

July 11, 2013

Meeting began at 6:55 p.m.

Present: Present: Bill Muse, Mayor; Gladys LeFevre, Sue Inman, Steve Cox, Tom Jerome, Council Members; Judi Davis, Clerk; Mark McIff, Attorney.

Public Present: Bill and Judith Geil, Mark Nelson, Perry Tancredi, Nicole, Peg Smith, David Jones, Ashley Coombs, Laurel Holding, Alyssa Thompson, Lisa Varga, Anselm Spring, Blake Spalding, Sergio Femenias, Kelly and Loch Wade, Robert and Mrs. Beers, Dennis Bertucci, Caroline Gaudy, Jen Castle, Matt Cochran and Constance Lynn, Scott and Brynn Brodie, Cindy Wilson, Jo Edmondson, Erin Adams and 9 others.

David Jones, representing the National Guard, had planned to come to our June 6 meeting but was unable to be here. Although he wasn't on this month's agenda, he was in the area and we agreed to have him present the **Community Covenant program** to us before the beginning of the regular agenda items.

Through means of a visual program, Mr. Jones presented the Community Covenant program and asked if we would want to participate. If so, we need to appoint someone to be in charge. He distributed a handout.

There are three key points to the program which is a partnership to support military service members. They are: Awareness, Resources, and Relationships. Typical steps to setting up the program include adopting a resolution authorizing the C.C. program; appointing a liaison, who could be the mayor, a council person, a staff person, or a volunteer from the community; and having a signing ceremony, which can be as elaborate or as simple as we want, and is not a binding contract. The date of the event can be done whenever we want, but he encouraged us to do it soon, and they will work with us.

Gladys would like to participate but suggested that, since the introduction of the program wasn't on the agenda, we wait until a regular meeting to vote on it and to choose a liaison person. We will vote on whether to participate on August 1 and plan to have the ceremony in September. David will email the information we need.

Pledge of allegiance

Tom made a motion we approve the minutes of the June 6 meeting. Steve seconded the motion. The vote was unanimous.

Steve made a motion we approve the minutes of the June 20 meeting. Gladys seconded

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the motion. The vote was unanimous.

Gladys made a motion we approve the minutes of the June 26 meeting. Sue seconded the motion. The vote was unanimous.

The Mayor called for a vote on the **Zoning Ordinance change on commercial sideyard setbacks**. The wording and intent were clarified. Tom stated that the Planning Commission had a prolonged discussion on the application. He would like to see there be some setback. Alyssa suggested that we send it back to the PC if we don't like it and want to clarify it. Setbacks are more for aesthetic purposes than for a business need. Gladys made a motion we send it back to the PC for clarification. There was more discussion. Tom made a motion to send it back to the Planning Commission. Gladys seconded the motion. Voting in favor were Gladys, Sue, and Tom. Voting against were Bill and Steve.

Gladys made a motion we approve the changes to the **General Plan**, making further changes as discussed. Tom seconded the motion. The vote was unanimous. After the vote was taken, the clerk clarified that the changes have to be adopted by ordinance, and we didn't have the ordinance prepared this time in case it wasn't approved, so we'll have to vote again next month to adopt it by ordinance.

Tom, in his capacity as Enforcement Officer, received a written complaint about perceived **violations of the Zoning Ordinance**. In keeping with the Town's policy of dealing with complaints, he researched the ordinances and wrote a report of his findings, a copy of which was given to each of the Council, the Mayor, the complainants (Dennis Bertucci and Caroline Gaudy) and those against whom the complaint was filed (Scott and Brynn Brodie.)

Tom explained that this is a complicated issue, and he wants everyone to have an opportunity to study it and review the ordinances before there is any discussion on it. This will be a discussion not just on this complaint but also on where we're going as a community.

In the meantime, the PC is working to redefine the Table of Uses. He wants to have a thoughtful discussion. He explained the process of filing a complaint. It must be done in writing, and the person filing the complaint must research the ordinances, cite the sections he feels are being violated, outline the issues, and sign the complaint. He thanked Dennis and Caroline for following the procedure. There will be time for discussion at a future meeting.

Tom then read the first pages of his report. In three weeks we will reconvene after everyone has studied the materials.

Tom stated that he has had many people approach him about water and sanitation issues. He then introduced Robert Beers, Director of the Environmental Health Office of the Southwest Utah Public Health Department, and turned the time over to him to address concerns that have been voiced. Mr. Beers stated that his jurisdiction covers the Five County area, with the mandate to promote healthy lifestyles, prevent the spread of disease, and protect the public health.

The first area of concern he addressed was **septic systems**. They prefer to do the inspections while they're being installed. They do receive complaints from time to time and advise people on how to correct malfunctioning septic systems.

The second area of concern is **septic tanks and septic field inspection and maintenance**. State law requires that every septic system be inspected and that there is a septic system permit. They review the plans for code compliance, then do the inspections after they're installed but before they're covered. They just get involved with maintenance when a system has a problem and the neighbor calls to complain. The better thing would be for the owner to call them for advice when they realize they are having a problem. Tom asked if there was a recommended schedule for having tanks pumped. There is not. The official recommendation is to have the tank inspected every year and pumped as often as necessary. However, he feels it is impractical and expensive, so he tells people to have a brand new tank inspected and pumped after five years. A reputable pumper could tell you whether it could wait a few more years or whether it should be done more often. There are too many variables in use of tanks to give a set formula that applies to everyone. Recommendations for maintenance will be on their website soon. In the meantime, do a computer search for water.epa.gov/infrastructure/septic where there is an excellent, simple, free guide.

How often do septic systems fail? They do fail occasionally, but it depends some on the area you're in. When they do, the liquid is bacterial, can have e coli in it, and can be dangerous. There are three things they are concerned about: the tank itself, the leach field, which distributes the discharge over a large area. Lessons from Septic Tank 101 were given: the tank is divided into three sections, one collects the liquid, one the oil and grease (floaters), and the other the solids, or sinkers. If the floaters or sinkers go into the leach field, it will fail.

Bill reported that issuance of our building permit requires a septic permit, which can only be issued after a perc test is done and which states the required size of septic tank based on the number of bedrooms. The smallest size tank that is allowed is 1,000 gallons for up to a three-bedroom home. The Town doesn't enforce it or approve it—that comes from the Health Department. We do allow composting toilets, but only when accompanied by a septic system to handle the black water. Robert stated that that is the correct procedure. The discussion returned to septic systems. Over time the solids build up and the floaters

accumulate. If they get into the leach line, they plug up the drain system and the water can't get through and comes out the easiest place, which is above ground. Periodic maintenance (pumping) is much more cost effective than trying to fix it after the fact. Additives to the system (microbial products, etc.) have proven to be worthless. The Health Department does not usually make restrictions on the numbers of septic systems in a given area, although some areas have placed restrictions on growth as a result of hydrogeologic studies. If there is evidence of contamination of the ground water, the state will encourage a community to install a sewer system.

The discussion turned to **composting toilets**, which we allow as long as they meet State requirements. Robert admitted that he has never seen one. Bill asked how we can get them to come over and inspect a composting toilet and how they are certified. We want to know that, as a Town, we are meeting State requirements in case there are any sanitation problems. We'd like them to issue us a letter showing that any given composting toilet has been certified and inspected. Robert stated that they can't do that and repeated that they are allowed in the state. He explained that an approved toilet will divide the liquid from the solids. Typically the solid is incinerated and the liquid waste, by State rule, has to go into a septic system. The only thing they know and inspect, when they do their inspections, they include a drawing of how the wastewater gets from the house to the tank. Septic system rules only cover from the tank to the leach field. A question was asked about a toilet that actually composts but doesn't incinerate. Robert said he isn't familiar with those, though he has heard of them. The heat composts the solids and evaporates the liquids. So, how does the Health Department deal with that? The NPS uses them and they are approved by other organizations. The NPS does not go through the SWPHD when they install their toilets. Because of that, Robert isn't familiar with what they put in. There was some discussion on whether that type is approved by the state and whether, because it is UL listed, that makes it state approved. Robert isn't aware that it is approved by the state. In his discussions with the State Department of Water Quality, which oversees anything to do with wastewater he has been told that a composting toilet requires a septic system to deal with the liquid component. When he mentions to them that he has been told that some of these units don't have any liquid component, they tell him there still has to be a septic system to deal with the liquid. Several times people mention black water and gray water, but there is no differentiation in State rule or, if there is, there are no approved gray water systems in the State of Utah by rule.

What goes on within a structure is a matter that the Building Department would have to deal with. After talking with the last Health Department representative, we changed our building permit process to require a sign-off from them on the composting toilet. So, how do we get the inspection and certification of a composting toilet from the Health Department? Robert stated that the previous board wanted to consider every case individually to decide whether they would allow a composting toilet in a given situation, but the current board has said, "You're the experts on septic systems. If you feel it's an

appropriate use of composting toilets, you go ahead and do it.” They (the Health Department) don’t inspect the composting toilet itself to make sure it’s installed properly. They would still make sure there’s a septic system, and that’s what they would inspect. If we want them to say they approve of the use of a composting toilet in a given situation, they can do that.

Another question Bill has is what disposal of the compost brick they approve of. What are the rules and laws on that? Robert isn’t aware of any laws on that. He has spoken with the State DEQ, who says the solid component is something that would be under the guidance of the Dept. of Solid and Hazardous Waste, and he doesn’t know of any guidelines for a private residence; they can dispose of it however they want. He doesn’t know of any rules to the contrary.

Blake’s composting toilet is UL listed and has been inspected by someone from the Health Department. John Gallins came and looked at it at the request of someone in town. It was working beautifully, but he had no jurisdiction. She feels like they’re in a Catch 22 because there is no black water generated by their equipment. They could put a sham septic system next to it, but nothing would go into it, so installing one is not logical.

Matt asked why, since this particular toilet doesn’t release any water, there is a policy requiring septic systems. Robert understands and agrees and has had the discussion with DEQ, but they make the policy and he is bound by it. Blake explained that her composting toilet and enclosing building cost about \$5,000, but there is nothing in the system to fail, while a septic system can fail in spite of maintenance. In her small farm situation, she feels it is more logical to use a system whose remaining material is inert and has no bacterial content. If she put in a septic and it failed, she would have a mess.

Bill’s understanding is that every home must have a septic system, even if they have a composting toilet. The issue isn’t that *composting* creates black water—a *home* creates black water. Constance stated that Utah is the only state that considers sink water black, so homes have to have a septic system for that water, even though 49 other states don’t see it that way. She asked if that can be changed and, if so, how can we go about doing so? Robert stated that the current state rule was written by the state Division of Water Quality, and part of the rules requires that before any county can allow a gray water system, the local health department has to agree to comply with the rule in all of its requirements. Because of the way the rule is written, not a single health department has agreed to do that. All 12 health departments in the state refuse to agree to the requirements of that rule, which was written in 2005. Constance stated that Arizona allows a much smaller septic system for kitchen water and wondered if something like that could be allowed. When she talked to the Health Department, they said 1,000 gallons is the minimum. Robert said that any change would have to go through the State Division of Water Quality since that’s their area of jurisdiction. He is required to operate

under the state rule.

Bill is concerned because this whole arrangement puts the Town in an impossible situation. He likes composting toilets and wanted to have one himself, and he knows what these people are going through trying to get a building permit. But they have to do what the state requires. Robert reminded us that we also are bound by the International Plumbing Code and the building codes, which give specific guidelines on approving these things. We put composting toilets on our building permit to try to enable people to be able to have them approved, and one of the Health Department representatives said they would inspect it and give us a letter approving it. Blake said that the fellow who looked at hers said he would write a letter, but all he would be able to say was that he looked at it and it looks great. Robert restated that they don't have any jurisdiction inside of a structure. Bill stated that the Town has a responsibility to follow state law; we can make our rules tougher than those of the state, but we can't make them easier. Robert said if they gave an approval for a composting toilet to be used in a specific situation, he would be happy to write a letter stating that it meets the requirements of the Southwest Utah Public Health Department Board. Bill: "That's all I have been asking for for nine years. Thank you." We need such a letter for Blake in our file to show that we have done what was required of us. We need a similar letter for every composting toilet in town stating that they have looked at the septic and that the septic meets (much speaking at once.) Robert: They would require that a composting toilet have a septic. Bill: In Blake's case, he doesn't think it would need one because there's no black water there. Maybe the Town could write a letter to see if we could get past the 1,000 gallon tank requirement.

Tom stated that we have an answer to this particular issue as far as that answer goes, which isn't particularly satisfying. Neither we nor the Health Department are the people we need to address on this issue, it's the State Department of Water Quality. Constance reported that she has gone to the State level and they say similar things—they can't make exceptions. We need to write to our State Representatives and force this issue along. Loch recapped what he understood: As far as composting toilets go, those that don't have black water or any kind of liquid waste, you're happy to look at them and write a letter. Robert: He's been told that a composting toilet has a liquid component. He understands our point, but people who are enforcing the rules tell him that you have to have a septic tank. Loch: The second thing he wants to confirm is that, if you're building a house, no matter what else goes on, you have to have a septic tank. Robert: Yes. In contrast to several other states, kitchen waste, shower, bath water, and laundry waste are considered black water by state rule. Then what's gray water? By state rule, if it's not drinking water and not black water, then it's gray water. Matt feels that the state is in such confusion that it's the Town's decision what it wants to do. Bill: we take an oath to follow the state law, and the Town could really be susceptible to someone who may not agree with composting. He would have to talk to our attorney, but as far as he knows, we are required to follow all state laws. Matt: Could people sign a waiver? Mark: Who

would be waiving what? Matt: We would waive the Town's responsibility over a failed system. Mark: So you're saying that the Town could waive the liability for anybody else who might—you can't waive that against any future person who might happen to come here. He can't see that working. Bill Geil wondered if what we are talking about is indemnification. A person would indemnify the Town of Boulder against any action. Mark: I suppose they could do that. It doesn't mean that the Town doesn't have to follow State law, but it may make it easier for the Town to take the risk. Loch: If they sign a waiver, a third party could still sue the Town for not following state law, or the state itself could prosecute the town, and a waiver would be meaningless. Bill G: with indemnification, the Town could turn to these people who feel strongly about it and say we will tender the defense to the town, but the town may not want to be in that position. Mark: so will they go to jail if it's prosecuted criminally? Bill: What are we looking at for risk? Mark: The courts will not uphold contracts that are against public policy, so you'd have to convince the judge that it's a good idea for towns to disregard as lawless the rules as long as somebody... so that they'll take the blame. No judge that we have in this district will go for that.

Blake asked if the Health Department has a requirement for a farm to have a toilet. Robert doesn't know that there is. Blake would like to know, because they put their composting toilet in because the Town was complaining that they didn't have a toilet. If it isn't required, the easiest thing for her to do would be to sell it. Bill explained what happened from the Town's viewpoint. They were asked to solve the problem of employee needs because of complaints from neighbors of waste in buckets, covered in sawdust, and carried somewhere. Blake wants to know if there is a Health Department requirement that they provide facilities. Robert repeated that waste water has to be disposed of in an approved sewer or septic facility. Anselm wants to know the difference between animal and human waste. Robert stated that is a valid point and referenced Best Friends facility in Kanab, which has several septic systems to handle certain of the wastes from the animal pens. Several agencies were involved in deciding what to do with the application for a new system, and there still isn't a decision three months later. The whole wastewater situation is complicated. As far as Blake's situation is concerned, Bill said she was given permission to use it, there is no wastewater, we haven't had verification from the Health Department, and it's time to move on.

As far as **camper and RV** waste is concerned, all the liquid is black water which has to go into an approved sewer, septic system or dump facility. It can be put into a household septic system, but it would have to be done gradually, as it is usually more concentrated than household waste. Bill discussed our temporary camping ordinance, which allows a camper to be used for 90 days if it is self-contained or within 100 feet of a house with approved facilities. If a camper is used 24/7 for the 90 days, would that create a problem? Robert: It could overwhelm a regular septic system if that waste were added to the normal household waste. On the other hand, if the septic system was built with a larger tank as

if the house had an extra bedroom, it would be okay. Bill: If an RV is not self-contained and is used for that period of time and is not within 100 ft. of any house, would the water used for cooking and allowed to drain onto the ground be considered black water?

Robert: Yes. It is definitely polluted water that is being disposed of. All RV's that he's familiar with have one large tank into which all the water in the RV is collected.

Irrigation water and ponds are not regulated by the Health Department. They are only involved if there is a charge to swim in a pond. Otherwise, it's not something they have jurisdiction over. Blake's attorney has told her that there has never been any issue with swimming in irrigation water in the country or in Utah.

The last issue is how does the Health Department **investigate and enforce regulation violations**? A person can call the office, either the Cedar City office or Robert Beers at his office. Tom has his contact information. They will come and do investigations, but they may not be as timely as we would like because of the distance, but they try to be accommodating and helpful.

There was discussion on the amount of umbrella insurance the Town should carry. There is no way to know what coverage we may need. Tom thinks we need a minimum of \$3 million. There was discussion on the playground and changes that need to be made to make it safer. Certain rocks need to be shielded or moved, and the north climbing bars to the platform need to be replaced with stairs. We need to research the safety and legality of the merry-go-round. Tom made a motion that we increase the coverage to \$5 million. Steve doesn't have an opinion. Judi will call the state Risk Management department and Bill will call State Parks. Peg feels there are more kids hurt on the swings than on the merry-go-round.

Tom would like to get a ladder for the town. He'll get that plus pots, bowls, and other kitchen utensils next time he is in Colorado. He was authorized to spend up to \$500.

Sue reported that the street signs are here and she is working on the permit to install them. The landfill has had an inspection, and the pits need attention. We need to contact the County about hauling things to John's Valley. Farlan may be able to get out there this week.

Shelly Ripplinger has asked that we put up No Parking signs on the door of each bay of the firehouse, and Katie would also like one by the south side of the Post Office. They would also like to paint No Parking on the pavement in front of the firehouse and beside the PO. They would also like lettering on the firehouse to identify it. We approved the identification sign some time ago, and Corry has all the information and will be glad to do it, so Steve would like authorization to tell them to go ahead and do those things. We could use the same place Sue got the road signs to order the No Parking signs. Steve will

just turn it over to Shelly, and she can contact Sue about the signs if she wants. They said they have volunteers to do the painting. The BLM has approved the changes we suggested for the Tract Park; we just have to send them a drawing showing where they will be. Sam has checked with Jones & DeMille, and they will charge \$2,000 to engineer the pavilion foundation. After some discussion, Steve made a motion that we approve payment of \$2,000 to Jones & DeMille to engineer the pavilion foundation. Gladys seconded the motion. The vote was unanimous.

Bill and Steve will meet with Danon Hulet of Forestry, Fire and State Lands on Monday at 11:00 at the Community Center to do paperwork for the Tree City program. Anyone else who has time is welcome to join them. The three pallets of roof tiles that are at the Tract Park belong to the Town. They could be used to roof the maintenance building or we can put up for sale. Tom will research a reasonable price and we will call for bids on them.

The Mayor and one or two Council members are invited to a Travel Council lunch tomorrow at The Burr Trail Grill to learn more about the Tour of Utah bicycle race that will be passing through town on August 7. They are hoping the people of Boulder will line the streets and cheer on the participants. There will be international television coverage of the race. They asked the Town to pay half the cost for a banner welcoming the bicyclists to Boulder, and Bill said we would do it. Our share of the cost will be \$50.

Tom made a motion the meeting adjourn. Gladys seconded the motion. The vote was unanimous.

The meeting adjourned at 9:25 p.m.