

NOTICE AND AGENDA

Notice is hereby given that the City Council of the City of Santaquin will hold a Special City Council Meeting on Monday, November 28, 2011, in the Council Chambers, 45 West 100 South, at 6:00 pm.

AGENDA

1. ROLL CALL
2. NEW BUSINESS
 - a. Convene as the Board of Canvassers
 - i. Canvas of the recount of Proposition 1 and Proposition 2
3. ADJOURNMENT

If you are planning to attend this Public Meeting and, due to a disability, need assistance in understanding or participating in the meeting, please notify the City ten or more hours in advance and we will, within reason, provide what assistance may be required.

CERTIFICATE OF MAILING

The undersigned duly appointed City Recorder for the municipality of Santaquin City hereby certifies that a copy of the foregoing Notice and Agenda was e-mailed to the Payson Chronicle, Payson, UT, 84651.

BY: Susan B. Farnsworth
Susan B. Farnsworth, City Recorder

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® Amendment to the agenda

**MINUTES OF A SPECIAL CITY COUNCIL MEETING
HELD IN THE COUNCIL CHAMBERS
NOVEMBER 28, 2011**

The meeting was called to order by Mayor James E. DeGraffenried at 6:00 pm. Council Members attending: Filip Askerlund, Martin Green, James Linford, Rick Steele and Brent Vincent.

Others attending: City Manager Ben Reeves, Legal Counsel Brett Rich, Matt Carr, Spencer Healey, Michael Swan, Richard Payne, Diane Payne, Stephanie Green, Nick Miller, Lance Wollebaek, and other unidentified individuals.

NEW BUSINESS

Convene as the Board of Canvassers

Council Member Askerlund asked what could happen if the Board of Canvassers, "does not certify or whatever the term is"? Legal Counsel Rich indicated that to canvass was to perform their duty under the State Statute.

Council Member Askerlund asked if the Council, acting as a canvassing body, had the authority to request a recount. Legal Counsel Rich indicated a recount was requested and performed. "At this time the only recount, I see under the statute", Council Member Vincent interjected by saying, "A second recount". Legal Counsel Rich indicated, "The thing that makes it null and void is there simply is a statutory provision for a recount and when that is done it is the recount that is the"... Council Member Vincent asked, "So how does that make it accurate? I don't understand." Legal Counsel Rich indicated he couldn't answer that question for Council Member Vincent since he wasn't a part of the count or recount. Council Member Vincent questioned the difference in the total votes cast from the original count and the recount. He was told by City Recorder Farnsworth, and verified by Council Member Askerlund, that there was an issue with ballots during the recount. City Recorder Farnsworth said the counters "held up a ballot and asked how should this be counted?" City Recorder Farnsworth said this particular voter had written in the word "no" two (2) times under the voting area of Proposition 1. It was determined the intent of the Voter was to vote no on Proposition 1 but the Voters intent could not be established for Proposition 2; therefore a vote was not counted. Council Member Askerlund questioned how that ballot was counted the first time. City Recorder Farnsworth indicated she could not determine how it was counted as she was not involved in the original count. Council Member Vincent said, "That is my heartache is that we didn't see the count".

City Recorder Farnsworth continued by saying there was a request for a recount so the recount was taken outside the City's jurisdiction to an independent counter so there wouldn't be any question as to the recount. Council Member Vincent questioned if it was correct that one of the counters quit during the recount. City Recorder Farnsworth stated, "Absolutely not". Council Member Vincent questioned what happened there. City Recorder Farnsworth indicated she didn't know what Council Member Vincent was talking about.

Council Member Vincent said, "One of the Counters didn't get upset and not count?" City Recorder Farnsworth again said, "Absolutely not". Council Member Askerlund indicated, "They were off by one". City Recorder Farnsworth said there was one group that started over and made a change of the reader. At that point Scott Hogensen turned the reading of the ballots over to Lloyd Carr. There were two or three times Mr. Carr recounted the ballots noting all the votes for Proposition 1, all the votes against Proposition 1, all the votes for Proposition 2 and all the votes against Proposition 2. At each verification count, all the votes had been accounted for. Council Member Askerlund commented, "Susan, that is not quite accurate". He continued by saying, "Table two at one point was off by one vote and the same process was not used". City Recorder Farnsworth indicated each time table two received an additional stack of ballots to count, the counters would make sure they were in agreement. At one point they were off by one vote, it is unclear on what issue the vote varied, but Mr. Hogensen recounted the ballots from the last verified total and found the error. At that point he indicated what the total for each proposition issue should be. Council Member Askerlund said, "Table one, Rich, correct me if I am wrong because you were sitting closer than me, when they were off after the first time, to make their corrections, it was a different process than what was done on table two. It was a different process than had been done through the whole thing. Now we are relying

on Lloyd's count who's not a" a comment was made from the audience which was not heard by City Recorder Farnsworth or recorded on the meeting recording.

City Recorder Farnsworth indicated once again that each time the counters received a new stack of ballots to count, they would verify that the numbers balanced. Council Member Askerlund said, "That didn't happen on table number one because he went back through, I don't know if there were 30 ballots, stacks of – groups of 5 totaling probably 25 or 30 per stack and he had them all over there on the table, took one after another and counted them." City Recorder Farnsworth added, "And if you were watching that, you would have noticed that the Lady Counter was on and the Gentleman Counter was off."

Council Member Vincent said, "I'm just asking how you feel the second count is more accurate". City Recorder Farnsworth indicated she felt the recount was accurate because there were two different teams counting the ballots this time instead of only one team. Council Member Steele asked, "Can we still go back and ask them to come and count them like two more times and make sure they are the same that way?" Legal Counsel Rich said, "I don't see any provisions for that. Your responsibility as I understand of the statute is that you examine the elections returns and you make the declaration and if there is something further"..... Council Member Steele interjected by saying, "It seems to me that even our counters the first time they counted them, it seems like to me that it should have been done more than once to make sure their numbers come".... Council Member Steele did not continue his statement.

Legal Counsel Rich indicated this was a very close election. Council Member Askerlund said, "The information I received to either accept or reject the recount, if it clearly appears to the Election Officer and Board of Canvassers that certain matters are omitted or that clerical mistakes may exist in an election is out of the code or legalese from Mark."

Legal Counsel Rich said he thought it may have come from discussion with the Lieutenant Governor's Office because he has had a number of discussions with them. His discussion was where a judge would decide it. Legal Counsel Rich indicated, "You're getting into some issues about what the Board has the authority to do and I think that this Board of Canvassers can do as far as the returns. I have not heard him say anything about having the opinion the Council"... Council Member Askerlund interrupted by saying, "20A-4-303 (3) (a) Election Officer or Board of Canvassers that certain matters are omitted or that clerical mistakes exist in election returns received, they shall transmit the election returns to the election judges for correction. Who are the election judges?" Legal Counsel Rich indicated he needed to look at the code before he could answer additional questions. Legal Counsel Rich said at this point he didn't believe the code allowed for anyone to order an additional recount. He said, "I will tell you that if this body chose to do that, there are some who would say you have the authority to and there are others who would say that you don't. There isn't clear case law that I can find in Utah on this issue. But that's the way I am looking at it. I understand there is a split of authority over what this body has the authority to do as canvassers."

Council Member Green read a portion of an article written quoting Council Member Askerlund saying, "It came out as a 6 vote swing; the issue now is whether or not the 9.9 million is enough to build the MBR." Council Member Askerlund said, "As I understood the question it had to do with the process. I've talked to Spencer about this quote. In a sealed box I am fine with all the processes. As far as not saying anything, I guess I was under the impression that as an observer I was not allowed. And then when Provo had their observers stop the recount...when I talked to the Lieutenant Governor's Office and found out that one recount team counted over 1000 ballots and the other counted less than 400 ballots should tell you something and I don't know the young man's name but I sensed a level of frustration on Mr. Carr's part. He started over at least 4 times. They started over at 30 ballots, they did it again at 80 ballots, they did it again at 180 ballots. And to my quote, my quote had to do with the process that was taking place and whether I was comfortable with the process which this is my first recount. I'm fine with it. If that is how they work, that's the way they work."

Legal Counsel Rich indicated the code provides for an election contest. The provisions are spelled out within the code. Mayor DeGraffenried indicated this action this evening would be an administrative responsibility. Legal Counsel Rich suggested a review of the tallies by the Board of Canvassers and then having a declaration made on the review. Council Member Askerlund said, "Brett, are you saying before we canvass, this Council should review those ballots?" Legal Counsel Rich said, "Some say the Board of Canvassers does have the authority to examine the actual ballots and this process could be completed right now. Some say you don't." Council Member Steele questioned what needed to be done to clarify that. Legal Counsel Rich indicated he wasn't in a position to give what he would call a legal opinion on it. "But I've looked at it and if I read the language of the statute, I'd say only to the tallies. I don't see a court case that is definitive on it and as I say the court cases are older."

Mayor DeGraffenried said, "If there is a vote no it goes to the 4th District Court". Legal Counsel Rich indicated an election contest may happen as per the statutory provisions. Council Member Askerlund was told during that process the ballots may be recounted by a Judge or by someone under his authority. Legal Counsel Rich said, "The Board of Canvassers should make a decision one way or another." He continued by saying he believed this topic was heated enough that it may end up in court anyway. He indicated the Board of Canvassers should make a decision and then if someone feels differently then they file an election contest with the courts. Council Member Linford said the due diligence for the Board of Canvassers, forget about the Council, is to canvass the votes. Legal Counsel Rich said this body, as the Board of Canvassers, presumably will make a decision to accept or not to accept it.

Council Member Askerlund said, "To put it in really simple terms, is there a way aside from taking it to the 4th District Court, to have it done?" Legal Counsel Rich indicated, "If you took the opinion that you do have the authority to open the individual ballots, it will most likely be contested one way or the other. I look at it like this, no matter what you come up with during your count here, it seems to me that this has been hotly enough contested that it would end up in court."

City Recorder Farnsworth, as the Election officer, asked where the integrity of the ballots stood if they were to be examined by the City Council. She was told she could be the only one handling the ballots as each of the Council Members examines them. That would guarantee the ballots continued to be in their original state. City Manager Reeves reiterated the integrity of the ballots is the most important issue. "Wouldn't it make the most sense to 1) protect the integrity of the ballots by delivering them right from the evidence room to the courts and 2) following an administrative act, the Council would then accept the numbers from the independent body that performed the recount? I guess what I am asking is wouldn't it be most appropriate for the Council to take the most traditional route of following the administrative steps of approving it? Arguably if a count is handled right now it would be contested as well." Council Member Askerlund indicated, "This is two separate issues. The integrity of the ballots; they are in a sealed box, are they not, Susan?" He was told they were. "To accept or reject is a separate issue. Whether or not it means it goes to court if the ultimate end of this is to vote our consciences and let what happens happen." City Manager Reeves said, "I guess it comes back to what Brett originally said about the difference between discretionary and administrative." Legal Counsel Rich indicated, "You would be acting in a judicial or quasi judicial way in deciding a controversy." He continued by saying, "You should confirm the tally sheet numbers and if they are correct you should go on." Mayor DeGraffenried was told the tally sheets from the recount were present.

A discussion was held as to who would be responsible to pay court costs if the issue went to court. Council Member Vincent asked "If this goes to court, if we canvass this tonight, then the people that are going to protest it and take it to court because we are going to say that we now accept this vote that now says that we're for it, that the majority of the Citizens are for it, the first time it said that the majority of the Citizens were against it, the people who voted against the referendum would have to pay for it." He asked, "If we

canvass this vote it means that the group of citizens that are going to have to pay to take it to court is going to be the group of citizens that voted the first count." Legal Counsel Rich indicated there was a recount and as he understands it "something has to be filed". Council Member Vincent asked "Who was going to protest it the second time then?" Legal Counsel Rich said he would anticipate that the election official is going to send the results as they have been tallied and presented to the Lieutenant Governor. If Susan sends it in, as your election official, I would assume she is going to send in the recount numbers as what has been presented." Council Member Askerlund said, "Wouldn't the first vote be official? That is what was declared and voted on. Why would the second recount be the declared?" Legal Counsel Rich indicated there is a provision for a recount and the recount was done so that is the last thing that happened. He continued by saying, "It is your responsibility as the Board of Canvassers, you are supposed to make that decision". Council Member Askerlund said, "I guess I am asking if there is a difference between canvasses and declared." He was told there was a difference. The City Recorder has declared that the recount has shown that Proposition 1 was approved. Those results have been given to the election official and she would give those results to the Lieutenant Governor's Office. That isn't the way it would normally work but in this instance without a canvass that is how it should be done.

Council Member Green moved to approve the recount numbers. Council Member Linford seconded the motion. Council Members Green and Linford voted in favor of the motion. Council Member Askerlund, Steele and Vincent voted against the motion. The motion did not carry.

Mayor DeGraffenried asked if there was a substitute motion. None of the Council Members said anything. Legal Counsel Rich said "My only concern is that there was a motion and the motion didn't carry, does that mean that there will be no other motion of the Council?" Council Member Askerlund asked if there should be a motion not to canvass the votes. Legal Counsel Rich answered in the affirmative. Council Member Askerlund questioned what the "no" votes meant on the last motion.

Mayor DeGraffenried said "There was a motion failed, nothing has been accomplished. Therefore we need to have a new motion that says that they motion not to do the canvass". Council Member Askerlund said "If I understand you correctly a motion needs to be made to not accept the canvass of the votes." Legal Counsel Rich was in agreement. Council Member Steele asked if they could make a motion to send the issue to a judge and have the ballots counted. Legal Counsel Rich indicated there didn't appear to be a provision in the code for that. That is where an election contest would come in. Again, no additional motions were made by the Council.

Canvass of the recount of Proposition 1 and Proposition 2

See above

ADJOURNMENT

At 6:45 Council Member Green moved to adjourn. Council Member Linford seconded the motion. Council Members Askerlund, Green, Linford, Steele and Vincent voted unanimously to adjourn.

Approved on January 04, 2012


James E. DeGraffenried, Mayor


Susan B. Farnsworth, City Recorder



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April 6, 2012

Mayor James DeGraffenreid
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Benjamin Reeves
Santaquin City Manager
275 West Main
Santaquin, Utah 84655

RE: Case number 12CA0008

Mayor DeGraffenreid and Mr. Reeves,

On January 13, 2012, I received a formal complaint in reference to alleged unlawful activity involving a recording of an official meeting of the Santaquin City Council. As the investigation ensued I was advised of another allegation involving misuse of city services and funds.

The first allegation involved the computer from the City Council Chambers being intentionally altered to cover or erase conversations involving public officials during a November 28, 2011 city council meeting. The conversation involved the recent bond election.

The computer from Santaquin City Council chambers was examined by a certified computer forensic examiner. The examiner found no evidence of alterations or deletions of files. It was apparent there was a software problem with the recording. The computer has since been replaced and the problem solved. A full report was filed by the examiner in relationship to this investigation.

The second allegation surrounded a violation of the Utah Elections Code, §20A-11-1203(1). This law prohibits the expending of public funds on certain electoral matters. The allegation stated Mayor DeGraffenreid authorized the use of public funds for mailers supporting the "yes" vote on the sewer bond.

An investigation was completed. It was determined that nearly 900 mailers were electronically set out in the City's utility bills. The investigation explained the possible violation of the Utah Election law and further explained the remedies implemented by the Mayor and City

Staff. The remedies were put into place after being notified of violation and counsel with the City Attorney.

The summary was submitted to the assigned attorney. After review by the assigned attorney and consultation with Jeff Buhman, Utah County Attorney, the legal opinion determined the facts of the alleged misconduct was unintentional to the extent of use of public funds, which is an element of the crime. Therefore, the attorney declined any criminal charges.

Based on this opinion, this case will be closed with no further action.

Any further information from this investigation will be addressed under GRAMA. U.C.A. §63G-2-204(3)

If there are any questions, please call me.



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