

MINUTES OF COUNCIL REGULAR MEETING – JANUARY 6, 2015

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THE WEST VALLEY CITY COUNCIL MET IN REGULAR SESSION ON TUESDAY, JANUARY 6, 2015, AT 6:30 P.M., IN THE COUNCIL CHAMBERS, WEST VALLEY CITY HALL, 3600 CONSTITUTION BOULEVARD, WEST VALLEY CITY, UTAH. THE MEETING WAS CALLED TO ORDER AND CONDUCTED BY MAYOR BIGELOW.

THE FOLLOWING MEMBERS WERE PRESENT:

Ron Bigelow, Mayor
Corey Rushton, Councilmember At-Large
Lars Nordfelt, Councilmember At-Large
Tom Huynh, Councilmember District 1
Steve Buhler, Councilmember District 2
Karen Lang, Councilmember District 3
Steve Vincent, Councilmember District 4

Wayne Pyle, City Manager
Sheri McKendrick, City Recorder

STAFF PRESENT:

Paul Isaac, Assistant City Manager/HR Director
Nicole Cottle, Assistant City Manager/CED Director
Eric Bunderson, City Attorney
Jim Welch, Finance Director
Layne Morris, CPD Director
Kevin Astill, Parks and Recreation Director
John Evans, Fire Chief
Russell Willardson, Public Works Director
Sam Johnson, Strategic Communications Director
Martha Stonebrook, Law Department
Steve Lehman, CED Department
Jake Arslanian, Public Works Department

16844 **OPENING CEREMONY**

The Opening Ceremony was conducted by Tom Huynh who led the Pledge of Allegiance to the Flag.

16845 **SPECIAL RECOGNITIONS**

Mayor Bigelow recognized State Representative-elect Fred Cox in attendance at the meeting.

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APPROVAL OF MINUTES OF REGULAR MEETINGS HELD DECEMBER 9, 2014 AND DECEMBER 16, 2014

The Council read and considered Minutes of the Regular Meetings held December 9, 2014, and December 16, 2014. There were no changes, corrections or deletions.

After discussion, Councilmember Vincent moved to approve the Minutes of the Regular Meetings held December 2, 2014, and December 9, 2014, as written. Councilmember Nordfelt seconded the motion.

A roll call vote was taken:

Mr. Vincent	Yes
Ms. Lang	Yes
Mr. Buhler	Yes
Mr. Huynh	Yes
Mr. Rushton	Yes
Mr. Nordfelt	Yes
Mayor Bigelow	Yes

Unanimous.

16847

COMMENT PERIOD

Upon inquiry by Mayor Bigelow the following individuals addressed the City Council during the comment period:

A. PUBLIC COMMENTS

Jen Mascaro, representing the listing agent for a property in West Valley City, addressed the City Council. Ms. Mascaro advised she had a property under contract and there was an issue with stucco. She indicated recently the Council passed an ordinance requiring only hardie board that had increased the price of the home by \$8,000 and was something the home purchaser did not want. She inquired regarding reasons for the ordinance change.

In response, Mayor Bigelow advised City staff would be glad to explain and further discuss the matter immediately following adjournment of the meeting.

Fred Cox addressed the City Council and advised he noticed an item on the agenda regarding the prison. He indicated he had sent a letter to Prison Relocation Commission members questioning whether to move the prison at all. He submitted a copy of that letter to the City Recorder for

distribution to members of the City Council. He explained there was enough room to double the beds on the Draper site and the Gunnison Prison could also be expanded. He shared his concerns and those of others regarding other sites under consideration.

B. CITY MANAGER COMMENTS

City Manager, Wayne Pyle, stated he would have further conversations with Ms. Mascaro and CED Department staff regarding the issue she raised about building materials. He indicated staff would explore ways in which to address that matter.

16848

PUBLIC HEARING, ACCEPT PUBLIC INPUT REGARDING RE-OPENING THE FY 2014-2015 BUDGET

Mayor Bigelow informed a public hearing had been advertised in order for the City Council to hear and accept public input regarding re-opening the Fiscal Year 2014-2015 Budget.

Mayor Bigelow presented proposed Ordinance No. 15-01 related to the proposal to be considered by the City Council subsequent to the public hearing, as follows:

Proposed Ordinance No. 15-01 would amend the Budget of West Valley City for the fiscal year beginning July 1, 2014 and ending June 30, 2015, to reflect changes in the Budget from increased revenues and authorize the disbursement of funds.

State Statute Title 10, Chapter 6, Utah Code Annotated 1953, as amended, allowed West Valley City to amend its budget during the year. The City held public hearings on budget amendments on a quarterly basis each fiscal year. Public notice had been given as required by law.

Mayor Bigelow opened the public hearing.

There being no one to speak either in favor or in opposition, Mayor Bigelow closed the public hearing.

ACTION: CONSIDER ORDINANCE NO. 15-01, AMENDING THE BUDGET OF WEST VALLEY CITY FOR THE FISCAL YEAR BEGINNING JULY 1, 2014 AND ENDING JUNE 30, 2015, TO REFLECT CHANGES IN THE BUDGET FROM INCREASED REVENUES AND AUTHORIZE THE DISBURSEMENT OF FUNDS

The City Council previously held a public hearing regarding proposed Ordinance No. 15-01 that would amend the Budget of West Valley City for the fiscal year beginning July 1, 2014 and ending June 30, 2015, to reflect changes in the Budget from increased revenues and authorize the disbursement of funds.

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After discussion, Councilmember Buhler moved to approve Ordinance No. 15-01, an Ordinance Amending the Budget of West Valley City for the Fiscal Year Beginning July 1, 2014 and Ending June 30, 2015, to Reflect Changes in the Budget from Increased Revenues and Authorize the Disbursement of Funds. Councilmember Huynh seconded the motion.

A roll call vote was taken:

Mr. Vincent	Yes
Ms. Lang	Yes
Mr. Buhler	Yes
Mr. Huynh	Yes
Mr. Rushton	Yes
Mr. Nordfelt	Yes
Mayor Bigelow	Yes

Unanimous.

16849

PUBLIC HEARING, ACCEPT PUBLIC INPUT REGARDING APPLICATION NO. S-19-2014, FILED BY ABDUL AFRIDI, REQUESTING A PLAT AMENDMENT FOR LOTS 1, 13 AND 14 AND A PARTIAL STREET VACATION FOR A PORTION OF WINTON STREET IN THE CHESTERFIELD PLAT A SUBDIVISION LOCATED AT APPROXIMATELY 2516 SOUTH WINTON STREET

Mayor Bigelow informed a public hearing had been advertised in order for the City Council to hear and consider public input regarding Application No. S-19-2014, filed by Abdul Afridi, requesting a plat amendment for Lots 1, 13 and 14 and a partial street vacation for a portion of Winton Street in the Chesterfield Plat A Subdivision located at approximately 2516 South Winton Street.

Mayor Bigelow presented proposed Ordinance No. 15-02 related to the proposal to be considered by the City Council subsequent to the public hearing, as follows:

Proposed Ordinance No. 15-02 would approve the amendment of Lots 1, 13 and 14 of the Chesterfield Plat A Subdivision, including a partial street vacation to a portion of Winton Street.

The application would approve the amendment as described and also dedicate a new cul-de-sac to allow Winton Street to end with an approved terminus. It would also vacate a portion of Winton Street that was no longer needed. The property was bordered on the north, south and west by existing residential uses and the east by Winton Street and Utah Transit Authority's (UTA) TRAX line.

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The applicant had proposed to construct a cemetery at the south end of Winton Street, located in close proximity to the Islamic Society of Greater Salt Lake. That organization would oversee the operation of the cemetery. A cemetery was defined as a community use in the City's land use code. In the agricultural zone, community use was listed as a permitted use. Issues related to the development of this site would be addressed as part of the permitted use application. The subject application would consolidate lots and vacate and dedicate right-of-way.

Access to the cemetery would be gained from Winton Street via the new cul-de-sac. At the present time, public improvements did not exist along Winton Street. The cul-de-sac would be constructed with curb, gutter, sidewalk, and a streetlight. The south end of Winton Street was not needed and would therefore be vacated.

Mayor Bigelow opened the public hearing.

Abdul Afridi, applicant, addressed the City Council and expressed appreciation to City staff for their efforts in working on the project. He gave background information relating to the subject property including plans to develop the property into a cemetery. Mr. Afridi requested approval of the application and proposed ordinance.

There being no one else to speak either in favor or in opposition, Mayor Bigelow closed the public hearing.

Hearing no objections, Mayor Bigelow reopened the public hearing.

Mr. Afridi answered questions from members of the City Council.

Mayor Bigelow closed the public hearing.

Upon request of the members of the City Council, Steve Lehman, CED Department, addressed the City Council and answered various questions regarding requirements for a cemetery and if there would be groundwater issues on the subject property. Additional questions regarding perpetual landscaping and maintenance were also discussed and answered.

ACTION: CONSIDER ORDINANCE NO. 15-02 APPROVING THE AMENDMENT OF LOTS 1, 13 AND 14 OF THE CHESTERFIELD PLAT A SUBDIVISION, INCLUDING A PARTIAL STREET VACATION TO A PORTION OF WINTON STREET

The City Council previously held a public hearing regarding Application No. S-10-2014, filed by Abdul Afridi, and considered proposed Ordinance No. 15-02 that would approve the amendment of Lots 1, 13 and 14 of the Chesterfield Plat A Subdivision, including a partial street vacation to a portion of Winton Street.

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After discussion, Councilmember Vincent moved to approve proposed Ordinance No. 15-02, an Ordinance Approving the Amendment of Lots 1, 13 and 14 of the Chesterfield Plat A Subdivision, Including a Partial Street Vacation to a Portion of Winton Street. Councilmember Lang seconded the motion.

A roll call vote was taken:

Mr. Vincent	Yes
Ms. Lang	Yes
Mr. Buhler	Yes
Mr. Huynh	No
Mr. Rushton	Yes
Mr. Nordfelt	Yes
Mayor Bigelow	Yes

Majority.

16850

RESOLUTION NO. 15-01, CHANGING THE TRUSTEE ON THE CITY'S LIFE INSURANCE POLICY WITH WESTERN RESERVE LIFE

Mayor Bigelow presented Resolution No. 15-01 that would change the trustee on the City's life insurance policy with Western Reserve Life.

He stated the proposal would change the trustee on the Western Reserve Life insurance policy from Shirlayne George to Aimee Tye-Critchley. A former employee of the City desired to change the beneficiary on the Western Reserve Life insurance policy he had with West Valley City as he retired from another city at the end of this year. The proposed resolution would allow the City to make that change after Aimee Tye-Critchley became the trustee.

After discussion, Councilmember Nordfelt moved to approve Resolution No. 15-01, a Resolution Changing the Trustee of the City's Life Insurance Policy with Western Reserve Life. Councilmember Vincent seconded the motion.

A roll call vote was taken:

Mr. Vincent	Yes
Ms. Lang	Yes
Mr. Buhler	Yes
Mr. Huynh	Yes
Mr. Rushton	Yes
Mr. Nordfelt	Yes
Mayor Bigelow	Yes

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Unanimous.

16851

RESOLUTION NO. 15-02, APPROVE A RIGHT-OF-WAY AGREEMENT WITH EL DORADO INVESTMENT COMPANY, L.C., A UTAH LIMITED LIABILITY COMPANY, FOR PROPERTY LOCATED AT 4899 WEST 2100 SOUTH (PARCEL 14-24-227-006) AND ACCEPT A SPECIAL WARRANTY DEED AND STORM DRAIN EASEMENT

Mayor Bigelow presented proposed Resolution No. 15-02 that would approve a Right-of-Way Agreement with El Dorado Investment Company, L.C., a Utah Limited Liability Company, for property located at 4899 West 2100 South (Parcel 14-24-227-006) and accept a Special Warranty Deed and Storm Drain Easement.

El Dorado Investment Company, L.C. had signed a Right-of-Way Agreement and agreed to sign a Special Warranty Deed and Storm Drainage Easement for property located at the above-referenced location.

The subject parcel was one of the properties affected and benefitted by construction of the 2400 South 4800 West Roadway Extension Project that would extend from 2400 South eastward to 4800 West and north to the SR-201 South Frontage Road. Compensation for the purchase of 28,325 square feet (0.650 acres) of property would be in the amount of \$141,600.00 based on an appraisal report prepared by the DH Group, LLC.

After discussion, Councilmember Lang moved to approve Resolution No. 15-02, a Resolution Authorizing the City to enter into a Right-of-Way Agreement with El Dorado Investment Company, L.C., a Utah Limited Liability Company, for Property Located at 4899 West 2100 South (Parcel 14-24-227-006) and to Accept a Special Warranty Deed and Storm Drain Easement. Councilmember Rushton seconded the motion.

A roll call vote was taken:

Mr. Vincent	Yes
Ms. Lang	Yes
Mr. Buhler	Yes
Mr. Huynh	Yes
Mr. Rushton	Yes
Mr. Nordfelt	Yes
Mayor Bigelow	Yes

Unanimous.

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RESOLUTION NO. 15-03, APPROVE A RIGHT-OF-WAY AGREEMENT WITH EL DORADO INVESTMENT COMPANY, L.C., A UTAH LIMITED LIABILITY COMPANY FOR PROPERTY LOCATED AT 4899 WEST 2100 SOUTH (PARCEL 14-24-227-007) AND ACCEPT A SPECIAL WARRANTY DEED AND STORM DRAIN EASEMENT

Mayor Bigelow presented proposed Resolution No. 15-03 that would approve a Right-of-Way Agreement with El Dorado Investment Company, L.C., a Utah Limited Liability Company for property located at 4899 West 2100 South (Parcel 14-24-227-007) and accept a Special Warranty Deed and Storm Drain Easement.

El Dorado Investment Company, L.C. had signed a Right-of-Way Agreement and agreed to sign a special Warranty Deed and a Storm Drainage Easement for property located at 4899 West 2100 South (Parcel 14-24-227-007).

The subject parcel was one of the properties affected and benefitted by construction of the 2400 South 4800 West Roadway Extension Project that would extend from 2400 South eastward to 4800 West and north to the SR-201 South Frontage Road. Compensation for purchase of 88,227 square feet (2.025 acres) of property would be in the amount of \$441,200.00 based on an appraisal report prepared by the DH Group, LLC.

After discussion, Councilmember Vincent moved to approve Resolution No. 15-03, a Resolution Authorizing the City to enter into a Right-of-Way Agreement with El Dorado Investment Company, L.C., a Utah Limited Liability Company, for Property Located at 4899 West 2100 South (Parcel 14-24-227-007) and to Accept a Special Warranty Deed and Storm Drain Easement. Councilmember Rushton seconded the motion.

A roll call vote was taken:

Mr. Vincent	Yes
Ms. Lang	Yes
Mr. Buhler	Yes
Mr. Huynh	Yes
Mr. Rushton	Yes
Mr. Nordfelt	Yes
Mayor Bigelow	Yes

Unanimous.

16853

RESOLUTION NO. 15-04 APPROVE A RIGHT-OF-WAY AGREEMENT WITH EL DORADO INVESTMENT COMPANY, L.C. A UTAH LIMITED LIABILITY COMPANY FOR PROPERTY LOCATED AT 5065 WEST 2100 SOUTH (PARCEL 14-24-201-007) AND ACCEPT A SPECIAL WARRANTY DEED

Mayor Bigelow presented proposed Resolution No. 15-04 that would approve a Right-of-Way Agreement with El Dorado Investment Company, L.C. a Utah Limited Liability Company for property located at 5065 West 2100 South (Parcel 14-24-201-007) and accept a Special Warranty Deed.

El Dorado Investment Company, L.C. had signed a Right-of-Way Agreement and agreed to sign a Special Warranty Deed for property located at 5065 West 2100 South (Parcel 14-24-201-007).

The subject parcel was one of the properties affected and benefitted by construction of the 2400 South 4800 West Roadway Extension Project that would extend from 2400 South eastward to 4800 West and north to the SR-201 South Frontage Road. Compensation for purchase of 3,762 square feet of property would be in the amount of \$153,900.00 based on an appraisal report prepared by the DH Group, LLC.

After discussion, Councilmember Lang moved to approve Resolution No. 15-04, a Resolution Authorizing the City to enter into a Right-of-Way Agreement with El Dorado Investment Company, L.C., a Utah Limited Liability Company, for Property Located at 5065 West 2100 South (Parcel 14-24-201-007) and to Accept a Special Warranty Deed. Councilmember Nordfelt seconded the motion.

A roll call vote was taken:

Mr. Vincent	Yes
Ms. Lang	Yes
Mr. Buhler	Yes
Mr. Huynh	Yes
Mr. Rushton	Yes
Mr. Nordfelt	Yes
Mayor Bigelow	Yes

Unanimous.

16854

RESOLUTION NO. 15-05, APPROVE A RIGHT-OF-WAY AGREEMENT WITH EL DORADO INVESTMENT COMPANY, L.C., A UTAH LIMITED LIABILITY COMPANY, FOR PROPERTY LOCATED AT 4901 WEST 2100 SOUTH (PARCEL 14-24-226-003) AND ACCEPT A SPECIAL WARRANTY DEED

Mayor Bigelow presented proposed Resolution No. 15-05 that would approve a Right-of-Way Agreement with El Dorado Investment Company, L.C., a Utah Limited Liability Company, for property located at 4901 West 2100 South (Parcel 14-24-226-003) and accept a Special Warranty Deed.

El Dorado Investment Company, L.C. had signed the Right-of-Way Agreement and agreed to sign a Special Warranty Deed for the subject property.

The subject parcel was one of the properties affected and benefitted by construction of the 2400 South 4800 West Roadway Extension Project that would extend from 2400 South eastward to 4800 West and north to the SR-201 South Frontage Road. Compensation for the purchase of 56,343 square feet of property would be in the amount of \$281,800.00 based on an appraisal report prepared by the DH Group, LLC.

After discussion, Councilmember Huynh moved to approve Resolution No. 15-05, a Resolution Authorizing the City to enter into a Right-of-Way Agreement with El Dorado Investment Company, L.C., a Utah Limited Liability Company, for Property Located at 4901 West 2100 South (Parcel 14-24-226-003) and to Accept a Special Warranty Deed. Councilmember Vincent seconded the motion.

A roll call vote was taken:

Mr. Vincent	Yes
Ms. Lang	Yes
Mr. Buhler	Yes
Mr. Huynh	Yes
Mr. Rushton	Yes
Mr. Nordfelt	Yes
Mayor Bigelow	Yes

Unanimous.

16855

RESOLUTION NO. 15-06, ACCEPT A SPECIAL WARRANTY DEED FROM TYP COMPANY FOR A PORTION OF PROPERTY LOCATED AT 4071 SOUTH 4000 WEST (PARCEL 15-32-354-030)

Mayor Bigelow presented proposed Resolution No. 15-06 that would accept a Special Warranty Deed from TyP Company for a portion of property located at 4071 South 4000 West (Parcel 15-32-354-030).

TyP Company had signed a Special Warranty Deed for right-of-way on 4000 West. He indicated TyP Company was the owner of the property for the proposed BKP Dental Development. The description for the subject property currently extended to the centerline of 4000 West. As the right-of-way had not been previously dedicated or conveyed to the City, conveyance of right-of-way to a 40-foot half width had been required as a condition of building permit approval. The West Valley City Major Street Plan showed 4000 West as an 80-foot right-of-way (40- feet each side of the section line/centerline).

After discussion, Councilmember Lang moved to approve Resolution No. 15-06, a Resolution Authorizing the City to Accept a Special Warranty Deed from TyP Company for a Portion of Property Located at 4071 South 4000 West (Parcel 15-32-354-030). Councilmember Vincent seconded the motion.

A roll call vote was taken:

Mr. Vincent	Yes
Ms. Lang	Yes
Mr. Buhler	Yes
Mr. Huynh	Yes
Mr. Rushton	Yes
Mr. Nordfelt	Yes
Mayor Bigelow	Yes

Unanimous.

16856

RESOLUTION NO. 15-13, OPPOSING THE RELOCATION OF THE UTAH STATE PRISON TO THE PROPOSED LOCATION AT THE INTERCHANGE OF INTERSTATE 80 AND 7200 WEST

Mayor Bigelow presented proposed Resolution No. 15-13 that would oppose the relocation of the Utah State Prison to the proposed location at the interchange of Interstate 80 and 7200 West.

He stated the proposal would outline West Valley City's opposition to the relocation of the Utah State Prison to the above-referenced location for a myriad of reasons, including its impact on economic development.

The subject location was currently ranked among the top choices under evaluation by the Prison Relocation Commission as a future site for the prison. The area was close to the boundaries of the City and would have a significant negative impact on economic development, particularly in the Class A industrial development currently ongoing. Moving the prison to the proposed location would have a negative impact on the City's image and establish the prison at a primary gateway to West Valley City. The subject location, like the current location of the prison, was located near a major interstate highway and would create significant social and economic disruption for neighboring communities.

After discussion, Councilmember Rushton moved to remove proposed Resolution No. 15-13 from the Agenda. Councilmember Vincent seconded the motion.

A roll call vote was taken:

Mr. Vincent	Yes
Ms. Lang	Yes
Mr. Buhler	Yes
Mr. Huynh	Yes
Mr. Rushton	Yes
Mr. Nordfelt	Yes
Mayor Bigelow	Yes

Unanimous.

Proposed Resolution No. 15-13 was removed from the Agenda.

16857

HEAR AND CONSIDER AN APPEAL OF THE CITY MANAGER'S DENIAL OF A GRAMA REQUEST FROM NATE CARLISLE OF THE SALT LAKE TRIBUNE

Mayor Bigelow opened a hearing that had been scheduled regarding an appeal of the City Manager's denial of a GRAMA (Government Record Access and Management Act) request from Nate Carlisle of the Salt Lake Tribune. He stated a packet of information and documentation had previously been uploaded to the agenda for access by members of the City Council.

Upon inquiry, the City Manager instructed the City Attorney to discuss and review procedures for the appeal hearing.

City Attorney, Eric Bunderson, addressed the City Council and reviewed procedures for the hearing. He advised the City Council would act in their quasi-judicial role and he read aloud from the West Valley City Code (3-16-502) and informed that statute mirrored the State Code.

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Mr. Bunderson stated the appellant, Nate Carlisle, would be recognized first to present his arguments, present evidence, and make comments. Next, the City's representative, Martha Stonebrook, West Valley City's Public Safety Attorney, would respond and present information and evidence. Both sides would then be given opportunity for rebuttal. In addition, he advised the Council could, at their discretion, take testimony from others in attendance at the meeting regarding this matter.

He further indicated the City Council could ask questions of both sides, and look at documents and deliberate "in camera," if desired. He also advised regarding the decision process, including the required timeline, and stated subsequently preparation of that decision would be completed in writing.

Councilmember Rushton informed members of the Council had received the PowerPoint documentation previously sent by email from the appellant, Nate Carlisle.

The City Attorney further reviewed processes and procedures regarding the City Council's responsibilities in making a decision. He advised the decision must be made within five business days of the hearing. He informed that the Council, in their quasi-judicial role, could deliberate in private after the hearing, if desired, or could deliberate and render a decision immediately.

Mayor Bigelow opened the hearing and recognized the appellant, Nate Carlisle.

Nate Carlisle, Salt Lake Tribune, appellant, addressed the City Council. Mr. Carlisle expressed appreciation to Sheri McKendrick, City Recorder, and the City Attorney, Eric Bunderson, for assisting him in following the proper procedures in anticipation of the hearing. He also thanked Martha Stonebrook and City Manager, Wayne Pyle, for their articulate denials thereby aiding in his preparation. He advised he would speak regarding judicial precedent in Utah when similar documents had been sought.

Mr. Carlisle displayed and discussed information in a PowerPoint presentation that, by reference, is made a part of this record.

The appellant stated his request included internal affairs files related to Police Officer Kevin Salmon and a recording or transcript of Mr. Salmon's interviews concerning the events of November 2, 2012. He indicated his original request had been broader and the City provided some documents, but this appeal was related to documents the City felt were not classified as a public record.

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Mr. Carlisle pointed out an error in his documentation where the wrong sub-chapter dealing with private records had been cited (UCA 63G-302 subparagraphs (2)(d)) which dealt with private records, and UCA Chapter 305 subparagraphs 10 (a) and (b). He stated Chapter 302 dealt with private records and the wrong sub-chapter had been cited. He expressed appreciation to Ms. Stonebrook as the denial letter corrected his error. He read aloud some of the information in the referenced chapters. He stated UCA Chapter 305 (10) (a) and (b) talked about a category of protected records considered not public and allowed for some records to be made public based on specific classification. He referenced the City's denial letter and read aloud some excerpts from that document.

Mr. Carlisle referenced and read excerpts from a 2008 Utah Supreme Court case, the Deseret News Publishing Company v. Salt Lake County, regarding denial of records relating to a sexual harassment case. He expressed his belief there was no on-going investigation regarding Kevin Salmon and that Mr. Salmon had resigned. He also discussed his understanding that the District Attorney had declined to prosecute the matter and West Valley City had stopped its investigation. Mr. Carlisle advised he had sent a link via e-mail to the entire Supreme Court opinion and invited the City Council to review the ruling.

He discussed a second judiciary case, Jeffrey B. Lawrence v. Utah Department of Public Safety (Utah Highway Patrol), where records had been requested and denied regarding a complaint of a state trooper. He referenced and read aloud excerpts from some sections of the ruling, and cited other cases and rulings where records had been released.

Mr. Carlisle concluded and expressed belief there was an inequity in not releasing records simply because Mr. Salmon had quit his job and had not been disciplined. He indicated Mr. Salmon had been on paid leave for about 23 months during which time there had been an on-going investigation.

Mayor Bigelow recognized the City's representative, Martha Stonebrook.

Martha Stonebrook, Public Safety Attorney for West Valley City, addressed the City Council. She stated West Valley City had properly classified the documents that included interviews and investigation files based on an incident on November 2, 2012, and requested by Mr. Nate Carlisle, Salt Lake Tribune. She advised the subject records had been properly classified under UCA Section 63G-2-305 10 (a) and (b) because it offered protection for records associated with disciplinary or investigative purposes and where disclosure of those records could reasonably be expected to interfere with investigations and/or proceedings.

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Ms. Stonebrook stated Mr. Salmon had resigned his employment before the City completed its investigation; therefore, making the facts different from the Deseret News case cited by Mr. Carlisle. She stated in the Deseret News case the decision had been rendered, a formal investigative report had been completed and filed, and the matter had been closed. She indicated the GRAMA law anticipated records would be public if discipline had been issued and all of the allotted times for appeal had run out. She explained in this case the file remained incomplete. She stated release of an uncompleted file could impact and compromise the integrity of an investigation thus allowing for speculation and conjecture as to innocence or guilt, and again separating this case from the cited Deseret News case.

Ms. Stonebrook stated making an officer's statements public prior to a completed investigation could compromise that investigation and further place increased difficulty on an officer who had been in a terrible situation, particularly, if the officer thought those statements would be made public.

She advised the two interviews referenced were both well within the protected category. She further explained one interview included an officer's statement concerning a shooting, and the second, not a West Valley City investigation, had been conducted by one or more federal agencies. She stated West Valley City had not to date been informed of the status of the federal investigation; and, therefore giving over interviews that were taken as part of that procedure could compromise the federal investigation if not completed. She expressed the importance of a municipality to be reliable and not release private records prior to other agency investigations being completed.

Ms. Stonebrook stated Judge Dever's ruling did not have binding precedent to the Council in making their decision. She also stated that while the ruling talked about invasion of privacy, West Valley City felt the private classification of the referenced records was appropriate. She indicated by releasing an officer's statement when the matter had not been finally resolved would be an unwarranted invasion of privacy.

Ms. Stonebrook stated Judge Dever's decision did not speak to a protected classification of an investigation and/or disciplinary-type records. She indicated nothing had been mentioned in the ruling about UCA Section 305-10 (a) and (b) and the Department of Public Safety had not raised that issue as a reason for denial. She stated the matter of a protected record under that section had not been before Judge Dever for consideration. She stated the Department of Public Safety had determined their record to be a personnel record and therefore protected by the attorney/client privilege.

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Ms. Stonebrook stated the GRAMA statute provided for entities when reviewing documents to review those documents and make classifications on a case-by-case basis. She stated in the Carlisle case all documents had been individually reviewed. She indicated the City released documents properly classified as public records and did not release those classified as protected and private records.

Ms. Stonebrook stated to release files in investigative cases that had not been completed either by a municipality or other federal agency would not be appropriate and have a chilling effect going forward.

She stated the GRAMA statute allowed for making wise decisions on a case-by-case basis when classifying records and it also allowed for appeals and set forth evidentiary standards for release of certain records and provided guidance at the various levels of review. She stated GRAMA Section 63G-2-406 (1) stated to release any record initially classified as protected, the requestor must establish by a preponderance of the evidence that the public interest was equal to or greater than the interest favoring restriction of releasing the documents if an investigation had not been completed. Ms. Stonebrook stated the appellant had not met that burden.

Ms. Stonebrook concluded and requested Mr. Carlisle's letter of appeal be re-read during deliberations and that the City Manager's decision denying release of the protected records be upheld.

Ms. Stonebrook answered questions from members of the City Council.

Upon inquiry by Councilmember Huynh, Ms. Stonebrook advised the investigation would remain as a case not completed due to Mr. Salmon's resignation from employment. She stated a record would be public if disciplinary action had been taken; however, the matter had been suspended due to Mr. Salmon's resignation from employment with West Valley City. She advised when appropriate the City had released letters of discipline as public records in other cases.

Upon inquiry by Councilmember Buhler, the City Attorney, Eric Bunderson, stated documents eligible for discovery in a civil law suit would depend on the particular lawsuit with some documents being released in discovery and some not being released.

Councilmember Buhler inquired regarding specific documents requested and denied. Ms. Stonebrook responded with the following: record pertaining to an internal affairs uncompleted investigation file regarding the shooting and included the District Attorney's ruling letter that had been classified as a public record and released; document regarding the adjudication by a West Valley City Deputy

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Chief giving his recommendation to the West Valley City Police Chief, and classified as a protected record; document regarding interviews of two West Valley City police officers conducted by an investigator for the police officers' attorneys. She advised a joint investigation had been conducted by the Department of Justice and the Federal Bureau of Investigations (FBI).

In response to Councilmember Buhler's question, Ms. Stonebrook and the City Attorney advised that the Deputy Chief's adjudication and the interview had not been turned over nor the FBI interview. Ms. Stonebrook indicated uncertainty if the above-referenced interview at the police officers' attorneys' office had been turned over.

Upon inquiry by Councilmember Buhler, Ms. Stonebrook advised that West Valley City did not have information as to whether the federal investigation was on-going. In response, she also advised Mr. Salmon had not made request for any city records.

In response to further inquiry, City Attorney, Eric Bunderson, advised those documents not turned over in the civil law suit discovery included everything referenced except the Deputy Chief's adjudication. He advised the civil case did have a protective order attached to it that would preclude all parties from making disclosures. He advised it would preclude the City and all parties from providing documents to newspapers.

Ms. Stonebrook advised the GRAMA statute did not provide in-depth direction in cases, for example, when a person died or resigned and the city decided not to pursue an investigation. She indicated rather the GRAMA statute allowed choices to be made appropriately and it specifically indicated what sustained findings would be deemed to be public when all appeal times had run out.

She stated the GRAMA statute addressed matters of subpoenas and discovery, other court matters of discovery, and indicated discovery in those matters was not considered to be a GRAMA request.

In response to inquiry by Councilmember Buhler, Ms. Stonebrook advised unless discipline was actually issued, those records would never become public as there would be no sustained findings of misconduct. She stated this protected against false accusations and speculation and protected innocent reputations. She indicated an investigation could be compromised by releasing information prior to completion and could result in an unwarranted invasion of personal privacy.

In response to Councilmember Buhler, Ms. Stonebrook advised West Valley City had received the federal interview document in its file to possibly provide

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information about the city's investigation since the city had been allowed to ask a few questions at that interview.

Upon inquiry by Councilmember Rushton, the City Attorney advised other investigative agencies and/or interested parties had not requested records in this matter.

Upon inquiry by Councilmember Buhler, the City Attorney advised when the recording and transcript of the federal interview conducted by the federal agencies was provided to the City, it had been disclosed to the City as part of the on-going investigation which, at that time, was all considered as protected and private classifications. In further response, he indicated the Department of Justice had not specifically said to keep the record private.

Upon inquiry by Councilmember Buhler, the City Attorney advised Mr. Salmon had not made any request for the subject records.

Upon inquiry by Mayor Bigelow, Ms. Stonebrook advised the investigation not being completed meant that the Police Chief had not rendered a decision and there had been no disciplinary hearing; therefore, Mr. Salmon's due process rights of speaking to the issues had not occurred.

Mayor Bigelow spoke to the right to obtain information and maintaining transparency to the public. He also spoke to not wanting to harm someone because of speculation, including news sensationalism. The Mayor also discussed redacting any harmful information in the records and expressed concern that any investigation not completed would not be made public.

In further response to Mayor Bigelow's inquiry, Ms. Stonebrook stated protected records were never released whether the file had been completed or remained uncompleted. She advised internal affairs files were not made public, by GRAMA classification. Ms. Stonebrook advised the appellant had been provided with the resignation letter, the Public Safety Review Board finding, and other documents classified as public records, as would be consistent with conformity to the GRAMA statutes.

Councilmember Buhler expressed the importance of a policy that followed the law. Ms. Stonebrook concurred the GRAMA statute did not specifically contain language that stated a document was protected based upon having a possible chilling effect on future investigations.

In response to questions by Councilmember Huynh, Ms. Stonebrook stated internal affairs files were generated as all kinds of allegations occurred, whether

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valid or invalid. She explained the importance of providing police officers with due process if accused, with a final determination made by the Police Chief.

Ms. Stonebrook advised West Valley City had received the document regarding the interview from the FBI and the document had not been generated by the City. She stated West Valley City had attempted to obtain information on the federal investigations but had not been successful therefore releasing the federal agency's documents could compromise a possible on-going federal investigation. She explained nothing would preclude the appellant from making request of the Department of Justice and the FBI for documents.

Councilmember Buhler discussed and recapped that there had been no final determination made and he discussed Mr. Salmon's right of due process.

Mayor Bigelow stated there seemed to be reasonable justification to not releasing documents when a federal investigation was on-going.

Mayor Bigelow opened the floor to rebuttal.

Nate Carlisle, appellant, addressed the City Council. Mr. Carlisle stated the FBI and Department of Justice provided the interview record to West Valley City and they had not indicated it should not be released and that they were still investigating. He stated Mr. Salmon's feelings were not the issue and case law specified what constituted personal privacy. He indicated the Deseret News opinion and Judge Dever also addressed that matter in the cases he cited earlier. Mr. Carlisle disagreed that the Tribune must show by preponderance of the evidence that the public would be served by release of the documents. He stated this matter had also been addressed in Judge Dever's ruling stating the public is best served about knowing what public officials were doing in the performance and discharge of their duties. He stated there had been contradictory statements regarding the classification of the subject records and he believed there had not been proper review of documents. He stated according to the Deseret News ruling, the City had an obligation to do a fresh review of records to determine classification prior to release. He referenced some discussion as to whether there would be conjecture regarding Mr. Salmon if documents were released on an uncompleted investigation, and suggested there would be more conjecture if documents were not released. He stated the GRAMA statute did not reference finished or unfinished investigations.

Councilmember Buhler commented the City had not released records in other cases when investigations had not been completed and were on-going and, upon completion of those investigations, had then released documents. He referenced the Joshua Powell case and indicated records had been released when the investigation concluded.

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Upon inquiry by Councilmember Huynh, Mr. Carlisle explained the Salt Lake Tribune's interest in this case. He stated information had been made available regarding the other officer involved in the November 2, 2014, incident, but not a lot had been known about Mr. Salmon's involvement. He stated the District Attorney had determined Mr. Salmon had no criminal involvement, but it was felt there was an inequity in not letting the public hear that information.

Councilmember Rushton moved to suspend the fact-finding portion of the hearing and deliberate in-camera.

City Manager, Wayne Pyle, recommended a motion include that deliberation would take place in-camera following two other scheduled meetings that followed this one, with a decision to be issued by the following Tuesday.

Mr. Carlisle stated if the City Attorney issued an opinion that the records were covered under the court's protective order he would like an opportunity to address that opinion.

Councilmember Rushton pointed out the Salt Lake Tribune would have the available appeal process through the courts if they did not agree with the City Council's decision. He stated all information would be taken under advisement during deliberations.

Upon inquiry by Mayor Bigelow regarding the City Council's responsibility in rendering a decision in the specified time frame, the City Attorney advised the Council must render a decision within the five business days period as previously discussed.

Upon inquiry, City Attorney, Eric Bunderson, advised the Council was required to hear testimony, evidence and comments on the issues and may allow other interested persons to comment on the issues.

Councilmember Rushton restated his earlier motion. There was no second to the motion.

After discussion, Mayor Bigelow called for testimony to be heard from other interested persons.

Fred Cox addressed the City Council and stated he was familiar with the GRAMA laws. Mr. Cox indicated the Deseret News ruling predated 2012 SB117, so the law had changed since then. He stated if the decision was to deny releasing the records, the appellant had the opportunity to appeal the decision. He also stated if an officer was required to testify without the ability to use the Fifth Amendment

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that testimony would not be allowed in a court of law as it would be self-incriminating. He encouraged the Council to also read sections (c) (d) and (e) of 63G-2-305, in particular reference to protected records from outside sources.

Upon inquiry by Councilmember Rushton, the City Attorney advised that if desired by the Council it would seem appropriate to read the entire section of the statute when deliberating although he was not aware of specific case law regarding that issue.

Mayor Bigelow inquired if any Council member required further information from interested parties.

Mr. Buhler moved to conclude and close the hearing and deliberate in-camera immediately following scheduled meetings of the Redevelopment Agency and Housing Authority boards. Councilmember Huynh seconded the motion.

Upon discussion, Councilmember Nordfelt spoke to hearing additional testimony from Martha Stonebrook.

Mayor Bigelow called for a vote on the motion.

A roll call vote was taken:

Mr. Vincent	No
Ms. Lang	No
Mr. Buhler	Yes
Mr. Huynh	Yes
Mr. Rushton	No
Mr. Nordfelt	No
Mayor Bigelow	No

Motion failed for lack of majority.

Mayor Bigelow recognized Martha Stonebrook who addressed the City Council. Ms. Stonebrook clarified she had not directly contacted the FBI or Department of Justice, but rather checked on the status of the federal investigation matters with the Police Department administration who would have that information. Secondly, she stated Mr. Carlisle had received documents from Internal Affairs files on many occasions in the past and files were never “rubber stamped” denying everything in the file. She stated each document and file was looked at individually and properly classified.

Mr. Carlisle addressed the City Council and stated the GRAMA statute specified records in Utah were public unless the law expressly said otherwise. He also

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stated, regarding whether Mr. Salmon had counsel or if allowed to take the Fifth Amendment, the GRAMA statute did not address that issue.

After discussion, Councilmember Nordfelt moved to reconsider the previous motion made by Councilmember Buhler. Councilmember Huynh seconded the motion.

A roll call vote was taken:

Mr. Vincent	Yes
Ms. Lang	Yes
Mr. Buhler	Yes
Mr. Huynh	Yes
Mr. Rushton	Yes
Mr. Nordfelt	Yes
Mayor Bigelow	Yes

Unanimous.

Mayor Bigelow instructed the City Council to consider the previous motion made by Councilmember Buhler and requested the motion be restated.

Councilmember Buhler moved to conclude and close the hearing and deliberate in-camera immediately following scheduled meetings of the Redevelopment Agency and Housing Authority boards. Councilmember Huynh seconded the motion.

A roll call vote was taken:

Mr. Vincent	Yes
Ms. Lang	Yes
Mr. Buhler	Yes
Mr. Huynh	Yes
Mr. Rushton	Yes
Mr. Nordfelt	Yes
Mayor Bigelow	Yes

Unanimous.

THERE BEING NO FURTHER BUSINESS OF THE WEST VALLEY CITY COUNCIL, THE REGULAR MEETING OF TUESDAY, JANUARY 6, 2015, WAS ADJOURNED AT 8:59 P.M., BY MAYOR BIGELOW.

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I hereby certify the foregoing to be a true, accurate and complete record of the proceedings of the Regular Meeting of the West Valley City Council held Tuesday, January 6, 2015.

Sheri McKendrick, MMC
City Recorder

DRAFT