mr. Greg Livingston regarding the water and sewer rates for The Fields at Timpanogos project.

Legal Counsel Cherylyn Egner stated that the RCA report was self-explanatory on this subject. Ultimately, the Fields at Timpanogos project had challenged the water and sewer rates through the City Administrator, who denied the challenge. They had a right to appeal to the City Council, which was the purpose of this agenda item. They were asking that the project be viewed as a commercial enterprise for a rate change, rather than a residential one—though it was apartments.

Representing The Fields at Timpanogos was Mr. Greg Livingston. He indicated that Perry Commercial owned this property, and they also owned Timpanogos Industrial. He handed out packets of information which were not the same as the Council had received previously.

Mr. Livingston stated he wished to explain the four requests as noted on page 1 in the packet, which were as follows:

1. That storm and sewer charges be re-calculated, and correction applied to billing.
2. That water charges be based on actual usage instead of per unit.
3. That sewer charges be based on actual usage instead of per unit.
4. That a 6-year statute of limitations be applied for overcharges.

Calling the Council’s attention to page 2 in the packet, Mr. Livingston noted that Utility Department employees had already agreed to make the changes, though it had been a while since the request had been made and no changes had been applied to date.

Mr. Livingston stated that the project was an apartment complex owned by one person, who paid the water and sewer bill for the entire structure. He called attention to page 4 in the packet which stated there to be 192 apartments and 1 clubhouse on the property, and that it was being billed as 193 single family homes. In the billing method being used, water usage was assumed at 6200 gallons per month per unit, whereas actual usage was 4200 gallons per month overall, and was indicated on a table in the packet. With these facts, they were asking for a recalculation.

As for sewer usage, Mr. Livingston stated that they looked at average winter monthly use, since during summer irrigation months water was absorbed by square feet and was not going down the drain. Actual usage was about 1/3 of that for which they had been charged. They were asking to be charged for that which was discharged rather than per unit, citing City policy that seemed to them to support their case. He then turned the time over to a man with the first name of Lance, but whose surname was not given.

Mr. Lance stated they had had a lot of back forth with the city regarding the refund period. He stated that while Timpanogos Industrial had received a one-year refund, The Fields at Timpanogos had received none. He stated they felt there were inconsistencies, although they had been told they would see a refund.

Mr. Lance continued that they had appealed the one-year refund initially, and the city came back and indicated that it was based on city code and policy. The position of The Fields at Timpanogos was that the State code overrode the city's policy. Furthermore, City code 13.04.010 states that the city code would comply with the State's code. However, when that was pointed out, they got a second argument.

Mr. Lance stated further they had been involved with municipalities and utilities for 30 years and they had heard the arguments before. He pointed out, however, that those arguments were based on sections that apply to personal injury and death, not on utility overcharges. In the argument by The Fields at Timpanogos, they had pointed out that case law supports a 6-year statute of limitations. The next thing that came up was a piece of code that they had not heard before, which had to do with tax collection, and which specifically excludes utility charges. They had been experiencing ongoing frustration trying to receive fairness. Mr. Lance addressed whether there was a written contract. If there was one, The Fields at Timpanogos had not seen it. He stated they were asking for a refund on the 3 years the account had been in existence. By its own admission, the city had overcharged for storm water twice as much as that which had actually gone down the drains.

Mr. Bunker explained that the storm drain use was recalculated, and a one-year refund was given, though The Fields at Timpanogos was arguing that one year was not appropriate, and that the time period should go back to the time the accounts began. Nevertheless, the city's code was one year. As for the water and sewer charges, the project was zoned as residential, and had been assessed as a residential project. The analysis doesn't look at it on a case-by-case basis. The breakdown only considered multi-family housing as a total. He cited the rate study done by Bowens and Collins, whose rate structure was adopted by the City Council. The bottom line: Staff's recommendation was to keep it as a residential building, with residential rates. He further stated that Legal Counsel could address the legal statute if need be.

Council Member Shelton felt they should decide on the storm drain.

Mr. Bunker pointed out that the request was for water and sewer only and that the agenda did not include storm water, nor was it requested. He maintained that the storm water was not in the packet and therefore was not presented as an appeal.

Ms. Egner referenced Timpanogos Industrial as far as the statute of limitations granted to them was concerned. She stated they had done the research, and the city code showed only a one year limitation. She had not prepared a formal briefing on this, as it was not included in the appeal. However, she could follow up and present something later, if desired.

Council Member Shelton stated he would love to have a review as Ms. Egner had suggested. He recalled another appeal, and he was interested to make sure the Council understood things clearly as it meshed with State code. He mentioned that when he had been elected ten years ago, they had talked about increasing water rates. It was a tough decision. Everyone can give a reason why their water bill should be different. They hired professional consultants to study and recommend, and

they respected their judgment. He stated he had a hard time with treating The Fields at Timpanogos as a commercial project, as it was not retail or professional space. They had gone over this before, and it was a lengthy discussion. For him, it was hard to consider switching it. Looking across the city, he felt comfortable with the sewer and water rates as they were being assessed. He understood that they felt it was unfair, and why; but he felt it should stand with what the experts came up with.

Council Member Taylor stated that The Fields at Timpanogos was not a commercial application, and it made no sense to treat them as such. He remembered the meetings at which they went through the rates with Bowen and Collins. He acknowledged that it would not line up perfectly for everyone. As a city, they had to have an objective outsider look into it. There was nothing compelling to him to treat this development differently than other developments.

Mr. Lance respectfully acknowledged that it wasn't a question of re-zoning. The Fields at Timpanogos was simply citing the commercial rates as being more closely aligned with actual usage and that the basis for their argument was fairness. He also mentioned that the city code used the words "fairly" and "equitably." He further stated that most municipalities had provisions to allow for exceptions when the rate structure does not fit. They were making an appeal based on fairness. The differences were not marginal differences, rather they were significant ones based on historical usage.

Council Member Shelton commented that until the technology was available to meter more fairly, the rate structure as currently utilized would have to stand. He acknowledged that technology would potentially change, and if it did, they could change their rate structure. He would have to see evidence that Bowens and Collins had erred before he would agree to something different than what exists.

Council Member Barnes gave examples of people who live on the street where he lives. One resident was a 90-year-old man who lives alone; the next was Barnes and his wife; and the third was a family with seven children. All pay the same for water and sewer. At one time Barnes and his wife were the ones with children. He stated he didn't know how the city could monitor every drop of water exactly.

Mr. Bunker stated regarding property tax, that the numbers were 100% of assessed value for commercial zones and 55% for residential zones. His point was that a property could not have an advantage both ways, and that if The Fields at Timpanogos was to be zoned commercial, (and get the lower water and sewer rates), they would have to be taxed at a higher property tax rate.

Mr. Lance again asserted that their comparison was in equitability not zoning. Paying as 193 single family residences, they were paying nearly three times what the average resident of the project was using.

Council Member Shelton asked if those units had been condominiums (and therefore individually owned), whether a residential rate structure would be applied. The answer was yes, and he asserted that one entity couldn't have a residential rate and the other similar one a commercial rate. That would not be fair, and in his mind that is where the Council was coming from.

Council Member Barnes agreed. He also stated, rather emphatically, that he did not like it when people brought something to the City Council that was different than what was in a presented packet. He felt it was unfair to ask the Council to make on-the-spot decisions when other people

had worked on things for weeks and months before presenting them before the Council. He wanted to be sure they knew that at least one person did not like it.

**Council Member Shelton moved to deny the petition of The Fields at Timpanogos as well as Timpanogos Industrial to modify the water rate and sewer rate structure to a commercial rate or an alternate rate structure, stating he would like to hear more on the storm drain issue. Council Member Hunter seconded the motion.** Council Member Taylor clarified that was not what had been presented, that it was for The Fields at Timpanogos only.

**Council Member Shelton corrected his motion to reflect the denial was for The Fields at Timpanogos only. Council Member Hunter agreed to the correction. Voting was as follows:**

<b>RESULT:</b>	<b>DENIED [UNANIMOUS]</b>
<b>MOVER:</b>	Rob Shelton, Council Member
<b>SECONDER:</b>	Ryan Hunter, Council Member
<b>AYES:</b>	Barnes, Hunter, Shelton, Taylor

4. Review and action on approval of final plat extensions for Lakeshore Landings Plats A through J located in the area of 900 West 350 South; Dixie Farms E-1, E-2, F-1, F-2 Combined Project located in the area of 900 West 900 South; Dixie Farms Plat G located in the area of 800 South 800 West; Plats A, B and C of the AF 10 Combined Project located in the area of 780 West 620 South; and AF PD South Plat A Conservation PUD located in the area of 900 West 620 South in the PR-3.0 Planned Residential Zone.

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	Clark Taylor, Council Member
<b>SECONDER:</b>	Ryan Hunter, Council Member
<b>AYES:</b>	Barnes, Hunter, Shelton, Taylor

5. Review and action on an ordinance approving amendments to Section 15.01.150 of the City code relating to drainage system plan.

Public Works Director Sensanbaugher stated that occasionally he sees in City code something he did not realize was there, and in the case of the recommended size of drainage pipes, that had recently happened. He recommended a change to the city code to require 18” drainage pipes rather than 12” drainage pipes, citing the fact that 12” was rather small and didn’t accommodate all the things that can go down drainage pipes.

Council Member Barnes asked if this change would require a change to existing 12” pipes, and the answer was no. This change would require all newly installed drainage pipes to be 18” and nothing currently at 12” would be dug up and replaced unless there was a problem. Public Works Director Sensanbaugher stated they were essentially matching code to practice with this.

Council Member Shelton stated he would like to better understand drainage water issues and would like an update at some time in the future.

**Council Member Taylor moved to adopt Ordinance No. 2021-06-28 approving amendments to Section 15.01.150 of the city code relating to drainage system plan. Council Member Barnes seconded the motion. Voting was as follows:**

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	Clark Taylor, Council Member
<b>SECONDER:</b>	Kevin Barnes, Council Member
<b>AYES:</b>	Barnes, Hunter, Shelton, Taylor

6. Review and action on a resolution approving the updated 2021-2022 General Fee Schedule.

Finance Officer Anna Montoya stated that they had worked on this in a work session on May 4. She specifically pointed out the clarification on some language regarding deposits of rental fees. All else had remained the same since the work session.

Council Member Shelton stated he had looked at this and remembered that fire inspections associated with business licenses cost \$100, unless there was a self-inspection. He hadn't seen any reference to the self-inspection option and asked if it was necessary to add that in. Ms. Montoya answered no. Council Member Shelton also mentioned that the process was a bit outdated on renewing his agreement with the police department on the alarm system on his home. He stated that the renewal was online but required three pieces of paper to be mailed in with a check. As many people no longer used checks, he wondered if that could be changed to an online payment. He offered that as a technological challenge to Staff.

**Council Member Barnes moved to approve Resolution No. 2021-06-19R establishing the fiscal year 2021-2022 General Fee Schedule. Council Member Hunter seconded the motion. Voting was as follows:**

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	Kevin Barnes, Council Member
<b>SECONDER:</b>	Ryan Hunter, Council Member
<b>AYES:</b>	Barnes, Hunter, Shelton, Taylor

7. Review and action on a resolution notifying the Utah County Commission of the City's intent to submit an opinion question to American Fork residents regarding the possible imposition of a citywide tax to fund Parks, Arts, Recreation, and Cultural activities and organizations in American Fork City.

Mr. Bunker reviewed the timeline for a resolution such as this, which by city statute was that the Lt. Governor's office was to be notified at least 75 days before a general election that would include a vote for imposition of a tax. Furthermore, the County must be notified at least 60 days before that in case they, too, want to impose the tax. Therefore, American Fork must notify the County by June 19 and the Lt. Governor's office by August 19.

Council Member Shelton asked if they would need another resolution before sending this to the Lt. Governor's office by August 19. They answer was yes. Council Member Shelton was concerned about such a tight timeline, to which City Administrator Bunker responded that the County would probably respond right away, which meant they could make another resolution and notify the Lt. Governor's office much sooner than August 19.

Council Member Shelton also stated that he wanted to make sure it was written in all documentation moving forward that this would be for 10 years. City Administrator Bunker stated they would make sure it states 10 years in all documentation associated with it.

**Council Member Taylor moved to adopt Resolution No. 2021-06-20R notifying the Utah County Commission of the City’s intent to submit an opinion question to American Fork residents regarding the possible imposition of a citywide tax to fund Parks, Arts, Recreation, and Cultural activities and organizations in American Fork City. Council Member Hunter seconded the motion.**

Council Member Shelton pointed out that the motion did not include wording regarding the 10 years, per State code. Ms. Egner inserted that if they were going to specify 10 years, they should state that it was 10 years at the conclusion of the previous 8-year period. That way they would not be saying it was 10 years from this voting period—it was inclusion of the current 8-year period. Council Member Shelton agreed with that language, as he wanted to make sure everything was very clean.

**Council Member Taylor added to his motion to include 10 years in the resolution. Council Member Hunter agreed to the addition.**

**Council Member Taylor added to his motion the statement “at the conclusion of the current eight-year period”. Council Member Hunter agreed to the addition. Voting was as follows:**

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	Clark Taylor, Council Member
<b>SECONDER:</b>	Ryan Hunter, Council Member
<b>AYES:</b>	Barnes, Hunter, Shelton, Taylor

8. Adjournment

**Council Member Shelton moved to adjourn the meeting. Council Member Barnes seconded the motion. All were in favor.**

The meeting adjourned at 8:02 p.m.



Terilyn Lurker, City Recorder